

CM CLARIFICATION #003

April 6, 2018

PROJECT: CNE Tahlequah Casino

Foreman Manhattan Team has added and/or revised the following CM Manual documents for review and inclusion by all contractors within their Scope Package Proposal:

1. **00 01 10 Table of Contents**
 - a. Revised to include revised and new Bid Packages
2. **00 11 00 Bid Solicitation with Pre-Bid Date**
 - a. Revised to include new Bid Packages Information
 - b. Revised to include Thumb Drive bid requirement
3. **00 21 13 Instructions to Bidders**
 - a. Revised to include new Bid Packages Information
 - b. Revised to include Thumb Drive bid requirement
4. **00 50 00 Bid Packages**
 - a. 03.01Rev01 – Building Concrete Rev01 – Revised Bid Package
 - b. 22.01 – Underslab Mechanical and Plumbing – New Bid Package
 - c. 26.01 – Underslab Electrical – New Bid Package
 - d. 33.01 – Site Utilities – New Bid Package
5. **00 60 02A Manhattan General Provisions**
 - a. Replace previously issued document with the revised included in this CM Clarification
6. **00 60 04 Exhibit B – Subcontractor Performance and Payment Bonds**
 - a. Replace previously issued document with the revised included in this CM Clarification
7. **00 60 05 Exhibit C – Insurance**
 - a. Replace previously issued document with the revised included in this CM Clarification
8. **00 60 09 Exhibit G – Tax Exempt – O.D.P.I.**
 - a. Revised, to include Sample Vendor Invoice, and Oklahoma Tax Commission Letter
9. **00 61 04 Exhibit C – Insurance**
 - a. Replace previously issued document with the revised included in this CM Clarification
10. **00 61 04A Exhibit C – Insurance Sample**
 - a. Replace previously issued document with the revised included in this CM Clarification

Please Contact **Tina Jones, Buyer IV** with any questions:

Tina Jones

(918) 384-7802

Tina.Jones@cnet.com

- END OF CM CLARIFICATION -

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Bid Solicitation

PROJECT: Cherokee Nation Entertainment Tahlequah Casino

BID PACKAGE NO. 02 / 02a – Will be bidding at this time (see Attached):

SUBCONTRACTOR IS TO COMPLY WITH ALL **CHEROKEE NATION, TRIBAL EMPLOYMENT RIGHTS OFFICE (TERO)**, NATIONAL INDIAN GAMING ASSOCIATION (NIGA), AND ALL BUREAU OF INDIAN AFFAIR'S (BIA) RULES, REGULATIONS, AND LICENSING REQUIREMENTS INCLUDING ALL FEES AND ASSESSMENTS, ASSESSMENT, APPLICABLE TO THIS PROJECT.

PROJECT INFORMATION:

CNE Tahlequah Casino – New Construction
3307 South Seven Clans Avenue
Tahlequah, OK 74464

Pre-Bid Meeting:

Location: Proposed Project Site
3307 South Seven Clans Avenue
Tahlequah, OK 74464

BID PACKAGE #2

Scope Package 03.01Rev01 – Building Concrete

Date: *Wednesday, April 4, 2018*
Time: 9:00 AM CST

BID PACKAGE #2a

Scope Package 22.01 – Underslab Mechanical and Plumbing

Scope Package 26.01 – Underslab Electrical

Scope Package 33.01 – Site Utilities

Date: *Tuesday, April 10, 2018*
Time: 9:00 AM CST

Project RFI's: (All Questions and Interpretations)

BID PACKAGE #2

Scope Package 03.01Rev01 – Building Concrete

Date: *Friday, April 6, 2018*
Time: 12:00 PM CST (Noon)

BID PACKAGE #2a

Scope Package 22.01 – Underslab Mechanical and Plumbing

Scope Package 26.01 – Underslab Electrical

Scope Package 33.01 – Site Utilities

Date: *Tuesday, April 17, 2018*
Time: 12:00 PM CST (Noon)

Project Contact: *Tina Jones, Buyer IV*

(918) 384-7802
Tina.Jones@cnent.com

Bid Day:

BID PACKAGE #2

Scope Package 03.01Rev01 – Building Concrete

Date: *Wednesday, April 11, 2018*
Time: 2:00PM CST

BID PACKAGE #2a

Scope Package 22.01 – Underslab Mechanical and Plumbing

Scope Package 26.01 – Underslab Electrical

Scope Package 33.01 – Site Utilities

Date: *Friday, April 20, 2018*
Time: 2:00PM CST

All proposals shall include one (1ea) hard copy, and one (1ea) soft copy (*.pdf format) on a USB Thumb Drive, and should be sent by express delivery, regular mail or hand delivery to Cherokee Nation Businesses Catoosa Corporate office at the following address:

IF BY EXPRESS DELIVER OR REGULAR MAIL

Cherokee Nation Businesses, L.L.C.
Attn: Tina Jones, Buyer IV
777 W. Cherokee Street
Catoosa, Oklahoma 74015

IF BY HAND DELIVERY

Cherokee Nation Businesses, L.L.C.
Attn: Tina Jones, Buyer IV
Corp. Building #3
1102 N. 193rd East Ave.
Catoosa, OK 74015

NOTE: A location Map has been attached to this document.

The bidder must supply all the information required by the RFP Documents, hereinafter defined.

The bidder must plan for a post bid meeting/interview to review bidder's proposal and scope of work associated with the project. This post bid de-scope meeting/interview will be scheduled at the close of business day a minimum of 48-hours after the initial Bid Day.

A second additional 48-hour period shall be extended in order to follow TERO requirements and procedures.

It is the intention of CNB to award this project within 30 days of the proposal date.

Any proposal received more than ninety-six (96) hours, excluding Saturdays, Sundays and holidays, before the time set for the opening of proposals, or any proposal so received after the time set for opening of proposals, shall not be considered and shall be returned unopened to the proposing firm submitting same.

Cherokee Nation Businesses and Foreman Manhattan Construction Team will privately review bids. The Owner and/or the Construction Manager expressly reserve the right to waive all formalities or minor irregularities and to reject any or all bids. Combination of bid packages, incomplete bid packages and/or qualified bids may be subject to rejection.

Instructions to Bidders

1. Receipt and Opening of Proposals:

Cherokee Nation Entertainment (“Owner”) on behalf of Foreman Manhattan Construction Team (herein called “Construction Manager”, “CM”, “Foreman Manhattan Team”, “FMC”, or “Foreman Manhattan”) acting as Construction Manager **is accepting SEALED bids.**

All proposals should be sent by express delivery, regular mail or hand delivery to Cherokee Nation Businesses Catoosa Corporate office at the following address:

IF BY EXPRESS DELIVER OR REGULAR MAIL

Cherokee Nation Businesses, L.L.C.
Attn: Tina Jones, Buyer IV
777 W. Cherokee Street
Catoosa, Oklahoma 74015

IF BY HAND DELIVERY

Cherokee Nation Businesses, L.L.C.
Attn: Tina Jones, Buyer IV
Corp. Building #3
1102 N. 193rd East Ave.
Catoosa, OK 74015

Proposals shall be designated as: **CNE Tahlequah Casino – Scope Package # _____**

And properly marked with project name, name of bidder and bid package number. Any Proposal may be withdrawn prior to the scheduled time for the opening of bids or authorized postponement thereof.

Email delivery of Proposals shall NOT be accepted

2. Proposal Due Date:

BID PACKAGE #2

Scope Package 03.01Rev01 – Building Concrete

Date: *Wednesday, April 11, 2018*
Time: 2:00PM CST

BID PACKAGE #2a

Scope Package 22.01 – Underslab Mechanical and Plumbing

Scope Package 26.01 – Underslab Electrical

Scope Package 33.01 – Site Utilities

Date: *Friday, April 20, 2018*
Time: 2:00PM CST

3. **Content to be included at Foreman Manhattan Construction Team request:**

Each bid proposal must be submitted on the prescribed form. All blank spaces for bid prices must be filled in, ink or typewritten. Bidder shall submit proposals using the prescribed forms included herein.

- a. Complete Scope Package Document
- b. Completed Affidavits
- c. Pre-qualification Documents (Section 00 45 00)
- d. TERO bidders must supply a copy of TERO Certificate, front and back
- e. **One (1ea) soft/digital copy of all the above (*.pdf format) on a USB Thumb Drive**

4. **Bid Bond:**

Not Required

5. **Performance and Payment Bond Requirements: (Subcontractor contracts Only)**

Costs for performance and payment bonds **shall be included in your base bid and any applicable alternates or unit prices.** All exterior envelope Bid Packages (Trades) will be required to bond. In addition, all base bids, combination base Bid and including all alternates of \$100,000 or above will require Performance and Payment Bond equal to one hundred percent (100%) of the contract amount. Reference Section 00 60 04 – Exhibit B of the C.M. Bid Manual.

6. **Tribal Employment Rights Office.**

SUBCONTRACTOR IS TO COMPLY WITH ALL CHEROKEE NATION, TRIBAL EMPLOYMENT RIGHTS OFFICE (TERO), NATIONAL INDIAN GAMING ASSOCIATION (NIGA), AND ALL BUREAU OF INDIAN AFFAIR'S (BIA) RULES, REGULATIONS, AND LICENSING REQUIREMENTS INCLUDING ALL FEES AND ASSESSMENTS, ASSESSMENT, APPLICABLE TO THIS PROJECT.

11.1.1 - TERO document "An Act" Legislative Act 01-14 dated February 10, 2014.
This Document is ACT AMENDING LA 30-12, "CHEROKEE NATION EMPLOYMENT RIGHTS ACT"

11.1.2 - Subcontractors are to EXCLUDE the cost for Section; Title 40, § 1011; T.
To assess an Employee Rights Fee of one-half (1/2) of one percent (1%) on all covered contracts. This cost will be paid by the Construction Manager.

11.1.3 - The Work Permits paragraph of the Tribal Employment Rights Office (TERO) Project Labor Agreement - Master Agreement LA 01-14 states: No person who is not a member of a federally recognized tribe shall be employed by a covered employer until he or she has obtained a work permit from the TERO at a cost of twenty-five dollars (\$25) per day, per permit. Subcontractors are to INCLUDE in their proposed price for the work, all costs associated with the twenty-five (\$25) per day work permit for every non-Indian individual employed on this project.

7. **Pre-Qualification of Bidder:**

All bidders shall complete the Prequalification forms as attached. If previously submitted, check with **Jessica Allen at 918-583-6900 - JLAllen@manhattanconstruction.com** to satisfy whether previously submissions are up to date or have not been entered into the database. If out of date or if previously submitted and not entered as happens from time to time, please submit as a condition of Bid.

The Owner or Construction Manager reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the Owner or Construction Manager that such bidder is properly qualified to carry out the obligation of the Agreement for Construction and to complete the work contemplated therein

Further and as portion of the Foreman Manhattan qualification and if Foreman Manhattan so elects, Subcontractor agrees to furnish a Letter of credit (LOC) in lieu of providing a Performance and Payment Bonds.

8. Sales Tax

All bids must be submitted exclusive of Federal Excise Tax and Oklahoma State Sales Tax. The Cherokee Nation is exempt from Oklahoma State Sales Tax and Federal Excise Tax under authority of § Okla. Stat. Supp. 1994 Section 1356. Bidder is to include and pay all other applicable sales tax and use taxes as required. Applications for payment shall be broken down as required by the Owner or Construction Manager.

Specific Project Requirements for the process, approval, and payment of Owner-Direct Payment Items (ODPI) are identified in section 00 60 09:

EXHIBIT "G"

Tax Exempt / Owner Direct Paid Invoice (ODPI) Payment Process

9. Schedule

Time is of the essence of the Contract. Bidders are to review the work of their particular Bid Package and all other Bid Packages in relation to the Project Schedule. The Subcontractor is committing to the Master Schedule of the project by submitting a Bid.

Subcontractor should include all remobilization charges required per the Project schedule.

10. Examination of bid documents:

Bid Documents can be obtained electronically from the Cherokee Nation Commerce website:

<http://www.cherokeebids.org>

Hard copy of Bid Documents can be viewed at:

Small Business Assistance Center
Tahlequah Oklahoma 74464
(918) 453-5536
sbac@cheokee.org

11. Examination of Site

Contractor shall examine site, make notes of existing conditions, comparing such with the plans and specifications, and be fully satisfied as to conditions of such before submitting his proposal. No allowance shall be subsequently made to the Contractor by reason of any error on his part. **Pre-bid date is scheduled for:**

Location: Proposed Project Site
3307 South Seven Clans Avenue
Tahlequah, OK 74464

BID PACKAGE #2

Scope Package 03.01Rev01 – Building Concrete

Date: *Wednesday, April 4, 2018*
Time: 9:00 AM CST

BID PACKAGE #2a

Scope Package 22.01 – Underslab Mechanical and Plumbing

Scope Package 26.01 – Underslab Electrical

Scope Package 33.01 – Site Utilities

Date: *Tuesday, April 10, 2018*
Time: 9:00 AM CST

12. All Questions and Interpretations of the Bid documents:

Project Contact: *Tina Jones, Buyer IV*

(918) 384-7802
Tina.Jones@cnet.com

Deadline cut-off date for all questions concerning these specific Bid Packages is:

BID PACKAGE #2

Scope Package 03.01Rev01 – Building Concrete

Date: *Friday, April 6, 2018*
Time: 12:00 PM CST (Noon)

BID PACKAGE #2a

Scope Package 22.01 – Underslab Mechanical and Plumbing

Scope Package 26.01 – Underslab Electrical

Scope Package 33.01 – Site Utilities

Date: *Tuesday, April 17, 2018*
Time: 12:00 PM CST (Noon)

13. Acceptance and/or Rejection of Bid Proposals:

Foreman Manhattan will privately open bids with the Client. The Owner and/or the Construction Manager expressly reserve the right to waive all formalities or minor irregularities and to reject any or all bids. Combination of bid packages, incomplete bid packages and/or qualified bids may be subject to rejection.

No bid shall be withdrawn for sixty (60) calendar days after bidding.

14. **Bid Alternates:**

Bid Alternate price shall be held for (90) calendar days after bidding.

15. **Bid Opening:**

Bids will be opened in private by Owner and Foreman Manhattan Construction Team.

The bidder must plan for a post bid meeting/interview to review bidder's proposal and scope of work associated with the project. This post bid de-scope meeting/interview will be scheduled at the close of business day a minimum of 48-hours after the initial Bid Day.

A second additional 48-hour period shall be extended in order to follow TERO requirements and procedures.

It is the intention of CNB to award this project within 30 days of the proposal date.

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End of Instructions to Bidders

BID PACKAGE – CNE Tahlequah Casino: SCOPE PACKAGE 03.01Rev1: – Building Concrete

Submitted by (Company Name per W-9 Form): _____

Provide the following *Lump Sum Proposal* as requested in accordance with all scope items listed in Scope of Work.

1. Drilled Piers: \$ _____

Assume 2ft Diameter Piers, Unless Noted Otherwise

Assume all Pier Depths to be 15ft (Fifteen Feet) Plus 3ft (Three Feet) Socket into Limestone Per 4/S1.3

-1.A – Temporary Casing of Piers as Needed: \$ _____

2. Pier Caps and Grade Beams: \$ _____

3. Concrete Slab: \$ _____

TOTAL – BASE BID (1 + 1A + 2 + 3) : \$ _____

UNIT PRICING:

UP-001: Unit Price #01: Drilled Pier Unit Prices (No Temporary Casing): Drilled pier adjustment from established drilled pier bearing elevation shall be determined from the following Drilled pier unit pricing, complete in place including all drilling, **with-out casing**, hoisting, concrete, reinforcing, spoil removal, etc. complete per unit.

	ADD	DEDUCT
a. Adjustment for 18" Dia. Pier per LF, complete	\$ _____/lf	\$ _____/lf
b. Adjustment for 24" Dia. Pier per LF, complete	\$ _____/lf	\$ _____/lf
c. Adjustment for 24" Dia. Pier per LF, complete	\$ _____/lf	\$ _____/lf
d. Adjustment for 30" Dia. Pier LF, complete	\$ _____/lf	\$ _____/lf
e. Adjustment for 36" Dia. Pier per LF, complete	\$ _____/lf	\$ _____/lf
f. Adjustment for 36" Dia. Pier per LF, complete	\$ _____/lf	\$ _____/lf

UP-002: Unit Price #02: MEP Trench and Slab Patching: Provide concrete patching of MEP trenches, complete in place including aggregate base, sand base, concrete, doweling, reinforcing (as required), spoil removal, etc. complete per unit.

- a. MEP Trench patching, complete ADD
\$ _____ / sf

UP-003: Unit Price #03: Housekeeping Pads (Interior and Exterior): Provide Concrete Housekeeping Pads as requested by the CM.

- a. Housekeeping Pad, 4" Thick Slab ADD
\$ _____ / sf
- b. Housekeeping Pad, 6" Thick Slab \$ _____ / sf

UP-004: Unit Price #04: Concrete Bollards: Provide bollard concrete foundation including installation of embedded bollards, concrete filling of bollard. Clean bollards of concrete splatters and provide ready for paint. Bollards and paint provided by others.

- a. Concrete Bollard, 6" Diameter ADD
\$ _____ / each

UP-005: Unit Price #05: Flowable Fill: Provide Unit Price for placing Flowable Fill as directed by the Construction Manager.

- a. Placing Flowable Fill ADD
\$ _____ / cy

Other Comments:

Contact Name:

Address:

Phone/Fax:

Email:

Signature:

By acknowledging items below, bidder certifies acceptance of these documents and that all associated costs have been included in the proposal amount. Any and all exceptions/comments to these documents must be attached to this proposal. Comments or requested revisions to these documents will not be accepted after this proposal date.

TERO bidders must supply a copy of TERO Certificate, front of back	<input type="text" value="Initial:"/>
Non-Collusion Affidavit	<input type="text" value="Initial:"/>
Business Relationship Affidavit	<input type="text" value="Initial:"/>
Acknowledge all scope of work items listed under scope of work (See Exhibit A)	<input type="text" value="Initial:"/>
Acknowledge Exhibits B, C, D, E, F, G, H	<input type="text" value="Initial:"/>
Addenda Included	<input type="text" value="#s:"/>
MCC Clarifications Included	<input type="text" value="#s:"/>
Acknowledge and agree to Foreman Manhattan Standard Subcontract Agreement/Special Terms and Conditions as per Exhibit E	<input type="text" value="Initial:"/>
Acknowledge and agree to Manhattan General Provisions as Included in the Bid Documents	<input type="text" value="Initial:"/>
SCHEDULE/EXPEDITING/SUBMITTALS Foreman Manhattan Construction Target Schedule is attached. Please verify supplier is able to meet Foreman Manhattan required installation dates.	<input type="text" value="Initial:"/>

*** PROJECT SCHEDULE TO BE ISSUED BY CLARIFICATION**

Sales Tax

All bids must be submitted exclusive of Federal Excise Tax and Oklahoma State Sales Tax. The Cherokee Nation is exempt from Oklahoma State Sales Tax and Federal Excise Tax under authority of § Okla. Stat. Supp. 1994 Section 1356. Bidder is to include and pay all other applicable sales tax and use taxes as required. Applications for payment shall be broken down as required by the Owner or Construction Manager.

Specific Project Requirements for the process, approval, and payment of Owner-Direct Payment Items (ODPI) are identified in section 00 60 09:

EXHIBIT "G" Tax Exempt / Owner Direct Paid Invoice (ODPI) Payment Process

Tribal Employment Rights Office.

SUBCONTRACTOR IS TO COMPLY WITH ALL CHEROKEE NATION, TRIBAL EMPLOYMENT RIGHTS OFFICE (TERO), NATIONAL INDIAN GAMING ASSOCIATION (NIGA), AND ALL BUREAU OF INDIAN AFFAIR'S (BIA) RULES, REGULATIONS, AND LICENSING REQUIREMENTS INCLUDING ALL FEES AND ASSESSMENTS, ASSESSMENT, APPLICABLE TO THIS PROJECT.

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To assess an Employee Rights Fee of one-half (1/2) of one percent (1%) on all covered contracts. This cost will be paid by the Construction Manager.

11.1.3 - The Work Permits paragraph of the Tribal Employment Rights Office (TERO) Project Labor Agreement - Master Agreement LA 01-14 states: No person who is not a member of a federally recognized tribe shall be employed by a covered employer until he or she has obtained a work permit from the TERO at a cost of twenty-five dollars (\$25) per day, per permit. Subcontractors are to INCLUDE in their proposed price for the work, all costs associated with the twenty-five (\$25) per day work permit for every non-Indian individual employed on this project.

Performance and Payment Bond Requirements: (Subcontractor contracts Only)

Costs for performance and payment bonds **shall be included in your base bid and any applicable alternates or unit prices.**

All exterior envelope Bid Packages (Trades) will be required to bond. In addition, all base bids, combination base Bid and including all alternates of \$100,000 or above will require Performance and Payment Bond equal to one hundred percent (100%) of the contract amount. Reference Section 00 60 04 – Exhibit B of the C.M. Bid Manual.

No obligation shall be incurred by the Owner or Foreman Manhattan Construction Team to any Bidder by reason of the issuance of these written instructions, by any notification relating to this bid, or by any act other than the execution of a written Subcontract Agreement between Foreman Manhattan Construction Team and the Bidder.

APPLICABLE SPECIFICATIONS:

DIVISION 00 – Foreman Manhattan’s Construction Manager’s Bid Manual

Complete

BID PACKAGE 01 (March 6, 2018)

DIVISION 00 – Procurement Requirements and Contracting Requirements

00 0102 – Project Information

As Applicable

00 0105 – Geotechnical Data

As Applicable

DIVISION 01 – General Requirements

As Applicable

DIVISION 03 – Concrete

03 3000 – Cast in Place Concrete

Complete

DIVISION 31 – EARTHWORK

31 2000 – Earthwork

As Applicable

31 2319 – Dewatering

As Applicable

31 2500 – Erosion and Sedimentation Control

As Applicable

31 5000 – Excavation Support and Protection

As Applicable

31 6329 – Drilled Concrete Piers and Shafts

Complete

DIVISION 32 – SITE IMPROVEMENTS

As Applicable

Section 32 9200 – Turf and Grasses

32 9200 – Turf and Grasses

As Applicable

DIVISION 33 – UTILITIES

Section 33 5100 – Private Storm Sewer

As Applicable

Legends, Notes and Schedules per Plans and Specifications

As Applicable

Geotechnical Engineering Report by Building & Earth Sciences, Inc. dated January 17, 2018

As Applicable

BID PACKAGE 02 (March 27, 2018)

DIVISION 07 – THERMAL AND MOISTURE PROTECTION

07 1300 – Sheet Waterproofing

As Applicable

07 2100 – Thermal Insulation

COMPLETE

DIVISION 22 – PLUMBING

22 1113 – Water Distribution

As Applicable

22 1313 – Private Sanitary Sewerage

As Applicable

22 1316 – Sanitary Waste and Vent Piping

As Applicable

DIVISION 23 – HEATING, VENTING, AND AIR CONDITIONING

23 6500 – Closed Circuit Cooling Tower	As Applicable
23 7313 – Central Station Air Handling Units	As Applicable
23 7313.1 – Central Station Air Handling Units	As Applicable

DIVISION 26 – ELECTRICAL

26 0519 – Low Voltage Electrical Power Conductors and Cables	As Applicable
26 0526 – Grounding and Bonding for Electrical Systems	As Applicable
26 0529 – Hangers and Supports for Electrical Systems	As Applicable
26 0533 – Raceways and Boxes for Electrical Systems	As Applicable
26 0543 – Underground Ducts and Raceways for Electrical Systems	As Applicable
26 0544 – Sleeves and Sleeve Seals for Electrical Raceways and Cabling	As Applicable
26 4113 – Lighting Protection for Structures	As Applicable

DIVISION 31 – EARTHWORK

31 3116 – Termite Control	COMPLETE
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Terminology:

Contractor and/or Subcontractor shall mean Scope Package Bidder.

Construction Manager (CM) shall mean Foreman Manhattan Construction Team.

SCOPE OF WORK:

Includes, but is not limited to, providing all the necessary labor, materials, tools, supplies, supervision, insurance, equipment, scaffolding, hoisting, fees, etc. necessary to provide the **Building Concrete Work at the CNE Tahlequah Casino**, Tahlequah, Oklahoma in accordance with the Contract Documents. It is further understood and agreed that this Subcontract also includes the furnishing and installation of the below listed items regardless of whether or not they are in the listed specification section(s) or any other specification section(s), or shown on the plans. This scope listing is to be used as a guideline and should not be considered as an all-inclusive list of items required to provide a complete scope of work under this proposal. Drawing and detail references are provided for reference only and are not to be considered as all-inclusive of Contract Documents for the particular items referenced. **(Please note: The word “provide” when used herein shall mean furnish and install completely, including all costs for labor, materials, equipment, hoisting, layout, scaffolding, ladders, staging, tools, rigging and any other appurtenances necessary to complete the Work”.)** Subcontractor has familiarized himself with the documents and has included those items of work shown and noted on the documents and all other equipment, devices and components that are not shown or noted, but required to provide a complete, functional and working system that is in compliance with all Federal, state and local codes.

1. Provide all cast in place building concrete, including foundations, footings, grade beams, drilled piers, slab on grade and slab on deck, etc.
 - a. Provide all structural excavation and backfill. This includes the loading, hauling and offsite disposal of all excess spoils.
 - b. Provide all slab-on-grade free draining granular fill (E.G. #57 Stone, etc.) below slab-on-grade areas.
 - c. Provide all slab-on-grade sand fill below slab-on-grade areas.
 - d. Provide all pier caps complete
 - e. Provide all retaining walls and stem walls complete. Include sunken slabs and recess floor details.
 - f. Provide slab modifications to accommodate block outs, floor drains, floor sinks, trench drains etc as shown on Food Service Drawings
 - g. All exposed concrete surfaces shall have a form finished appears as no patching or rubbing will be allowed.
 - h. Provide all carton forms/void forms
 - i. Provide any perimeter foundation insulation as required by the contract documents.
 - j. Provide all drilled piers which shall be based on the Geo-technical report dated January 17, 2018. Base bid to include temporary casing of all drilled piers as required.
2. Comply with all notes on structural documents.
3. Provide all concrete related earthwork (both machine and handwork) including all excavation, rock excavation, thickened areas, fine grading, backfill with approved backfill materials, and compaction in accordance with all Division 31 specifications and as required by the Geotechnical Report. This subcontractor shall receive building sub-grade at +/- 1/2” **balanced to zero** of slab-on-grade sub-grade elevation (bottom of aggregate base) from earthwork subcontractor.
 - a. Subcontractor shall brace all concrete structural elements for backfill operations as required.
 - b. This Subcontractor will be responsible for backfill at ~~elevator pit walls~~, retaining walls, on grade stairs, loading docks, concrete trench drains to +/- 1/2” ft. of slab on grade sub-grade elevation.
 - c. Rework, re-compact and fine grade to **previous tolerances** all sub-grade surfaces as required for slab-on-grade following completion of under-slab utilities, foundation backfill, and/or other work causing irregularities in sub-grade prior to aggregate capillary base course placement.
4. Provide and install all drainage gravel behind foundation walls and site walls. Coordinate drainage gravel with backfilling of select fill.
 - a. Waterproofing and protection board by others.
5. Provide all termite control pre-treatment work in accordance with the contract documents.

6. Provide all formwork, equipment, temporary bracing and accessories as required for a complete installation. This includes formwork engineering where specified or required by ACI.
7. Provide any required forming for trench drains, sump pumps and slab depressions. It will be the responsibility of the concrete Subcontractor to coordinate all floor recess, block-outs, curbs, stub-ups, foam insulation board and concrete reinforced wearing beds with mechanical, plumbing, electrical and food service equipment.
8. Form slab edges, recesses, and block-outs as required, including but not limited to, column block-outs. Include all grout/concrete, as required by the contract documents, to in-fill all column block-outs.
 - a. Provide grouting of structural steel base plates
9. Provide all framed slab block-outs indicated on the contract documents.
10. Provide all concrete reinforcing steel, dowels, wire mesh, lenton couplers, smooth dowels, grease, slip caps, form savers and required accessories including slab bolsters, chairs, runners, spacers, etc. During construction all vertical reinforcing steel shall have a 6" 90-degree bend for impalement protection or provide OSHA approved impalement caps.
11. Provide all reinforcing steel / wire mesh / lenton and accessories. (All female lenton couplers in precast are by others.)
12. Provide all drilling, epoxy adhesives, etc. as required for the performance of this subcontractor's work.
13. Provide drilling, epoxying, and/or doweling into existing slabs, grade beams, or other elements as required.
14. Provide all concrete accessories including but not limited to: void forms, 1/8" hardboard, soil retainers, water stops; reglets; dovetail slots (if indicated); bonding agents; contraction / construction / control / expansion / isolation joints and semi-rigid fillers; compressible fillers, bond breakers, etc. as necessary and required.
15. Provide all vapor barriers.
16. Provide all concrete materials, admixtures and additives. This includes all hot and cold weather additives.
17. Provide all place and finish of concrete materials.
18. Provide all formed concrete finishes as required including smooth form finish, rough formed finish, stamped finish and concrete surface repairs as indicated or specified. This includes patching of all tie holes, honeycomb, de-finishing and removal of offsets.
 - a. This includes coordination of surface preparation for those areas scheduled to receive waterproofing being installed by others.
19. Provide all concrete curing and protection as required. Coordinate and provide curing materials/methods compatible with floor finish materials, waterproofing and in accordance with specifications for all concrete to receive finished products as required.
20. This subcontractor shall review all General Notes, Concrete Construction Notes, Plan Notes and Keynotes as indicated on the contract documents.
21. Receive, unload, inventory control, store and install all embeds and anchor bolts being furnished by others including all sill /continuous angles, stair nosing, sump grate frames, hand/guard rail and fence post sleeves, precast attachment embeds, bollards, etc. All costs to correct omitted or misplaced anchor bolts or embeds shall be borne by this contractor. One metal template will be provided by others for each different set of anchor bolt patterns.
22. All embeds and anchor bolts are to be left clean and free of concrete seepage/laitance and also provide for the removal of any temporary nails / screws. Provide as-built of anchor bolt locations to confirm correct installation. One nut on each set of anchor bolts shall be set at elevation so it is ready for the steel erector.
23. Perform all saw cutting as required for the performance of this subcontractor's work.
24. Provide self-contained dumpsters with liner for concrete wash-out including dump fees. Coordinate with the Foreman Manhattan designated representative a location for concrete washout dumpster. Restore dumpster area to the condition it was in prior to this work.
25. Provide layout of all block-outs, embeds, sleeves, anchors, supports, etc. as required by the Contract Documents and in accordance with shop drawings provided by others.
26. Coordinate material deliveries and concrete pours with the Foreman Manhattan designated representative.
27. Prepare and implement pre-pour sign off documents prior to all concrete pours. Completed form to be submitted to the Foreman Manhattan designated representative for final approval prior to any pour (form to be approved by Foreman Manhattan).
28. Provide all patching, leveling or grinding of non-conforming concrete including slab tolerances or finishes, and repair of any formed surface out of tolerance or because of form failure.
29. This contractor shall clean and remove all concrete spillage, drippings, laitance, dried concrete fins etc. caused during placing, stripping of forms or finishing of concrete. All slabs are to be broom cleaned of all debris, and broom cleaned again at completion of concrete work. Includes cleaning and/or protection of existing improvements from concrete splatters or drippings.
30. Provide any waterproofing of base plates, anchor bolts, and columns as required by the contract documents.
31. Provide all provisions for cold and hot weather work as required including approved additives for concrete work as specified, hot or chilled water, ice, temporary heat, enclosures, blankets, fog sprayers and protection. All wrapping of elevated slab-on-metal decks / temporary heat for cold weather concrete will be considered an added scope of work. Foreman Manhattan Construction Team will provide an internal allowance for this added scope of work.
32. Provide coordination, assistance, and necessary access for the Owner's furnished Testing Laboratory, including notification, obtaining samples and data gathering as required for scope of work. Costs for retesting due to failed tests and/or for Subcontractor's unpreparedness, will be paid by this Subcontractor.
33. Provide all interior and exterior concrete housekeeping pads and curbs required for all mechanical and electrical equipment as indicated in architectural, civil, mechanical, and electrical drawings. Includes pads and/or curbs for exterior equipment yard, chillers, A/C condensers, generators, transformers, etc. Required earthwork, installation and compaction of aggregate base provided by this subcontractor.
 - a. This Subcontractor shall coordinate size and locations with other trades as applicable.
 - b. Provide reinforcing steel/wire mesh, forming, chamfer strips and dowels etc.

34. Provide any bond-breaker materials at control joints, expansion joints (for concrete assemblies), between existing pile caps and slab on grade, column bases, etc. as required by the contract documents.
35. Provide all layout, survey, installation, bolt templates, support/brace and protect all embeds including those furnished by others. All embeds are to be left clean and free of concrete including threads of all anchor bolts and/or bolt assemblies. Provide all equipment, hoisting other than as provided by others, and means for placing and installation as required including all concrete pumps, placing booms if required, concrete buckets, shoots and trimmers.
36. Open excavations shall be barricaded, protected, and provided with an OSHA approved railing at all times as required by OSHA and all authorities having jurisdiction.
37. Keep surrounding streets, drives, and parking areas free of dirt and debris including dust control caused or created by the work of this bid package. Subcontractor is required to comply with requirements to control Dust and Airborne Contaminants.
38. Provide all required temporary dewatering of foundation excavations while performing this scope of work.
39. Provide underslab drainage fill (4" compacted layer of washed ASTM No 57 stone) – Per S 0.1, Structural Notes
40. **Provide all required trade permits required, including right of way permits for any lane closures and tying together of new paved surfaces.**

GENERAL ITEMS

41. Include separate mobilizations / demobilizations as required by the Project Schedule and Phasing Plans.
42. Provide all shop drawings, product data, sample and other pertinent submittals for the work of this Subcontract. Provide engineering and printing costs for all shop drawings, coordination drawings, and product submittals for architect approval as required to properly coordinate the work included in this Subcontract with other trades. Include costs for revising and resubmitting shop/ coordination drawings as needed.
43. Subcontractor will assist Foreman Manhattan with providing material quantities and cost breakdowns as required for the Owner's and Foreman Manhattan's budget requirements. All breakouts specified in this subcontract will be used for accounting purposes and tracking only.
44. Contractor shall provide a complete installation that complies with all applicable codes, ordinances and satisfying all Authorities Having Jurisdiction.
45. Provide all field engineering and layout from benchmarks and base building control (benchmarks and baseline control is furnished by others). This Subcontractor is responsible for replacement of any damaged benchmarks, base line control or layout work of other trades/packages damaged or destroyed by the work of this work package.
46. Provide all required pedestrian protection, traffic control and protection including flagman, barricades, signage, etc. as required for the work, and as may be required for protection for equipment access, deliveries and loading.
47. Subcontractor is required to comply with requirements to control Dust and Airborne Contaminants. No waste materials or debris shall be allowed to accumulate.
48. Provide coordination, assistance, and necessary access for the Owner's furnished Testing Laboratory, including notification, obtaining samples and data gathering as required for scope of work. Costs for retesting due to failed tests and/or for Subcontractor's unpreparedness, will be paid by this Subcontractor.
49. It is mutually understood and agreed that this subcontractor will coordinate all of the scheduled deliveries of these items being furnished by others with the Foreman Manhattan designated representative. This includes the on or off site storage, staging, inventory control, and shipping to the site. All damages or shortages are to be reported within 24 hours of delivery.
50. Subcontractor agrees to be bound by the Welcome Package issued by the Foreman Manhattan Field staff.
51. **Revise paragraph 1.2.3 of section 00 60 02A Manhattan General Provisions as contained in the Construction Manager's Bid manual as follows:**
Until Subcontractor's obligations under this Subcontract are completely fulfilled, Subcontractor agrees not to perform any changes to the work directly for Owner or any of its tenants, or deal directly with Owner's representatives with respect to the work and/or changes to the work, in connection with the Project, unless approved in writing by Foreman Manhattan. Foreman Manhattan understands that the Owner and specifically TERO shall communicate directly with the subcontractor to maintain a spirit of cooperation and also to utilize the TERO Job Bank to the fullest extent giving first hire priority rights to Cherokee Citizens.
52. **The Owner requirements for funding for work in progress is to provide payment less retainage of ten percent (10%), which shall be withheld and paid, without interest, upon final completion of the entire project.**
53. The terms and conditions contained in the following documents including General Provisions, Article 2.5, "Indemnification" as included within the contract documents; are incorporated herein by reference as if fully written out;
Foreman Manhattan General Provisions 2012
Exhibit A – (Scope of Work)
Exhibit B – (Bond Forms)
Exhibit C – (Insurance Requirements / Sample)
Exhibit D – (Contract Documents)
Exhibit E – (Special Conditions)
Exhibit F – (Project Schedule)
Exhibit G – Tax Exempt – O.D.P.I.
Exhibit H – (Foreman Manhattan Additional Safety Requirements)

SCOPE OF WORK EXCLUSIONS:

The following items are excluded from this Subcontract:

1. Precast Concrete.
2. Masonry rebar or grouting.
3. Joint sealants.
4. Furnishing of embeds; anchor bolts and/or anchor bolt assemblies.
5. Mass Excavation for Building Pad and Site work
6. Lightweight Insulating Concrete
7. Site Concrete
8. Sidewalks
9. Maintenance Building
10. Site utility vault(s)
11. **Concrete Paving / Asphalt Paving**

BID PACKAGE – CNE Tahlequah Casino: SCOPE PACKAGE 22.01: – UNDERSLAB MECHANICAL AND PLUMBING

Submitted by (Company Name per W-9 Form): _____

Provide the following *Lump Sum Proposal* as requested in accordance with all scope items listed in Scope of Work.

BASE BID – UNDERSLAB MECHANICAL AND PLUMBING: \$ _____

ALLOWANCE #1
Underslab Storm Sewer Rough In \$ _____

ALLOWANCE #2
Fire Service Underslab Rough In to 12" Above Finish Floor \$ _____

Other Comments:

Contact Name: _____

Address: _____

Phone/Fax: _____

Email: _____

Signature: _____

By acknowledging items below, bidder certifies acceptance of these documents and that all associated costs have been included in the proposal amount. Any and all exceptions/comments to these documents must be attached to this proposal. Comments or requested revisions to these documents will not be accepted after this proposal date.

TERO bidders must supply a copy of TERO Certificate, front of back

Initial:

Non-Collusion Affidavit

Initial:

Business Relationship Affidavit

Initial:

Acknowledge all scope of work items listed under scope of work (See Exhibit A)

Initial:

Acknowledge Exhibits B, C, D, E, F, G, H

Initial:

Addenda Included

#'s:

MCC Clarifications Included

#'s:

Acknowledge and agree to Foreman Manhattan Standard Subcontract Agreement/Special Terms and Conditions as per Exhibit E

Initial:

Acknowledge and agree to Manhattan General Provisions as Included in the Bid Documents

Initial:

SCHEDULE/EXPEDITING/SUBMITTALS

Foreman Manhattan Construction Target Schedule is attached. Please verify supplier is able to meet Foreman Manhattan required installation dates.

Initial:

*** PROJECT SCHEDULE TO BE ISSUED BY CLARIFICATION**

Sales Tax

All bids must be submitted exclusive of Federal Excise Tax and Oklahoma State Sales Tax. The Cherokee Nation is exempt from Oklahoma State Sales Tax and Federal Excise Tax under authority of § Okla. Stat. Supp. 1994 Section 1356. Bidder is to include and pay all other applicable sales tax and use taxes as required. Applications for payment shall be broken down as required by the Owner or Construction Manager.

Specific Project Requirements for the process, approval, and payment of Owner-Direct Payment Items (ODPI) are identified in section 00 60 09:

EXHIBIT “G” Tax Exempt / Owner Direct Paid Invoice (ODPI) Payment Process

Tribal Employment Rights Office.

SUBCONTRACTOR IS TO COMPLY WITH ALL CHEROKEE NATION, TRIBAL EMPLOYMENT RIGHTS OFFICE (TERO), NATIONAL INDIAN GAMING ASSOCIATION (NIGA), AND ALL BUREAU OF INDIAN AFFAIR'S (BIA) RULES, REGULATIONS, AND LICENSING REQUIREMENTS INCLUDING ALL FEES AND ASSESSMENTS, ASSESSMENT, APPLICABLE TO THIS PROJECT.

11.1.1 - TERO document “An Act” Legislative Act 01-14 dated February 10, 2014.
 This Document is ACT AMENDING LA 30-12, "CHEROKEE NATION EMPLOYMENT RIGHTS ACT"

11.1.2 - Subcontractors are to EXCLUDE the cost for Section; Title 40, § 1011; T.
 To assess an Employee Rights Fee of one-half (1/2) of one percent (1%) on all covered contracts. This cost will be paid by the Construction Manager.

11.1.3 - The Work Permits paragraph of the Tribal Employment Rights Office (TERO) Project Labor Agreement - Master Agreement LA 01-14 states: No person who is not a member of a federally recognized tribe shall be employed by a covered employer until he or she has obtained a work permit from the TERO at a cost of twenty-five dollars (\$25) per day, per permit. Subcontractors are to INCLUDE in their proposed price for the work, all costs associated with the twenty-five (\$25) per day work permit for every non-Indian individual employed on this project.

Performance and Payment Bond Requirements: (Subcontractor contracts Only)

Costs for performance and payment bonds **shall be included in your base bid and any applicable alternates or unit prices.** All exterior envelope Bid Packages (Trades) will be required to bond. In addition, all base bids, combination base Bid and including all alternates of \$100,000 or above will require Performance and Payment Bond equal to one hundred percent (100%) of the contract amount. Reference Section 00 60 04 – Exhibit B of the C.M. Bid Manual.

No obligation shall be incurred by the Owner or Foreman Manhattan Construction Team to any Bidder by reason of the issuance of these written instructions, by any notification relating to this bid, or by any act other than the execution of a written Subcontract Agreement between Foreman Manhattan Construction Team and the Bidder.

APPLICABLE SPECIFICATIONS:

DIVISION 00 – Foreman Manhattan’s Construction Manager’s Bid Manual

Complete

BID PACKAGE 01 (March 6, 2018)

DIVISION 00 – Procurement Requirements and Contracting Requirements	
00 0102 – Project Information	As Applicable
00 0105 – Geotechnical Data	As Applicable
DIVISION 01 – General Requirements	As Applicable
DIVISION 03 – CONCRETE	
03 3000 – Cast in Place Concrete	As Applicable
DIVISION 31 – EARTHWORK	
31 2000 – Earthwork	As Applicable
31 2319 – Dewatering	As Applicable
31 2500 – Erosion and Sedimentation Control	As Applicable
31 5000 – Excavation Support and Protection	As Applicable
31 6329 – Drilled Concrete Piers and Shafts	As Applicable
DIVISION 32 – SITE IMPROVEMENTS	
32 9200 – Turf and Grasses	As Applicable
DIVISION 33 – UTILITIES	
Section 33 5100 – Private Storm Sewer	As Applicable

Legends, Notes and Schedules per Plans and Specifications
Geotechnical Engineering Report by Building & Earth Sciences, Inc. dated January 17, 2018

As Applicable
As Applicable

BID PACKAGE 02 (March 27, 2018)

DIVISION 07 – THERMAL AND MOISTURE PROTECTION	
07 1300 – Sheet Waterproofing	As Applicable
07 2100 – Thermal Insulation	As Applicable
DIVISION 22 – PLUMBING	
22 1113 – Water Distribution	As Applicable
22 1313 – Private Sanitary Sewerage	As Applicable
22 1316 – Sanitary Waste and Vent Piping	COMPLETE
DIVISION 23 – HEATING, VENTING, AND AIR CONDITIONING	
23 6500 – Closed Circuit Cooling Tower	As Applicable
23 7313 – Central Station Air Handling Units	As Applicable
23 7313.1 – Central Station Air Handling Units	As Applicable
DIVISION 26 – ELECTRICAL	
26 0519 – Low Voltage Electrical Power Conductors and Cables	As Applicable
26 0526 – Grounding and Bonding for Electrical Systems	As Applicable
26 0529 – Hangers and Supports for Electrical Systems	As Applicable
26 0533 – Raceways and Boxes for Electrical Systems	As Applicable
26 0543 – Underground Ducts and Raceways for Electrical Systems	As Applicable
26 0544 – Sleeves and Sleeve Seals for Electrical Raceways and Cabling	As Applicable
26 4113 – Lighting Protection for Structures	As Applicable
DIVISION 31 – EARTHWORK	
31 3116 – Termite Control	As Applicable

Terminology:

Contractor and/or Subcontractor shall mean Scope Package Bidder.
Construction Manager (CM) shall mean Foreman Manhattan Construction Team.

SCOPE OF WORK:

Includes, but is not limited to, providing all the necessary labor, materials, tools, supplies, supervision, insurance, equipment, scaffolding, hoisting, fees, etc. necessary to provide the **Under Slab Mechanical and Plumbing** for the **CNE Tahlequah Casino**, Tahlequah, Oklahoma in accordance with the Contract Documents. It is further understood and agreed that this Subcontract also includes the furnishing and installation of the below listed items regardless of whether or not they are in the listed specification section(s) or any other specification section(s), or shown on the plans. This scope listing is to be used as a guideline and should not be considered as an all-inclusive list of items required to provide a complete scope of work under this proposal. Drawing and detail references are provided for reference only and are not to be considered as all inclusive of Contract Documents for the particular items referenced. (Please note: The word "provide" when used herein shall mean furnish and install completely, including all costs for labor, materials, equipment, hoisting, layout, scaffolding, ladders, staging, tools, rigging and any other appurtenances necessary to complete the Work".) Subcontractor has familiarized himself with the documents and has included those items of work shown and noted on the documents and all other equipment, devices and components that are not shown or noted, but required to provide a complete, functional and working system that is in compliance with all local codes.

1. This bid package is intended to be all inclusive of labor, material, and equipment required for the Under Slab Mechanical and Plumbing only, as required by the contract documents for a complete project.
2. Provide complete related Division 22 PLUMBING systems work complete, including but not limited to all sanitary, gas, domestic cold and hot water systems, venting, and appurtenances as required for all areas designated for construction.
3. Provide, relocate and remove upon completion, all temporary power (generators) and all required temporary light plants for work performance, safety and convenience for the work of this subcontractor, and as required to maintain required schedule.
4. Provide all survey, layout, and staking from established benchmarks as required for the performance of this subcontractor's work. The initial site control / coordinates will be provided by Manhattan Construction Company.
5. Comply with all notes on plumbing drawings.
6. Provide all building domestic water services complete including requirements on the civil documents
7. Provide all building sanitary and waste vent systems complete including requirements on the civil documents
8. Provide all building storm drainage systems complete from +/- 5'-0" outside building and connections to site Storm Drainage system as provided by others.
9. Provide as may be required, any related earthwork including excavation, backfill materials, backfill, handwork, pipe bedding and compaction in accordance with Division 31 specifications and geotechnical reports. Remove and legally dispose; all excess soil, spoil, or rock from Plumbing work,

offsite. Restore all building and site sub-grades rutted or disturbed during work performance to **+/-1/2"** **balanced to zero** of required sub-grade elevations.

10. Provide flowable fill at any excavations under foundations, footings, or grade beams.
11. Provide all required clean-outs and architectural cover plates as required for plumbing work.
12. Provide any required seismic provisions for plumbing work.
13. Provide all required sleeves or block-outs in slabs required for this scope of work.
14. Review all drawings for any plumbing work identified therein. (E.G. Food Service troughs, floor sinks, floor drains, etc.)
15. Provide all performance and acceptance testing. Subcontractor to provide all labor, materials, supervision and equipment to facilitate the testing of all work of this subcontract.
16. Provide all necessary local and state trade permits, test and inspection fees as required for the performance of this subcontractor's work.
17. **Provide all under slab PVC carbonated beverage lines.**
18. **Provide all under slab PVC duct for Beer Lines, Carbonated Beverage Lines, as shown on Food Service Drawings.**

GENERAL ITEMS

1. Include separate mobilizations / demobilizations as required by the Project Schedule and Phasing Plans.
2. Provide all shop drawings, product data, sample and other pertinent submittals for the work of this Subcontract. Provide engineering and printing costs for all shop drawings, coordination drawings, and product submittals for architect approval as required to properly coordinate the work included in this Subcontract with other trades. Include costs for revising and resubmitting shop/ coordination drawings as needed.
3. Subcontractor will assist Foreman Manhattan with providing material quantities and cost breakdowns as required for the Owner's and Foreman Manhattan's budget requirements. All breakouts specified in this subcontract will be used for accounting purposes and tracking only.
4. Contractor shall provide a complete installation that complies with all applicable codes, ordinances and satisfying all Authorities Having Jurisdiction.
5. Provide all field engineering and layout from benchmarks and base building control (benchmarks and baseline control is furnished by others). This Subcontractor is responsible for replacement of any damaged benchmarks, base line control or layout work of other trades/packages damaged or destroyed by the work of this work package.
6. Provide all required pedestrian protection, traffic control and protection including flagman, barricades, signage, etc. as required for the work, and as may be required for protection for equipment access, deliveries and loading.
7. Subcontractor is required to comply with requirements to control Dust and Airborne Contaminants. No waste materials or debris shall be allowed to accumulate.
8. Provide coordination, assistance, and necessary access for the Owner's furnished Testing Laboratory, including notification, obtaining samples and data gathering as required for scope of work. Costs for retesting due to failed tests and/or for Subcontractor's unpreparedness, will be paid by this Subcontractor.
9. It is mutually understood and agreed that this subcontractor will coordinate all of the scheduled deliveries of these items being furnished by others with the Foreman Manhattan designated representative. This includes the on or off site storage, staging, inventory control, and shipping to the site. All damages or shortages are to be reported within 24 hours of delivery.
10. Subcontractor agrees to be bound by the Welcome Package issued by the Foreman Manhattan Field staff.
11. **Revise paragraph 1.2.3 of section 00 60 02A Manhattan General Provisions as contained in the Construction Manager's Bid manual as follows:**
Until Subcontractor's obligations under this Subcontract are completely fulfilled, Subcontractor agrees not to perform any changes to the work directly for Owner or any of its tenants, or deal directly with Owner's representatives with respect to the work and/or changes to the work, in connection with the Project, unless approved in writing by Foreman Manhattan. Foreman Manhattan understands that the Owner and specifically TERO shall communicate directly with the subcontractor to maintain a spirit of cooperation and also to utilize the TERO Job Bank to the fullest extent giving first hire priority rights to Cherokee Citizens.
12. **The Owner requirements for funding for work in progress is to provide payment less retainage of ten percent (10%), which shall be withheld and paid, without interest, upon final completion of the entire project.**
13. The terms and conditions contained in the following documents including General Provisions, Article 2.5, "Indemnification" as included within the contract documents; are incorporated herein by reference as if fully written out;
Foreman Manhattan General Provisions 2012
Exhibit A – (Scope of Work)
Exhibit B – (Bond Forms)
Exhibit C – (Insurance Requirements / Sample)
Exhibit D – (Contract Documents)
Exhibit E – (Special Conditions)
Exhibit F – (Project Schedule)
Exhibit G – Tax Exempt – O.D.P.I.
Exhibit H – (Foreman Manhattan Additional Safety Requirements)

SCOPE OF WORK EXCLUSIONS:

The following items are excluded from this Subcontract:

1. Concrete housekeeping pads and bases.
2. Maintenance Building
3. Grease Interceptors
4. Painting

Contact Name: _____

Address: _____

Phone/Fax: _____

Email: _____

Signature: _____

By acknowledging items below, bidder certifies acceptance of these documents and that all associated costs have been included in the proposal amount. Any and all exceptions/comments to these documents must be attached to this proposal. Comments or requested revisions to these documents will not be accepted after this proposal date.

TERO bidders must supply a copy of TERO Certificate, front of back

Initial:

Non-Collusion Affidavit

Initial:

Business Relationship Affidavit

Initial:

Acknowledge all scope of work items listed under scope of work (See Exhibit A)

Initial:

Acknowledge Exhibits B, C, D, E, F, G, H

Initial:

Addenda Included

#'s:

MCC Clarifications Included

#'s:

Acknowledge and agree to Foreman Manhattan Standard Subcontract Agreement/Special Terms and Conditions as per Exhibit E

Initial:

Acknowledge and agree to Manhattan General Provisions as Included in the Bid Documents

Initial:

SCHEDULE/EXPEDITING/SUBMITTALS

Foreman Manhattan Construction Target Schedule is attached. Please verify supplier is able to meet Foreman Manhattan required installation dates.

Initial:

*** PROJECT SCHEDULE TO BE ISSUED BY CLARIFICATION**

Sales Tax

All bids must be submitted exclusive of Federal Excise Tax and Oklahoma State Sales Tax. The Cherokee Nation is exempt from Oklahoma State Sales Tax and Federal Excise Tax under authority of § Okla. Stat. Supp. 1994 Section 1356. Bidder is to include and pay all other applicable sales tax and use taxes as required. Applications for payment shall be broken down as required by the Owner or Construction Manager.

Specific Project Requirements for the process, approval, and payment of Owner-Direct Payment Items (ODPI) are identified in section 00 60 09:

EXHIBIT “G” Tax Exempt / Owner Direct Paid Invoice (ODPI) Payment Process

Tribal Employment Rights Office.

SUBCONTRACTOR IS TO COMPLY WITH ALL CHEROKEE NATION, TRIBAL EMPLOYMENT RIGHTS OFFICE (TERO), NATIONAL INDIAN GAMING ASSOCIATION (NIGA), AND ALL BUREAU OF INDIAN AFFAIR'S (BIA) RULES, REGULATIONS, AND LICENSING REQUIREMENTS INCLUDING ALL FEES AND ASSESSMENTS, ASSESSMENT, APPLICABLE TO THIS PROJECT.

11.1.1 - TERO document “An Act” Legislative Act 01-14 dated February 10, 2014.
This Document is ACT AMENDING LA 30-12, "CHEROKEE NATION EMPLOYMENT RIGHTS ACT"

11.1.2 - Subcontractors are to EXCLUDE the cost for Section; Title 40, § 1011; T.
To assess an Employee Rights Fee of one-half (1/2) of one percent (1%) on all covered contracts. This cost will be paid by the Construction Manager.

11.1.3 - The Work Permits paragraph of the Tribal Employment Rights Office (TERO) Project Labor Agreement - Master Agreement LA 01-14 states: No person who is not a member of a federally recognized tribe shall be employed by a covered employer until he or she has obtained a work permit from the TERO at a cost of twenty-five dollars (\$25) per day, per permit. Subcontractors are to INCLUDE in their proposed price for the work, all costs associated with the twenty-five (\$25) per day work permit for every non-Indian individual employed on this project.

Performance and Payment Bond Requirements: (Subcontractor contracts Only)

Costs for performance and payment bonds **shall be included in your base bid and any applicable alternates or unit prices.** All exterior envelope Bid Packages (Trades) will be required to bond. In addition, all base bids, combination base Bid and including all alternates of \$100,000 or above will require Performance and Payment Bond equal to one hundred percent (100%) of the contract amount. Reference Section 00 60 04 – Exhibit B of the C.M. Bid Manual.

No obligation shall be incurred by the Owner or Foreman Manhattan Construction Team to any Bidder by reason of the issuance of these written instructions, by any notification relating to this bid, or by any act other than the execution of a written Subcontract Agreement between Foreman Manhattan Construction Team and the Bidder.

APPLICABLE SPECIFICATIONS:

DIVISION 00 – Foreman Manhattan’s Construction Manager’s Bid Manual

Complete

BID PACKAGE 01 (March 6, 2018)

DIVISION 00 – Procurement Requirements and Contracting Requirements	
00 0102 – Project Information	As Applicable
00 0105 – Geotechnical Data	As Applicable
DIVISION 01 – General Requirements	As Applicable
DIVISION 03 – CONCRETE	
03 3000 – Cast in Place Concrete	As Applicable
DIVISION 31 – EARTHWORK	
31 2000 – Earthwork	As Applicable
31 2319 – Dewatering	As Applicable
31 2500 – Erosion and Sedimentation Control	As Applicable
31 5000 – Excavation Support and Protection	As Applicable
31 6329 – Drilled Concrete Piers and Shafts	As Applicable
DIVISION 32 – SITE IMPROVEMENTS	
32 9200 – Turf and Grasses	As Applicable
DIVISION 33 – UTILITIES	
Section 33 5100 – Private Storm Sewer	As Applicable

Legends, Notes and Schedules per Plans and Specifications
Geotechnical Engineering Report by Building & Earth Sciences, Inc. dated January 17, 2018

As Applicable
As Applicable

BID PACKAGE 02 (March 27, 2018)

DIVISION 07 – THERMAL AND MOISTURE PROTECTION	
07 1300 – Sheet Waterproofing	As Applicable
07 2100 – Thermal Insulation	As Applicable
DIVISION 22 – PLUMBING	
22 1113 – Water Distribution	As Applicable
22 1313 – Private Sanitary Sewerage	As Applicable
22 1316 – Sanitary Waste and Vent Piping	As Applicable
DIVISION 23 – HEATING, VENTING, AND AIR CONDITIONING	
23 6500 – Closed Circuit Cooling Tower	As Applicable
23 7313 – Central Station Air Handling Units	As Applicable
23 7313.1 – Central Station Air Handling Units	As Applicable
DIVISION 26 – ELECTRICAL	
26 0519 – Low Voltage Electrical Power Conductors and Cables	As Applicable
26 0526 – Grounding and Bonding for Electrical Systems	As Applicable
26 0529 – Hangers and Supports for Electrical Systems	As Applicable
26 0533 – Raceways and Boxes for Electrical Systems	As Applicable
26 0543 – Underground Ducts and Raceways for Electrical Systems	COMPLETE
26 0544 – Sleeves and Sleeve Seals for Electrical Raceways and Cabling	As Applicable
26 4113 – Lighting Protection for Structures	As Applicable
DIVISION 31 – EARTHWORK	
31 3116 – Termite Control	As Applicable

Terminology:

Contractor and/or Subcontractor shall mean Scope Package Bidder.
Construction Manager (CM) shall mean Foreman Manhattan Construction Team.

SCOPE OF WORK:

Includes, but is not limited to, providing all the necessary labor, materials, tools, supplies, supervision, insurance, equipment, scaffolding, hoisting, fees, etc. necessary to provide the **Under Slab Electrical** for the **CNE Tahlequah Casino**, Tahlequah, Oklahoma in accordance with the Contract Documents. It is further understood and agreed that this Subcontract also includes the furnishing and installation of the below listed items regardless of whether or not they are in the listed specification section(s) or any other specification section(s), or shown on the plans. This scope listing is to be used as a guideline and should not be considered as an all-inclusive list of items required to provide a complete scope of work under this proposal. Drawing and detail references are provided for reference only and are not to be considered as all inclusive of Contract Documents for the particular items referenced. (Please note: The word "provide" when used herein shall mean furnish and install completely, including all costs for labor, materials, equipment, hoisting, layout, scaffolding, ladders, staging, tools, rigging and any other appurtenances necessary to complete the Work".) Subcontractor has familiarized himself with the documents and has included those items of work shown and noted on the documents and all other equipment, devices and components that are not shown or noted, but required to provide a complete, functional and working system that is in compliance with all local codes.

1. This bid package is intended to be all inclusive of labor, material, and equipment required for the Under Slab Electrical only, as required by the contract documents for a complete project.
2. Provide all required local, State and Federal trade permits and pay required fees as required for the performance of this subcontractor's work.
3. Provide all underground and under-floor ducts and raceways, complete.
4. Provide, relocate and remove upon completion, all temporary power (generators) and all required temporary light plants for work performance, safety and convenience for the work of this subcontractor, and as required to maintain required schedule.
5. Provide all taping, flashings, etc. protection, etc. as required around perimeter of electrical rough-in components for air, moisture, weather, acoustical, fire resistance, etc., as required.
6. Comply with all notes and details on electrical drawings.
7. Provide all survey, layout, and staking from established benchmarks as required for the performance of this subcontractor's work. The initial site control / coordinates will be provided by Foreman Manhattan.
8. Review Food Service drawings for any required in-slab electrical rough in required for Food Service equipment and items.
9. Provide under slab empty electrical conduits with 6" stub ups at each end as shown on electrical drawings
10. Provide under slab conduits shown on ITS101 and ITS 102 Low Voltage Conduit Plans.
11. Provide required underground / under slab sleeves, Raceways, and conduits required at the Fire Riser Room 34, Emergency Electrical 35, Electrical Room 36 and outdoor equipment yard.

GENERAL ITEMS

1. Include separate mobilizations / demobilizations as required by the Project Schedule and Phasing Plans.
2. Provide all shop drawings, product data, sample and other pertinent submittals for the work of this Subcontract. Provide engineering and printing costs for all shop drawings, coordination drawings, and product submittals for architect approval as required to properly coordinate the work included in this Subcontract with other trades. Include costs for revising and resubmitting shop/ coordination drawings as needed.
3. Subcontractor will assist Foreman Manhattan with providing material quantities and cost breakdowns as required for the Owner's and Foreman Manhattan's budget requirements. All breakouts specified in this subcontract will be used for accounting purposes and tracking only.
4. Contractor shall provide a complete installation that complies with all applicable codes, ordinances and satisfying all Authorities Having Jurisdiction.
5. Provide all field engineering and layout from benchmarks and base building control (benchmarks and baseline control is furnished by others). This Subcontractor is responsible for replacement of any damaged benchmarks, base line control or layout work of other trades/packages damaged or destroyed by the work of this work package.
6. Provide all required pedestrian protection, traffic control and protection including flagman, barricades, signage, etc. as required for the work, and as may be required for protection for equipment access, deliveries and loading.
7. Subcontractor is required to comply with requirements to control Dust and Airborne Contaminants. No waste materials or debris shall be allowed to accumulate.
8. Provide coordination, assistance, and necessary access for the Owner's furnished Testing Laboratory, including notification, obtaining samples and data gathering as required for scope of work. Costs for retesting due to failed tests and/or for Subcontractor's unpreparedness, will be paid by this Subcontractor.
9. It is mutually understood and agreed that this subcontractor will coordinate all of the scheduled deliveries of these items being furnished by others with the Foreman Manhattan designated representative. This includes the on or off site storage, staging, inventory control, and shipping to the site. All damages or shortages are to be reported within 24 hours of delivery.
10. Subcontractor agrees to be bound by the Welcome Package issued by the Foreman Manhattan Field staff.
11. **Revise paragraph 1.2.3 of section 00 60 02A Manhattan General Provisions as contained in the Construction Manager's Bid manual as follows:**
Until Subcontractor's obligations under this Subcontract are completely fulfilled, Subcontractor agrees not to perform any changes to the work directly for Owner or any of its tenants, or deal directly with Owner's representatives with respect to the work and/or changes to the work, in connection with the Project, unless approved in writing by Foreman Manhattan. Foreman Manhattan understands that the Owner and specifically TERO shall communicate directly with the subcontractor to maintain a spirit of cooperation and also to utilize the TERO Job Bank to the fullest extent giving first hire priority rights to Cherokee Citizens.
12. **The Owner requirements for funding for work in progress is to provide payment less retainage of ten percent (10%), which shall be withheld and paid, without interest, upon final completion of the entire project.**
13. The terms and conditions contained in the following documents including General Provisions, Article 2.5, "Indemnification" as included within the contract documents; are incorporated herein by reference as if fully written out;
 - Foreman Manhattan General Provisions 2012
 - Exhibit A – (Scope of Work)
 - Exhibit B – (Bond Forms)
 - Exhibit C – (Insurance Requirements / Sample)
 - Exhibit D – (Contract Documents)
 - Exhibit E – (Special Conditions)
 - Exhibit F – (Project Schedule)
 - Exhibit G – Tax Exempt – O.D.P.I.
 - Exhibit H – (Foreman Manhattan Additional Safety Requirements)

SCOPE OF WORK EXCLUSIONS:

The following items are excluded from this Subcontract:

1. Concrete housekeeping pads and bases.
2. Maintenance Building
3. Painting
4. Site Electrical / Site Lighting
5. Site CCTV
6. Electrical Equipment, such as Distribution Panels, Switchboards, UPS, Generators, Transformers,
7. Conductors

BID PACKAGE – CNE Tahlequah Casino: SCOPE PACKAGE 33.01: – SITE UTILITIES

Submitted by (Company Name per W-9 Form): _____

Provide the following *Lump Sum Proposal* as requested in accordance with all scope items listed in Scope of Work.

1. Sanitary Sewer Line System: \$ _____

2. Water Line System: \$ _____

TOTAL – BASE BID (1 + 2): \$ _____

UNIT PRICING:

UP-001: Provide additional mobilization unit price (base bid assumes 2ea): \$ _____ / per Mobilization

UP-002: Provide select fill including delivery and compaction in-place: \$ _____ / Cubic Yard

UP-003: Over excavate, remove, haul off and legally dispose, replace sub grade with approved materials, scarify, moisture condition and compact in accordance with specification and soils report for any inadequate sub-grade surfaces: \$ _____ / Cubic Yard

UP-004: Provide aggregate base in-place for all adjustments including delivery and compaction in-place: \$ _____ / Cubic Yard

UP-006: - Provide the following Unit Rates to be used during the project for any Additional Changes, Scope Changes or Time and Material Work. Rates Shall be guaranteed through February 28, 2019 and shall include all required tools/equipment (Valued < \$5,000). Transportation, jobsite trucks, burden and any other required items.

Classification	Straight Time (\$Hour)	Overtime (\$Hour)
Operator		
Labor – Foreman		
Labor – Journeyman		
Labor- Apprentice		
Equipment – Bobcat or Skid Steer		
Equipment – Small Excavator < 2500 lbs		
Equipment - Medium Excavator between 2,500 lbs and 4,500 lbs		
Equipment – Large Excavator > 4,500 lbs		
Equipment – Medium Bull Dozer		
Equipment – Large Bull Dozer		

Other Comments:

Contact Name: _____

Address: _____

Phone/Fax: _____

Email: _____

Signature: _____

By acknowledging items below, bidder certifies acceptance of these documents and that all associated costs have been included in the proposal amount. Any and all exceptions/comments to these documents must be attached to this proposal. Comments or requested revisions to these documents will not be accepted after this proposal date.

TERO bidders must supply a copy of TERO Certificate, front of back

Initial:

Non-Collusion Affidavit

Initial:

Business Relationship Affidavit

Initial:

Acknowledge all scope of work items listed under scope of work (See Exhibit A)

Initial:

Acknowledge Exhibits B, C, D, E, F, G, H

Initial:

Addenda Included

#'s:

MCC Clarifications Included

#'s:

Acknowledge and agree to Foreman Manhattan Standard Subcontract Agreement/Special Terms and Conditions as per Exhibit E

Initial:

Acknowledge and agree to Manhattan General Provisions as Included in the Bid Documents

Initial:

SCHEDULE/EXPEDITING/SUBMITTALS

Foreman Manhattan Construction Target Schedule is attached. Please verify supplier is able to meet Foreman Manhattan required installation dates.

Initial:

*** PROJECT SCHEDULE TO BE ISSUED BY CLARIFICATION**

Sales Tax

All bids must be submitted exclusive of Federal Excise Tax and Oklahoma State Sales Tax. The Cherokee Nation is exempt from Oklahoma State Sales Tax and Federal Excise Tax under authority of § Okla. Stat. Supp. 1994 Section 1356. Bidder is to include and pay all other applicable sales tax and use taxes as required. Applications for payment shall be broken down as required by the Owner or Construction Manager.

Specific Project Requirements for the process, approval, and payment of Owner-Direct Payment Items (ODPI) are identified in section 00 60 09:

EXHIBIT “G” Tax Exempt / Owner Direct Paid Invoice (ODPI) Payment Process

Tribal Employment Rights Office.

SUBCONTRACTOR IS TO COMPLY WITH ALL CHEROKEE NATION, TRIBAL EMPLOYMENT RIGHTS OFFICE (TERO), NATIONAL INDIAN GAMING ASSOCIATION (NIGA), AND ALL BUREAU OF INDIAN AFFAIRS (BIA) RULES, REGULATIONS, AND LICENSING REQUIREMENTS INCLUDING ALL FEES AND ASSESSMENTS, ASSESSMENT, APPLICABLE TO THIS PROJECT.

11.1.1 - TERO document “An Act” Legislative Act 01-14 dated February 10, 2014.
 This Document is ACT AMENDING LA 30-12, "CHEROKEE NATION EMPLOYMENT RIGHTS ACT"

11.1.2 - Subcontractors are to EXCLUDE the cost for Section; Title 40, § 1011; T.
 To assess an Employee Rights Fee of one-half (1/2) of one percent (1%) on all covered contracts. This cost will be paid by the Construction Manager.

11.1.3 - The Work Permits paragraph of the Tribal Employment Rights Office (TERO) Project Labor Agreement - Master Agreement LA 01-14 states: No person who is not a member of a federally recognized tribe shall be employed by a covered employer until he or she has obtained a work permit from the TERO at a cost of twenty-five dollars (\$25) per day, per permit. Subcontractors are to INCLUDE in their proposed price for the work, all costs associated with the twenty-five (\$25) per day work permit for every non-Indian individual employed on this project.

Performance and Payment Bond Requirements: (Subcontractor contracts Only)

Costs for performance and payment bonds **shall be included in your base bid and any applicable alternates or unit prices.** All exterior envelope Bid Packages (Trades) will be required to bond. In addition, all base bids, combination base Bid and including all alternates of \$100,000 or above will require Performance and Payment Bond equal to one hundred percent (100%) of the contract amount. Reference Section 00 60 04 – Exhibit B of the C.M. Bid Manual.

No obligation shall be incurred by the Owner or Foreman Manhattan Construction Team to any Bidder by reason of the issuance of these written instructions, by any notification relating to this bid, or by any act other than the execution of a written Subcontract Agreement between Foreman Manhattan Construction Team and the Bidder.

APPLICABLE SPECIFICATIONS:

DIVISION 00 – Foreman Manhattan’s Construction Manager’s Bid Manual

Complete

BID PACKAGE 01 (March 6, 2018)

DIVISION 00 – Procurement Requirements and Contracting Requirements	
00 0102 – Project Information	As Applicable
00 0105 – Geotechnical Data	As Applicable
DIVISION 01 – General Requirements	As Applicable
DIVISION 03 – CONCRETE	
03 3000 – Cast in Place Concrete	As Applicable
DIVISION 31 – EARTHWORK	
31 2000 – Earthwork	As Applicable
31 2319 – Dewatering	As Applicable
31 2500 – Erosion and Sedimentation Control	As Applicable
31 5000 – Excavation Support and Protection	As Applicable
31 6329 – Drilled Concrete Piers and Shafts	As Applicable
DIVISION 32 – SITE IMPROVEMENTS	
32 9200 – Turf and Grasses	As Applicable
DIVISION 33 – UTILITIES	
Section 33 5100 – Private Storm Sewer	As Applicable

Legends, Notes and Schedules per Plans and Specifications
Geotechnical Engineering Report by Building & Earth Sciences, Inc. dated January 17, 2018

As Applicable
As Applicable

BID PACKAGE 02 (March 27, 2018)

DIVISION 07 – THERMAL AND MOISTURE PROTECTION	
07 1300 – Sheet Waterproofing	As Applicable
07 2100 – Thermal Insulation	As Applicable
DIVISION 22 – PLUMBING	
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22 1316 – Sanitary Waste and Vent Piping	As Applicable
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23 6500 – Closed Circuit Cooling Tower	As Applicable
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23 7313.1 – Central Station Air Handling Units	As Applicable
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DIVISION 31 – EARTHWORK	
31 3116 – Termite Control	As Applicable

Terminology:

Contractor and/or Subcontractor shall mean Scope Package Bidder.
Construction Manager (CM) shall mean Foreman Manhattan Construction Team.

SCOPE OF WORK:

Includes, but is not limited to, providing all the necessary labor, materials, tools, supplies, supervision, insurance, equipment, scaffolding, hoisting, fees, etc. necessary to provide the **Site Utilities** for the **CNE Tahlequah Casino**, Tahlequah, Oklahoma in accordance with the Contract Documents. It is further understood and agreed that this Subcontract also includes the furnishing and installation of the below listed items regardless of whether or not they are in the listed specification section(s) or any other specification section(s), or shown on the plans. This scope listing is to be used as a guideline and should not be considered as an all-inclusive list of items required to provide a complete scope of work under this proposal. Drawing and detail references are provided for reference only and are not to be considered as all inclusive of Contract Documents for the particular items referenced. (Please note: The word “provide” when used herein shall mean furnish and install completely, including all costs for labor, materials, equipment, hoisting, layout, scaffolding, ladders, staging, tools, rigging and any other appurtenances necessary to complete the Work.”) Subcontractor has familiarized himself with the documents and has included those items of work shown and noted on the documents and all other equipment, devices and components that are not shown or noted, but required to provide a complete, functional and working system that is in compliance with all local codes.

1. This bid package is intended to be all inclusive of labor, material, and equipment required for the Site Utilities as required by the contract documents for a complete project.
2. Provide all Site Sanitary Sewer systems complete including all connections in accordance with contract documents. Work is to include all systems to within 5'-0" of building unless pipe exits into gas/oil separator or grease waste interceptor, then Contractor shall connect to discharge side of separator/interceptor and pipe to discharge location. The work associated with this item is to include, but is not necessarily limited to, the following:
 - a. All pipe, borings and sleeves, fittings, valves, and associated accessories for sanitary sewer lines. Seal piping penetrations to sleeves at both ends as required.
 - b. All force mains (upstream of lift station), lift stations, wet wells, pumping equipment and controls (turnkey) including force main discharge to existing structure. (Electrical Power by others).
 - c. Provide all connections as indicated on documents to Utility services including connection to services) to existing lines, and connections to structures.
 - d. Provide required taps & sleeves, valves and appurtenances, clean-outs, valve boxes, etc. not provided by utility agencies or part of permits and associated fees.
 - e. Provide all structures, manholes, inlets, drains, frames, gratings, collars, clean-outs, concrete aprons, marking tape/trace wires, bollards, pads and any and all other requirements necessary for a complete, operable and approved system as indicated in documents

3. Provide all Water Lines, Complete to within 5' of the Building, including but not limited to below items:
 - a. Water lines A, B, C, D
 - b. Prop 6" PVC Fire Supply Line
 - c. Prop 4" PVC FDC Line
 - d. All vaults, manholes, and associated concrete structures.
 - e. All fire hydrants, fire department connections, post indicator valves, etc.
 - f. All valves
 - g. All water meters
 - h. All backflow preventers or reduced pressure zone devices
 - i. Air release valves and associated vaults, manholes, or access holes
 - j. Branch line(s) to parking garage
 - k. All associated tapping
4. Provide all required concrete structures, vaults, etc. for utilities included in this package. Including but not limited to water meter and backflow preventer vaults.
5. Provide all precast and cast-in-place concrete manholes.
6. Provide all cleaning, flushing, testing and certification as required by Contract Documents and prevailing jurisdictions.
7. Provide temporary bracing, shoring for all utility work as required.
8. Provide all saw cutting of the work as required.
9. Provide all trenching, excavation and acceptable backfill, including pipe beddings and cover, Flowable fills. Etc. for all Storm Sewer system lines as indicated or required.
10. Note: ref. all general information notes and legends for additional requirements.
11. Note: this contractor is considered a secondary permittee and all requirements of a secondary permittee are the responsibility of this contractor.
12. All required utility site clearing and earthwork as required for installation of required utilities. All waste, debris, and demolished items to be removed from site and legally disposed.
13. Provide all related cutting, patching, and repair as required for work in accordance with documents, Owner, CM, and jurisdictional entities. Provide patching of all pavements and components whether new, existing, or temporary, including curb/gutter and sidewalk in accordance with documents.
14. Remove, relocate, and reinstall all temporary fencing and gates (installed by others) as required to perform work of this contract. Note: Contractor shall make every effort to remove, relocate and reinstall temporary fencing and gates without damage. All damage resulting from relocation of fencing will be to the account of this contractor.
15. Provide sod and necessary amendments for all areas disturbed by work of this contract. Permanent sodding for all areas to be sodded indicated on Landscape drawings, is by others.
16. Provide all Utility system(s) earthwork in accordance with documents including Geotechnical Engineering Report, all as required per tolerances per documents but no more than +/- 1/10 foot of new finished grade elevations or existing grades as scheduled.
17. Provide all temporary trench protection measures including sheeting, shoring, and sloping as required for the work of this package and as required by OSHA, including any temporary fencing. Provide all engineering and calculations as required for trenching, shoring, sheeting, sloping, and plating.
18. Open excavations shall be barricaded and protected at all times as required by OSHA, the Owner, or any authorities having jurisdiction. Provide temporary bracing and hangers for new, existing or temporary utilities as necessary to perform the work including for backfill operations.
19. Backfill all utilities, bore pits, etc. with approved materials. Remove and legally dispose all boring mud from site. Contractor shall be responsible to re-establish all existing grades disturbed by work including replacement and maintenance of new sod, plantings, and irrigation systems as required at disturbed areas not to be reworked.
20. Provide temporary plating where necessary to allow vehicular/pedestrian traffic crossing over open trenches.
21. Provide all dewatering system(s) and pump / bale equipment and accessories required for proper water discharge to perform the Work. Additionally, remove muck/spoil from all areas immediately. Additionally, restore grade with new materials if rutted or damaged by dewatering/pump/bale operations. Dewatering and Adequate pump/bale equipment and accessories shall be on the project at all times during performance of the Work.
 - a) Dewatering equipment shall be on the project at all times during performance of the work including (e.g. portable generators, piping, etc.) Additionally, remove muck and spoil from all areas immediately. Additionally, restore grade with new materials if rutted or damaged.
22. All waste concrete and concrete truck washouts is to be confined to an area as approved in writing by the Construction Manager. Remove and dispose on weekly bases all washout and waste material from site and legally dispose. Washout shall be confined to plywood box with filter media. Boxes shall be cleaned weekly of all debris, waste and removed from site. Restore all areas to original condition upon removal.
23. Provide all traffic control measures (vehicular and pedestrian), safety and security protection as needed to complete the work. This is to include all barricades, fencing, flagging, signage, flagmen, temporary striping, removal of striping, cones, or other necessary measures required to complete the work. Coordinate with CM and get approvals for placement locations of all items.
24. Provide traffic control plans, job hazard analysis, and all relevant safety notices prior to start of work.
25. Provide all field surveying, engineering, layout and staking as required from established benchmarks.
26. Bidders shall include general cleanup of debris created by work scope, as directed. Trash shall be deposited in project dumpsters provided by others.

27. All waste generated other than from general clean-up debris shall be removed and legally disposed from site by this Contractor. (Not to be deposited into project dumpsters described above).
28. Clean streets as required such that roadways required to remain operational during performance of the work remain clean at all times. Provide street sweeper equipment during performance of this work at all times and ready for use. Note: equipment must not create dust during street cleaning operations.
29. Provide dust and noise control as required by the contract documents, governing authorities and as required by the Construction Manager during the performance of this subcontractors work.
30. Provide all necessary means for the complete and proper protection of adjacent surfaces. Damage caused by work of this contract to adjacent surfaces/structures shall be repaired at this Subcontractors expense.
31. Provide shut-down, safe-off, capping, temporary caps or plugs as required for demolition work.
32. Provide a complete installation that complies with all applicable codes, ordinances and satisfying all Authorities Having Jurisdiction.
33. Contractor shall be cognizant and recognize that various utilities, mechanical, plumbing, high and low voltage electrical and communication services will be required to be maintained operational during construction of the project in this same area, and contractor shall include all protection, barriers, partitions, etc.; provide all hand, loading and removal of waste debris and import of new materials as required so as to maintain operation of all existing components to remain, during and until new construction is complete.
34. Disposal of all hazardous waste and demolition debris shall be in licensed sanitary landfills. Contractor shall keep and submit to the Construction Manager the following work day, a copy of the previous days manifest and all dump receipts corresponding to each manifest.
35. Provide all required permits and pay required fees for all Municipal and jurisdictions having authority including for demolition, hazardous waste removal, and waste and debris disposal.
36. All utility systems are to be installed per governing authorities and shall include all utility company service and installation charges, permits and costs thereof, cleaning and sterilization, testing, inspections and required earthwork for burial, piping and fittings, connection, devices, etc. as required for complete services.
37. Contractor shall be responsible to re-establish all existing grades disturbed by Work including replacement and maintenance of new sod, plantings, and irrigation systems as required at disturbed areas outside the limits of construction.
38. Adjust all existing utility structures (vaults, valve boxes, manholes, junction boxes, clean-outs, inlets (both area and curb) to match new finish grade contours, as required..
39. All utility work shall comply with all Utility Companies and/or other authorities having jurisdictional complete including all required appurtenances, structures and apparatus.
40. Provide all warning tapes as indicated per applicable specifications.
41. Provide, relocate and remove upon completion, all temporary power (generators) and all required temporary lighting for work performance, safety and convenience for the work of this subcontractor, and as required to maintain required schedule.
42. Provide all field engineering and layout from benchmarks and base building control (benchmarks and baseline control is furnished by others). This Subcontractor is responsible for replacement of any damaged benchmarks, base line control or layout work of other trades/packages damaged or destroyed by the work of this work package.
43. Provide all patching of existing concrete /asphalt damaged during construction.
44. Provide all Utility system Earthwork including excavation, backfill, backfill materials, hand work, and compaction in accordance with the contract documents and Geotechnical Engineering Report including all Addenda. Provide all backfill, compaction, fine grade, etc. Note: all back-fill under any paved surface to be aggregate as indicated and specified.
45. Coordinate all work with utility companies/agencies and CM as required. Where utility cutting, capping, or plugging is required, perform such work in accordance with requirements of the utility company or governmental agency having jurisdiction.
46. Provide required provisions per EPA guidelines for Storm Water Pollution control as applicable to utility systems, and/or as required.
47. Provide all related pumping, bailing, discharge and maintenance thereof including temporary drainage requirements for control of run-off and the prevention of ponding and repair to resulting damaged sub-grades.
48. Authorized Subcontractor supervision must be onsite while work is being performed.
49. Provide coordination, assistance, and necessary access for the Owner's furnished Testing Laboratory, including notification, obtaining samples and data gathering as required for scope of work. Costs for retesting due to failed tests and/or for Subcontractor's unpreparedness, will be paid by this Subcontractor.
50. Subcontractor will assist CM with providing material quantities and cost breakdowns as required for the Owner's and CM's budget requirements. All breakouts will be used for accounting purposes and tracking only.

GENERAL ITEMS

1. Include separate mobilizations / demobilizations as required by the Project Schedule and Phasing Plans.
2. Provide all shop drawings, product data, sample and other pertinent submittals for the work of this Subcontract. Provide engineering and printing costs for all shop drawings, coordination drawings, and product submittals for architect approval as required to properly coordinate the work included in this Subcontract with other trades. Include costs for revising and resubmitting shop/ coordination drawings as needed.
3. Subcontractor will assist Foreman Manhattan with providing material quantities and cost breakdowns as required for the Owner's and Foreman Manhattan's budget requirements. All breakouts specified in this subcontract will be used for accounting purposes and tracking only.
4. Contractor shall provide a complete installation that complies with all applicable codes, ordinances and satisfying all Authorities Having Jurisdiction.
5. Provide all field engineering and layout from benchmarks and base building control (benchmarks and baseline control is furnished by others). This Subcontractor is responsible for replacement of any damaged benchmarks, base line control or layout work of other trades/packages damaged or destroyed by the work of this work package.

6. Provide all required pedestrian protection, traffic control and protection including flagman, barricades, signage, etc. as required for the work, and as may be required for protection for equipment access, deliveries and loading.
7. Subcontractor is required to comply with requirements to control Dust and Airborne Contaminants. No waste materials or debris shall be allowed to accumulate.
8. Provide coordination, assistance, and necessary access for the Owner's furnished Testing Laboratory, including notification, obtaining samples and data gathering as required for scope of work. Costs for retesting due to failed tests and/or for Subcontractor's unpreparedness, will be paid by this Subcontractor.
9. It is mutually understood and agreed that this subcontractor will coordinate all of the scheduled deliveries of these items being furnished by others with the Foreman Manhattan designated representative. This includes the on or off site storage, staging, inventory control, and shipping to the site. All damages or shortages are to be reported within 24 hours of delivery.
10. Subcontractor agrees to be bound by the Welcome Package issued by the Foreman Manhattan Field staff.
11. **Revise paragraph 1.2.3 of section 00 60 02A Manhattan General Provisions as contained in the Construction Manager's Bid manual as follows:**
Until Subcontractor's obligations under this Subcontract are completely fulfilled, Subcontractor agrees not to perform any changes to the work directly for Owner or any of its tenants, or deal directly with Owner's representatives with respect to the work and/or changes to the work, in connection with the Project, unless approved in writing by Foreman Manhattan. Foreman Manhattan understands that the Owner and specifically TERO shall communicate directly with the subcontractor to maintain a spirit of cooperation and also to utilize the TERO Job Bank to the fullest extent giving first hire priority rights to Cherokee Citizens.
12. **The Owner requirements for funding for work in progress is to provide payment less retainage of ten percent (10%), which shall be withheld and paid, without interest, upon final completion of the entire project.**
13. The terms and conditions contained in the following documents including General Provisions, Article 2.5, "Indemnification" as included within the contract documents; are incorporated herein by reference as if fully written out;
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 - Exhibit A – (Scope of Work)
 - Exhibit B – (Bond Forms)
 - Exhibit C – (Insurance Requirements / Sample)
 - Exhibit D – (Contract Documents)
 - Exhibit E – (Special Conditions)
 - Exhibit F – (Project Schedule)
 - Exhibit G – Tax Exempt – O.D.P.I.
 - Exhibit H – (Foreman Manhattan Additional Safety Requirements)

SCOPE OF WORK EXCLUSIONS:

The following items are excluded from this Subcontract:

1. Masonry rebar or grouting.
2. Joint sealants.
3. Furnishing of embeds; anchor bolts and/or anchor bolt assemblies.
4. Mass Excavation for Building Pad and Site work
5. Site Concrete
6. Sidewalks
7. Maintenance Building
8. Grease Interceptors
9. Storm Sewer in Bid Package 01 Drawings and Specs (By Others)

Subcontractor ABC
1234 N. ABC Drive, Generic Location, OK
Phone: xxx.xxx.xxxx Fax: xxx.xxx.xxxx
MANHATTAN GENERAL PROVISIONS
Dated 01/13/2015

ARTICLE 1
CONTRACT DOCUMENTS

1.1 DEFINITION

1.1.1 The Contract Documents consist of the Subcontract, the Agreement between Manhattan and Owner (“Agreement”), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of the Agreement, the Manhattan General Provisions, other documents listed in the Subcontract and the Manhattan General Provisions (including Exhibits and Riders) and all modifications issued after execution of the Agreement.

1.1.2 Subcontractor acknowledges and agrees that its Subcontract and the Contract Documents are adequate and sufficient to provide for the performance and completion of the Work, and include all work, whether or not shown or specified, which reasonably may be inferred to be required for the completion of the Work in accordance with all applicable laws, codes and professional standards.

1.1.3 The Contract Documents (except for proprietary and financial terms) shall be made available for inspection by Subcontractor at a reasonable time and upon reasonable notice in order to ascertain all the obligations which Manhattan has assumed toward Owner and which Subcontractor assumes to Manhattan, as provided below.

1.2 THE SUBCONTRACT

1.2.1 The Subcontract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral.

1.2.2 The Subcontract may not be construed to create any contractual relationship of any kind between Subcontractor and Owner, between Subcontractor and Architect or between any persons or entities other than Manhattan and Subcontractor. Notwithstanding the above, Manhattan's surety (or sureties) is an intended beneficiary of the Subcontract.

1.2.3 Until Subcontractor's obligations under this Subcontract are completely fulfilled, Subcontractor agrees not to perform any work directly for Owner or any of its tenants, or deal directly with Owner's representatives, in connection with the Project, unless approved in writing by Manhattan.

1.2.4 With respect to the work covered by this Subcontract, Subcontractor shall assume all obligations, risks and responsibilities to Manhattan which Manhattan has assumed toward Owner and Manhattan shall have all rights and remedies with respect to Subcontractor as Owner has with respect to Manhattan, in the Contract Documents, except to the extent the Subcontract requires more of the Subcontractor or gives Manhattan greater rights.

1.3 THE WORK

The Work of Subcontractor shall include the performing and furnishing by Subcontractor of all supervision, labor, materials, services, scaffolding, hoisting, tools, equipment, supplies, systems, machinery, transportation, apparatus, drawings, shop drawings, samples, mock-ups, submittals, plans, job hazard analysis and all other things necessary for the construction and completion of the Work, as described in its Subcontract, and all Work incidental thereto or reasonably inferable therefrom, in strict accordance and in full compliance with the terms of the Contract Documents.

1.4 PARTICULARIZED TERMS

Unless the context of these provisions indicate otherwise, or as otherwise provided,

(a) The term “days” shall mean calendar days.

(b) The term “contractor” appearing in any of the Specification Sections or Divisions applicable to the Subcontract shall mean Subcontractor unless specifically stated otherwise herein.

(c) The term “subcontractor” shall mean any subcontractor, vendor or materialman, of any tier to Subcontractor, which is supplying material or performing work in connection with the Work required in the Subcontract.

(d) The term “subcontract” when referencing contractual arrangements between subcontractors and Subcontractor shall mean purchase orders and contracts for construction, materials and/or services relating to the Work.

(e) References to "Owner" shall include the Owner, its Architects and other representatives acting on their behalf.

1.5 INTERPRETATION OF CONTRACT DOCUMENTS

1.5.1 It is the intention of the parties that all the terms of the Subcontract are to be considered as complimentary. However, in the event that such an interpretation is not possible, the order of precedence of the documents forming this Subcontract shall be (a) modifications of any documents forming part of the Subcontract; (b) the Subcontract, including attached Exhibits and Riders (unless the Manhattan General Provisions or the Contract Documents impose a higher standard or greater requirement on the Subcontractor, in which case the Manhattan General Provisions or the Contract Documents shall govern); (c) the Manhattan General Provisions (unless the provisions of (b) apply), and (d) the Contract Documents (unless the provisions of (b) apply.)

1.5.2 In the event of a conflict between or among modifications, the later in date shall prevail; in the event of a conflict between or among the terms of the Subcontract, the higher standard or greater requirement for Subcontractor shall prevail.

ARTICLE 2 **SUBCONTRACTOR**

2.1 SUBCONTRACTOR’S INVESTIGATIONS AND REPRESENTATIONS

2.1.1 Subcontractor represents that it has studied and compared the Contract Documents with each other, and will continue to study and compare any revisions to the Contract Documents, for the purpose of discovering errors, inconsistencies or omissions in the Contract Documents as it concerns the scope of Subcontractor's Work. This review by Subcontractor is in Subcontractor's capacity as a contractor, and not as a designer, unless the scope of Subcontractor's Work includes design responsibilities. Subcontractor shall be liable for any damage resulting from such errors, inconsistencies or omissions if Subcontractor discovered, or should have discovered, such errors, inconsistencies or omissions. With respect to errors, inconsistencies or omissions that Subcontractor did not discover and which it could not, with reasonable diligence, have discovered, Subcontractor shall notify Manhattan as provided in Paragraph 3.2 herein following the discovery of such errors, inconsistencies or omissions or any claims based upon errors, inconsistencies or omissions shall be deemed waived. Nothing herein shall bar Subcontractor’s right, if any, to seek additional compensation if allowed under the Subcontract assuming timely notice is received.

2.1.2 Subcontractor represents that it is fully qualified to perform this Subcontract, and acknowledges that prior to the execution of this Subcontract it has (a) by its own independent investigation ascertained and evaluated (i) the Work required by this Subcontract, (ii) the conditions and difficulties involved in performing the Work, (iii) the obligations of this Subcontract and the Contract Documents, (iv) the nature, locality and site of the Work, (v) climatic conditions, and (vi) the availability and costs of labor and materials, tools and equipment and (b) verified all information furnished by Manhattan or others, satisfying itself as to the correctness and accuracy of that information. Any failure by Subcontractor to investigate independently and become fully informed will not relieve Subcontractor from its responsibilities hereunder. Subcontractor assumes the risk of any increases in its labor, materials, fuel or any other thing necessary for the construction and completion of the Project, whether foreseen or unforeseen. Subcontractor shall be entitled to additional compensation for price escalations to the extent Manhattan is entitled to recover and actually recovers such additional compensation from Owner.

2.2 TIME OF PERFORMANCE

2.2.1 Subcontractor will proceed with the Work in a prompt and diligent manner, in accordance with Manhattan’s schedules, as reasonably amended from time to time. Subcontractor shall be liable to Manhattan for failure to adhere to Manhattan’s schedule, including amendments, even if such schedules differ from schedules set forth in the Contract Documents or the time of completion called for by the Contract Documents. TIME IS OF THE ESSENCE. In agreeing to perform the Work in accordance herewith, Subcontractor has taken into account and made allowance for delays which should be reasonably anticipated or foreseeable.

2.2.2 Subcontractor shall notify Manhattan in writing of any objection to any schedule or amendment thereof, within forty-eight (48) hours after receipt of such schedule or amendment. The failure by Subcontractor to object to any schedule or amendment shall constitute acceptance and waiver of any claim of Subcontractor based on any schedule or amendment to the schedule.

2.2.3 If requested by Manhattan, Subcontractor shall submit detailed schedules for performance of the Subcontract, in a form acceptable to Manhattan, which shall comply with all scheduling requirements of the Contract Documents and of Paragraph 2.2.1 above. Manhattan may from time to time, at its sole discretion, direct Subcontractor to make reasonable modifications and revisions in such schedules.

2.2.4 Subcontractor agrees to accelerate its work and work overtime, if necessary, to bring its work back on schedule. Subcontractor shall not be entitled to additional compensation for this acceleration if Subcontractor is late in the performance of the work or is not otherwise entitled to an extension of time. Subcontractor agrees to coordinate its Work with the work of Manhattan, Manhattan's other subcontractors, and Owner's other contractors, if any, so no delays or interference will occur in completion of any part and/or all of the Project. All float in Manhattan's schedule shall belong to Manhattan.

2.2.5 Provided that Manhattan has not actively interfered with Subcontractor's performance, causing a delay on the critical path of the project schedule, Subcontractor expressly agrees not to make, and hereby waives any claim for damages (including but not limited to those resulting from increased labor or material costs, acceleration, disruption, inefficiency, loss of productivity, impacts, or extended general conditions costs) (hereinafter "Disruption Damage") on account of any delay, obstruction or hindrance from any cause whatsoever, whether or not foreseeable and whether or not anticipated, and agrees that the sole right and remedy for any such delays and impacts of any kind shall be an extension of time as provided below. Notwithstanding the above, Subcontractor shall be entitled to additional compensation for Disruption Damage to the extent, but only to the extent, that Manhattan actually recovers damages from Owner which includes damages incurred by Subcontractor. Subcontractor agrees that Manhattan shall not be deemed to have actively interfered with Subcontractor's work based on the exercise of legal remedies available in the subcontract to Manhattan or by the number or amount of any changes to this Subcontract.

2.2.6 Subcontractor shall be entitled to an extension of time only to the extent Manhattan obtains an extension of time from Owner, as it pertains to Subcontractor's work and only if Subcontractor has properly notified Manhattan of its claim for an extension of time as required by the Contract Documents and this Subcontract.

2.3 WARRANTY

2.3.1 Subcontractor warrants to Manhattan, Owner and Architect that all materials and equipment furnished under the Subcontract will be new unless otherwise specified, and that all Work will be of the quality required by the drawings and specifications, free from faults and defects and in conformance with the Contract Documents. Subcontractor warrants that it and its subcontractors will perform their work and will manufacture and furnish material and equipment in a good and workmanlike manner.

2.3.2 Subcontractor further warrants its Work, materials and equipment hereunder to Manhattan on the same terms, and for the same period, as Manhattan warrants the Work to Owner under the Contract Documents.

2.3.3 Subcontractor additionally agrees to repair or replace all Work that may prove defective in workmanship or materials commencing on the date of substantial completion and ending one year from the date of completion and acceptance of the Work by Owner in addition to any requirements in the Contract Documents to repair or replace defective Work. Such guarantees and warranties shall include the removal and replacement of other work affected thereby and payment for resulting damage to other property.

2.3.4 The warranties and guarantees provided in this Section 2.3 are in addition to, and not in limitation of, any other right or remedy Manhattan may have or any other warranty given by Subcontractor, and will not limit any recovery Manhattan may seek or any remedy of Manhattan under the Subcontract, or as provided by law, including the recovery of direct or consequential damages. Specifically, and not by limitation, the express warranty provided by Subcontractor and its subcontractors will not limit, in any respect, any implied warranties at law which may apply to Subcontractors Work, including a warranty for the quality of labor and materials and a warranty of good and workmanlike performance.

2.4 SUBCONTRACTOR'S LIABILITY

2.4.1 Subcontractor shall have responsibility and liability for all Work, supervision, labor and materials provided hereunder, whether or not erected in place, and for all plant, scaffolding, tools, equipment, supplies and other things provided by Subcontractor until final acceptance of the Work by Owner, and shall at all times prosecute the Work in a good and workmanlike manner, with diligence and continuity. In the event of any loss, damage or destruction thereof from any cause, Subcontractor shall be liable therefore, and shall repair, rebuild and make good said loss, damage or destruction at Subcontractor's cost. Nothing herein shall prejudice any rights Subcontractor may have to recover its costs from any applicable Builder's Risk policy which may provide coverage for said loss.

2.4.2 Subcontractor shall be liable to Manhattan for all costs Manhattan incurs or becomes responsible for as a result of Subcontractor's failure to perform this Subcontract, or any other subcontract between Manhattan and Subcontractor, in accordance with their terms. The breach of any provision of any other subcontract between Subcontractor and Manhattan shall, at Manhattan's election, constitute a breach of this Subcontract and a breach of this Subcontract shall constitute a breach of any other subcontract between Manhattan and Subcontractor on any other project. Manhattan shall be entitled to offset, against any amounts due Subcontractor, any amounts due Manhattan from Subcontractor on any other project. Subcontractor's failure to perform shall include the failure of its subcontractors to perform. Subcontractor's liability shall include but not be limited to (a) damages and other delay costs payable by Manhattan to Owner (including liquidated damages); (b) Manhattan's or its agent's or its other subcontractor's, and

supplier's increased costs of performance, such as extended overhead and increased performance costs resulting from delays or improper Work; (c) warranty and rework costs; (d) liability to third parties; (e) excess procurement costs; (f) consultants' fees; and (g) attorneys' fees and related costs.

2.4.3. Without limiting the foregoing, if Subcontractor is only furnishing labor for the finishing, installation or erection of materials furnished by Manhattan, the following costs, without restriction thereto, are to be fully recovered by Manhattan from Subcontractor: (a) the full cost of materials required to replace those spoiled by Subcontractor through faulty workmanship or negligence or damaged by any other cause not the fault of Manhattan; (b) the full cost of materials wasted by Subcontractor; (c) the full cost of removing rejected materials when not properly and promptly removed by Subcontractor, together with cost of removing, patching or replacing the work of others necessitated by such rejection; (d) the full cost of reworking, refinishing or altering any work of Subcontractor not accepted by Owner or the Owner's authorized agents; and (e) cost resulting from damage by Subcontractor to materials or work of Manhattan or others.

2.4.4 In the event that Subcontractor or any of its agents, employees, suppliers, or subcontractors utilize any machinery, equipment, tools, scaffolding, hoists, lifts or similar items belonging to or under the control of Manhattan, Subcontractor shall be liable to and shall defend and indemnify Manhattan for any loss or damage (including bodily injury, personal injury, death or property damage) which may arise or result from such use, except when such loss or damage is due solely to the negligence of Manhattan employees operating Manhattan-owned or Manhattan-leased equipment. **SUBCONTRACTOR EXPRESSLY ASSUMES LIABILITY FOR THE CONCURRENT NEGLIGENCE OF MANHATTAN; HOWEVER, THIS LIABILITY SHALL BE LIMITED AS PROVIDED IN PARAGRAPH 2.5.2 BELOW.**

2.4.5 Subcontractor agrees to assume entire responsibility and liability for any claim or action based on or arising out of injuries, including death, to persons or damages to or destruction of property (real, personal, tangible or intangible) sustained in connection with the performance of this contract by Subcontractor, its subcontractors, agents and employees. **THIS RESPONSIBILITY AND LIABILITY OF SUBCONTRACTOR APPLIES EVEN THOUGH THE CLAIM OR ACTION IS THE RESULT OF THE CONCURRENT NEGLIGENCE OF MANHATTAN, OWNER, ARCHITECT, THEIR REPRESENTATIVES OR THEIR EMPLOYEES, AGENTS, INVITEES OR LICENSEES THEREOF TO THE EXTENT LIABILITY FOR CONCURRENT NEGLIGENCE OF THE ABOVE-REFERENCED PARTIES IS ALLOWED BY APPLICABLE LAW.**

2.4.6 Subcontractor's assumption of liability is independent from, and not limited in any manner by, the insurance required of Subcontractor. All amounts owed by Subcontractor to Manhattan as a result of the liability provisions of this Subcontract shall be paid upon demand.

2.5 INDEMNIFICATION

2.5.1 To the fullest extent permitted by law, Subcontractor is liable for and will defend, indemnify, hold harmless and reimburse Manhattan, its surety, Owner, Architect (and any other design professionals retained by either Owner or Architect), all other persons or entities for which indemnity is required by the Contract Documents and their representatives and employees, officers, agents, invitees and licensees of the same (collectively "Indemnitees"), against:

(a) all claims arising out of any breach of this Subcontract by the Subcontractor, or a breach of any agreement relating to the Work or any Work done by any of its subcontractors, or any negligent act, gross negligence, error or omission by Subcontractor or any of its subcontractors, or any patent or copyright infringement arising out of the performance of this Subcontract by Subcontractor or any of its subcontractors;

(b) all liabilities, claims and demands for personal or bodily injury (including death) or property damage (real, personal, tangible or intangible) to any of the Work of Subcontractor or any other work or property of any other party, including injury or death to Subcontractor's employees, together with any resulting costs, legal fees and consulting fees, arising out of or caused by any act or omission of the Subcontractor or any of its subcontractors, their agents or employees;

(c) all liens, or claims of rights to enforce liens, against the Project, Project Site and all claims against Manhattan or its surety arising out of any work performed or to be performed or labor, services or materials furnished or to be furnished under this Subcontract by any of its subcontractors to Subcontractor;

(d) all costs, damage, expenses and liabilities Indemnitees may sustain by reason of the failure of Subcontractor to indemnify any of the Indemnitees as required herein and elsewhere in the Subcontract; and

(e) all other costs, damage, expenses and liabilities (including all resulting costs, legal fees and consultant fees) for which Manhattan is liable to Owner under its Agreement, or to any third party under agreements with those third parties who may be affected by construction of the Project on account of or in any way related to Subcontractor's Work.

2.5.2 THE ABOVE-REFERENCED DEFENSE AND INDEMNIFICATION OBLIGATION SHALL APPLY EVEN THOUGH THE MATTER IS THE RESULT OF THE CONCURRENT NEGLIGENCE OF ANY OR ALL OF THE INDEMNITEES (INCLUDING OTHER SUBCONTRACTORS OF MANHATTAN) TO THE EXTENT (A) THE CLAIM INVOLVES BODILY INJURY OR DEATH OF AN EMPLOYEE OF SUBCONTRACTOR, ITS AGENTS OR ANY OF ITS SUBCONTRACTORS OF ANY TIER OR (B) APPLICABLE LAW ALLOWS DEFENSE AND INDEMNITY FOR CONCURRENT NEGLIGENCE OF THE INDEMNITEES FOR OTHER CLAIMS FOR DAMAGES OR INJURY TO PERSONS OR PROPERTY IN ADDITION TO THOSE SET FORTH IN SUBPART (A) ABOVE.

2.5.3 Manhattan has a right to withhold from any payments due or to become due Subcontractor an amount which, in Manhattan's opinion is reasonable to protect Manhattan from any claims or lawsuits subject to this indemnification paragraph. These rights are in addition to Manhattan's other legal and equitable rights. The indemnification obligation under this provision and this Subcontract, or any other indemnification obligation under any other subparagraph of this Subcontract, are not limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Subcontractor, or any of its subcontractors, under applicable Worker's or Workmen's Compensation Acts, Disability Benefit Acts, Employee Benefit Acts nor by any requirement for insurance, or the furnishing of insurance by Subcontractor or any of its subcontractors, under this Subcontract. Subcontractor shall, however, maintain insurance with respect to this indemnification obligation and shall, in addition, name Manhattan as an additional insured which coverage for Manhattan, as an additional insured, shall not be affected by the enforceability or applicability of the above-referenced indemnity obligation.

2.5.4 The indemnity obligations shall survive completion or termination of the Subcontract.

2.5.5 Indemnitees shall have the right to select counsel of their own choosing to defend them and such selection shall not lessen or otherwise limit Subcontractor's obligations hereunder.

2.5.6 Nothing contained herein shall limit any claim of Manhattan against Subcontractor based on breach of contract or breach of warranty.

2.5.7 The above-referenced defense and indemnification obligations shall not require Subcontractor to defend and indemnify Architect or other design professionals (or their representatives, employees, agents, invitees and licensees) against claims arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, unless required by the agreement between Owner and Manhattan.

2.6 PATENTS AND ROYALTIES

Except as otherwise provided by the Contract Documents, Subcontractor shall pay all royalties and license fees which may be due with respect to the Work. Subcontractor shall defend all suits or claims for infringement of any patent rights that may be brought against Manhattan or Owner arising out of its Work, and shall be liable to Manhattan and Owner for all loss, including all costs and expenses, on account thereof.

2.7 TAXES AND PERMITS

2.7.1 Except as otherwise provided by the Contract Documents, Subcontractor agrees to pay, comply with and hold Manhattan harmless from and against the payment of all Federal, state and local contributions, taxes, duties or premiums arising out of the performance of this Subcontract, and all Sales, Use or other duties or taxes of whatever nature levied or assessed against Owner, Manhattan or Subcontractor arising out of this Subcontract, including any interest or penalties. Subcontractor waives any and all claims for additional compensation because of any new contributions, duties, taxes or premiums, or any increases therein, unless payment therefor is specifically provided for in the Contract Documents.

2.7.2 Subcontractor shall obtain and pay for all permits, licenses, fees and certificates of inspection necessary for the prosecution and completion of the Work. Subcontractor shall arrange for all necessary inspections and approvals by public officials.

2.8 SUPERVISION

Subcontractor and its subcontractors (a) shall not employ anyone to perform Work whose employment is objected to by Manhattan or Owner and (b) shall employ skilled and competent supervisory and subordinate personnel at the jobsite at all times who are familiar with their obligations under this Subcontract, the Contract Documents and Manhattan's schedule, are capable of communicating effectively with Manhattan's Project staff and who shall perform the Work with the highest degree of skill.

2.9 CLEANUP

Subcontractor shall, on a daily basis, clean its Work and remove, sort as required, and deposit all debris resulting from or associated with its Work in a manner that will not impede either the progress of the Project or of other trades. Should Subcontractor fail to clean

its Work within twenty-four (24) hours after receipt of written notice from Manhattan, Manhattan shall have the right to perform cleanup itself and charge Subcontractor the reasonable cost thereof, including an allocation of the cost of cleanup not identifiable to any source. Manhattan may request composite crew clean up activities in which this Subcontractor will participate, if performing Work during the period of such request.

2.10 LABOR HARMONY

Neither Subcontractor nor any of its subcontractors will directly or indirectly cause, or induce others to cause, any interference with the work of any other contractor or subcontractor. Subcontractor shall only employ workmen who will work in harmony with those employed by Manhattan and other subcontractors. Should any workers performing work covered by this Subcontract engage in a strike, work stoppage, work slowdown or cease to work due to picketing, protests, strikes or a labor dispute of any kind, said circumstance shall be deemed a failure to perform the work and shall constitute a default by Subcontractor, subjecting it to the terms and conditions set forth in Article 9 herein. Furthermore, Subcontractor acknowledges that the project will be constructed, and work performed, utilizing many other employers, subcontractors, suppliers, and vendors providing supplies and materials, who may or may not be a party to, or signatory to, collective bargaining agreements or project labor agreements. If pickets, protests, strikes or other forms of labor disputes occur at the jobsite, Subcontractor agrees that its employees and those of its subcontractors will either cross picket lines or enter the jobsite through a separate entrance established for such use. Failure of Subcontractor to man the job with a sufficient number of skilled workers during a labor dispute shall have no effect on Manhattan's remedies under Article 9 of this Subcontract. Subcontractor agrees that Manhattan is entitled to all remedies provided in Article 2.2, 2.4, and 9.1 of this Subcontract should Subcontractor delay the project as a result of a labor dispute of any nature. Prior to the commencement of its Work, Subcontractor shall inform Manhattan if any of the employees that it, or its subcontractors, intends to employ on the Project are subject to a collective bargaining agreement and whether or not any such agreement contains a valid no strike clause.

2.11 ASSIGNMENT AND SUBCONTRACTING

2.11.1 Subcontractor shall not assign or transfer this Subcontract, or funds due hereunder, without the prior written consent of Subcontractor's surety and Manhattan. To the extent any applicable law does not require Subcontractor to obtain written consent of Manhattan to the assignment of funds, Subcontractor nevertheless agrees to notify Manhattan, in writing, prior to any such assignment. Failure of Subcontractor to notify Manhattan shall constitute a material breach of this Subcontract. Subcontractor's subcontractors are subject to the provisions of this Subcontract, and Subcontractor shall insert in Subcontractor's subcontracts all provisions required by the Contract Documents or necessary to enable Subcontractor to comply with the terms hereof. Subcontracting by Subcontractor shall not abrogate any obligation of Subcontractor under this Subcontract.

2.11.2 Subcontractor shall, within thirty (30) days after award of this Subcontract and monthly thereafter, provide a detailed, itemized list of materials and equipment to be provided under this Subcontract along with the ultimate supplier of each material item and equipment, the supplier's representative and phone number, and the current proposed delivery date of the material and equipment. Manhattan reserves the right to review and/or approve Subcontractor's subcontractor. Such approval will not be unreasonably withheld.

2.11.3 Subcontractor, by execution of this Subcontract, contingently assigns to Manhattan all of Subcontractor's subcontracts. The assignment of each of Subcontractor's subcontracts shall take effect only upon both Subcontractor's termination under either Article 9 or 10 and Manhattan's affirmative acceptance of the assignment of the specific subcontract by written notice to Subcontractor and Subcontractor's subcontractor. Manhattan shall have no liability to any of Subcontractor's subcontractors unless and until Manhattan affirmatively accepts the assignment as provided above.

2.11.4 Subcontractor further agrees, if requested by Manhattan, to conditionally assign this Subcontract to Owner or Owner's lender.

2.12 APPROVALS, REVIEWS AND SUBSTITUTIONS

2.12.1 Subcontractor warrants and agrees that all requisite approvals from Owner as to its eligibility to serve as a subcontractor, and that reviews or approvals of all materials and performance of the Work as required by the Contract documents, are obtainable.

2.12.2 Subcontractor shall deliver to Manhattan copies (or electronic files in the format needed) of shop drawings, cuts, samples, material lists, and other submissions, including mock-ups and temporary structures, required by Manhattan or the Contract Documents within sufficient time so as not to delay performance of the Project and within sufficient time for Manhattan to submit the same within the time stated in the Contract Documents, whichever is earlier. Review or approval of a submittal does not constitute specific written approval. No general approval granted by Manhattan or Owner shall relieve Subcontractor from complying with the Contract Documents. Submissions shall be in strict accordance with the Contract Documents provided, however, that if Subcontractor wishes to propose a deviation from the Contract Documents, such deviation shall be clearly identified on the submission and accompanied by a letter describing in detail such deviation and the effect, if any, on Subcontractor's Work and on the Work of Manhattan or any of its other subcontractors on the Project, and the impact on the time of performance. Requested deviations will be allowed only in

accordance with the Contract Documents and when specific separate written approval referencing the deviation is given to Subcontractor by both Manhattan and Owner or its representatives. In making or seeking to make any substitution, Subcontractor hereby agrees to pay or reimburse Manhattan for any increase whatsoever in the cost of the work undertaken by Manhattan or by any of its other subcontractors as a result of any substitution made upon initiation of Subcontractor. Subcontractor agrees and represents, at the time of entering this Subcontract, that no substitution was contemplated in arriving at the amount of the Subcontract.

2.12.3 Manhattan's review or approval of any shop drawings, cuts, samples, material lists and other submissions, including mock-ups or temporary structures, shall not to any extent, under any circumstances, (a) alter the requirements of the Contract Documents for quality, quantity, finish, dimension, design or configuration; (b) constitute acceptance by Manhattan of any method, material or equipment not ultimately acceptable to Owner; or (c) relieve Subcontractor from its responsibilities and requirements in the Subcontract or for errors of any sort therein or from the necessity of furnishing any Work required by the Contract Documents which may have been omitted therefrom.

2.13 INSPECTION AND ACCEPTANCE

2.13.1 Subcontractor shall provide appropriate facilities at all reasonable times for inspection, by Manhattan or Owner, of the Work and materials provided under this Subcontract, whether at the Project site or any place where such Work or materials may be in preparation, manufacture, storage or installation. Subcontractor shall promptly replace or correct any Work or materials which Manhattan or the Owner shall reject as failing to conform to the requirements of this Subcontract. If Subcontractor does not do so within the time required by the Contract Documents, or, in the absence thereof, within a reasonable time, Manhattan shall have the right to do so and Subcontractor shall be liable to Manhattan for the cost thereof. If, in the opinion of Manhattan, it is not expedient to correct or replace all or any part of rejected Work or materials, then Manhattan, at its option, may deduct from the payments due, or to become due, to Subcontractor such amount as in Manhattan's reasonable judgment will represent (a) the difference between the fair value of the rejected Work and materials and the value thereof if it complied with this Subcontract, or (b) the cost of correction, whichever Manhattan determines is more appropriate.

2.13.2 Notwithstanding the above, if rejection of work is by Owner, or by Manhattan at the request of Owner, Subcontractor's remedy for wrongful rejection of work pursuant to Paragraph 2.13.1 shall be limited to Manhattan's remedy under the Contract Documents. Manhattan shall be liable for any increased direct cost caused by its wrongful rejection of Work only if Owner was not involved in any such rejection.

2.13.3 The Work shall be accepted according to the terms of the Contract Documents. Unless otherwise agreed in writing, however, entrance, occupancy and/or use by Owner or Manhattan of any part of the Project, or any equipment installed on the Project, shall not constitute acceptance of the Work, shall not establish the commencement date of any warranty, or be construed as an achievement of substantial completion of the Work.

2.13.4 Any quality control, quality assurance or inspection (or the failure to perform quality control, quality assurance or inspection) by Manhattan which involves Subcontractor's Work shall not relieve Subcontractor from its obligations in this Subcontract nor limit any liability which Subcontractor may have to Manhattan.

2.14 HOISTING AND SPECIAL RIGGING

2.14.1 Subcontractor shall perform all hoisting, rigging, and final placement of material and/or equipment as required for the Work.

2.14.2 Subcontractor is responsible for any and all special rigging, flagmen, spotters or other assistance necessary in connection with hoisting, as well as personnel required for off loading materials.

ARTICLE 3 **CLAIMS AND DISPUTES**

3.1 DEFINITION

A claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Subcontract terms or payment of money, extension of time, or other relief with respect to the terms of the Subcontract.

3.2 LIMITATION ON CLAIMS

3.2.1 Claims by Subcontractor for additional compensation or for a time extension shall be made no later than the earlier of (a) forty-eight (48) hours after Subcontractor first recognizes the condition giving rise to the claim or (b) within a reasonable time so as to allow Manhattan to comply with the Contract Documents for the assertion of any claim. Claims must be made by written notice to Manhattan containing a complete description of the claim and circumstances thereof.

3.2.2 To the extent and only to the extent that Manhattan is liable for any damages to Subcontractor, the following limitations will apply:

- (a) No indirect or consequential damages will be allowed;
- (b) No recovery shall be based on a comparison of planned expenditures to total actual expenditures or on estimated losses of labor efficiency, or on a comparison of planned man loading to actual man loading, or any other analysis that is used to show damages indirectly;
- (c) Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong;
- (d) No damages will be allowed for job or home office overhead computed on any Eichleay formula calculation or otherwise; and,
- (e) No profit will be allowed on any damage or backcharge claim.

3.2.3 Notwithstanding the foregoing limitations in Paragraph 3.2.2, Subcontractor shall be entitled to recover damages for delay or disruption to the extent, and only to the extent, that Manhattan is entitled to recover such damages from Owner and actually recovers funds from Owner for Subcontractor's claims.

3.2.4 Subcontractor waives all claims against Manhattan for consequential, special and indirect damages arising out of or relating to this Subcontract. In addition, the following damages, whether consequential, incidental, special, direct or otherwise are also waived: claims by Subcontractor for loss of financing, business and reputation, loss of bonding capacity, loss of business opportunity and increased interest or losses from or for damages allegedly caused to Subcontractor on any other contract between Subcontractor and any other third party, including contracts with Manhattan on other projects.

3.3 CONTINUING CONTRACT PERFORMANCE

In the event of any dispute involving the Work, Subcontractor must proceed diligently with performance of its Work and must follow any decision by Manhattan with respect to the dispute until final resolution. If Subcontractor makes a claim as provided herein, Subcontractor must continue with its Work without interruption, deficiency or delay.

3.4 ACCEPTANCE OF FINAL PAYMENT

Acceptance of final payment for the Work by the Subcontractor constitutes a waiver of any claims except those claims identified as being unresolved by the Subcontractor in writing at the time of final payment.

3.5 SETTLEMENT OF DISPUTES

3.5.1 In case of any dispute between Manhattan and Subcontractor in any way relating to or arising from any act or omission of Owner, the Architect, or involving the Contract Documents, Subcontractor agrees to be bound to Manhattan to the same extent that Manhattan is bound to Owner by the terms of the Contract Documents, and by any and all preliminary and final decisions or determinations made thereunder by any party, board or court so authorized in the Contract Documents or by law, whether or not Subcontractor is a party to such proceedings. In case of such dispute, Subcontractor will comply with all provisions of the Contract Documents and allow a reasonable time for Manhattan to analyze and forward to Owner any required communications or documentation sufficiently in advance of any time limits set forth in the Contract Documents. Manhattan may, at its option, (a) present to Owner, in Manhattan's name, (b) authorize Subcontractor to present to Owner, in Manhattan's name, all of Subcontractor's claims and answer Owner's claims involving Subcontractor's Work or (c) file a third party or separate action against Owner with respect to any liability Manhattan may have to Subcontractor. Manhattan may further invoke on behalf of Subcontractor, or allow Subcontractor to invoke, those provisions in the Contract Documents for determining disputes. Nothing herein shall require Manhattan to exercise any of the above options or to forward any claim to Owner or certify a claim under a contract. If certification is required by Owner, and if Manhattan elects to certify Subcontractor's claim, Subcontractor shall also certify its claim to both Manhattan and Owner and shall defend and indemnify Manhattan for any liability Manhattan may have as a result of said certifications. If such dispute is prosecuted by Manhattan, Subcontractor at its own expense agrees to furnish all documents, statements, witnesses, and other information required by Manhattan and to pay or reimburse Manhattan for all costs incurred by Manhattan in connection with the dispute, including attorneys' fees. In the event Manhattan elects and Subcontractor accepts the option of presenting its claims to Owner, in Manhattan's name, Subcontractor shall not perform any act, or fail to perform any act, which results in any liability to Manhattan. Manhattan shall have the right to have its legal counsel associate with Subcontractor's counsel in the prosecution of any such claim at Manhattan's expense.

3.5.2 All disputes between the parties shall be resolved by litigation, in a court of competent jurisdiction, except that Manhattan may, at its sole option, require that any dispute be submitted to arbitration pursuant to the Construction Industry Rules of the American Arbitration Association except that for disputes equal or less than \$500,000, a single arbitrator shall be appointed who will be an attorney with at least (10) years of experience in construction law, and for disputes involving \$500,000 or more, there shall be three (3) arbitrators with each being an attorney and having at least ten (10) years of experience in construction law. Manhattan shall not be deemed to have waived any right it may have to arbitrate its dispute with Subcontractor by the filing of litigation against

Subcontractor and its surety. At Manhattan's request, Subcontractor agrees to join in any motion Manhattan may file seeking stay of any suit pending resolution of any arbitration between Subcontractor and Manhattan. In any arbitration between Subcontractor and Manhattan, pretrial discovery shall be allowed to the full extent as permitted by the local rules of civil procedure in the state in which the project is located.

3.5.3 If Manhattan elects to arbitrate any such dispute with Subcontractor, Subcontractor consents to the joint arbitration of any dispute it might have with Manhattan with the arbitration of any dispute Manhattan might have with any other subcontractor of Manhattan or with Owner or Architect, if Manhattan should so elect. If Manhattan should so elect to arbitrate any such dispute, and if the arbitration rules of any other arbitration Manhattan might have with any other subcontractor or with Owner or Architect are different than the arbitration rules above, the rules of arbitration, as set forth in this Subcontract, shall be modified to conform with the rules of such other arbitration proceeding.

3.5.4 In the event of litigation or arbitration of any dispute between Subcontractor and Manhattan, the prevailing party shall be awarded attorneys' fees, costs of court and such other damages as may be permitted by the Subcontract and applicable law. A party shall not be deemed to be a prevailing party for the recovery of attorneys' fees unless it has either (a) been awarded or obtained a judgment for a substantial amount of its claim or (b) successfully defended against the majority of a claim being asserted by the other party. Notwithstanding the foregoing, if a party, against whom a claim is being made, makes a written offer of compromise to the claiming party, and if the written offer is not accepted by the claiming party within ten (10) days after receipt, the offering party shall be deemed to be the prevailing party if the claiming party does not obtain a more favorable judgment or arbitration award than the written offer of compromise. The above-referenced provision with respect to the tendering of a settlement offer shall not be applicable to any offer of compromise made within fifteen (15) days of the initial arbitration hearing date or trial date, as may be applicable.

3.5.5 Subcontractor agrees that the limitations period for the filing of any litigation or arbitration by Subcontractor against Manhattan shall be two years and one day following the date of substantial completion of Subcontractor's work. In the event the above-referenced provision shall be held to be unenforceable, the limitations period for the filing of any litigation or arbitration against Manhattan shall be two years and one day following the accrual of any cause of action; provided further, however, that if the applicable law does not permit the shortening of the limitations period as provided above, this clause shall be modified so as to require Subcontractor to file any such litigation or arbitration within the minimum period of time as may be allowed by law.

3.5.6 IN THE EVENT OF ANY LITIGATION SOLELY BETWEEN MANHATTAN AND SUBCONTRACTOR, SUBCONTRACTOR AND MANHATTAN AGREE TO WAIVE TRIAL BY JURY TO THE EXTENT SUCH WAIVER IS ENFORCEABLE PURSUANT TO THE LAWS OF THE PLACE OF THE PROJECT.

ARTICLE 4 **CHANGES IN THE WORK**

4.1 Manhattan may, at any time, unilaterally or by agreement with Subcontractor, without notice to any surety, make changes in the Work covered by this Subcontract. Any unilateral order or agreement under this Article 4 shall be in writing. Subcontractor shall perform the Work as changed without delay.

4.2 Subcontractor shall submit to Manhattan any requests or claims for adjustment in the price, schedule or other provisions of the Subcontract for changes directed by Owner. Subcontractor shall only obtain an adjustment to its Subcontract amount to the extent that Manhattan is entitled to relief from Owner. Further, each Subcontract adjustment shall be equal only to Subcontractor's allocable share of any adjustment in Manhattan's contract with Owner. Subcontractor's allocable share shall be determined by Manhattan, after allowance of Manhattan's normal overhead and profit on any recovery and Manhattan's expense of recovery, by making a reasonable apportionment, if applicable, between Subcontractor, Manhattan and other subcontractors or persons with interests in the adjustment. This paragraph shall also cover other equitable adjustments or other relief allowed by the Contract Documents.

4.3 Payment on account of pending changes made by Owner shall be made only if and when Manhattan receives such payment from Owner for Subcontractor's changed Work. Each payment to Subcontractor on account of pending change orders shall be equal to Subcontractor's allocable share of Manhattan's payment from Owner for the pending change as determined by Manhattan. Amounts paid on account of pending changes are provisional and not an admission of liability and shall be repaid to Manhattan on demand whenever Manhattan determines there has been an overpayment.

4.4 For changes ordered by Manhattan independent of Owner or the Contract Documents, Subcontractor shall be entitled to an equitable adjustment in the Subcontract price except to the extent in conflict with other terms of this Subcontract. If Subcontractor considers any action or inaction by Manhattan other than a formal change order to be a change, it shall so notify Manhattan in writing, within forty-eight (48) hours of said action or inaction and seek a confirmation from Manhattan. Failure to comply with said confirmation procedure shall constitute a waiver of the right to compensation for the action or inaction. Change orders or charges of any kind, occurring between Manhattan and Subcontractor independent of Owner or the Contract Documents shall be performed and

paid for on the basis of direct cost only, without any jobsite or home office overhead, indirect expense or profit. The limitations in Paragraph 3.2 above shall apply to any such claim.

4.5 Subcontractor shall submit a reasonable price quotation for any additive or deductive change requested by Manhattan or Owner. Subcontractor's quotation shall be furnished to Manhattan by the earlier of (a) seven (7) days following Manhattan's request or (b) in sufficient time to allow Manhattan to comply with the applicable provisions of the Contract Documents with respect to changes in the work. If Subcontractor does not do so and Manhattan elects or is required to submit a price quotation to Owner which includes a proposed additive or deductive change to Subcontractor's Work, Subcontractor waives any right of recovery with respect to any such additive change and any right to challenge any deductive change except for any amount for which payment is made by Owner for Subcontractor's portion of a proposed additive change.

4.6 The payment of any incremental increase in the cost of bonds arising as a result of changes in the Work shall be the responsibility of Subcontractor and will be included as a part of Subcontractor's price for proposed changes.

ARTICLE 5 **PAYMENTS**

5.1 SCHEDULE OF VALUES

5.1.1 Before the first application for payment, Subcontractor shall (1) provide a list of all of its known subcontractors, vendors and suppliers who will be furnishing materials, equipment or performing labor on the Project and (2) submit an itemized schedule of values ("Schedule of Values"), for Manhattan's approval, allocated to the various portions of the Work prepared in such form and supported by such data to substantiate its accuracy as Manhattan may reasonably require and/or as required by the Contract Documents. Subcontractor shall update the list of all of its subcontractors, vendors and suppliers with each subsequent application submitted.

5.1.2 This schedule, unless objected to by Manhattan, Owner or the Architect, will be used only as a basis of Subcontractor's applications for payment. The form of the application for payment will be as directed by Manhattan and/or as required by the Contract Documents together with applicable bills and payroll sheets.

5.2 APPLICATIONS FOR PAYMENT

5.2.1 Subcontractor must submit to Manhattan an itemized application for payment, notarized, if required by applicable law or requested by Owner, supported by such data substantiating the Subcontractor's right to payment as Manhattan, Owner or the Architect may require, including requisitions from subcontractors.

5.2.2 Subcontractor shall, as part of each request for partial payment, furnish conditional releases and lien waivers with respect to all Work performed and materials supplied in the current request for partial payment and, to the extent Subcontractor has received payment for previous pay applications, Subcontractor shall furnish a final lien waiver with respect to all Work performed and materials supplied to the extent Subcontractor has received payment. Subcontractor shall also furnish such documents as may be required by the Contract Documents and as allowed by law. Unless prohibited by law, and prior to final payment, Subcontractor shall provide to Manhattan a release of its liens and claims and satisfactory evidence that there are no other liens or claims whatsoever outstanding against the Work relating to this Subcontract and such other documents as may be required by the Contract Documents. To the extent applicable state law does not allow Manhattan to require an unconditional lien and claim release prior to final payment, Subcontractor shall provide a conditional release of its liens and claims and furnish a final unconditional lien and claim release once payment is received. Subcontractor shall insure that its subcontractors furnish all lien and claim releases which are required of Subcontractor.

5.2.3 If the Contract Documents allow partial payment for materials stored either off-site or on-site, such payments shall be made to Subcontractor in the amounts and under the standards set forth in the Contract Documents for off-site or on-site stored materials once such payments have been approved by Manhattan and Owner, but only after Manhattan's receipt of payment therefore from Owner.

5.2.4 No partial payment shall be due Subcontractor unless and until Manhattan receives payment from Owner and provided that the Work has been approved by Manhattan and Owner and provided that Subcontractor is in compliance with the terms of its Subcontract. Final payment shall not be due until Subcontractor's Work has been completed and approved by Owner, the entire Project is complete, all final payment prerequisites under the Contract Documents have been satisfied, satisfactory proof of payment of all amounts owed by Subcontractor in connection with this Subcontract has been provided and Manhattan has been paid in full for the entire Project. Notwithstanding the above, Manhattan may withhold from any partial or final payment to Subcontractor such amounts as may be allowed by the Subcontract in Paragraph 5.3. No certification of a progress payment and no partial or final payment made to Subcontractor pursuant to this Subcontract shall constitute or imply acceptance of Work or materials or any waiver

of any claim Manhattan may presently have or may in the future have against Subcontractor based on its duties and obligations under this Subcontract including, but not limited to, claims based on the failure of Subcontractor to have performed its Work in a good and workmanlike manner and in accordance with the Contract Documents.

5.2.5 If at any time any monies earned by or due to Manhattan from Owner are not paid in full, Manhattan shall in its sole discretion apportion the nonpayment equitably and reduce payments otherwise due Subcontractor accordingly. Such reductions shall continue until Manhattan is paid all monies due to it provided, however, if the withholdings do not relate to Subcontractor's Work, and if the reasons for non-payment are due to Manhattan's failure to meet its contractual obligations to Owner, Subcontractor shall be paid in full when Manhattan's right to recover from Owner is finally determined or expires. Subcontractor acknowledges that this paragraph establishes a reasonable time for payment.

5.2.6 Subcontractor shall pay all of its subcontractors all sums properly due its subcontractors for their work on the Project. Manhattan, after giving notice to Subcontractor, may pay all subcontractors which have not been paid the monies due them in connection with the Subcontract, whether or not a lien has been filed, unless Subcontractor, within three days of receipt of said notice, or such shorter period of time as Manhattan finds necessary to meet its obligations to Owner (a) demonstrates that such sums are not due and (b) provides Manhattan adequate security. Manhattan, without prejudice to any other right it may have, may issue a check to any subcontractor of Subcontractor, or may issue a joint check to Subcontractor and its subcontractor, and delivery of said check to either subcontractor or Subcontractor shall constitute payment to Subcontractor. Nothing contained herein shall create any duty on the part of Manhattan to make any payment to any such subcontractor of Subcontractor nor shall any contractual relationship be created by such payment.

5.2.7 Subcontractor agrees that Manhattan may, at any time, contact any of its subcontractors to verify amounts paid, amounts invoiced, scheduled time for performance and/or delivery of materials or for any other purpose reasonably related to the performance of the work of any such subcontractor on or for the Project and/or Subcontractor.

5.2.8 All material and Work incorporated into the Project or for which partial payment has been made shall become the property of Manhattan, or if the Contract Documents so provide, the property of Owner; however, this provision shall not relieve Subcontractor from the sole responsibility and liability for all Work and materials for which payments have been made until final acceptance thereof by Owner.

5.3 PAYMENTS WITHHELD

5.3.1 Notwithstanding any provision of the Subcontract to the contrary, Manhattan is not obligated to make any payment to Subcontractor under the Subcontract if any one or more of the following conditions exists:

- (a) Subcontractor has failed to perform its obligations under the Subcontract or otherwise is in default under the Subcontract or the Contract Documents;
- (b) If any part of such payment is attributable to Work which is not performed in accordance with the Contract Documents; provided, however, payment will be made for the portions of the Work which have been performed in accordance with the Contract Documents;
- (c) Subcontractor or any subcontractor has failed to make payments promptly to any of their subcontractors, as applicable, or to pay for material or labor used in the Work for which Subcontractor has received payment;
- (d) Subcontractor has failed to provide the revised Schedule of Values with the Application for Payment;
- (e) Reasonable evidence that the Work of Subcontractor cannot be completed for the unpaid balance of the Subcontract amount;
- (f) Reasonable evidence that the Work of the Subcontractor will not be completed within its scheduled time for completion and that the unpaid balance would not be adequate to cover any actual or liquidated damages for the anticipated delay;
- (g) Subcontractor has suspended the Work other than as authorized by Owner or the Contract; or
- (h) Subcontractor has filed a voluntary petition for protection or relief under applicable Bankruptcy laws of the United States or a petition has been filed placing Subcontractor under the protection of the Bankruptcy laws of the United States and Subcontractor has not (1) notified Manhattan that Subcontractor has the necessary capacity and resources to finish the Work and honor the Subcontract and will dismiss such petition and removed itself from bankruptcy protection within 90 days of the filing or (2) affirmed and had the bankruptcy

court approve its obligations under this Subcontract to Manhattan and evidence Subcontractor's ability to perform this Subcontract to Manhattan's reasonable satisfaction; or

- (i) Subcontractor has failed to provide or maintain required insurance or bonds.

5.3.2 In the event any of the conditions as outlined in Paragraph 5.3.1 exists, Manhattan may withhold such funds as may be reasonably necessary to protect it from liability or compensate it for its damages; provided, however, that the exercising of the right of withholding by Manhattan shall not be conclusive with respect to any liability of Subcontractor to Manhattan.

5.3.3 Manhattan may withhold funds from Subcontractor in an amount which represents Manhattan's good faith estimate of the attorneys' fees Manhattan may incur in any pending or threatened claim or dispute with Subcontractor.

5.4 **CONDITION PRECEDENT**

SUBCONTRACTOR EXPRESSLY ASSUMES THE RISK OF NON-PAYMENT BY OWNER. SUBCONTRACTOR AGREES THAT RECEIPT OF PAYMENT BY MANHATTAN FROM OWNER SHALL BE AN EXPRESS CONDITION PRECEDENT TO ANY PAYMENT OBLIGATION OF MANHATTAN OR ITS SURETY TO SUBCONTRACTOR.

NOTWITHSTANDING THE ABOVE, MANHATTAN SHALL NOT URGE THIS DEFENSE TO ANY PAYMENT OBLIGATION TO SUBCONTRACTOR IN THE EVENT THE FAILURE OF MANHATTAN TO RECEIVE PAYMENT FROM OWNER IS DUE TO MANHATTAN'S FAILURE TO MEET ITS CONTRACTUAL OBLIGATIONS TO OWNER AND WHICH FAILURE IS NOT THE RESULT OF SUBCONTRACTOR'S FAILURE TO MEET ITS CONTRACTUAL REQUIREMENTS.

THE ABOVE-REFERENCED CONDITION PRECEDENT SHALL APPLY TO ALL REQUESTS FOR PAYMENT BY SUBCONTRACTOR FOR PARTIAL PAYMENT, FINAL PAYMENT, EXTRA WORK, CLAIMS OR OTHERWISE. THE ABOVE-REFERENCED CONDITION PRECEDENT SHALL NOT BE USED AS A BASIS FOR INVALIDATION OF THE ENFORCEABILITY OR PERFECTION OF A MECHANIC'S LIEN BUT SHALL BE APPLICABLE TO ANY CLAIM AGAINST MANHATTAN OR MANHATTAN'S SURETY.

IN THE EVENT ANY OF THE PROVISIONS IN THIS SUBCONTRACT, WHICH CONDITION PAYMENT TO SUBCONTRACTOR BASED ON RECEIPT OF PAYMENT BY MANHATTAN FROM OWNER, ARE DETERMINED TO BE VOID OR UNENFORCEABLE, SUBCONTRACTOR AGREES THAT MANHATTAN SHALL NOT BE LIABLE FOR PRICE ESCALATIONS (PARAGRAPH 2.1.2) OR DISRUPTION DAMAGE (AS DEFINED IN PARAGRAPH 2.2.5) EXCEPT FOR ACTIVE INTERFERENCE AND MANHATTAN'S LIABILITY SHALL BE SUBJECT TO THE LIMITATIONS IN PARAGRAPH 3.2.2.

ARTICLE 6 **PROTECTION OF PERSONS AND PROPERTY**

6.1 Subcontractor must take all reasonable precautions for the safety of, and must provide all reasonable protection to prevent damage, injury or loss to:

- (a) all employees at the Project Site or engaged in the Work and all other persons who may be affected by the Work or are in proximity to the Work;
- (b) the Work and all materials and equipment to be incorporated into the Work, whether in storage on or off the Project Site, under the care, custody or control of the Subcontractor or any of its subcontractors;
- (c) other property at the Project Site or adjacent thereto, including all existing improvements not part of the Work, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction;
- (d) the work of Manhattan, Owner or other separate contractors; and
- (e) all tenants and visitors to the Project.

6.2 Subcontractor must give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

6.3 In addition to safety requirements imposed by law, Subcontractor shall comply with all safety requirements and policies imposed by Manhattan or Owner and will conduct operations in a safe manner. Subcontractor shall designate an employee to be responsible for compliance with all federal, state, and local safety and health regulations and all safety policies and requirements imposed by Manhattan or Owner. Unless the Subcontractor designates otherwise, the responsible employee shall be the

Subcontractor's job site supervisor. Subcontractor shall be liable to Manhattan for any additional costs including fines, which Manhattan incurs as a result of Subcontractor's failure to operate safely. Manhattan may conduct safety inspections from time to time. Such inspections shall not relieve Subcontractor from its obligations to adhere to safety requirements nor shall such inspections create any liability to Manhattan.

6.4 Any incident arising out of Subcontractor's work shall be discussed at the next Contractor's Safety Committee meeting to determine if the accident was preventable and to determine the responsible party. If the incident involved lost time, significant loss or involved a significant risk of loss, an officer or owner of Subcontractor shall attend the meeting and explain, in person, the cause of the accident and the action Subcontractor shall take to prevent similar accidents in the future. In the event Subcontractor has repeated safety issues on the Project, Manhattan may, at its sole discretion, require Subcontractor to furnish a full-time safety engineer for the Project at no additional cost. This safety engineer shall be responsible for full and complete understanding of the safety laws, rules and regulations, applicable to Subcontractor's work on the Project.

6.5 Subcontractor shall comply with all hazardous material requirements imposed by Manhattan or Owner. Subcontractor agrees to provide to Manhattan a copy of its Hazardous Communication Program for the project. Subcontractor agrees that in performing its work, it will not create, use or dispose of any hazardous chemicals or substances in an unlawful or hazardous manner and shall be solely responsible for the lawful, proper and safe handling, storage and removal of all hazardous wastes, chemicals, and substances which are introduced to the project site, or removed from the project site, by Subcontractor's operations. The term "hazardous wastes, chemicals or substances" shall mean those materials and substances prohibited, proscribed, or the use of which is controlled by any agent of the federal government or the applicable state or local agency having jurisdiction of such matters. Subcontractor shall comply with all federal, state and local regulations dealing with the use, storage or disposal of all hazardous wastes, chemicals and substances. **SUBCONTRACTOR SHALL BE RESPONSIBLE FOR ANY AND ALL CLAIMS AND DAMAGES RESULTING FROM ITS USE, HANDLING, STORAGE, REMOVAL AND DISPOSAL OF SUCH HAZARDOUS WASTES, CHEMICALS OR SUBSTANCES FROM THE PROJECT, AND SHALL DEFEND AND HOLD MANHATTAN HARMLESS FROM ANY AND ALL LIABILITY ASSOCIATED WITH SUCH USE, HANDLING, STORAGE, REMOVAL AND DISPOSAL INCLUDING ALL ASSOCIATED ATTORNEY'S FEES AND COSTS AND COSTS OF ALL CLEANUP OPERATIONS WHEREVER AND WHENEVER REQUIRED BY ANY GOVERNMENTAL AUTHORITY OR BY MANHATTAN.**

6.6 Subcontractor and its subcontractors, and all employees, servants and agents of any of them, shall comply strictly with the applicable requirements of the Occupational Safety and Health Act (OSHA) of 1970, as amended, and all other applicable health and safety laws and regulations.

ARTICLE 7 **INSURANCE**

Insurance requirements are set forth in the insurance rider attached hereto titled Insurance Requirements of Subcontractor. Subcontractor also acknowledges that additional insurance requirements are set forth in other provisions of the Manhattan General Provisions.

ARTICLE 8 **PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND**

8.1 If required by the Subcontract, Subcontractor must furnish to Manhattan and keep in force the required bonds, being both a performance bond (for the Work) and labor and material payment bond (covering the cost of the Work) guaranteeing that Subcontractor will perform its obligations under the Subcontract and will pay for all labor and materials furnished for the Work and will be responsible for damages resulting from any defective or non-conforming work (including the replacement thereof) performed by Subcontractor. Subcontractor's surety shall be liable to the same extent as Subcontractor is liable under the terms of this Subcontract which liability includes, but is not limited to, defects in Subcontractor's work which are discovered following the date of the completion of the work required by this Subcontract. Each bond must be issued in a form (refer to Exhibit "B") and by a surety acceptable to Manhattan, must be submitted to Manhattan for approval as to form, must name Manhattan as obligee and each must be in an amount equal to at least 100% of the Subcontract amount (as the same may be adjusted from time to time pursuant to the Contract), unless a greater amount is required by applicable law, in which case such greater amount will control. The Subcontractor must deliver the approved and executed bonds to Manhattan upon execution of this Subcontract. In the event the surety which provided bonding becomes insolvent or fails, Subcontractor shall immediately replace, at its expense, the bonds with valid bonds from a new surety meeting the above requirements. Failure of Subcontractor to replace bonds shall constitute a failure to comply with this Subcontract which, at Manhattan's election, shall allow withholding of funds, termination and other relief as set forth in Paragraph 5.3.1 and Article 9 herein.

8.2 The payment bond must be issued in a form consistent with and as may be required by all applicable laws for the state in which the Project is located, such that, to the fullest extent possible at law, no liens can attach to the Project and all mechanics or materialmen's liens filed in connection with the Work or the Project will attach only to the bonds.

8.3 Notwithstanding the above, and in the event that liens are filed by anyone in relation to the labor performed and/or material furnished pursuant to this Subcontract, Subcontractor agrees to have the same discharge by posting a bond with the appropriate authorities, or otherwise, within three days of notice. In the event such lien is not so discharged, Manhattan may discharge the lien itself and hold Subcontractor responsible for all costs and obligations incurred.

8.4 If Subcontractor is not required to furnish bonds, or if Manhattan desires Subcontractor to provide additional bond coverage, Manhattan may, at any time, and upon written request, instruct Subcontractor to provide, and Subcontractor shall so provide within ten (10) days, performance and payment bonds as provided in this Article 8. In this event, Manhattan will reimburse Subcontractor for reasonable bond premiums.

ARTICLE 9
SUBCONTRACTOR'S FAILURE TO PERFORM; TERMINATION FOR DEFAULT

9.1 If, in the opinion of Manhattan, Subcontractor shall at any time (a) refuse or fail to provide sufficient properly skilled workers, adequate supervision or materials of the proper quality, (b) fail in any material respect to prosecute the Work according to Manhattan's current schedule, (c) cause, by any action or omission, the stoppage or delay of or interference with the Work of Manhattan or of any other contractor or subcontractor, (d) fail to comply with any provision of this Subcontract or the Contract Documents, (e) make a general assignment for the benefit of its creditors, (f) have a receiver appointed, or (g) become insolvent, then, after serving forty-eight (48) hour written notice (unless a shorter period is required in the Subcontract or by the Contract Documents), unless the condition specified in such notice shall have been eliminated within such forty-eight (48) hours, Manhattan, at its option, without voiding the other provisions of this Subcontract and without notice to the sureties, and without prejudice to any other rights of Manhattan under the law, may (i) take such steps as are necessary to overcome or correct the condition (including supplementing the work of Subcontractor), in which case the Subcontractor shall be liable to Manhattan for the cost thereof (ii) terminate for default Subcontractor's performance of all or a part of the Subcontract Work, or (iii) obtain specific performance or interlocutory mandatory injunctive relief requiring performance of Subcontractor's obligations hereunder (it being agreed by Subcontractor that such relief may be necessary to avoid irreparable harm to Manhattan and/or the Owner).

9.2 In the event that Manhattan exercises its options under Paragraph 9.1 (i) or (ii), Manhattan may, at its option, (a) enter on the premises and take possession, for the purpose of completing the Work, of some or all of the materials and equipment of Subcontractor, (b) take assignment of any or all of Subcontractor's subcontracts, and/or (c) either itself or through others complete the Work by whatever method Manhattan may deem expedient. Subcontractor shall not be entitled to receive any further payment until the Work is fully completed and accepted by the Owner and payment is received from the Owner. At such time, if the unpaid balance of the price to be paid shall exceed the expense incurred by Manhattan, including overhead and profit, such excess shall be paid by Manhattan to Subcontractor. If such amount shall exceed such unpaid balance, the Subcontractor shall pay Manhattan the difference on demand.

9.3 If Manhattan wrongfully exercises its option under Paragraph 9.1(i) that action shall be treated as a deductive change. If Manhattan wrongfully exercises its option under Paragraph 9.1(ii), that termination for default shall be considered a termination for Manhattan's convenience and Subcontractor shall be entitled to the applicable compensation provided in Article 10. Subcontractor's remedies under this Paragraph 9.3 shall be exclusive. Nothing herein shall bar withholdings by Manhattan permitted by other provisions of this Subcontract.

ARTICLE 10
TERMINATION FOR CONVENIENCE

Manhattan shall have the right to terminate for convenience Subcontractor's performance of all or any part of the Work by providing Subcontractor with a written notice of termination for convenience, to be effective upon receipt by Subcontractor and regardless of whether Owner has terminated Manhattan's work. If there has been a termination of Manhattan's Contract with Owner, Subcontractor shall be paid the amount due from Owner for its Work, as provided in the Contract Documents, after payment therefor by Owner to Manhattan. If Manhattan's Contract has not been terminated, Subcontractor shall be paid the reasonable value of the Work performed by Subcontractor prior to termination plus reasonable direct close-out costs, including job site overhead and profit on Work performed, but in no event shall Subcontractor be entitled to unabsorbed overhead, anticipatory profit or damages of any kind or nature, direct or indirect, incidental or consequential. If no work has been performed by Subcontractor at the time of termination, Subcontractor shall be paid the sum of \$10.00 for its undertaking an obligation to perform.

ARTICLE 11
LAWS, REGULATIONS AND ORDINANCES

11.1 Subcontractor shall be bound by, and at its own cost shall comply with, all Federal, state and local laws, codes, ordinances and regulations applicable to this Subcontract and the performance of the Work whether by reason of general law or by reason of provisions in the Contract Documents. Subcontractor and all of its subcontractors shall be duly licensed to operate under the laws of all applicable jurisdictions.

11.2 Subcontractor shall be liable to Manhattan and Owner for all loss, damage, cost and expense attributable to any acts of commission or omission by Subcontractor, or any of its subcontractors, and all employees, servants or agents of any of them, resulting from failure to comply with any Federal, state or local laws, codes, ordinances or regulations including, but not limited to, any fines, penalties or corrective measures.

ARTICLE 12
EQUAL OPPORTUNITY

12.1 In connection with the performance of the work, Subcontractor agrees to support Equal Employment Opportunity for all persons, regardless of race, color, religion, sex, national origin, marital status, physical disability, medical condition, age, genetic information, status as a Disabled Veteran, Recently Separated Veteran, Other Protected Veteran and Armed Forces Service Medal Veteran with respect to recruitment, hiring, training, promotion, and other terms and conditions of employment, provided the individual is qualified to perform the work available. Further, Subcontractor shall comply with the concepts and practices of affirmative action. Accordingly, all employment decisions shall be consistent with the principle of Equal Employment Opportunity (EEO). All promotion decisions shall be consistent with the principle of EEO and only valid qualifications will be required for promotion. All other personnel actions or programs such as compensation, benefits, transfers, layoffs, recalls, company sponsored training, social and recreational programs will be administered in a non-discriminatory manner with respect to minorities and women, provided the individual is qualified to perform the work available.

12.2 Subcontractor agrees to post in conspicuous places, available for employees and applicants for employment, notices prepared by Subcontractor and approved by the Government, when required, setting forth the provisions of this Paragraph. Subcontractor shall permit access to its books, records and accounts by representatives of Manhattan or Owner for purposes of investigation to ascertain compliance with the provisions of this Paragraph.

12.3 Subcontractor shall include the provisions of this Paragraph in Subcontractor's subcontracts. The requirements of this Article 12 shall be in addition to any Equal Opportunity provisions of the Contract Documents and other laws, regulations and ordinances as set forth in Article 11 above.

ARTICLE 13
ADDITIONAL TERMS AND CONDITIONS

13.1 LAYOUT AND ENGINEERING

Manhattan shall furnish bench marks and base control lines for use by all of its subcontractors. All other layout, field engineering and field measurements required for the execution of this Subcontract shall be provided by Subcontractor.

13.2 USE OF TEMPORARY FACILITIES

Subcontractor, except for on-site offices and fabrication plants, may share with Manhattan and its other subcontractors, at no charge, electrical power, OSHA standard lighting, water, and sanitation services which Manhattan has available. Any additional services, including lighting, additional outlets, and/or water requirements, which Subcontractor may require for the performance of its Work or the protection of its Work, materials, and equipment from the elements and against theft and vandalism shall be Subcontractor's responsibility.

13.3 INTERFACE AND COORDINATION

13.3.1 Subcontractor, as well as its subcontractors and employees, shall cooperate and fully coordinate their Work with one another and all of Manhattan's other subcontractors for the purpose of securing a complete project as required by the Project schedule.

13.3.2 Subcontractor shall review the critical dimensions and elevations of its Work, and verify the previous Work as to its relationship to the Subcontractor's Work. The Subcontractor shall promptly submit a written statement to Manhattan noting any discrepancies or unacceptable conditions prior to commencing with the Work of this Subcontract. Subcontractor shall not attach to or cover over any material which is not properly installed. Failure by Subcontractor to notify Manhattan of unacceptable discrepancies or unacceptable conditions of previous work shall constitute a waiver of any claims by Subcontractor and it shall be deemed that Subcontractor has accepted the conditions of all previous work.

13.4 PROTECTION OF MATERIALS/TOOLS/EQUIPMENT

Subcontractor shall secure and adequately protect, all materials, tools, and equipment delivered for or incorporated in the Work until the time of final acceptance by the Owner. This shall include protection from the weather and all other elements of nature, as well as any damage which may be done to same due to vandalism, theft, or any cause.

13.5 TESTS AND INSPECTIONS

All costs associated with the failure of, or unpreparedness for, any required testing and/or inspection relating to the Work shall be the responsibility of Subcontractor.

13.6 CONSTRUCTION REPORTS

Subcontractor is required to submit a Daily Construction Report to Manhattan. The Report must include a description of the Subcontractor's activities for the day, a work force count by trade for both the Subcontractor and its subcontractors, as well as a listing of any major deliveries, worker injuries or job delays and impacts. The Reports must be submitted by noon the following day. Subcontractor shall provide safety data including the entries from the OSHA 300 Report and man hours worked on a quarterly basis or more often as required. Names or sensitive information can be omitted since the intent of the above-referenced requirements is to achieve better overall job safety.

13.7 RECORD DOCUMENTS

Subcontractor shall daily maintain an up-to-date and accurate record of all deviations from the approved drawings, specifications, and shop drawings which may occur in the Work as actually constructed, and shall submit to Manhattan for submission to the Owner, at completion of the Work prior to final payment and at other times as reasonably requested by Manhattan, including as part of the Application for Payment process, completely corrected record drawings and specifications (including documents electronically created or maintained) representing the actual condition of the Work.

13.8 ELECTRONIC SOFTWARE

Subcontractor shall furnish and maintain all required electronic software to perform its Work including any software which may be necessary so as to guarantee that Subcontractor's work will be compatible with the work of other subcontractors to Manhattan, Manhattan, the Architect and its consultants and any Owner requirements.

13.9 DRUG-FREE AND TOBACCO-FREE WORKPLACE PROGRAM

Subcontractor shall adopt Manhattan's Drug-Free and Tobacco-Free Workplace Program, or a substantially similar policy, for its own employees, agent and representatives who come onto the jobsite and shall require its subcontractors who come onto the jobsite to do likewise. If Subcontractor, or anyone who comes onto the jobsite under an employment or other contractual arrangement with Subcontractor, whether direct or indirect, fails to enforce Manhattan's Drug-Free and Tobacco-Free Workplace Program, or such substantially similar policy, Manhattan reserves the right to bar such party from the jobsite. Any resulting damage (including damage for delay) will be the responsibility of Subcontractor. Copies of Manhattan's Drug-Free and Tobacco-Free Workplace Program will be made available to Subcontractor upon request.

13.10 ADVERTISING - SIGNS

Neither Subcontractor, or its subcontractors, or any of their employees shall take photographs of the Work or site, publish or display advertising matter of any description relating to the Project, or display signs at or near the Project without first obtaining the written consent of Manhattan and Owner.

ARTICLE 14
MISCELLANEOUS

14.1 NOTICES

All notices shall be addressed to the parties at the addresses set out herein, and shall be considered as delivered on the earlier of (a) when signed for or (b) three working days after postmarked, if the notice is dispatched by registered or certified mail, when confirmed if sent by electronic mail, telegram or telecopy, when signed for when delivered by hand, and when received in all other cases. If notice is made by one or more of the methods above, the delivery date of the notice shall be deemed to be the earliest of the delivery dates referenced above. Unless otherwise provided in the Subcontract, all notices from Subcontractor to Manhattan shall be to the attention of Manhattan's Project Manager.

14.2 SEVERABILITY AND WAIVER

The partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other provision. If any provision is invalid, in whole or in part, the provision shall be considered reformed to reflect the intent thereof to the greatest extent possible consistent with law. The failure of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Subcontract, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects to further performance.

14.3 INDEPENDENT CONTRACTOR

Subcontractor acknowledges and agrees that it is being retained as an independent contractor.

14.4 EXECUTION OF ADDITIONAL DOCUMENTS

Subcontractor agrees to execute such additional documents as may be reasonably required by any lender to Owner, such as a subordination agreement with respect to any lien rights of Subcontractor, a waiver of rights to removables (to the extent such right is allowed by law), and a consent to continue work for a lender and/or its designee in the event of a default by the Owner.

14.5 ACKNOWLEDGMENT OF RECEIPT

Subcontractor acknowledges that it has received and reviewed the foregoing Manhattan General Provisions. Subcontractor agrees that the terms of these General Provisions will be incorporated into, as if fully written out, any Subcontract Manhattan, or any of its affiliates, and Subcontractor, or any company affiliated with Subcontractor, execute in the future provided that these Manhattan General Provisions are referenced in any such future Subcontract. The execution of this acknowledgment and receipt shall not confer any rights to Subcontractor unless and until a Subcontract is executed between the parties incorporating these provisions.

14.6 DEFENSES OF MANHATTAN'S SURETY

Notwithstanding any statute or other law or rule to the contrary, Manhattan's surety (or sureties) may rely on all of Manhattan's defenses to Subcontractor's claims as may be allowed under the terms of this Subcontract and applicable law, including, but not limited to, the failure of satisfaction of conditions precedent to Manhattan's obligation to pay Subcontractor as set forth in Paragraph 5.4 of Manhattan's General Provisions, any exclusions or limitations on Subcontractor's recovery for delays, inefficiencies or lost productivity and Subcontractor's waiver of consequential damages.

14.7 OTHER PROVISIONS

Those other documents forming part of the Manhattan General Provisions and the Contract Documents, and incorporated herein by reference, are as follows:

- Insurance Requirements of Subcontractor Rider (Five Pages)
- Louisiana Rider (One Page)
- Oklahoma Rider (One Page)
-
-

Subcontractor ABC
SUBCONTRACTOR

Manhattan Construction Company
MANHATTAN

Signature: _____

Signature: _____

Title:

Title: Senior Vice President

Printed Name:

Printed Name:

Date:

Date:

Insurance Requirements of Subcontractor

1. Specific Insurance Requirements

The following insurance shall be maintained in effect with limits not less than those set forth below at all times during the term of each Subcontract and thereafter as required:

Insurance	Coverage/Limits	Other Requirements
Commercial General Liability (Occurrence Basis)	<ul style="list-style-type: none"> • \$1,000,000 Per Occurrence • \$2,000,000 General Aggregate • \$2,000,000 Products/Completed Operations Aggregate • \$1,000,000 Personal And Advertising Injury • Designated Construction Project(s) General Aggregate Limit 	<ul style="list-style-type: none"> • Current ISO edition of CG 00 01 • The personal injury contractual liability exclusion shall be deleted • Additional insured status shall be provided in favor of Contractor Parties on a combination of ISO forms CG 20 10 10 01 and CG 20 37 10 01 • This coverage shall be endorsed to provide primary and non-contributing liability coverage. It is the intent of the parties to this Agreement that all insurance coverage required herein shall be primary to and shall seek no contribution from all insurance available to Contractor Parties, with Contractor Parties' insurance being excess, secondary and non-contributing • This policy and all policies provided herein shall be endorsed to provide thirty (30) days prior written notice of cancellation of coverage to Manhattan • The following exclusions/limitations (or their equivalent(s), are prohibited: <ul style="list-style-type: none"> ○ Contractual Liability Limitation CG 21 39 ○ Amendment of Insured Contract Definition CG 24 26 ○ Limitation of Coverage to Designated Premises or Project, CG 21 44 ○ Exclusion-Damage to Work Performed by Subcontractors On Your Behalf, CG 22 94 or CG 22 95 ○ Any Construction Defect Completed Operations exclusion ○ Any endorsement modifying or deleting the exception to the Employer's Liability exclusion ○ Any endorsement deleting or modifying coverage for explosion, collapse or underground work ○ Any "Insured vs. Insured" exclusion ○ Any Punitive, Exemplary or Multiplied Damages exclusion ○ Any Residential or Habitational exclusion if such work is to be performed ○ Any Subsidence exclusion
Business Auto Liability	\$1,000,000 Per Accident	<ul style="list-style-type: none"> • Current ISO edition of CA 00 01 • Arising out of any auto (Symbol 1), including owned, hired and nonowned
Workers' Compensation and Employer's Liability	<ul style="list-style-type: none"> • Statutory Limits • \$1,000,000 Each Accident and Disease • USL&H must be provided where such exposure exists. 	<ul style="list-style-type: none"> • The State where work is to be performed must be listed under Item 3.A. on the Information Page • Such insurance shall cover liability arising out of the Subcontractor's employment of workers and anyone for whom the Subcontractor may be liable for workers' compensation claims. Workers' compensation insurance is required, and no "alternative" forms of insurance shall be permitted • Where a Professional Employer Organization (PEO) or "leased employees" are utilized, Subcontractor shall require its leasing company to provide Workers' Compensation insurance for said workers and such policy shall be endorsed to provide an Alternate Employer endorsement in favor of Subcontractor. Where Subcontractor uses leased employees with Workers' Compensation insurance provided by a PEO or employee leasing company, Subcontractor is strictly prohibited from subletting any of its work without the express written agreement of Manhattan
Excess Liability (Occurrence Basis)	\$3,000,000 Each Occurrence	<ul style="list-style-type: none"> • Such insurance shall be excess over and be no less broad than all coverages described above • Drop-down coverage shall be provided for reduction and/or exhaustion of underlying aggregate limits and shall include a duty to defend any insured

Professional Liability (If Applicable)	<ul style="list-style-type: none"> • \$2,000,000 Each Occurrence • Such insurance shall cover all services rendered by the Subcontractor and its consultants under the Contract Documents, including but not limited to design or design/build services. • Policies written on a Claims-Made basis shall have an extended reporting period of at least two years beyond termination of each Subcontract. 	<p>This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from:</p> <ul style="list-style-type: none"> • bodily injury or property damage where coverage is provided on behalf of design professionals or design/build contractors • habitational or residential operations • mold and/or microbial matter and/or fungus and/or biological substance • punitive, exemplary or multiplied damages
Pollution Liability (If Applicable)	<ul style="list-style-type: none"> • \$2,000,000 Each Occurrence • Such insurance must provide third party liability coverage for bodily injury, property damage, clean up expenses, and defense arising from the operations. • All coverage provided in the policy shall apply to operations and completed operations of Subcontractor without separate restrictions for either of these time frames. • Mold and/or microbial matter and/or fungus and/or biological substance shall be specifically included within the definition of Pollutants in the policy. 	<p>This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from:</p> <ul style="list-style-type: none"> • asbestos or lead • contractual assumption of liability • impaired property that has not been physically injured • materials supplied or handled by the named insured. However, exclusions for the sale and manufacture of products are allowed. Exclusionary language pertaining to materials supplied by the insured shall be reviewed by the certificate holder for approval. • property damage to the work performed by the contractor • punitive, exemplary or multiplied damages • work performed by subcontractors

2. General Insurance Requirements

A. Definitions

- i. “Contractor Parties” means (a) Manhattan, (b) the Owner, (c) Architects/Engineers (regardless of whether Owner or Manhattan retains the Architects/Engineers), (d) the Project, (e) any lender whose loan is secured by a lien against the Work, (f) their respective shareholders, members, partners, joint venturers, affiliates, subsidiaries, successors and assigns, (g) any directors, officers, employees, or agents of such persons or entities, and (h) others as required by the Construction Documents.
- ii. “Subcontractor” shall include subcontractors of any tier.
- iii. “ISO” means Insurance Services Office.

B. Policies

- i. Subcontractor shall maintain such General Liability, Excess Liability, and if applicable Professional and Pollution Insurance in identical coverage, form and amount, including required endorsements, for the greatest of the following periods of time: (a) four (4) years following Date of Substantial Completion of the Work to be performed under the Subcontract (b) the expiration of any applicable statute of limitation or repose or (c) as may be required by the Contract Documents.
- ii. All policies must:
 - a. Be written through insurance companies authorized to do business in the State in which the work is to be performed and rated no less than A- VII in the most current edition of A. M. Best’s Key Rating Guide.
 - b. Provide a waiver of subrogation in favor of Contractor Parties on all insurance coverage carried by Subcontractor, whether required herein or not

- c. Be provided to the Contractor Parties in compliance with the requirements herein and shall contain no endorsements that restrict, limit, or exclude coverage required herein in any manner without the prior express written approval of Manhattan.
- iii. Failure of Manhattan to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Manhattan to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Subcontractor's obligation to maintain such insurance.
- iv. Subcontractor shall provide to Manhattan a certified copy of all insurance policies required herein within ten (10) days of any such request. Renewal policies, if necessary, shall be delivered to Manhattan prior to the expiration of the previous policy.
- v. Commencement of Work without provision of the required insurance and/or required endorsements, or without compliance with any other provision of the Contract Documents, shall not constitute a waiver by any Contractor Party of any rights. Manhattan shall have the right, but not the obligation, of prohibiting the Subcontractor or any sub-subcontractor from performing any Work until such certificates of insurance and/or required endorsements are received and approved by Manhattan.

C. Limits, Deductibles and Retentions

- i. The limits of liability may be provided by a single policy of insurance or by a combination of primary and excess policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.
- ii. No deductible or self-insured retention shall exceed \$25,000 without prior written approval of Manhattan. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at the Subcontractor's sole risk. The Subcontractor shall not be reimbursed for same.

D. Forms

- i. If the forms of policies, endorsements, certificates or evidence of insurance required by this Exhibit are superseded or discontinued, Manhattan will have the right to require other equivalent forms.
- ii. Any policy or endorsement form other than a form specified in this Rider must be approved in advance by Manhattan.

E. Evidence of Insurance Insurance must be evidenced as follows:

- i. ACORD Form 25 Certificate of Liability Insurance for liability coverages.
- ii. Evidence shall be provided to Manhattan prior to commencing Work and prior to the expiration of any required coverage.
- iii. ACORD Forms specify:
 - a. Manhattan as certificate holder at Manhattan's mailing address;
 - b. Insured's name, which must match that on the Subcontract;
 - c. Insurance companies producing each coverage and the policy number and policy date of each coverage;
 - d. Producer of the certificate with correct address and phone number and have the signature of the authorized representative of the producer;
 - e. Additional Insured status in favor of Contractor Parties;
 - f. Amount of any deductible or self-insured retention in excess of \$25,000;
 - g. Designated Construction Project(s) General Aggregate Limit;
 - h. Personal Injury Contractual Liability;
 - i. Primary and non-contributory status;
 - j. Waivers of subrogation; and
 - k. All exclusions and limitations added by endorsement to the General Liability coverage. This can be achieved by provision of the Schedule of Forms and Endorsements page.**
- iv. Copies of the additional insured endorsement(s) and the 30 Day Notice of Cancellation endorsement applicable to the General Liability policy shall also be provided.

F. Subcontractor Insurance Representations to Contractor Parties

- i. It is expressly understood and agreed that the insurance coverages required herein (a) represent Contractor Parties' minimum requirements and are not to be construed to void or limit the Subcontractor's indemnity obligations as contained in the Contract Documents nor represent in any manner a determination of the insurance coverages the Subcontractor should or should not maintain for its own protection; and (b) are being, or have been, obtained by the Subcontractor in support of the Subcontractor's liability and indemnity obligations under the Contract Documents. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of the Subcontractor, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate or waive any of the provisions of the Contract Documents.

- ii. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, the Subcontract. If the Subcontractor shall fail to remedy such breach within five (5) business days after notice by Manhattan, the Subcontractor will be liable for any and all costs, liabilities, damages and penalties resulting to the Contractor Parties from such breach, unless a written waiver of the specific insurance requirement(s) is provided to the Subcontractor by Manhattan. In the event of any failure by the Subcontractor to comply with the provisions of the Contract Documents, Manhattan may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to the Subcontractor, purchase such insurance, at the Subcontractor's expense, provided that Manhattan shall have no obligation to do so and if Manhattan shall do so, the Subcontractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.
- iii. This Rider is an independent contract provision and shall survive the termination or expiration of any individual Subcontract.

G. Equipment Insurance: Subcontractor's Responsibility for Loss and Damage

- i. Subcontractor shall furnish equipment insurance which shall protect Subcontractor against losses caused by physical damage or theft to any of Subcontractor's tools, equipment and materials which are used to perform the Work but which are not actually incorporated into the Work if such coverage is so desired by Subcontractor. Subcontractor and its Insurance Carrier waive all rights of subrogation in favor of the Contractor Parties.
- ii. Subcontractor is fully responsible for loss and damage to its property on the site, including tools and equipment, and shall take necessary precautions to prevent vandalism, theft, burglary, pilferage and unexplained disappearance of property. Any insurance covering Subcontractor's or its subcontractor's property shall be Subcontractor's and its subcontractor's sole and complete means or recovery for any such loss. To the extent any loss is not covered by said insurance or subject to any deductible or co-insurance, Subcontractor shall not be reimbursed for same. Should Subcontractor or its subcontractors fail to insure this risk, it is expressly agreed that Subcontractor hereby waives, and shall cause its subcontractors to waive, any claim for damage or loss to said property in favor of Contractor Parties.

H. Insurance Required of Subcontractor's subcontractors

Insurance similar to that required of Subcontractor shall be provided by all of Subcontractor's subcontractors (or provided by Subcontractor on behalf of its subcontractors) to cover operations performed under any subcontract agreement. Subcontractor shall be held responsible for any modification in these insurance requirements as they apply to its subcontractors. SUBCONTRACTOR AGREES TO INDEMNIFY, DEFEND AND HOLD CONTRACTOR PARTIES' HARMLESS FOR ANY FAILURE OF SUBCONTRACTOR OR ANY OF ITS SUBCONTRACTORS TO OBTAIN AND MAINTAIN THE REQUIRED INSURANCE COVERAGES. Subcontractor shall maintain certificates of insurance from all of its subcontractors containing provisions similar to those listed herein (modified to recognize that the certificate is from its subcontractor) enumerating, among other things, the waivers of subrogation, additional insured status, and primary liability as required herein, and make them available to Manhattan upon request.

I. Builder's Risk

Owner or Manhattan shall obtain builder's risk insurance for the Work, insuring against all risks of direct physical loss or damage to materials, equipment, machinery and other property incorporated in the job, subject to policy exclusions and deductibles. The builder's risk policy shall be made available for inspection by Subcontractor prior to the execution of each Subcontract. It shall be the duty of Subcontractor to fully investigate all coverage provisions of the builder's risk insurance, including exclusions. By executing each Subcontract, Subcontractor shall be deemed to have accepted all the terms, coverages and exclusions of the builder's risk policy. The builder's risk policy shall not provide coverage for materials, tools, equipment, machinery or other items which Subcontractor uses in connection with the Work and which are not incorporated into or intended to become a permanent part of the Work. Subcontractor waives all right of subrogation against Owner, Manhattan, and the other Subcontractors for damage and loss caused by fire or other perils, to the extent covered by property insurance obtained pursuant to this provision or other property insurance applicable to the Work. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. If Subcontractor makes a claim on the builder's risk policy, or a claim is submitted on its behalf, Subcontractor shall pay its pro rata share of the policy's deductible amount, up to and including 100% if applicable or Manhattan may at its election apportion the deductible according to Subcontractor's contribution to the cause of the claim.

J. Release and Waiver

The Subcontractor hereby releases, and shall cause its subcontractors to release, the Contractor Parties from any and all claims or causes of action whatsoever which the Subcontractor and/or its subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by the Subcontractor and/or its subcontractors pursuant to the Contract Documents.

K. Miscellaneous

Subcontractor, or the surety of any bond required under the Subcontract from Subcontractor, shall not be relieved from any liability or obligation imposed upon either or both of them by the provisions of the Subcontract as a result of (a) any requirements of insurance from Subcontractor (b) the furnishing of any insurance by Subcontractor (c) approval of any insurance by Manhattan and/or (d) any exceptions by Manhattan to any insurance requirements.

Subcontractor ABC

Manhattan Construction Company

Subcontractor

Manhattan

Signature: _____

Signature: _____

Title: _____

Title: Senior Vice President

Printed Name: _____

Printed Name:

Date : _____

Date : _____

Bond No. []
Premium []

EXHIBIT "B"
SUBCONTRACT PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we [] As Principal and [] as Surety, are held and firmly bound unto FOREMAN-MANHATTAN CONSTRUCTION TEAM AND MANHATTAN CONSTRUCTION COMPANY AND FOREMAN CONSTRUCTION MANAGEMENT & CONSULTING are collectively and individually as Obligees, in the penal sum of [] DOLLARS \$ [] lawful money of the United States, for the payment of which sum well and truly, to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE OBLIGATION IS SUCH, That whereas, the Principal entered into a Subcontract with the Obligees dated [], which is incorporated herein and made a part hereof, For [] being part of the work covered by a contract dated on or about [02/21/2018] Between [Cherokee Nation Entertainment, LLC.] hereinafter called Owner, and the said Obligees for [] which contract and the plans, specifications and general conditions thereof are hereby incorporated herein and shall be deemed a part hereof as fully as if set out herein.

NOW, THEREFORE, if the said Principal shall fully indemnify and save harmless the Obligees from all loss, liability, costs, damages, penalty, attorneys' fees or expense which Obligees may incur by reason of failure to well and truly keep, perform and fulfill each, every and all of the terms and conditions of said Subcontract on the part of the said Principal to be kept, performed and fulfilled, including but not limited to completion within the time specified of all work covered by said Subcontract, performance and fulfillment of all obligations and guarantees of the Obligees relating to such work under the contract with the Owner; then this obligation shall be of no effect, but otherwise it shall remain in full force and effect.

It is a condition hereof that any change, alteration, modification or amendment of any nature whatsoever that may be made in the terms of said Subcontract, any change in the character or scope of the work to be performed, or the method of performance, under said Subcontract or modification of said Subcontract or in the time for completion thereof, any change in the manner, time or amount of payment as provided therein, any change of any nature whatsoever that may be made in the terms of the contract between the said Obligees and the Owner or any change that may be made in the performance of the work under said Subcontract by the Principal, assented to by the Obligees, whether made under express agreement or not, may be made without notice to the surety and without affecting the obligations of the Surety on this bond and without requiring the consent of the Surety, and no such change or changes shall release the Surety from any of its obligations hereunder, the Surety hereby consenting to and waiving notice of any such change, alteration, modification or amendment. In addition, the penal sum of this Bond shall automatically increase as the Subcontract amount increases provided however that the penal sum shall not increase more than 25% above any previously established amount absent written consent from Surety and such consent shall not be unreasonably withheld.

It is a further condition hereof that no one other than the named Obligees and the successors, administrators, or assigns of the Obligees shall have any right to action under this bond.

IN WITNESS WHEREOF, the said Principal and Surety have hereunto set their hands and seals, this [] day of [], 20 [].

ATTEST: []
[] (Principal) [] (Seal)
By [] (Name and Title)
[] (Signature)

WITNESS: []
[] (Surety) [] (Seal)
By [] (Name and Title)
[] (Signature)

FOREMAN | MANHATTAN Construction Team

Bond No.
Premium

EXHIBIT "B" SUBCONTRACT PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that we As Principal and as Surety, are held and firmly bound unto FOREMAN-MANHATTAN CONSTRUCTION TEAM AND MANHATTAN CONSTRUCTION COMPANY AND FOREMAN CONSTRUCTION MANAGEMENT & CONSULTING as Obligee, in the penal sum of

DOLLARS \$ lawful money of the United States, for the payment of which sum well and truly, to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE OBLIGATION IS SUCH, That whereas, the Principal entered into a Subcontract with the Obligee dated , which is incorporated herein and made a part hereof, For

being part of the work covered by a contract dated on or about 02/21/2018 Between Cherokee Nation Entertainment, LLC.

hereinafter called Owner, and the said Obligee for which contract and the plans, specifications and general conditions thereof are hereby incorporated herein and shall be deemed a part hereof as fully as if set out herein.

NOW, THEREFORE, if the said Principal shall pay promptly and in full the claims of all persons, firms or corporations, performing labor or furnishing equipment, materials, or supplies incurred in connection with the contract to be performed and fulfilled under said Subcontract, and shall indemnify and save harmless the Obligee from all loss, liability, costs, damages, penalty, attorneys' fees or expenses for all taxes, insurance premiums, any and all applicable contributions, allowances or other payments or deductions, however termed, required by statute or union labor agreement, including voluntary payment thereof by the Obligee necessary to insure orderly prosecution of work or other items or services used in, upon or for or incurred in connection with the contract to be performed under said Subcontract, then this obligation shall be of no effect, but otherwise it shall remain in full force and effect.

It is a condition hereof that any change, alteration, modification or amendment of any nature whatsoever that may be made in the terms of said Subcontract, any change in the character or scope of the work to be performed, or the method of performance, under said Subcontract or modification of said Subcontract or in the time for completion thereof, any change in the manner, time or amount of payment as provided therein, any change of any nature whatsoever that may be made in the terms of the contract between the said Obligee and the Owner or any change that may be made in the performance of the work under said Subcontract by the Principal, assented to by the Obligee, whether made under express agreement or not, may be made without notice to the Surety and without affecting the obligations of the Surety on this bond and without requiring the consent of the Surety, and no such change or changes shall release the Surety from any of its obligations hereunder, the Surety hereby consenting to and waiving notice of any such change, alteration, modification or amendment. In addition, the penal sum of this Bond shall automatically increase as the Subcontract amount increases provided however that the penal sum shall not increase more than 25% above any previously established amount absent written consent from Surety and such consent shall not be unreasonably withheld.

Subject to the priority of the named Obligee with respect to recovery up to the penal sum of this bond, persons who have supplied or furnished labor, material, machinery, equipment or supplies to the Principal for the use in the prosecution of the work provided for in said Subcontract shall have a direct right of action against said Principal and Surety under this bond.

IN WITNESS WHEREOF, the said Principal and Surety have hereunto set their hands and seals, this day of , 20.

ATTEST:

(Principal) (Seal)
By
(Name and Title)

(Signature)

WITNESS:

(Surety) (Seal)
By
(Name and Title)

(Signature)

Construction Team Exhibit C

FOREMAN - MANHATTAN CONSTRUCTION TEAM SUBCONTRACTOR'S MINIMUM INSURANCE REQUIREMENTS

*****PLEASE REVIEW SUBCONTRACTOR MGP INSURANCE RIDER FOR COMPLETE CONTRACTUAL INSURANCE REQUIREMENTS*****

IT IS THE RESPONSIBILITY OF SUBCONTRACTOR AND THEIR AGENT TO MAKE SURE THEIR INSURANCE MEETS THEIR CONTRACTUAL OBLIGATIONS

PROJECT: Cherokee Nation Entertainment Tahlequah Casino
PROJECT NUMBER: 3882
PROJECT OWNER: Cherokee Nation Entertainment, LLC.

COMMERCIAL GENERAL LIABILITY (OCCURRENCE BASIS)

General Aggregate Limit	\$ 2,000,000
Products & Completed Operations Aggregate Limit	\$ 2,000,000
(To be carried for FOUR (4) years after completion of Project including required endorsements)	
Personal Injury Limit	\$ 1,000,000
Each Occurrence Limit	\$ 1,000,000

Aggregate Loss Limit to apply per Project (2503 Form or Equivalent)

Foreman - Manhattan Construction Team, Manhattan Construction Company, Foreman Construction Management & Consulting, Cherokee Nation Entertainment, LLC. (its parent, subsidiary, & affiliated companies), Architect (James R. Childers Architect, Inc.) and others are included as Additional Insureds (CG2010 & CG2037 Forms **or Equivalent type**).

Attached Additional Insured Endorsement(s) shall be for Ongoing and Completed Operations.

Insurance shall be Primary and Non-contributory.

Waiver of Subrogation in favor of Foreman - Manhattan Construction Team, Manhattan Construction Company, Foreman Construction Management & Consulting, Cherokee Nation Entertainment, LLC. (its parent, subsidiary, & affiliated companies), Architect (James R. Childers Architect, Inc.) and others.

BUSINESS AUTO LIABILITY

Combined Single Limit for Bodily Injury & Property Damage	\$ 1,000,000
(Above to include Owned, Hired, and Non-Owned Auto)	

Foreman - Manhattan Construction Team, Manhattan Construction Company, Foreman Construction Management & Consulting, Cherokee Nation Entertainment, LLC. (its parent, subsidiary, & affiliated companies), Architect (James R. Childers Architect, Inc.), and others to be included as Additional Insureds

WORKERS COMPENSATION/EMPLOYER'S LIABILITY

Covers **ALL** employees of the Insured in the State where work is performed.

Each Accident	\$ 1,000,000
Disease Limit – Policy	\$ 1,000,000
Disease Limit – Each Employee	\$ 1,000,000

Waiver of Subrogation in favor of Foreman - Manhattan Construction Team, Manhattan Construction Company, Foreman Construction Management & Consulting, Cherokee Nation Entertainment, LLC. (its parent, subsidiary, & affiliated companies), Architect (James R. Childers Architect, Inc.) and others

UMBRELLA LIABILITY or EXCESS POLICY (Follow Form) (OCCURRENCE BASIS)

Combined Single Limit	\$ 3,000,000
(Over/above General, Auto and Employer's Liability Limits)	

Foreman - Manhattan Construction Team, Manhattan Construction Company, Foreman Construction Management & Consulting, Cherokee Nation Entertainment, LLC. (its parent, subsidiary, & affiliated companies), Architect (James R. Childers Architect, Inc.) and others to be included as Additional Insureds.

Waiver of Subrogation in favor of Foreman - Manhattan Construction Team, Manhattan Construction Company, Foreman Construction Management & Consulting, Cherokee Nation Entertainment, LLC. (its parent, subsidiary, & affiliated companies), Architect (James R. Childers Architect, Inc.) and others. Insurance is Primary and Non-Contributory to any other available insurance to the Additional Insureds.

PROFESSIONAL LIABILITY AND POLLUTION LIABILITY– (if applicable)

Limit of Liability	\$ 2,000,000
(Must be carried for four (4) years after completion of the project)	

Foreman - Manhattan Construction Team, Manhattan Construction Company, Foreman Construction Management & Consulting, Cherokee Nation Entertainment, LLC. (its parent, subsidiary, & affiliated companies), Architect (James R. Childers Architect, Inc.) and others be included as Additional Insureds on Pollution Policy.

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INSURED'S NAME**OP ID:**PAGE 2
Date

Additional Insured in favor of Foreman - Manhattan Construction Team, Manhattan Construction Company, Foreman Construction Management & Consulting, Cherokee Nation Entertainment, LLC. (its parent, subsidiary, & affiliated companies), Architect (James R. Childers Architect, Inc.) and others as required by written contract on GL, Auto & Umbrella Policies.

Additional Insured Endorsements for Ongoing and Completed Operations are attached.

Excess and/or Umbrella follows form.

All policies, including excess or umbrella policies, are primary and non-contributory to any other insurance available to the Additional Insureds.

Waiver of Subrogation in favor of Foreman - Manhattan Construction Team, Manhattan Construction Company, Foreman Construction Management & Consulting, Cherokee Nation Entertainment, LLC. (its parent, subsidiary, & affiliated companies), Architect (James R. Childers Architect, Inc.) and others as required by written contract on GL and WC Policies.

Workers Compensation Coverage covers ALL employees of the insured in the state where work is being performed.

EXHIBIT "G"
Tax Exempt / Owner Direct Paid Invoice (ODPI) Payment Process

1. Identify supplier/vendors eligible for tax exemption process. Eligible supplier/vendors are providers of materials to the construction of CNE Tahlequah Casino and who remit taxes to OTC.
2. Provide list of supplier/vendors to Manhattan by executing Change Notice to the Contract between Manhattan.
3. CNE Tahlequah Casino to issue Tax Exemption Letter to each vendor. Letter to indicate contractual relation between CNE Tahlequah Casino, Manhattan, & Vendors.
 - Tax Exempt Entity – CNE Tahlequah Casino
 - Contractor (Tier 1) – Manhattan Construction Company
 - Contractor (Tier 2) – Subcontractors of Manhattan
 - Contractor (Tier 3) - All suppliers/vendors providing materials
4. Purchase Orders for materials shall clearly state that the purchase is being on behalf of the CNE Tahlequah Casino and that the material is necessary for the construction of the CNE Tahlequah Casino.
5. Subcontractor's Schedule of Values (G703) shall clearly identify all Invoices submitted as Tax Exempt, under column titled Owner Paid Materials.
6. Subcontractor shall include the supplier's/vendors W9 with the pay application.
7. Tax Exempt Invoice will be submitted monthly to Manhattan Construction Company. All invoices shall be listed on Tax Exemption Summary Sheet, to be submitted with each pay application (Format attached).
8. Manhattan shall submit monthly pay application for review and approval to the Design Professional. Approved pay application will be forwarded to CNE Tahlequah Casino for payment.
9. CNE Tahlequah Casino to issue checks made out to the supplier / vendor for all ODPI invoices. Checks will be delivered to Manhattan for distribution. Manhattan will distribute payments and collect Lien Waivers.

Request for Taxpayer Identification Number and Certification

**Give Form to the
 requester. Do not
 send to the IRS.**

Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return)	
	Business name/disregarded entity name, if different from above	
	Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ <input type="checkbox"/> Other (see instructions) ▶ _____	Exemptions (see instructions): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number									
				-			-		

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Employer identification number									
				-					

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below), and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. The IRS has created a page on IRS.gov for information about Form W-9, at www.irs.gov/w9. Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the

withholding tax on foreign partners' share of effectively connected income, and

4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct.

Note. If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.



OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

PHONE (405) 521-3133
FACSIMILE (405) 522-0063

December 29, 2003

Re: Our File Number LR 03-251; Exemption status of Indian Nations

In reply to the applicability of sales tax to Indian tribes, the Commission recognizes an exemption from sales tax under the circumstances outlined by the court in *Chickasaw Nation v. Oklahoma Tax Commission*, 31 F.3d 964, 973 (10th Cir. 1994). To be exempt, the sale must satisfy the following requirements:

1. The sale must be made directly to the federally recognized Indian tribe.
2. Payment must be received directly from the tribe.
3. The tribe must be the consumer or user of the purchased good which is consumed or used within Indian country.

While tribes, tribal enterprises and tribal members are immune from state taxation within "Indian country", this rule does not operate outside Indian Country, *Oklahoma Tax Commission v. Chickasaw Nation*, 115 S. Ct. 2214, 2223 (1995). To be exempt, the sale must satisfy the following:

1. The sale must be made directly to a tribal member or tribal enterprise.
2. Payment must be received directly from the tribal member or tribal enterprise.
3. The sale must occur on Indian country as evidenced by delivery ticket or shipping document.

Therefore, instead of a determination as to whether tribes or tribal enterprises are exempt from sales tax when purchasing resale items for the various types of businesses listed in your correspondence, there must be a determination that the sale meets the above-stated requirements as set out in the case of *Oklahoma Tax Commission v. Chickasaw Nation*, cited hereinabove.

This response applies only to the circumstances set out in your request of November 7, 2003. Pursuant to Commission Rule 710:1-3-73(e), this Letter Ruling may be generally relied upon **only** by the entity to whom it is issued, assuming that all pertinent facts have been

accurately and completely stated, and that there has been no change in applicable law. If I can be of further assistance, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Brenda J. Sullivan".

Brenda J. Sullivan
Tax Policy Analyst

FOREMAN | MANHATTAN Construction Team

Exhibit C

Foreman - Manhattan Construction Team

PURCHASE CONTRACTS MINIMUM INSURANCE REQUIREMENTS

PROJECT: Cherokee Nation Entertainment Tahlequah Casino
PROJECT NUMBER: 3882
PROJECT OWNER: Cherokee Nation Entertainment, LLC.

Commercial General Liability (Occurrence Basis)

General Aggregate Limit	\$2,000,000
Products & Completed Operation Aggregate Limit	\$2,000,000
Personal Injury Limit	\$1,000,000
Each Occurrence Limit	\$1,000,000

Foreman - Manhattan Construction Team, Manhattan Construction Company, Foreman Construction Management & Consulting, Cherokee Nation Entertainment, LLC. (its parent, subsidiary, & affiliated companies), Architect (James R. Childers Architect, Inc.) and others are to be included as an Additional Insured (CG2015 or Equivalent)

Insurance is Primary and Non Contributory

Business Auto Liability

Combined Single Limit for Bodily Injury & Property Damage (Above to include Owned, Hired and Non-Owned Auto)	\$1,000,000
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Workers' Compensation/Employer's Liability

Each Accident	\$1,000,000
Disease Limit - Policy	\$1,000,000
Disease Limit - Each Employee	\$1,000,000

Umbrella Liability or Excess Policy (Occurrence Basis)

Combined Single Limit	\$1,000,000
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(Over/above General, Auto and Employer's Liability Limits)

Umbrella or Excess Policy follows form over all GL, Auto and Employers Liability policies

VENDORS DELIVERING THEIR OWN PRODUCTS

In addition to the requirements above, any vendor delivering and unloading their own products will provide a Waiver of Subrogation in favor of Foreman - Manhattan Construction Team, Manhattan Construction Company, Foreman Construction Management & Consulting, Cherokee Nation Entertainment, LLC. (its parent, subsidiary, & affiliated companies), Architect (James R. Childers Architect, Inc.) and others on the General Liability, Auto and Workers Compensation Policies. Additional Insured status will be provided on the General Liability, Auto and Umbrella in favor Foreman - Manhattan Construction Team, Manhattan Construction Company, Foreman Construction Management & Consulting, Cherokee Nation Entertainment, LLC. (its parent, subsidiary, & affiliated companies), Architect (James R. Childers Architect, Inc.) and others.

NOTEPAD:HOLDER CODE
INSURED'S NAME**OP ID:**PAGE 2
Date

Additional Insured in favor of Foreman - Manhattan Construction Team, Manhattan Construction Company, Foreman Construction Management & Consulting, Cherokee Nation Entertainment, LLC. (its parent, subsidiary, & affiliated companies), Architect (James R. Childers Architect, Inc.) and others as required by written contract on GL.

Excess and/or Umbrella follows form.

General Liability is primary and non-contributory to any other insurance available to the Additional Insureds.

Waiver of Subrogation in favor of Foreman - Manhattan Construction Team, Manhattan Construction Company, Foreman Construction Management & Consulting, Cherokee Nation Entertainment, LLC. (its parent, subsidiary, & affiliated companies), Architect (James R. Childers Architect, Inc.) and others as required by written contract on GL and WC Policies.

Workers Compensation Coverage covers ALL employees of the insured in the state where work is being performed.