



Flintco, LLC
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Tulsa, OK 74120

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*Construction Manager's
Bid Book*

**Cherokee Nation
Heritage Center**

**Early Demolition Package
(August 2026)**

The Flintco Companies, LLC

Austin • Denver • Houston • Memphis • Oklahoma City • San Antonio • Springdale • Tulsa

Construction Manager's Bid Book

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INVITATION TO BIDDERS

Cherokee Nation Cultural and Economic Development, hereinafter referred to as Owner and Flintco, LLC, hereinafter called the Construction Manager, will receive SEALED bids to provide the work included in the **Cherokee Heritage Center Project** located in Tahlequah, OK, on **August 6, 2026 at 2:00 PM CST**.

All properly sealed and labeled bids should be sent by express delivery, regular mail or hand delivered to Cherokee Nation Cultural and Economic Development Office at the following addresses.

- **Express Delivery or Regular Mail**

Cherokee Nation Cultural and Economic Development
Attn: Amy Eubanks
P.O. Box 340
Tahlequah, OK 74465

- **Hand Delivery**

Cherokee Nation Cultural and Economic Development
Attn: Amy Eubanks
Building A
1416 Wildcat Lane
Tahlequah, OK 74464

The following bid packages are part of this phase of bidding:

- **Demolition**

All bids are to be sealed and **CLEARLY** labeled by describing the project and indicating the package being bid, on the envelope as described in the Instructions to Bidders. A **Bid Security**, as stipulated in the bid documents, **in the amount of 5%** of the bid shall accompany the sealed proposal of each bidder if the amount of the bid exceeds **\$100,000**.

All Bidders for this project are required to meet all qualification requirements as established in these bid documents.

All questions in regards to the bid, or documents, are to be submitted in writing via email to Amy Eubanks at amy.eubanks@cnbglobal.com no verbal questions will be addressed.

Copies of the bidding documents may be reviewed at Cherokee Nation One Stop Bid Center at the Cherokee Nation Tribal Headquarters in Tahlequah, OK.

The Owner and Construction Manager will conduct a **MANDATORY** pre-bid conference at the project site at 21192 S Keeler Dr., Park Hill, OK 74451 for the purpose of review of the bidding documents, bidding procedures and to receive Bidders' questions. The pre-bid conference is scheduled for **10:00AM (CST) on Monday, July 27, 2026**.

The Owner reserves the right to reject any or all bids or to waive any informalities or irregularities in the bidding.

DOCUMENT 002100

INSTRUCTIONS TO BIDDERS

To be considered, bids must be made in accordance with these Instructions to Bidders.

1. CONDITIONS RELATING TO CONSTRUCTION:

Bidders shall carefully examine **all** bid documents and the construction site to obtain first-hand knowledge of existing conditions. Bidder must confirm all utility locations, sizes, pressures, etc., and satisfy himself as to existing conditions under which he will be obliged to operate. Contractor must employ such methods and means in carrying out the work as will not cause interruption or interference with any other Contractor of the Owner. Bidders shall not be given extra payments for conditions that can be determined by examining the site and bid documents.

2. INTERPRETATION OR CORRECTION OF BIDDING DOCUMENTS:

Should a Bidder find discrepancies in, or omissions from, the bid documents, or be in doubt as to their meaning, he must notify the Construction Manager **in writing seven (7) calendar days** prior to the bid opening. Replies shall be issued to all bidders of record by Addendum or CM Clarification to the bid documents and shall become part of the contract. The Owner shall not be responsible for oral clarification. All addenda or CM clarification items issued during the time of bidding shall be covered in the bid and acknowledged on the proposal.

The Contract and Bidding Documents will be available at Gill Reprographics. Copies of the contract and bidding documents may also be reviewed at the Dodge Plan Room and Southwest Construction News.

3. SUBSTITUTIONS:

- A. The materials, products, and equipment described in the Documents establish a standard of required function, dimension, appearance, and quality to be met by any proposed substitution. To obtain approval to use unspecified products, the Bidder shall submit a written request at least **seven (7) calendar days** before the bid date. Requests shall clearly describe the product for which approval is asked including all data necessary to demonstrate acceptability.
- B. Basic data and characteristics of the specified items, as well as the proposed item, shall be submitted. It is the sole responsibility of the Bidder to submit complete descriptive and technical information so the Owner may make a proper appraisal. The burden of proof of the merit of the proposed substitute is upon the proposer. The Architect's decision of approval or disapproval of a proposed substitution shall be final. If the product is acceptable, the Architect shall approve it in an addendum issued to all prime bidders of record. Bidders shall not rely upon approvals made in any other manner.

4. BASIS OF BID:

Proposals will be made of a single contract, lump-sum amount for all work shown or described in **all** of the contract documents.

5. BID SECURITY:

Bid security shall be made payable to Cherokee Nation in the amount of five percent (5%) of the bid sum may be required to accompany the sealed proposal of each bidder if the amount of the bid exceeds **\$100,000**. Security shall be either certified check or a bid bond issued by a surety licensed to conduct business in the State of Oklahoma. The successful Bidder's security shall be retained until he has signed the contract and furnished the required Labor and Material Payment Bond, Statutory Bond, Performance Bond, Defect Bond, Insurance Certificates, and all other documents required to be furnished with the Executed Contract

Agreement. The Owner reserves the right to retain the security of all Bidders until the successful Bidder enters into a contract or until 60 days after the bid opening, whichever is the shorter. All other bid security shall be returned as soon as practical. If any Bidder refuses to enter into a contract, the Owner shall retain his bid security as liquidated damages, but not as a penalty. The bid security is to be enclosed in the same envelope with the bid proposals. **Any Bidder (materials only or materials and installation) whose total bid amount is less than \$100,000.00 is not required to furnish a bid bond with their bid.**

In lieu of performance, statutory, defect and bid bonds, bidders may use an irrevocable letter of credit from a federally or Oklahoma chartered financial institution.

6. **PERFORMANCE BOND, LABOR AND MATERIAL PAYMENT BOND AND DEFECT BOND:**
This project will utilize a Subcontractor Default Insurance policy for Performance and Payment Bonding on subcontractors that are qualified. Bidders shall not include the cost of bonds in the base bid. The bonding cost will be provided as an add alternate listed on the bid packages in the space provided. Each subcontractor must be prequalified for the Subcontractor Default Insurance policy prior to execution of the subcontract. All contractors must have a current qualification file. Qualifications are updated annually. Inquire with the contact below to ensure your firm is up to date. Contractors without a current qualification file will receive a Prequal Request. Please complete the form completely and accurately. All information requested is required for prequalification purposes. If a subcontractor is not qualified for the Subcontractor Default Insurance policy, they shall furnish bonds with a surety company acceptable to the Owner and Construction Manager. **A Dual Obligatee rider shall be furnished with each bond naming the Owner and Flintco, LLC.** Bidder's bond surety shall be listed in the current revision of U. S. Department of Treasury Circular, "Surety Companies Acceptable on Federal Bonds." The Bidder shall deliver said bonds to the Construction Manager no later than the date of execution of the contract. Failure or neglecting to deliver said bonds, as specified, shall be retained as liquidated damages. Bonds shall be written for the sum equal to the contract price, including accepted alternate bids.
To become prequalified for the Subcontractor Default Insurance policy, please contact:
Matt Rogge
SDI Prequalification Coordinator
Alberici Group
Email: matt.rogge@alberici.com
7. **CONTRACTORS:**
There shall be only one contractor named for each classification listed. Bidders shall have no outstanding claims, lawsuits, or arbitration or administrative proceedings by or against the owner or Flintco at the time of bid submission to be a qualified responsible bidder. The bid of any bidder that does not meet this requirement will be rejected as non-responsive.
8. **BIDDER'S QUALIFICATION STATEMENT:**
Each prospective Bidder may be required to submit a Contractor's Qualification Statement, AIA Document to the Construction Manager. Submittal of an advertising brochure is not permitted. Such statement shall be notarized. A financial statement is not required with the qualification statement, however, the apparent three lowest bidders may be required to submit a notarized current statement within 72 hours after the bid opening.
9. **MODIFICATION AND WITHDRAWAL:**
Bids may not be modified after submittal. Bidders may withdraw bids at any time before bid opening. No bid may be withdrawn or modified after the bid opening except where the award of the contract has been delayed for **60 days**.

10. FORM OF PROPOSAL:

- A. Before submitting the proposal, carefully examine **all** bid documents, visit the site, examine existing conditions and limitations, and include a sum to cover the costs of all items included in the bid documents. Failure or omission of the Bidder to receive or examine any form, instrument, addendum or other document, or to visit the site and acquaint themselves with existing conditions shall not relieve the Bidder from obligations with respect to his bid or to contract requirements. Submission of the Form of Proposal (Document 004200) shall be taken as prima facie evidence of compliance with this division.
- B. Proposals shall be made only on the bid package forms provided in this Construction Managers Bid Book (Documents 004700). Blank spaces on the form shall be fully filled out, numbers stated both in writing and figures, signatures signed in longhand, and form completed without interlineation, alteration or erasure. Oral, telegraphic or telephonic proposals or modifications shall not be accepted.

11. PROPOSAL PROCEDURE:

- A. Bidders shall submit the following documents in a large, manila envelope with a label including all of the information listed below:

1. Bid Date and Location:

Bid Date: **2:00PM CST, August 6, 2026**

Bid Place: **Express Delivery or Regular Mail**

Cherokee Nation Cultural and Economic Development
Attn: Amy Eubanks
P.O. Box 340
Tahlequah, OK 74465

Hand Delivery

Cherokee Nation Cultural and Economic Development
Attn: Amy Eubanks
Building A
1416 Wildcat Lane
Tahlequah, OK 74464

2. Label Information: **Cherokee Nation
Heritage Museum**

Submitted By: _____
(Company Name)

Bid Package(s) # _____

3. Form of Proposal (004200), signed and complete with every blank filled in
4. Bid Package General Requirements (004600), complete with every blank filled in
5. Bid Package(s) (004700), complete with every blank filled in
6. Business Relationship/Non-Collusion Representations (004520)

- 7. Bid security.
- 8. TERO Certificate if applicable

- B. The Bidder, by his failure to include every listed Items 2 through 8 above within the sealed envelope and label information as required in item 1, may forfeit his right to have his bid considered.
- C. Each Bidder shall propose an additive or deductive sum to the base bid sum for each alternate included in each Bid Package, except that should he desire not to bid an alternate he may insert the words "No Bid" in the space provided for price for such alternate. However, when a Bidder writes "No Bid" for one or more alternates, he thereby waives any claim to the contract award if that alternate becomes the basis for determining the low bid and/or the contract award. If an alternate price called for involves no change in price, Bidder shall so indicate by writing the words "No Change" in the space provided.
- D. Proposals shall not contain any recapitulation of the work to be done.
- E. Proposals shall be delivered to place designated in the Invitation to Bidders on or before the day and hour set for the opening of bids. The proposal shall be in an opaque, sealed envelope, bearing the Bid Package number(s) and the name of the Bidder. It is the sole responsibility of the Bidder to deliver the proposal before the scheduled closing time. Bids received after the scheduled closing time shall be returned unopened.
- F. In the event of discrepancy between prices quoted in words and those quoted in figures, words shall govern. Prices shall include the furnishing of materials, equipment, tools and all other facilities and performance of labor and services necessary for proper completion of the work.
- G. Each Bidder shall note the provision for liquidated damages on the Proposal Form and by submittal of his proposal acknowledges that he is subject to liquidated damages for his cause or failure to achieve substantial completion. The indicated substantial completion date is shown in the Construction Manager's Schedule.
- H. Addenda: Any addenda issued during the time of bidding are to be acknowledged in the proposal; in executing a contract, they will become a part thereof.
- I. CM Clarification: Any CM Clarification issued during the time of bidding are to be acknowledged in the proposal; in executing a contract, they will become a part thereof.

12. EXECUTION OF CONTRACT:

- A. The Owner anticipates award of the contract for construction on the basis of the lowest, responsible bid, including any alternates accepted, which the Owner deems to be in its best interest.
- B. Upon the request of the Owner, a Bidder whose bid is under consideration for award of contract shall submit promptly to the Owner satisfactory evidence indicating the Bidder's construction experience and organization available for performance of the contract.
- C. Each Bidder shall be prepared, upon execution of the contract agreement, to commence work following receipt of his written order of the Owner to proceed.
- D. Tax Exempt Status: This Project is **NOT** tax exempt. Include all applicable taxes including State, County and City sales tax.

13. CONTRACT:
The form of agreement, which the successful Bidder, as Contractor, shall be required to execute is the Flintco, LLC Standard Subcontract Agreement, which is attached as Document 005213.
14. COMPLETION TIME:
It is agreed that work performed under this contract shall commence when the Notice to Proceed has been distributed by Flintco, LLC and that the work shall be substantially completed for beneficial occupancy within the time provided in accordance with the Project Schedule (Document 003113). Beginning date, construction rate of progress and time for completion are essential conditions of the contract. The Bidder agrees work shall be performed regularly, diligently and uninterrupted at such a rate of progress as to ensure a complete job within the time specified in accordance with the schedule for construction prepared by the Construction Manager and issued as part of the bidding Documents. It is expressly agreed that the time for completion is a reasonable time, considering conditions prevailing in the region of the project. Abnormal weather, except for an act of God, shall not be a consideration.
- Prior to beginning work, but not later than 45 days after Notice to Proceed, subcontractors are to submit detailed sequencing schedules to the Construction Manager for incorporation into the project planning and master schedule. Schedules are to be broken down by floor and building zone in such detail that indicates sequencing of work, exterior and interior of the building, under slab, in-wall, overhead, rough-in, supports, mains, branches, valves, equipment, switches, controls, testing, flushing, balancing, training, start-up, and commissioning of each system being installed as applicable to the subcontractor's discipline of work.
15. WORK UNDER THIS CONTRACT:
Includes all required permits, fees, material, labor, tools, expendable equipment, transportation services, daily cleanup, and all incidental items necessary to perform and complete all of the work required as indicated on the drawings and/or specified herein.
16. PRE-BID CONFERENCE
The Owner and Construction Manager will conduct a **MANDATORY** pre-bid conference at the project site at 21192 S Keeler Dr., Park Hill, OK 74451 for the purpose of review of the bidding documents, bidding procedures and to receive Bidders' questions. The pre-bid conference is scheduled for **10:00AM (CST) on Monday, July 27, 2026**.
17. NON-USE OF TOBACCO PRODUCTS POLICY
By submission of Bidding Documents, bidder understands that the construction site is covered by the Owner's Policies. Any individual on-site, including but not limited to, contractors, subcontractors, and suppliers are prohibited from using tobacco products while on the owner's property (which includes construction sites). Any individual violating the policy may be required to be removed from the owner's property on a permanent basis.
18. IMPACTS OF EXECUTIVE ORDERS, TARIFFS, TAXES / IMPORT FEES
All bids must include and will be understood by bidder to account for all impacts of executive orders, tariffs, taxes and/or import fees which are known, or which could be known through the exercise of reasonable diligence, as of the submission date."
19. TERO CERTIFIED BUSINESS PROCESS:
A. Reference the attached document "An Act" for TERO requirements.
Subcontractors are to EXCLUDE the cost for Section 5; Title 40, § 1011; T. Employee Rights Fee of ½%. This cost will be paid by the Construction Manager.

- B. Reference the attached TERO Statutory Requirements with the Project Labor Agreement and include all associated fees in the base bid for the project.
Subcontractors are to INCLUDE the cost for daily work permits of \$25/day for each employee.

20. MANDATORY SAFETY HELMET REQUIREMENT

Following 5 years of field use by Flintco and many trade partners; head protection offered by ANSI Type II safety helmets has proven superior over traditional hard hats. Now is the time to take the next clear and evident step in providing superior protection for our industry's most important asset, our employees.

Beginning March 1, 2024, traditional hard hats will no longer be optional for use on Flintco projects. All subcontracts issued on or after March 1, 2024, will include language requiring trade partner, service provider and vendor employees to wear an ANSI Type II or an EN12492 safety helmet with integrated chinstrap in place and fastened. This will also be a requirement for job site visitors. Employees working under contracts in place before March 1, 2024, are encouraged, but not required to participate.

Why is Flintco mandating the use of safety helmets on our job sites?

Because safety helmets are more effective at preventing serious injury. More than half of fatal work-related traumatic injuries are the result of falls – particularly from roofs, ladders, and scaffolds. Traumatic brain injuries represent one-quarter of all construction fatalities. Construction workers sustain more traumatic brain injuries than employees at any other type of workplace in the United States, according to a recent report from NIOSH - after 8 years of study.

The Benefits and Versatility of Type II or EN12492 Certified Safety Helmets

- Significantly reduce the force from impact to the top and sides of the head
- Comfortable, 4-point, adjustable chinstrap keeps helmet secure; chin straps are replaceable and required to be utilized.
- Adjustable fit with a ratchet suspension to fit any head size.
- Vented, non-vented, and short-brim and full-brim options.
- Integrated visors, glasses, or face shields are available.
- Electric shock protection (check electrical classification)

The helmet's design provides a comfortable fit with more versatility but only works with the 4-point chin strap attached securely under the chin – a requirement on all Flintco job sites. Your company is responsible for choosing the helmet for your workforce that meets the ANSI guidelines. Several manufacturers currently produce Type II or EN12492 Safety Helmets, including, but not limited to:

- Studson (Flintco uses)
- KASK (Flintco uses)
- Milwaukee
- Ironwear
- Wavecell

Please reach out to a Flintco HSE Area Manager with questions and guidance in selecting the helmet that best suits your needs. Arkansas/Tulsa - Brandon Trammel 918-691-5241

END OF DOCUMENT

An Act

Legislative Act 01-14

ACT AMENDING LA 30-12, "CHEROKEE NATION EMPLOYMENT RIGHTS ACT"

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title 40, § 1001 shall read as follows: Title and Codification

This Act shall be referred to as an Act Repealing and Superseding the Cherokee Nation Employment Rights Ordinance, Cherokee Nation Code Annotated, Title 40, Chapters One through Six, Sections 1 through 65. This Act shall be codified at Title 40, Sections 1001 et seq. and shall be known as the Cherokee Nation Employment Rights Act.

Section 2. Title 40, § 1002 shall read as follows: Legislative History

The Cherokee Nation previously enacted the Cherokee Nation Employment Rights Ordinance, effective January 11, 1986, by Legislative Act 22-87, and as amended by Legislative Act 29-88. This Act repeals said legislation and supersedes said legislation as codified at Cherokee Nation Code Annotated, Title 40, Chapters One through Six, Sections 1 through 65.

The purpose of this Act is to repeal the current Cherokee Nation Employment Rights Ordinance, codified at Cherokee Nation Code Annotated, Title 40, Chapters One through Six, Sections 1 through 65, and to supersede said law to: clarify the responsibilities of those entities involved in employment rights; to conform the Act to federal and tribal policies; and to clarify requirements regarding Indian preference.

Section 3. Title 40, § 1003 shall read as follows: Purpose

The purpose of this Title is to encourage employment of Indians and to assist in and require the fair employment of Indians and to prevent discrimination against Indians in the employment practices of employers who are doing business with the Cherokee Nation on Cherokee Nation Indian Country or in such jurisdiction as is provided in a cooperative agreement between the Cherokee Nation and another government.

Section 4. Title 40, § 1004 shall read as follows: Definitions

- A. "Administration" shall mean the Executive Branch of the Cherokee Nation as provided in the Cherokee Nation Constitution.
- B. "Cherokee Nation Indian Country" shall mean ~~all land held in trust or subject to restrictions by the United States for the Cherokee Nation, or land within the original boundaries of the Cherokee Nation and held in trust or subject to restrictions for an individual, and all land held by the Cherokee Nation or its entities, in fee simple, and any other land within the jurisdiction of the Cherokee Nation which land comes within the definition of "Indian Country" as defined in 18 U.S.C. § 1151.~~ **the territorial boundaries**

of the Cherokee Nation as defined within the Cherokee Nation 1999 Constitution, Article II.

- C. "Cherokee Nation Government" shall mean the officials and employees **of the** at the Cherokee Nation complex located at Tahlequah Oklahoma and its programs or commissions wherever located. "Cherokee Nation" shall mean the government of Cherokee citizens, authorized by the Act of Union of 1839.
- D. "Contractor" shall mean any person, company or other entity engaged in work with the Cherokee Nation, its entities or wholly-owned corporations. The term "contractor" includes Cherokee Nation, its entities and wholly-owned corporations, ~~federal, state and county government agencies~~ and includes contractors, and subcontractors **thereof**, ~~of all other agencies.~~ **This term shall not include federal, state, or county government agencies to the extent prohibited by federal or state law.**
- E. "Core crew" shall mean an owner of the firm, or an employee **of a company** who is in a supervisory or other key position such that the employer would face a serious financial damage or loss if that position were filled by a person who had not previously worked for the **employer**, contractor or subcontractor.
- F. "Council" shall mean the Tribal Council of the Cherokee Nation as established pursuant to the Cherokee Nation Constitution.
- G. "Debarment List" shall be a list of contractors which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws.
- H. "EEOC" shall mean the Equal Employment Opportunity Commission of the United States.
- I. "Emergency" means any condition that places an extreme **physical or** emotional **condition** or financial burden on a Cherokee Citizen. (After all reasonable efforts have been made to contact a TERO Vendor)
- K.J.** "Employer" shall mean **(i) Cherokee Nation, its entities and wholly-owned corporations, (ii) any person, company, contractor, subcontractor or other entity located in or on Cherokee Nation Indian Country or engaged in work on a Project with the Cherokee Nation, its entities or wholly-owned corporations employing two or more persons, or (iii) any person or entity employing two or more persons located within Cherokee Nation Indian Country that has applied for or received certification with the TERO Office.** For the Purpose of this Act, the term "employer" includes Cherokee Nation, its entities and wholly-owned corporations, federal, state and county government agencies and includes contractors, and subcontractors of all other agencies. **The term "Employer" shall not include companies that are engaged in government contracting or other activities where the application of this law may violate applicable federal or state laws.**

- K. An employer is "engaged in work" if, during any portion of a business enterprise or specific project, contract or subcontract, the employer performs work under contract with the Cherokee Nation, its entities and wholly-owned corporations and/or the work is performed on Cherokee Nation Indian Country.
- L. ~~"HRC" shall mean the Human Rights Commission of the State of Oklahoma.~~ **Reserved for Future Use**
- M. "Indian" shall mean a person who is a member of a federally recognized Indian tribe ~~and/or any person recognized as an Indian by the United States pursuant to its trust responsibility to American Indians.~~
- N. "Indian organization" shall mean the governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77, 25 U.S.C. § 1451).
- O. "Indian-owned economic enterprise" shall mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than 51 percent (51%) of the enterprise, and the ownership shall encompass active operation and control of the enterprise.
- P. "Indian Tribe" means an Indian Tribe, pueblo, band, nation, or other organized group or community, including any Alaska Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. § 1601), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- Q. "Locally Owned" means a business that has its headquarters and majority of its employees residing within the jurisdictional boundaries of the Cherokee Nation, as described in Article II of the Cherokee Constitution, or counties contiguous to those boundaries
- R. An employer is "located ~~in or on the~~ **within** Cherokee Nation **Indian Country**" if, during **and in connection with** any portion of a business enterprise or specific project, contract or subcontract, the employer maintains a temporary or permanent office or facility on or performs work on Cherokee Nation Indian Country.
- S. "Major Cherokee Employer" shall mean an Indian owned business that employs at least 50 Cherokee Citizens as either part of the core crew or project crew, or has at least 75% of its workforce comprised of Cherokee Citizens as certified by the TERO. A business may be certified as Indian Owned, major Cherokee Employer, or both.
- T. "Nation" shall mean the Cherokee Nation.
- U. "OFCCP" shall mean the Office of Federal Contract Compliance Programs of the United States.

- V. "One Stop Business Center" means a centralized location where Cherokee Owned businesses can obtain information regarding procurements, training, and financing.
- W. "Secretary" shall mean the United States Secretary of the Interior or his or her duly authorized representatives.
- X. "Tribal member **Citizen**" or "~~member~~" shall mean any person who is a duly enrolled citizen **member** of the Cherokee Nation, ~~unless the context clearly indicates otherwise.~~
- Y. "TERO" shall mean the Tribal Employment Rights Office.
- Z. "TERO Staff" shall mean employees assigned to the TERO Office by the Executive Branch of the Cherokee Nation.

AA. "Project" shall mean any construction, alteration, or repair of buildings or structures performed for Cherokee Nation or its entities.

Section 5. Title 40, § 1011 shall read as follows:

Tribal Employment Rights Office; Establishment, authority and duties

There is hereby recognized the Tribal Employment Rights Office (hereinafter referred to as the "TERO"). The TERO shall administer the employment rights program of the Cherokee Nation in accordance with this Title.

The TERO shall have the authority:

- A. To operate consistent with the provisions of this Title and to develop rules and regulations governing activities of TERO. The TERO may adopt EEOC guidelines or may adopt other requirements to eliminate employment barriers unique to Indians in Indian Country.
- B. To obtain funding from Federal, state and other sources to supplement Council appropriations as delegated by the Administration.
- C. To negotiate cooperative agreements with federal, state, local, and other authorities on matters dealing with employment rights and TERO activities and to operate pursuant to finalized cooperative agreements and/or memoranda of understanding or agreement.
- D. To use the information, facilities, personnel, and other resources of federal, state, and local agencies, **as allowed by those agencies**, as well as any and all Cherokee Nation departments.
- ~~E. To establish numerical hiring goals and timetables specifying the minimum number of Indians an employer must hire by craft or skill level.~~
- FE.** To require employers to establish or participate in job training programs as the TERO deems necessary to increase the pool of Indians eligible for employment.
- GF.** To establish and administer a tribal job bank and require employers to use it.

~~H~~G. To prohibit employers from using job-qualification criteria or personnel requirements that may bar Indians from employment unless such criteria or requirements are required by business necessity.

~~H~~H. To engage in the process of certifying businesses as "Indian-owned economic enterprises" and to determine whether businesses may be given Indian preference.

~~H~~I. To direct inspections of regulated sites and determine compliance with rules, regulations, and/or contract requirements. A "regulated site" shall be any site where an Employer is engaged in work as defined by this Act.

~~K~~J. To negotiate agreements with unions to insure union compliance with this Title.

~~L~~K. To require employers/contractors to follow the preferences as required in §1021 ~~give preference to Indian-owned economic enterprises in the award of contracts and subcontracts.~~

~~M~~KML. To establish counseling programs to assist Indians in obtaining and retaining employment.

~~N~~LNLM. To require employers to submit reports and take all actions deemed necessary by the TERO for the fair and vigorous implementation of this Act.

~~O~~MON. To enter into cooperative agreements with employment rights agencies such as EEOC, HRC, and OFCCP to eliminate adverse discrimination against Indians.

~~P~~NPO. To take such actions as are necessary to achieve the purposes and objectives of the Cherokee Nation employment rights program established in this Title.

~~Q~~O.P ———To publish a listing of certified "Indian-owned economic enterprises."

~~R~~P.Q To review and propose changes to this Title and related regulations as necessary.

~~S~~Q.R To ~~hold hearings~~ participate and cooperate in appeal hearings in accordance with this chapter.

~~T~~R.S To register and keep file of records and complaints concerning certified Indian-owned economic enterprises and with individuals and companies doing business with the Cherokee Nation.

~~U~~S.T To assess an employment rights fee of one-half (1/2) of one percent (1%) on all covered contracts, which shall mean any contract executed by a contractor as defined in Title 40§1004.

~~V~~T.U To issue and assess fees for Work Permits which must be obtained for all non-Indian employees of a covered an employer, who are not considered a core crew member.

1. Any employer, as defined in this act shall be required to pay a fee of not less than Twenty-five dollars per employee per day for non-Indian employees hired for the a Pproject or hired after the effective date of Legislative Act 30-12 if the Employer is the Cherokee Nation or its entities.

2. Each such employer shall be required to submit a core crew list to the TERO.
3. Once the core crew list is submitted the TERO will confirm the ~~essential employees~~ core crew members the vendor has listed and those employees shall be not be exempt from the requirement to obtain a Work Permit and but no fee will be due for the core crew employees.
4. If the TERO has identified Indians that can be used for non-Indian Employees it shall ~~require the employer to place the qualified Indians~~ submit the name to the Employer for consideration of replacement of the non-Indian Employees. Failure to hire the qualified Indians submitted by TERO will result in termination of the Employer's contract with the Cherokee Nation or its entities.
5. The TERO is also authorized to administer other fees and penalties as provided in this act.
6. An Employer is exempt from the assessment of a fee or penalties as provided in this Act if the Employer can prove to the TERO that the Employer followed the preferences under this Act through posting of a job announcement twice, Employer submits job descriptions to TERO for qualified Indians, and through proof that no Indian applicant was qualified or no Indian applied.

Section 6. Title 40, § 1012 shall read as follows:

Adoption of rules, regulations, policies and guidelines

The TERO and its staff shall, with all reasonable speed, adopt detailed rules, regulations, policies and guidelines to fully implement this Title and the purposes and responsibilities of the TERO.

Section 7. Title 40, § 1013 shall read as follows:

Funds

All funds from employer fees and other sources collected by the TERO shall be tribal funds and be allocated to job training programs developed by the TERO staff and approved by the Council.

Section 8. Title 40, § 1021 shall read as follows:

Indian preference requirements generally

- A. All employers are required to give preference to Indians Cherokee Nation Citizens first, then Cherokees from the two other federally recognized Cherokee Tribes, and then members of other federally recognized tribes in hiring, promotion, training, and all other aspects of employment, contracting, or sub-contracting, unless such preference would subject the employer to a violation of a federal or state law applicable to that employer, and must comply with this Title and the rules, regulations and orders of the TERO.

1. The Cherokee Nation government is an “employer” for the purposes of this title and any of its business entities, subject to the exceptions listed in Title 40 § 1004 (KJ), shall be an “employer” for the purpose of this title.
2. If potential contractors are otherwise equally qualified to complete the relevant contract work and respective bids are otherwise equal, the Cherokee Nation, its entities and wholly owned corporations shall apply a preference ~~Indian-owned~~ as set forth in Sections d (i) (ii) (iii) (iv) hereinbelow for economic enterprises in procurement and contracting. Exceptions to this requirement shall be permitted when no Indian-owned economic enterprise is readily available as designated by TERO; when applicable federal or state law does not permit such a preference; when other governmental entity contracts (including, but not limited to, VA or GSA contracts) are available; when more favorable pricing may be obtained; when the order meets the requirements of the Sole Source Request as defined in Acquisition policy and procedure; when the contract price is below \$5,000.00 or in an emergency situation as determined by the Principal Chief.
 - a. primary preference shall be given to certified “Indian Owned Businesses” where the Majority Owner(s) are Cherokee citizen:
 - b. second preference to other certified “Indian Owned businesses” and,
 - c. A business may be certified as both an “Indian Owned” and “Major Cherokee Employer” business. In this case, such dually certified business would receive preference over other Indian-owned businesses within categories a. and b. above.
 - d. Preference shall be given in the following order:
 - i. First Preference shall be given to Cherokee owned business that are Major Cherokee Employers
 - ii. Second Preference shall go to Cherokee Owned Businesses
 - iii. Third Preference shall go to businesses that are certified as Indian Owned and that are Major Cherokee Employers
 - iv. Final Preference shall go to those businesses that are certified as Indian Owned.
3. Following the preferences in item 2. above, the procurement offices of the Nation shall develop policies to administer to “Locally-Owned businesses” as defined herein. In no instance shall this preference degradate or superseded Indian Preference.
4. Any contract awarded to a general contractor may be subcontracted, provided that the Indian Preference requirements herein apply unless applicable federal or state law prevents the Indian Preference application, regardless of the level of subcontracting activity. Failure to apply Indian preference to subcontracts shall be deemed by TERO a violation of this act, unless applicable federal or state law prevents the application of an Indian Preference. The contractor/employer have the burden of proving to TERO that federal or state law applies to that contractor/employer and prevents the Indian Preference application.

5. The Cherokee Nation Administration may create procurement and contracting policies and procedures for application of said preference. The Cherokee Nation procurement and/or contracting offices ~~may~~ **shall** maintain a list of entities which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws **and shall also maintain a list of entities which have provided good performance and satisfactory work and have engaged in compliant behavior with contract provisions, rules, regulations or laws.**
 6. Nothing shall require the Cherokee Nation to contract with or hire any Indian-owned economic enterprises which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws. The Cherokee Nation procurement and/or contracting offices may maintain a list of entities which have previously provided poor performance or unsatisfactory work or which have engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws.
- B. In accordance with 8.A.5. of this Act the Procurement offices of the Nation and its entities shall maintain a “Debarment List” which shall be a list of contractors which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws. Procurement offices shall develop policies and procedures to define poor performance of a contractor / Employer. Documentation of poor performance must be available and provided to the contractor upon request. The Procurement offices shall forward the names of any certified Indian Owned Businesses determined to have poor performances to both the TERO and to the One Stop Business Center for Technical assistance and Improvement.
1. Debarment list , Annual Certification; in compiling the debarment list required by Section 8, Title 40 § 1021, B. the TERO Office shall require, on an annual basis, Employers who employ twenty-five (25) employees or more to certify that they are in compliance with applicable state federal and tribal labor and employment laws. Nothing herein shall impose any new obligation on any employer to comply with said labor and employment laws.
 2. The period of Debarment by the TERO shall be for a period of no less than two years.
- C. In accordance with Section 24 of this Act, the TERO shall address complaints of violations the Act or TERO Rules, should there be any unresolved violations by Departments of the Nation or its Business entities, the TERO shall issue reports of non-compliance to the Principal Chief, Tribal Council and applicable Boards of Directors.

Section 9. Title 40, § 1022 shall read **be amended** as follows:

Indian preference in contracting and subcontracting

In the award of contracts or subcontracts, employers shall give preference to Indian organizations and to Indian-owned economic enterprises as defined in this Title, **unless such preference would be a violation of applicable federal law.** The TERO staff shall maintain and

publish a list of Indian organizations and Indian-owned economic enterprises which shall be supplied to the employers for their use.

Section 10. Title 40, § 1023 shall read be amended as follows:

Preference in promotions

Every employer shall, in accordance with TERO regulations, give Indians preferential consideration for all promotion opportunities and shall encourage Indians to seek such opportunities. Preference will apply as follows (unless federal or state law applicable to that employer prevents such a preference):

- A. Primary preference to Cherokee Nation Citizens
- B. Second preference to other Indians

Section 11. Title 40, § 1024 shall read as follows:

Preference in employment of students

Employers shall give Indian students preferential consideration for summer student employment. The employer shall make every effort to promote after-school, summer, and vacation employment for Indian students.

Section 12. Title 40, § 1025 shall read as follows:

Reserved for Future Use

Establishment and review of numerical goals for Indian employment generally

- ~~A.— The TERO may establish the minimum number of Indians each employer must employ on its work force during any year that the employer or any of its employees are located or engaged in work within Cherokee Nation Indian Country. Numerical goals may be set for each craft, skill, job classification, etc., used by the employer and shall include, but not be limited to, administrative, supervisory and professional categories. The goals shall be expressed in terms of man-hours worked by the employer's work force in the job classification involved.~~
- ~~B.— For both new and existing employers, the goals shall be reviewed by the TERO staff at least annually and shall be revised as necessary to reflect changes in the number of Indians available or changes in employer hiring plans. Each employer shall submit a monthly report to TERO on a form provided by the TERO staff, indicating the number of Indians in the employer's work force, the progress towards the employer's goals, all persons hired or fired during the month, the job positions involved, and other information required by the TERO Office.~~

Section 13. Title 40, § 1026 shall read as follows:

Participation in training programs by employers

Employers may be required by the TERO to participate in training programs to assist Indians to become qualified in the various job classifications used by the employer. The ratio of Indian trainees to fully qualified workers shall be set by the TERO after consultation with the employer.

Section 14. Title 40, § 1027 shall read as follows:

Establishment by TERO staff of counseling and other support programs; Cooperation by employers

The TERO may establish counseling and other support programs to assist Indians in obtaining and retaining employment. Every employer shall be required to cooperate with the TERO regarding such counseling and support programs.

Section 15. Title 40, § 1028 shall read as follows:

Use of job qualification criteria and personnel requirements by employers

Employers are prohibited from using job-qualification criteria or personnel requirements which bar Indians from employment unless such criteria or requirements are required by business necessity.

Section 16. Title 40, § 1029 shall read as follows:

Implementation of layoffs and reductions in force by employers

In all layoffs and reductions in force, employers shall maintain the required ratio of Indian employees.

Section 17. Title 40, § 1030 shall read be amended as follows:

Duties of contractors and subcontractors; Liabilities of employers for violations of by contractors and subcontractors

The Indian preference requirements contained in this Title shall be binding on all contractors and subcontractors doing Projects for of employers (unless applicable federal or state law prevents such a preference), regardless of tier, as referenced in §1021(A)(2) of this Act, and shall be deemed a part of all contract and subcontract specifications. ~~The employer shall be subject to penalties provided herein for violation of this Title if the contractor or subcontractor fails to comply.~~ Any violation of this Act by a contractor or subcontractor of an employer shall subject the contractor or sub contractor to penalties even if the contract does not contain the Indian preference requirement, unless applicable federal or state law prevents such a preference.

Section 18. Title 40, § 1031 shall read as follows:

Establishment and administration of job bank; Recruitment and hiring of personnel by employers

The TERO may establish and administer a Job Bank to assist employers in placing Indians in job positions. An employer may recruit and hire workers from whatever sources are available and by whatever process the employer chooses, as long as the employer complies with this Title and Indian job preference regulations and agreements pertaining to the employer.

Section 19. Title 40, § 1032 shall read as follows:

Prohibition on brokering and fronting services

No Indian entity shall represent that it is exercising management control of a project in order to qualify for Indian Preference in the award of said contract or sub-contract when in fact such management control is exercised by a non-Indian entity such that the Indian entity is acting as front or brokering out services.

Section 20. Title 40, § 1041 shall read as follows:

Duties of unions generally

Every union with a collective bargaining agreement with an employer must file a written agreement stating that the union will comply with this Title and rules, regulations and orders of the TERO. Until such agreement is filed with the TERO, the employer may not commence work within Cherokee Nation Indian Country.

Section 21. Title 40, § 1042 shall read as follows:

Contents of union agreements

Every union agreement with an employer or filed with the TERO must provide:

- A. *Indian preference.* The union will give preference to Indians in job referrals regardless of which union referral list they are on.
- B. *Cooperation with the TERO staff.* The union will cooperate with the TERO Office in all respects and assist in the compliance with and enforcement of this Title and related regulations and agreements.
- C. *Training programs.* The union will establish a journeyman upgrade and advanced apprenticeship program.
- D. *Temporary work permits.* The union will grant temporary work permits to Indians who do not wish to join the union.

Section 22. Title 40, § 1043 shall read as follows:

Model union agreement

The TERO staff will provide a model union agreement for use by all unions who have collective bargaining agreements with any employer.

Section 23. Title 40, § 1044 shall read as follows:

Recognition of unions or endorsement of union activities

- A. Nothing herein, nor any activity by the TERO authorized hereby, shall constitute official Cherokee Nation recognition of any union or endorsement of any union activities within the Cherokee Nation. Nothing herein bars any employer, Cherokee Nation or its entities, from recognizing any union.
- B. Neither the TERO, including any employer or agent thereof, nor any Cherokee Nation entity, shall engage in any activity constituting opposition to or endorsement of any Union activities among employees of any Employer covered by this Act. Nothing herein shall restrain any elected official of the Cherokee Nation from endorsing or opposing such Union activities.
 - 1. Any prohibition against endorsement of any Union activities in this Section shall not include the provision of any assistance to any Cherokee Nation citizen to utilize any apprentice or job training program operated by any Union or Union affiliated entity.

Section 24. Title 40, § 1052 shall read as follows:

Filing of complaints by TERO and proceedings thereon generally

If the TERO staff has cause to believe that an employer, contractor, subcontractor, or union

has failed to comply with this Title or any rules, regulations or orders of the TERO, it may file a complaint with the TERO Director and notify such party of the alleged violations. The TERO Director will attempt to achieve an informal settlement of the matter, but if an informal settlement cannot be achieved, the TERO may impose penalties as provided in Section 1061 herein. Should any entity fail to comply with orders of the TERO, the TERO may pursue a civil legal action against the entity in the Cherokee Nation District Court.

Section 25. Title 40, § 1053 shall read as follows:

Filing of complaints by Indians and proceedings thereon generally; Penalties for retaliatory actions by employers against employees filing complaints

- A. If any Indian believes that an employer has failed to comply with this Title or rules, regulations or orders of the TERO, or if the Indian believes he or she has been adversely discriminated against by an employer because he or she is Indian, the Indian may file a complaint with the TERO specifying the alleged violation. Upon receipt of the complaint, the TERO shall investigate and attempt to achieve an informal settlement of the matter. If an informal settlement cannot be achieved, the individual or TERO may take further action as provided for by law.
- B. If any employer fires, lays off, or penalizes in any manner any Indian employee for utilizing the individual complaint procedure, or any other right provided herein, the employer shall be subject to the penalties provided in Section 1061 of this Title.
- C. Nothing in this Title shall prohibit the aggrieved Indian from pursuing from the employer other remedies available by law.

Section 26. Title 40§ 1051 shall read as follows:

Conduct of Hearings

If any employer or person feels aggrieved by a decision made by the TERO Office they may appeal that decision to the Employee Appeals Board. Employee Appeals Board shall hold a hearing in accordance with this ACT and will either confirm or deny the TERO Office decision. ~~The Chairperson and Co-Chairperson of the Employment committee of the Tribal Council may attend said hearings as advisory members, but shall not have nay vote in the proceedings.~~

- A. Hearings shall be governed by the following rules and procedure:
 - 1. All parties may present testimony of witnesses and other evidence and may be represented by counsel at their expense.
 - 2. The Board may have the advice and assistance at the hearing of counsel provided by the nation
 - 3. The Chairman of the Board or the vice-chairman shall preside and the Board shall proceed to ascertain the facts in a reasonable and orderly fashion.
 - 4. The Hearing may be adjourned, postponed and continued at the discretion of the Board.
- B. At the final close of the hearings, the board may take immediate action or take the matter under advisement

- C. The Board shall notify all parties 45 days after the last hearing of its decision in the matter.
- D. The Board shall conclude this process within ninety (90) days of the request for a hearing.

Notice of Hearings

- A. The Employees Appeals Board, as established pursuant to Title 51 Section 1001 et seq. of the Cherokee nation Code Annotated shall have the power and duty to hear employer appeals of TERO decisions denying certification of the employer as an Indian owned economic enterprise. The Employee appeals Board shall have the power to either affirm or reverse the TERO Certification decision, but will not have the power to award any other form of remedy in the cases brought to this title.
- B. The Employee Appeals Board shall have the power to create rules as may be necessary to perform the duties and functions delegated to the Employee Appeals Board herein.
 - 1. If a hearing is requested by ~~it~~ **the** Board, an individual, an employer, or union pursuant to this section, a written notice of the hearing shall be given to all concerned parties stating the nature of the hearing and the evidence to be presented.
 - 2. The notice shall advise such parties of their right to be present at the hearing, to present the testimony of witnesses and other evidence and to be represented by counsel at their own expense.

Section 27 Title 40 § 1072 shall read as follows:

Appeals from decisions of Committee

- A. Any party to a hearing shall have the right to appeal any decision of the Board to the District Courts of the Cherokee Nation
- B. Standard Review. The District Court shall review decisions of the Employee Appeal Board without a jury and shall be confined ~~to~~ **to** the record, except that ~~increases~~ **in cases** of alleged irregularities in procedure before the Employee Appeals Board, not shown in the record, testimony thereon may be taken by the District Court. The District Court, upon request, shall hear oral arguments and receive written briefs.
- C. Appeals of the decision of the district court may be taken in the Supreme Court under the rules and procedures governing civil appeals before that Court.

Section 28. Title 40, § 1061 shall read- be amended as follows:

Penalties for violations of chapter and rules, regulations or orders of the TERO or Employee Appeals Board

- A. Any employer, contractor, subcontractor or union who violates this Title-or rules, regulations or orders of the TERO shall be subject to penalties for the violation, including, but not limited to:
 - 1. Denial of the right to commence or continue business within the jurisdiction of the Cherokee Nation.
 - 2. Suspension of operations within the jurisdiction of the Cherokee Nation.
 - 3. Payment of back pay and damages to compensate any injured party.
 - 4. ~~An order to summarily remove employees hired in violation of this Title or rules, regulations or orders of the TERO.~~ **Reserved for Future Use.**
 - 5. Imposition of monetary civil penalties.
 - 6. Prohibition from engaging in future operations within the Cherokee Nation boundaries.
 - 7. An order requiring employment, promotion, and training of Indians injured in the violation.
 - 8. An order requiring changes in procedures and policies necessary to eliminate the violation.
 - 9. An order making any other provision deemed necessary to alleviate, eliminate, or compensate for any violation.
- B. The maximum monetary penalty which may be imposed is Five-Thousand-Dollars (\$5,000.00) for each violation. The penalties will be graduated as follows
 - 1. The first violation will incur a fine of \$200.00
 - 2. The second violation will incur a fine of \$1,000.00
 - 3. The third violation will incur a fine of \$5,000.00
- C. Each day during which a violation exists shall constitute a separate violation.
- D. Monetary penalties assessed by TERO may be tripled if it is shown that the violation occurred egregiously or with reckless or wanton behavior.
- E. Attorney Fees and Cost of pursuing or defending an action of the TERO may be awarded to the prevailing party.

Section 29. Title 40, § 1072 shall read as follows:

Time computations

In computing any period of time prescribed or allowed by this Title, the day of the act, default, or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday as defined by the Cherokee Nation or any other day when the receiving office does not remain open for public business until 4:00 p.m., in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday as defined by the Cherokee Nation, or any other day, when the receiving office does not remain open for public business until 4:00 p.m. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays as defined by the Cherokee Nation or any other day when the receiving office does not remain open for public business until 4:00 p.m., shall be excluded in the computation.

Section 30. Title 40, § 1073 shall read as follows:

Notification of prospective and current employers of obligations imposed by Title and rules, regulations and orders of the TERO

- A. The TERO shall notify all employers of this Title and of the employer's obligation to comply herewith. All bid announcements issued by any tribal, federal, state, or other private or public entity shall contain a statement that the successful bidder will be obligated to comply with this Title and all rules, regulations and orders of the TERO.
- B. All Cherokee Nation agencies responsible for issuing business permits for activities within the Cherokee Nation or otherwise engaged in activities involving contact with prospective employers within the Cherokee Nation shall be responsible for advising such prospective employers of their obligations under this Title and rules, regulations and orders of the TERO.
- C. The TERO shall send a copy of this Title to every employer doing business with the Cherokee Nation.

Section 31. Title 40, § 1074 shall read as follows:

Filing of reports and other information by employers; Conduct of on-site inspections and investigations by TERO; Inspection and copying of records by TERO

- A. Employers shall submit reports, and other information requested by the TERO.
- B. The TERO and its representatives shall have the right to make on-site inspections during regular working hours in order to monitor any employer's compliance with this Title and the rules, regulations, and orders of the TERO.
- C. The TERO shall have the right to inspect and copy all relevant records of any employer, or any signatory union or subcontractor, and shall have a right to speak to workers and conduct investigations on job sites.

Section 32. Title 40, § 1081 to read as follows:

Provisions as cumulative

The provisions of this Title shall be cumulative to existing law except where stated otherwise in this Title.

Section 33. Title 40, § 1082 shall read as follows:

Severability

The provisions of this Title are severable and if any part or provision hereof shall be held void, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this Act.

Section 34. Title 40, § 1083 shall read as follows:

Administrative Appeals Board

The Employee Appeals Board, as established pursuant to Title 51, Section 1001, et seq., of the Cherokee Nation Code Annotated, shall hereinafter be known as the "Administrative Appeals Board".

Section 35. Title 40, § 1084 shall read as follows:

Emergency declared

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this Act shall take effect and be in full force after its passage and approval.

Section 36. Title 40 § 1085 shall read as follows:

Applicability

The provisions of this Act shall not apply nor shall compliance be required to the extent such application or compliance may violate applicable federal or state laws. The provisions of this Act shall not apply if such compliance would create a default of a contract by the Cherokee Nation or its entities.

~~Provisions as cumulative~~

~~———— The provisions of this act shall be cumulative to existing law.~~

Section 37 Title 40 § 1086 shall read as follows:

Reserved for Future Use

Severability

~~———— The provisions of this act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.~~

Section 38 Title 40 § 1087 shall read as follows

Effective Date

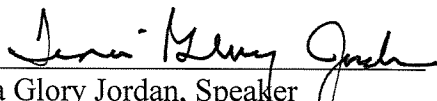
The provisions of this act shall become effective thirty (30) days from and after the date of its passage and approval.

Section 39 Title 40 § 1088 shall read as follows

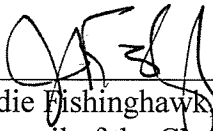
Self-Help Contributions

To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.

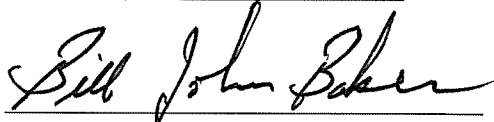
Enacted by the Council of the Cherokee Nation on the 10th day of February, 2014.


Tina Glory Jordan, Speaker
Council of the Cherokee Nation

ATTEST:


Jodie Fishinghawk, Secretary
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 19 day of Feb., 2014.


Bill John Baker, Principal Chief
Cherokee Nation

ATTEST:


Chuck Hoskin, Jr., Secretary of State
Cherokee Nation

YEAS AND NAYS AS RECORDED:

Tina Glory Jordan	<u>Yea</u>	Janees Taylor	<u>Yea</u>
David Walkingstick	<u>Yea</u>	Dick Lay	<u>Yea</u>
Joe Byrd	<u>Yea</u>	Cara Cowan Watts	<u>Yea</u>
Jodie Fishinghawk	<u>Yea</u>	Harley Buzzard	<u>Absent</u>
Janelle Lattimore Fullbright	<u>Yea</u>	Frankie Hargis	<u>Yea</u>
David W. Thornton, Sr.	<u>Yea</u>	Victoria Vazquez	<u>Yea</u>
Don Garvin	<u>Yea</u>	Julia Coates	<u>Yea</u>
Lee Keener	<u>Yea</u>	Jack D. Baker	<u>Yea</u>
Curtis G. Snell	<u>Yea</u>		



Cherokee Nation
Tribal Employment Rights Office
General Provisions

Legislative Act 01-14



CHEROKEE NATION TRIBAL EMPLOYMENT RIGHTS ACT REGULATIONS

PART 1 GENERAL PROVISIONS

1.1 PURPOSES

The following Regulations are issued by the Cherokee Nation Employment Rights Office pursuant to the authority granted by the Cherokee Nation Employment Rights Act, LA 01-14 §1012 (“the Act”). The purpose of these regulations “is to encourage employment of Indians and to assist in and require the fair employment of Indians and to prevent discrimination against Indians in the employment practices of employers who are doing business with the Cherokee Nation on Cherokee Nation Indian Country or in such jurisdiction as is provided in a cooperative agreement between the Cherokee Nation and another government.” LA 01-14, §1003.

1.2 DEFINITIONS

- A. **"Administration"** shall mean the Executive Branch of the Cherokee Nation as provided in the Cherokee Nation Constitution.
- B. **"Certified Indian Owned Economic Enterprise"** shall mean any Indian-owned economic enterprise certified by the Tribal Employment Rights Committee.
- C. **"Cherokee Nation Indian Country"** shall mean the territorial boundaries of the Cherokee Nation as defined within the Cherokee Nation 1999 Constitution, Article II.
- D. **"Cherokee Nation Government"** shall mean the officials and employees of the Cherokee Nation and its programs or commissions wherever located. "Cherokee Nation" shall mean the government of Cherokee citizens, authorized by the Act of Union of 1839.
- E. **"Contractor"** shall mean any person, company or other entity engaged in work with the Cherokee Nation, its entities or wholly-owned corporations. The term "contractor" includes Cherokee Nation, its entities and wholly-owned corporations, and includes contractors, and subcontractors thereof. This term shall not include federal, state, or county government agencies to the extent prohibited by federal or state law.
- F. **"Core crew"** shall mean an owner of the firm, or an employee of a company who is in a supervisory or other key position such that the employer would face a serious financial damage or loss if that position were filled by a person who had not previously worked for the employer contractor or subcontractor.
- G. **"Council"** shall mean the Tribal Council of the Cherokee Nation as established pursuant to the Cherokee Nation Constitution.

- H. **"Non-Compliance List"** shall be a list of contractor/ employers which have previously engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws.
- I. **"EEOC"** shall mean the Equal Employment Opportunity Commission of the United States.
- J. **"Emergency"** means any condition that places an extreme physical or emotional condition or financial burden on a Cherokee Citizen. (After all reasonable efforts have been made to contact a TERO Vendor)
- K. **"Employer"** shall mean (i) Cherokee Nation, its entities and wholly-owned corporations, (ii) any person, company, contractor, subcontractor or other entity engaged in work on a project with the Cherokee Nation, its entities or wholly-owned corporations or (iii) any person or entity employing two or more persons located within Cherokee Nation Indian Country that has applied for or received certification with the TERO Office. The term "Employer" shall not include companies that are engaged in government Contracting or other activities where the application of this law may violate applicable federal or state laws.
- L. An employer is **"engaged in work"** if, during any portion of a business enterprise or specific project, contract or subcontract, the employer performs work under contract with the Cherokee Nation, its entities and wholly-owned corporations and/or the work is performed on Cherokee Nation Indian Country.
- M. **"Indian"** shall mean a person who is a member of a federally recognized Indian tribe.
- N. **"Indian-owned economic enterprise"** shall mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than 51 percent (51%) of the enterprise, and the ownership shall encompass active operation and control of the enterprise.
- O. **"Indian Tribe"** means an Indian Tribe, pueblo, band, nation, or other organized group or community, including any Alaska Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. § 1601), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- P. **"Locally Owned"** means a business that has its headquarters and majority of its employees residing within the jurisdictional boundaries of the Cherokee Nation, as described in Article II of the Cherokee Constitution, or counties contiguous to those boundaries.

- Q.** An employer is "**located within Cherokee Nation Indian Country**" if, during and in connection with any portion of a business enterprise or specific project, contract or subcontract, the employer maintains a temporary or permanent office or facility on or performs work on Cherokee Nation Indian Country.
- R.** "**Major Cherokee Employer**" shall mean an Indian owned business that employs at least 50 Cherokee Citizens as either part of the core crew or project crew, or has at least 75% of its workforce comprised of Cherokee Citizens as certified by the TERO. A business may be certified as Indian Owned, major Cherokee Employer, or both.
- S.** "**Nation**" shall mean the Cherokee Nation.
- T.** "**One Stop Business Center**" means a centralized location where Cherokee Owned businesses can obtain information regarding procurements, training, and financing.
- U.** "**Secretary**" shall mean the United States Secretary of the Interior or his or her duly authorized representatives.
- V.** "**Tribal Citizen**" shall mean any person who is a duly enrolled member of the Cherokee Nation-
- W.** "**TERO**" shall mean the Tribal Employment Rights Office.
- X.** "**TERO Staff**" shall mean employees assigned to the TERO Office by the Executive Branch of the Cherokee Nation.
- Y.** "**Project**" shall mean any construction, alteration, or repair of buildings or structures performed for Cherokee nation or its entities.

1.3 TERO AUTHORITY

The TERO has the authority granted under LA 01-14 §1011:

- A.** To operate consistent with the provisions of these regulations. The TERO may adopt EEOC guidelines or may adopt other requirements to eliminate employment barriers unique to Indians in Indian Country.
- B.** To obtain funding from Federal, state and other sources to supplement Council appropriations as delegated by the Administration.
- C.** To negotiate cooperative agreements with federal, state, local, and other authorities on matters dealing with employment rights and TERO activities and to operate pursuant to finalized cooperative agreements and/or memoranda of understanding or agreement.

- D.** To use the information, facilities, personnel, and other resources of federal, state, and local agencies, as allowed by those agencies, as well as any and all Cherokee Nation departments.
- E.** To require employers to establish or participate in job training programs as the TERO deems necessary to increase the pool of Indians eligible for employment.
- F.** To establish and administer a tribal job bank and require employers to use it.
- G.** To prohibit employers from using job-qualification criteria or personnel requirements that may bar Indians from employment unless such criteria or requirements are required by business necessity.
- H.** To engage in the process of certifying businesses as "Indian-owned economic enterprises" and to determine whether businesses may be given Indian preference.
- I.** To direct inspections of regulated sites and determine compliance with rules, regulations, and/or contract requirements. A "regulated site" shall be any site where an Employer is engaged in work as defined by the Act.
- J.** To negotiate agreements with unions to insure union compliance with this Title.
- K.** To require employers/contractors to follow the preferences as required in §1021.
- L.** To establish counseling programs to assist Indians in obtaining and retaining employment.
- M.** To require employers to submit reports and take all actions deemed necessary by the TERO for the fair and vigorous implementation of the Act.
- N.** To enter into cooperative agreements with employment rights agencies such as EEOC and OFCCP to eliminate adverse discrimination against Indians.
- O.** To take such actions as are necessary to achieve the purposes and objectives of the Cherokee Nation employment rights program established in the Act.
- P.** To publish a listing of certified "Indian-owned economic enterprises."
- Q.** To review and propose changes to the Act and related regulations as necessary.
- R.** To participate and cooperate in appeal hearings in accordance with the Act.
- S.** To register and keep file of records and complaints concerning certified Indian-owned economic enterprises and with individuals and companies doing business with the Cherokee Nation.
- T.** To assess an employment rights fee of one-half (1/2) of one percent (1%) on all covered contracts, which shall mean any contract executed by a contractor as defined in Title 40, §1004.

- U. To issue and assess fees for Work Permits which must be obtained for all non-Indian employees of an employer.
1. Any employer, as defined in this act shall be required to pay a fee of not less than Twenty-five dollars per employee per day for non-Indian employees hired for a Project or hired after the effective date of Legislative Act 30-12 if the Employer is the Cherokee Nation or its entities.
 2. Each such employer shall be required to submit a core crew list to the TERO.
 3. Once the core crew list is submitted the TERO will confirm the core crew members the vendor has listed and those employees shall not be exempt from the requirement to obtain a Work Permit but no fee will be due for the core crew employees.
 4. If the TERO has identified Indians that can be used for non-Indian Employees it shall submit the name to the Employer for consideration of replacement of the non-Indian Employees. Failure to hire the qualified Indians submitted by TERO may result in termination of the Employer's contract with the Cherokee Nation or its entities.
 5. The TERO is also authorized to administer other fees and penalties as provided in the Act.
 6. An Employer is exempt from the assessment of a fee or penalties as provided in the Act if the Employer can prove to the TERO that the Employer followed the preferences under the Act through posting of a job announcement twice, Employer submits job descriptions to TERO for qualified Indians, and through proof that no Indian applicant was qualified or no Indian applied

PART 2

TERO POLICIES AND GUIDELINES

The following rules policies and guidelines shall be implemented by the TERO to comply with the authority granted under LA 01-14 §1011:

2.1. CORE CREW (PERMANENT AND KEY EMPLOYEES)

- A.** Prior to commencing work on a project on Cherokee Nation Indian Country or with the Cherokee Nation, prospective employers and all subcontractors of employers shall identify key, regular, permanent employees (core crew). It shall not include persons hired on a project-by-project basis. For Cherokee Nation entities, such list shall be provided upon approval of these regulations and updated when core crew are replaced. Cherokee Nation shall be exempt from this requirement based upon federal law or regulations.
- B.** A key employee is one who is in a top supervisory position or performs a critical function such that an employer would risk likely financial damage or loss if that task were assigned to a person unknown to the employer. The fact that an employee has worked for the employer on previous projects shall not qualify that employee as a regular, permanent employee; provided, that exceptions for superintendents and other key personnel who are not permanent, regular employees may be granted by the TERO Director/Compliance Officer on a case-by-case basis. Any employer or subcontractor of an employer which fills vacant employment positions in its organization immediately prior to undertaking work pursuant to a contract to take place on Cherokee Nation Indian Country or with the Cherokee Nation shall set forth evidence acceptable to the TERO Director that its actions were not intended to circumvent these requirements. Upon its approval of each key or permanent regular employee requested by the employer, the TERO shall issue a permit to that worker. For Cherokee Nation entities, key employee shall mean all chief executives for the entity.

2.2. WORK PERMITS

- A.** All employers shall obtain work permits for their employees prior to commencing work.
- B.** A fee of \$25.00 per day fee will be assessed for the work permit for all non-Indian employees unless such employee meets one of the following exemptions:
 - 1.** All Cherokee Nation Employees, based on federal law and/or regulations;
 - 2.** Cherokee Nation Entity Employees hired prior to the effective date of LA 30-12 or Cherokee Nation Entity Employees if the application of the fee, which is based on Indian preference, would create a violation of federal law or regulation or would create a violation of a federal contract;
 - 3.** Core Crew Members of employers as determined by the TERO; or

4. Non-Indians hired after due diligence by employer as required by LA 01-14 §1011(U) 6.

2.3. JOB QUALIFICATIONS, PERSONNEL REQUIREMENTS, AND RELIGIOUS ACCOMMODATIONS

- A. An employer may not use any job qualification criteria or personnel requirements which serve as barriers to the employment of Indians and which are not required by business necessity. The burden shall be on the employer to demonstrate to the TERO that such criterion or requirement is required by business necessity. If the employer fails to meet this burden, he will be required to eliminate the criterion or personnel requirement at issue. Employers shall make reasonable accommodation to the religious beliefs of Indian workers.
- B. Where the TERO and employer are unable to reach agreement on the matters covered in this section, a hearing shall be held, as provided for in these Regulations. The TERO Director shall make a determination on the issues and shall order such actions as he/she deems necessary to bring the employer into compliance with this section. The employer may appeal the decision of the TERO Director under the procedures provided for in Section 5.1 of these Regulations.

2.4. COUNSELING AND SUPPORT PROGRAMS

The TERO, in conjunction with other Tribal and Federal offices, will provide counseling and other support services to Indians employed by employers to assist such Indians in obtaining and retaining employment. Employers shall be required to cooperate with such counseling and support services.

2.5. LIST OF CERTIFIED FIRMS

The TERO shall maintain a list of Certified Indian Owned Economic Enterprises and shall publish such list. An entity may obtain a list of firms certified as Indian preference eligible from the TERO. The TERO shall identify such firms according to the order of preference set out in LA 01-14 § 1021, A, 2, d.

2.6 REPORTS AND MONITORING

- A. All employers/contractors engaged in any aspect of business activity on Cherokee Nation Indian Country or with the Cherokee Nation or its entities shall submit reports and such other information as is requested by the TERO. Employees of the TERO shall have the right to make on-site inspections during regular working hours in order to monitor an employer/contractor's compliance with these Regulations. Employees of the TERO shall have the right to inspect and copy all relevant records of an employer/contractor, of the employer/contractor's signatory unions or subcontractors, to speak with workers on the job site, and to engage in similar investigatory activities. All financial and/or proprietary information collected by the TERO shall be kept confidential, unless disclosure is required during a hearing or appeal as provided for in these Regulations.

- B.** Each certified firm shall report to the TERO, in writing, any changes in its ownership or control status within 30 days after such changes have occurred. Each certified firm, on the anniversary of its receipt of permanent certification, shall update the information provided in its initial application on an Annual Report form provided by the TERO. Failure to provide information pursuant to these requirements shall constitute grounds for withdrawal of certification.

2.7 DISSEMINATION

The obligation of all employers/contractors to comply with the Tribal Employment Rights Requirements shall be made known to all existing and future employers/ contractors. All bid announcements issued by employer/ contractors shall contain a statement that the successful bidder will contract to comply with these Regulations and that a bidder will contact the TERO to obtain additional information. Those tribal and other offices engaged in activities involving contact with prospective employers/ contractors shall be responsible for informing such prospective employers/ contractors of their obligations under these Regulations or directing them to the TERO for information.

2.8 APPLICABILITY

These provisions shall not apply nor shall compliance be required to the extent such application or compliance may violate applicable federal or state laws. These provisions shall not apply if such compliance would create a default of a contract by the Cherokee Nation or its entities.

PART 3
CERTIFICATION OF INDIAN-OWNED ECONOMIC ENTERPRISES

3.1 CERTIFICATION PROCEDURE

- A.** A firm seeking certification as an Indian-owned firm shall submit a completed application to the TERO on the form provided by the TERO. The firm will also include a check or money order for one hundred dollars (\$100.00) made payable to the Cherokee Nation TERO. This is non-refundable.
- B.** Applications may be requested from the TERO and received from the TERO by mail or fax, or may be downloaded from the TERO website.

 - 1.** The TERO staff will provide assistance to the firm in filling out the application when requested.
 - 2.** The TERO staff will stamp the date received of each application as it is received.
 - 3.** Once received, the application will be logged in and reviewed by a designated TERO staff.
 - 4.** When an application is submitted, the TERO shall provide the applicant with notice of the Act and the Regulations. Such notice shall explain that if certified, the Act and the Regulations will apply to the applicant and the applicant is submitting to regulation under the Act. In addition, the notice shall include the applicant's right to withdraw the application if they are not willing to comply with the requirements in the Act.
- C.** Once the application is deemed complete, a TERO staff member will schedule a site visit with the vendor if feasible.
- D.** Once the site visit is completed, the application will be given to the TERO Director for review.
- E.** After review, the TERO Director will recommend approval, denial, or interview.

 - 1.** If the recommendation is denial, concerns will be listed and the vendor will be contacted for additional information or clarification.

 - Once these concerns are addressed, the application will be placed on the agenda for the next scheduled Certification Committee meeting, if the vendor wishes to proceed.
 - 2.** If the recommendation is approval or interview, the application will be placed on the agenda for the next scheduled Certification Committee meeting.
- F.** Members of the Certification Committee will receive a copy of the agenda and the listed applications the day before the scheduled meeting in order to ensure a thorough review of the applications prior to the meeting.

- G.** During the Certification Committee meeting, the committee will review all applications and vote to recommend the application be approved or placed in pending for an interview. The committee will base their decision on the criteria discussed in Section 3.2 of these provisions.
1. The Indian principal(s) of the firm must be present at the interview. In addition, any other party wishing to present information to the Committee shall be entitled to do so, by requesting, no less than one day prior to the hearing, an opportunity to participate. A party may not be represented by counsel.
 2. The Certification Committee will meet on the first Tuesday of every month unless that day falls on a Holiday or if the committee is unavailable to establish a quorum. The committee will reschedule the meetings at its earliest convenience.
 3. If placed in pending for interview, the vendor will be contacted by the TERO and scheduled to come before the Certification Committee at the next scheduled Certification Committee meeting.
 4. After the interview, the Certification Committee will either recommend approval or denial of the application, or may retain in pending for additional documentation.
- H.** The TERO will send a one-year probationary certificate to the vendor and they are added to the TERO certified vendor list after approval from the Tribal Council.
1. During probationary period, the TERO shall monitor the firm's activities to ensure that the firm is operating in the manner described in its application. During the probationary period, the TERO and the Committee shall have the right to request and receive such information and documents as they deem appropriate.
 2. After the one-year certification, the vendor is notified that it is time to renew and requested to submit the recertification form and applicable documentation. (See procedure for recertification.)
 3. At the end of the probationary period, the Committee, after receiving recommendations from the TERO, shall either:
 - a. Grant full certification with annual recertification;
 - b. Continue the probationary period for up to six months; or
 - c. Deny certification.
- I.** If the application is denied the TERO will send a letter to the vendor informing them of their right to appeal the decision. In addition, the letter will notify the applicant that they cannot reapply for one year from the date of denial.
- J.** If the TERO does not receive any contact by the vendor within six months of request for documents or interview, the application will be denied and no further action will be taken with the application. Once denied, the applicant must file a

new application and application fee before the application will be considered but the applicant will not be required to wait one year to reapply.

- K.** All decisions must be approved by the Executive Director.

3.2 RECERTIFICATION PROCEDURE

It is the policy of the TERO to review each vendor annually to ensure the vendor meets the criteria to continue to be a certified Indian-owned business.

- A.** The TERO will mail each vendor a notification letter and recertification form annually to inform the vendor it is time to renew.
- B.** The vendor will be placed on the TERO Committee agenda for recertification.
- C.** Once the TERO Committee affirms the TERO recertification request, the TERO will request the \$50.00 fee and a copy of the most recent business tax return.
- D.** Once the payment and Tax Return has been received the TERO will verify Indian ownership of the business.
- E.** Additional site visits may also be conducted by the TERO staff.
- F.** If the vendor is deemed eligible, a new one-year certification certificate will be mailed to the vendor after approval by the Tribal Council.
- G.** If the vendor is not eligible, the TERO will send a letter to the vendor informing them of the vendor being dropped from the TERO list, or request that the vendor interview with the Certification Committee.
- H.** Vendors will be granted a 90 day grace period once the certificate has expired to comply with TERO to determine eligibility.
 - 1.** The vendor will be mailed a certified letter informing the vendor that they will be dropped from the TERO list in 15 business days unless they respond to the TERO.
 - 2.** After 15 days from notification, the business will be removed from the listing.
 - 3.** Any vendor who bids using an expired certificate will receive no preference.
 - 4.** A certified letter will be mailed to the vendor informing them of their business being dropped from the TERO list.

3.3 CRITERIA FOR INDIAN-OWNED ECONOMIC ENTERPRISE CERTIFICATION

To receive a certification as an Indian-Owned Economic Enterprise, an applicant must satisfy all of the criteria set out in this section.

A. Ownership

The firm must be 51% or more Indian-owned. The applicant must demonstrate the following:

1. Formal Ownership

That an Indian or Indians own(s) 51% or more of the partnership, corporation or other arrangement for which the application is being submitted. Such ownership must be embodied in the firm's organic documents, such as its stock ownership or partnership agreement.

Ownership Includes:

- a.** Financial ownership—i.e., the Indian(s) own 51% or more of the assets and equipment, will receive 51% or more of the firm's assets upon dissolution, and will receive 51% or more of the profits; and
- b.** Control—i.e., the Indian(s) 51% or more ownership provides him or her with a majority of voting rights or decisional authority and that all decisions of the firm are to be made by a majority vote except where otherwise required by law.

2. Value

The Indian owner(s) provided real value for his or her 51% or more ownership by providing capital, equipment, real property or similar assets commensurate with the value of his or her ownership share. It will not be considered "real value" if the Indian(s) purchased his or her ownership share, directly or indirectly, through a promissory note, the ultimate creditor of which is the non-Indian owner of the firm or an immediate relation thereof, or any similar arrangement, unless a convincing showing can be made that the Indian owner(s) brought such special skills, marketing connections or similar benefits to the firm that there is a good reason to believe the arrangement would have been entered into even if there was not an Indian Preference Program in existence. Where the Indian participant can demonstrate that he or she could not pay good value for his or her 51% or more Indian ownership because the normal capital sources were closed to him or her because he or she is an Indian, that person may satisfy this requirement by demonstrating further that he or she extended his or her capital-raising capability as far as possible, such that the Indian participant clearly is at risk in the business in relationship to his or her means.

3. Profit

The Indian owner(s) will receive 51% or more of all profits. If there is any provision that gives the non-Indian owner a greater share of the profits, in whatever form and under whatever name, such as through management fees, equipment rental fees, or bonuses tied to profits, certification will be denied. Salary scales will be reviewed to ensure the relative salaries being paid Indian and non-Indian owners are consistent with the skills of the parties and are not being used to circumvent the requirement that Indian owners receive 51% or more of the profits.

B. Management Control

The Firm must be under significant Indian management and control. The firm must be able to demonstrate that:

1. One or more of the Indian owners must be substantially involved, as a senior level official, in the day-to-day management of the firm. The Indian owner does not have to be the “Chief Executive Officer”. However, he or she must, through prior experience or training, have substantial occupational ties to the area of business in which the firm is engaged such that he or she is qualified to serve in the senior level position and is sufficiently knowledgeable about the firm’s activities to be accountable to the Tribe for the firm’s activities. The provision may be waived when:
 - a. The firm is 100% Indian owned and the Chief Executive Officer is the spouse and/or parent of the owner(s) and the family lives within or near the historical boundaries of the Cherokee Nation, and the majority of employees are Indian; or
 - b. The firm is modeled on a publicly-held corporation such that it is owned by 10 or more persons and it is at least 70% Indian owned, the Chief Executive Officer and the highest salaried employee in the firm is/are Indian, and majority of the employees are Indian.
2. No joint ventures will be certified.

C. Integrity of Structure

There must be good reason to believe that the firm was not established solely or primarily to take advantage of the Indian Preference Program and in questionable cases certification will be denied.

1. History of the Firm

Whether the history of the firm provides reason to believe it was established primarily to take advantage of the Indian Preference Program, and in

particular whether the firm, a portion of the firm, or key actors in the firm originally were associated with a non-Indian owned business that gained little of business value in terms of capital, expertise, equipment, etc., by adding ownership or by merging with an Indian firm.

2. Employees

- a. Whether key non-Indian employees of the applicant are former employees of a non-Indian firm with which the Indian firm is or has been affiliated, through a joint venture or other arrangement, such that there is reason to believe the non-Indian firm is controlling the applicant.
- b. Whether Indians are employed in all or most of the positions for which qualified Indians are available. A high percentage of non-Indian employees in such positions will provide reason to believe the firm was established primarily to benefit non-Indians.

3. Relative Experience and Resources

Whether the experience, expertise, resources, etc., of the non-Indian partner(s) is so much greater than that of the Indian(s) that there is little sound business reason for the non-Indian to accept a junior role in the firm or venture other than to be able to take advantage of the Indian Preference Program.

D. Brokers

Brokers will be certified only if they are dealers who own, operate or maintain a store, warehouse or other establishment in which the commodities being supplied are bought, kept in stock and sold to the public in the usual course of business; Provided, that this requirement shall not apply where the applicant demonstrates that it is customary and usual in the area of trade for a broker/dealer not to maintain an establishment and to keep the commodities in stock.

3.4. WITHDRAWAL OF CERTIFICATION

- A. On the basis of written grievance filed by any other firm or person, or on its own initiative, the TERO may initiate proceedings to withdraw or suspend the certification of any firm. The TERO shall prepare an analysis and recommend disposition for the Committee and shall send the firm notice, by registered mail, that its certification is being examined, along with the grounds therefore. The Committee shall then set a date for a hearing, which shall be held within 21 days after it receives the analysis and recommended disposition from the TERO. At the hearing, the TERO shall present the case for suspension or withdrawal. After the hearing, the Committee may:

- 1. Withdraw Certification;

2. Suspend certification for up to one year;
 3. Put firm on probation; and/or
 4. Order corrective action be taken within a fixed period. A firm that has had its certification withdrawn may not reapply for a period of two years.
- B.** All decisions made by the committee or the TERO are subject to approval by the Executive Director.

PART 4 FEES

4.1. PROVISION FOR COLLECTION OF FEES

- A.** Except as provided in Section 4.2,A, all fees are due and shall be paid in full by any employer/ contractor prior to his or her commencing work, unless other arrangements are agreed to, in writing, by the Director.
- B.** Immediately upon becoming aware that an employer/ contractor is intending to engage in work with the Cherokee Nation or its entities, the TERO shall contact said employer/ contractor informing him or her of the nature and purpose of the fee, the percentage, the specific amount due, if known, the date due, and the possible consequences if the employer/ contractor fails to comply. Said notice shall be accompanied by a formal notice of fees due (invoice).
- C.** If the employer/ contractor fails to pay the fee by the day it commences work on Cherokee Nation Indian Country or with the Cherokee Nation or its entities, the TERO may direct that work cease on the project until the fee is paid and/or may issue an Order of Non-Compliance.
- D.** Where the Director or Committee has reasonable cause to believe that an employer/ contractor will flee the jurisdiction before the procedures set out above can be completed, they may apply any of the procedures provided for in the Act, notwithstanding the above procedures.

4.2. ALTERNATIVE ARRANGEMENT

- A.** The Director, in his direction, may, upon receipt of a written request, authorize an employer/ contractor to pay the required fees in installments over the course of the year or the contract, as appropriate, when:
 - 1.** The total annual fees exceed \$5,000.00; and
 - 2.** The employer/ contractor demonstrates hardship or other good cause.
- B.** The decision to authorize an alternative arrangement, which shall be in writing, shall rest solely with the TERO Director.

PART 5 COMPLAINTS

5.1 COMPLAINT PROCEDURES

- A.** Any party who has the ability to file a complaint under LA 01-14 for failure to comply with these Regulations, or the Law, may file a complaint with the TERO.
- B.** Once a written complaint is received by the TERO, the TERO shall notify the alleged violating party of the complaint and shall allow said party to provide a written rebuttal statement. The TERO will do the necessary investigation to determine if the complaint is valid.
- C.** The TERO will attempt to achieve an informal settlement of the matter. If voluntary conciliation cannot be achieved and the Director has reasonable cause to believe a party has violated the Act or Regulations, the Director shall issue a formal notice of non-compliance to the party and an Order for how to comply with the law. Failure to comply with the Order of TERO may subject the party to penalties. Such penalties may be assessed by the TERO after consultation with the Office of the Attorney General and approval by the Executive Director.
- D.** If any employer, contractor, or person feels aggrieved by a decision made by the TERO Office they may appeal that decision to the Employee Appeals Board.

5.2 APPEALS

The decision of the Committee or TERO will be subject to appeal as provided for in the Cherokee Nation Tribal Employment Rights Act. The Party appealing shall pay the fee to file the appeal. If the appealing party is successful and a decision of the committee or TERO is overturned, then TERO shall reimburse the filing fee to the successful party.

Approved:

TERO Director

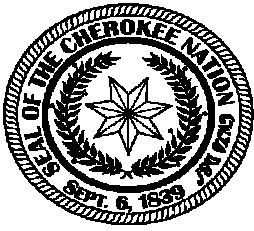
Date

Executive Director for Career Services

Date

Secretary of State

Date



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Office of the Chief

Bill John Baker
Principal Chief
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S. Joe Crittenden
Deputy Principal Chief
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TRIBAL EMPLOYMENT RIGHTS OFFICE (TERO) STATUTORY REQUIREMENTS

LA 01-14

The Tribal Employment Rights Office (TERO) of the Cherokee Nation monitors and enforces the Cherokee Nation TERO ordinance to ensure the employment rights of Native American workers are protected within the jurisdictional boundaries of the Cherokee Nation. Another equally important mission of the TERO is to create economic and employment opportunities for Native Americans within these same boundaries.

In an effort to accomplish this mission, TERO is requiring some statutory language be included in every construction related bid package that is issued. In order to begin work on any Cherokee Nation, Housing Authority of the Cherokee Nation, Cherokee Nation Enterprises or Cherokee Nation Industries contract that is governed by the TERO law each successful bidder must contact the TERO before work is to begin and abide by the following requirements:

Project labor agreement:

Each contractor who has been awarded a contract to perform work for the Cherokee Nation will be required to sign a project labor agreement which will specify the requirements the contractor must comply with, such as, hiring of Native Americans, submission of reports, hiring sub-contractors and other activities that will assure compliance with the TERO law. The project labor agreement will also outline the duties and responsibilities of Career Services to the contractor under the TERO law. **No contractor may commence work until it has met with Career Services and completed the project labor agreement.**

Payment of the TERO fees:

TERO has been given authority by the TERO law to charge an employment rights fee of ½ of 1% on every contract that is awarded to any covered employer. These fees will assist the Career Services department in its effort to fulfill its responsibilities in creating opportunities for Native Americans, for example establishing training programs that will give Native Americans the chance to learn a new skill or upgrade current skills. **No contractor may commence work on a project until this fee has been paid to the Career Services.**

Core Crew:

The TERO has been given the authority by the TERO law to establish a job bank and require employers to utilize the job bank. Each successful bidder must **submit their Core Crew list to the TERO for approval before work is to begin.** Employers have the freedom to hire workers from whatever sources he/ she so chooses, however, he/ she must make every effort to hire Native Americans. Before an employer can hire anyone other than a member of a federally recognized tribe, **he must give Career Services 72 hours to locate a qualified Indian.** If Career Services cannot locate a qualified Indian in that time period, the employer will be given the opportunity to hire from whatever source he/ she so chooses.

Work Permits:

In a further effort to enforce the TERO law, 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 Career Services. **A fee of twenty-five dollars (\$25) per day for each non-native American will be charged** for each work permit issued. Any non-Native American individual found to be employed by a covered employer without a valid work permit will be **summarily removed from the job and the employer shall be subject to additional sanctions.**

- "Core crew" was changed

(Section 4 Title 40 § 1004, E.)

“Core crew” shall mean an owner of the firm, or an employee of a company who is in a supervisory or other key position such that the employer would face a serious financial damage or loss if that position were filled by a person who had not previously worked for the employer, contractor or subcontractor.

- Establishes that Work Permits Fees must be paid by employers at the rate of \$25.00/ day for Non-Indians hired for a Project or hired after the effective date of LA 30-12

(Section 5 Title 40 § 1011, U. 1.)

Any employer, as defined in this act shall be required to pay a fee of not less than Twenty-five dollars per employee per day for non-Indian employees hired for a Project or hired after the effective date of Legislative Act 30-12 if the Employer is the Cherokee Nation or its entities.

- Exempts Non-Indian Core crew from being charged a fee for work permits

(Section 5 Title 40 § 1011, U. 3.)

Once the core crew list is submitted the TERO will confirm the core crew members the vendor has listed and those employees shall be exempt from the requirement to obtain a Work Permit and no fee will be due for the core crew employees.

- Exempts an employer from paying a fee or penalty if certain criteria are met.

(Section 5 Title 40 § 1011, U. 3.)

An Employer is exempt from the assessment of a fee or penalties as provided in this Act if the Employer can prove to the TERO that the Employer followed the preferences under this Act through posting of a job announcement twice, Employer submits job descriptions to TERO for qualified Indians, and through proof that no Indian applicant was qualified or no Indian applied.

- Established order of preference

(Section 8 Title 40 § 1021, A.)

All employers are required to give preference to Cherokee Citizens first, then Cherokees from the two other federally recognized Cherokee Tribes, and then members of other federally recognized tribes in hiring, promotion, training, and all other aspects of employment, contracting, or sub-contracting, unless such preference would subject the employer to a violation of a federal or state law applicable to that employer, and must comply with this Title and the rules, regulations and orders of the TERO.



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Office of the Chief

Chuck Hoskin Jr.
Principal Chief

Bryan Warner
Deputy Principal Chief

Tribal Employment Rights Office
PROJECT LABOR AGREEMENT
Master Agreement
LA 01-14

DURATION

This agreement shall be in effect from _____ to _____ 20____

This agreement is entered into by and among the Cherokee Nation Tribal Employment Rights Office (TERO) and _____ selected contractor for the _____ project.

PURPOSE AND SCOPE

This agreement applies to any new project on the Cherokee Nation Jurisdictional area. It represents a concerted effort among the parties to provide opportunities for employment; to provide safe, healthy, and clean working environments and working conditions; to provide ongoing apprenticeship, training, employment, and career path opportunities.

TRIBAL SOVEREIGNTY

All federally recognized Indian Tribes possess inherent sovereign jurisdiction and authority over their territories and the affairs of the tribes and all parties signatory to this agreement acknowledge that the sovereign authority governs the terms of this agreement. The parties agree that the sovereign immunity and authority of the Tribes shall remain intact and unabridged throughout the life of this agreement and that the Cherokee Nation shall decide all issues regarding tribal sovereignty and their decision shall be both final and binding.

TERO RECOGNITION

The Cherokee Nation has adopted a Tribal Employment Rights Ordinance (TERO). The contractor, its appointed agents and all other parties agree to recognize the rights, responsibility and authority and agree

to abide by the TERO regulation or determination. The parties recognized that TERO has a primary commitment to the employment of Indian tribal members and the hiring of Indian preference employees.

INDIAN PREFERENCE WORKERS

The contractor agrees that it shall adhere to the following numbers established by the TERO, for this project only. In its effort to create the economic opportunities for Native Americans and to meet the purpose of the TERO act, the TERO has established that **100% of the unskilled labor positions be filled by Native Americans.** The contractor and its agents agree to utilize the TERO Job Bank to the fullest extent giving **first hire priority rights to all Cherokee Citizens.** If, after documented evidence that, the contractor has exhausted all avenues to fill these labor positions with Native Americans and positions remain unfilled, the contractor shall have the right to seek other applicants from whatever source it chooses. **The contractor shall supply the TERO with written documentation of the employees hired for this project before work is to begin. This documentation is to include:** position for which employee was hired, date of hire, and rate of pay. The contractor further agrees to adhere to the requirements set forth in Section 16 Title 40 § 1029 of the Cherokee Nation TERO Act, which addresses procedures in the event of a layoff or reduction in force.

WORK PERMITS

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. Work permits issued under this agreement are valid only for this covered project. If any non-Indian individual employed on this project is found not to possess a work permit issued by the TERO, he/she may be summarily removed from the project and the employer shall be subject to additional sanctions.

Union contractors shall grant temporary work permits to Indians who do not wish to join the union. The employer agrees to respect the right of the TERO referral to decide for themselves whether to accept cash in lieu of benefits or accept fringe benefits for construction projects.

TERO FEES

TERO has been given authority by the TERO law specifically Section 5. Title 40 § 1011(T), to charge an employment rights fee of ½ of 1% of the total project cost on every contract that is awarded to any covered employer. These fees will assist the TERO department in its effort to fulfill its responsibilities in creating opportunities for Native Americans, for example, establishing training programs that will give Native Americans the chance to learn a new skill or upgrade current skills. **No contractor may commence work on a project until this fee has been paid to the TERO**

OTHER SPECIFIC REQUIREMENTS

The contractor further agrees to allow the TERO staff to monitor projects unannounced during normal business hours and to provide full cooperation and any requested documentation to the TERO staff member performing the monitor visit. **The Contractor shall provide the TERO with a Core Crew List for this project before work begins.**

ENFORCEMENT AND REMEDIES

Any employer, contractor, or subcontractor, who violates any part of this agreement, shall be subject to the remedies set forth in Section 28, title 40 §1061 of the Cherokee Nation TERO act.

By executing this document, I hereby submit to the jurisdiction of the Cherokee Nation Courts.

For the Contractor:

For TERO:

Signature

Signature

Title

Title

Date

Date

Address

E-mail

Phone #

Jobsite Contact



email :

[illegible]

Estimated start date:

Cherokee Nation
Tribal Employment Rights Office
Project Labor Fees
Direction for Completion

General:

It is mandatory for covered contractors and subcontractors performing work on Cherokee Nation contracts to furnish weekly a statement with respect to the Days worked by each employee during the preceding week. The TERO Office require contractors to submit weekly a copy of the days worked, accompanied by a signed "Statement of Compliance" indicating that the information is correct and complete.

Detailed instructions concerning the preparation of the sheets follow:

Contractor or Subcontractor: Fill in your firm's name and check appropriate box.

Address: Fill in your firm's address.

For Week Ending: List the workweek ending date.

Project and Location: Self-explanatory.

Start Date.: Fill in the date your firm started work on the project.

Column 1 - Name and Individual Identifying Number of Worker: Enter each worker's full name and an individual identifying number (e.g., last four digits of worker's social security number) on each weekly payroll submitted.

Column 2 and 3 – Indian / Non-Indian : Indicate with an (x) if the named individual is Native American or not. To be considered Native American the individual must be a member of a federally recognized tribe.

Column 4 - Hours worked: List the day and date and hours worked in the applicable boxes.

Column 5 – Total Days Worked: Indicate the total number of days the named individual worked on the project during the stated pay period.

Column 6 – Total Fees: Enter the Dollar amount owed to TERO for Non-Indians working on Job site. To calculate this amount multiply the number of days each "Non" works on the Job site by \$25.00. Enter this amount on the same row as employee's information. Add the totals in column (6) enter that amount in the "TOTAL \$" box at the bottom of the column

Column 7 –Complete the statement by entering your firms name in the first blank, the project name in the second. Enter the first day of the pay period in the third blank the last day of the pay period in the fourth blank. The fifth blank will be the contractor's or sub contractor's name again. In the sixth blank enter the number of Native Americans that worked on the project for that pay period. The seventh is the number of non Native Americans employed on the site for the pay period. By signing the statement you are certifying the information contained on the page is true and correct and sign.

Cherokee Nation Tribal Employment Rights Office

Project Labor Fees

Name of Contractor or Sub Contractor			(Address)		Business Contact (Phone)		(E-Mail)				
For Week Ending			Project Location		Start Date						
(1) Name of individual and position	(2) Indian	(3) Non-	(4.) Day and Date worked							(5.)	(6.)
			Mon	Tue	Wed	Thur	Fri	Sat	Sun	Total Days Worked	Total Fees
(7.)										TOTAL \$	

I, _____ do hereby state that the above listed individuals worked on the _____
 project during the period commencing on _____ and ending on _____
 During this period _____ employed _____ Indians and _____ non Indians on said job site.

Safety Helmets Provide Superior Protection



OSHA Adopts Safety Helmets for Agency Inspectors in 2024.

Beginning March 1, 2024, traditional hard hats will no longer be optional for use on Flintco projects. All new subcontracts will include language requiring trade partner and vendor employees to wear an ANSI Type II or an EN12492 safety helmet. These specific safety helmets shown here meet the requirements of testing against vertical, front, back, and side impacts and penetration.

The safety helmet design provides a comfortable fit with more versatility but only works with the 4-point chin strap attached securely under the chin – a requirement on all Flintco job sites. Your company is responsible for choosing the helmet for your workforce that meets the ANSI guidelines. The samples shown represent some but, not all of the safety helmets that meet the requirements.

The Benefits and Versatility of Type II or EN12492 Certified Safety Helmets

- Significantly reduce the force from impact to the top and sides of the head
- Comfortable, 4-point, adjustable chinstrap keeps helmet secure; chin straps are replaceable and required to be utilized.
- Adjustable fit with a ratchet suspension to fit any head size.
- Vented, non-vented, and short-brim and full-brim options.
- Integrated visors, glasses, or face shields are available.
- Electric shock protection (check electrical classification)



STUDSON SHK-1

/ FLINTCO USES

CERTIFICATIONS

ANSI Z89.1 – 2014 TYPE I & II CLASS C

CONSTRUCTION

Integrated koroyd® panels protect the head in critical impacts zones, paired with an eps liner and abs shell for ultimate durability.

FIT SYSTEM

Sleek 360° fit system with 20mm of adjustability up or down ensures a secure fit and comfort for all head shapes and sizes.

LIFE SAVING DIFFERENCE

twICEme®nfc (near field communication) chip embedded in the helmet which stores and gives vital emergency information to first responders when seconds matter.

WEIGHT

495G

ROTATIONAL PADDING

Industry first silicone shearing pads allow for rotational energy absorption upon oblique impacts and finished with a silver antimicrobial fiber reducing bacteria.

SIZING

M/L (53-59CM), L/XL (58-63CM)

STRAP SYSTEM

Fidlock® magnetic buckle enclosure with adjustable nylon 4-point strap, allowing for maximum adjustability and easy one-handed use with gloves.

VENTILATION SYSTEM

Designed to keep rain out of vents, paired with koroyd® welded tubular makeup, provides unrivaled breath ability and exhausting of hot air.

KASK HELMET

/ FLINTCO USES

ERGO FIT SYSTEM

Helmet size adjusting system that allows for an easy and secure fit by turning the large diameter dial. The system moves up and down to adapt to a range of head shapes. The ergonomically shaped wings cradle the back of the neck for added comfort.

POLYPROPYLENE HD EXTERNAL SHELL

Lightweight external shell with exponential better performance. Excels in impact absorption, especially at lower temperatures (-30°C). Resists yellowing and degradation.

HD EPS INTERNAL SHELL

Inner shell composed of high-density foam for all-around impact energy absorption and improved comfort.

ADVANCED LITE CHINSTRAP

Acrylic chinstrap with 5 adjustment points for a personalized fit. Accommodates wider head sizes and adapts to earmuff use. Color-coded fasteners indicate EN standard compliance rating.

HEADBAND

Soft PA Nylon

WEIGHT

460g

SIZE

Universal adjustable from 52 to 63 cm

CONSTRUCTION

Protection against top impacts and penetration in conformity with EN 397

CERTIFICATIONS

EN 397 additional tests: -30°C / LD / MM



Safety Helmets Provide Superior Protection



MILWAUKEE

/ TYPE II FRONT BRIM VENTED SAFETY HELMET

CONSTRUCTION

Protects Side and Top Impact

FIT SYSTEM

Comfortable Padded Suspension

Antimicrobial and moisture wicking Sweat Band and Helmet Liner

Machine washable sweat band, helmet liner and chin strap

Replaceable Chin Strap, Suspension, Sweatband, and Liner

Comfortable Fit - 5 Adjustable Buckles Chin Strap

CERTIFICATIONS

ANSI/ISEA Z89.1 Type 2 Class C

Meets Energy Absorption Capacity clauses 4.2.1.2 (Front), 4.2.1.3 (Side), & 4.2.1.4 (Rear), and Retention System clauses 4.2.3 (Strength) & 4.2.4 (Effectiveness) of EN12492:2012

UL Third-Party Tested and Certified

MATERIAL COMPOSITION

High Density Polyethylene

WEIGHT

1.15 lb

IRONWEAR

/ TYPE II VENTED SAFETY HELMET

CONSTRUCTION

White Type II Vented Safety Helmet - For protection against a blow to the top & sides of head

CERTIFICATIONS

Meets ANSI / ISEA Z89.1 Class C (Conductive)

HT (High temperature up to 140° f +/- 3.6° f) & LT (Low temperature above -22° f +/- 3.6° f)

STRAP SYSTEM

Features adjustable chin strap and a ratchet closure with a 4 point suspension

MATERIAL COMPOSITION

Made from PC & ABS (Polycarbonate & acrylonitrile butadiene styrene)



WAVECEL

/ TYPE II WAVECEL T2+ MAX

SIZE

One size fits most. Head circumference 53-63 cm. Sizes 6 5/8 – 7 7/8

WEIGHT

T2+ MAX 485g; T2+ PRO 480g

CERTIFICATIONS

ANSI Z89.1-2014, Type 2: protection against top, front, rear, and side impacts

EN 12492:2012: Helmet for Mountaineers

TECHNOLOGY

WaveCel impact mitigation system

TEMPERATURE RANGE

-30°C to +50°C

LIFETIME*

5-year recommended lifetime (*Hard hat lifespan may vary depending on the conditions of each work site. Hard hats subjected to more wear and tear or used outdoors in direct sunlight may need to be replaced more frequently.)

MATERIALS

ABS (shell)

Co-Polymer (WaveCel Core)

CONSTRUCTION

Protection from crown, front, side, and back impacts.

FIT SYSTEM

with oversized dial and vertical height adjustment.

DOCUMENT 002500

FLINTCO SITE LOGISTICS PLAN

CLIENT
Cherokee Nation Cultural Tourism

DESIGN ARCHITECT
Saville Architects, LLC
100 Prosper Way
Savannah, GA 31404 USA
T 912.829.2100 F 912.829.2408

ARCHITECT OF RECORD
Archistate Design Inc.
100 W. Aquatic Street
Norman, OK 73069 USA
T 405.365.5010

CIVIL ENGINEER
Walker Design Collective, PC
410 North Walnut Avenue, Suite 200
Oklahoma City, OK 73104 USA
T 405.236.5858 F 405.364.5858

LANDSCAPE ARCHITECT
PWP Landscape Architecture
739 Ashton Way
Berkeley, CA 94710 USA
T 510.849.3494 F 510.849.9333

STRUCTURAL ENGINEER OF RECORD
Barr Hapgood Consulting Engineers PC
100 Broadway 17th Floor
New York, NY 10005 USA
T 212.334.2025

STRUCTURE ENGINEER - LOCAL
Walker Design Collective, PC
410 North Walnut Avenue, Suite 200
Oklahoma City, OK 73104 USA
T 405.236.5858 F 405.364.5858

MEP DESIGN ENGINEER
Barr Hapgood Consulting Engineers PC
100 Broadway 17th Floor
New York, NY 10005 USA
T 212.334.2025

MEP ENGINEER OF RECORD
ISA Engineering
7405 Ellis Street
Fort Smith, AR 72916 USA
T 479.452.8922

LIGHTING DESIGN
BOL LLC
151 West 29th Street 11th Floor
New York, NY 10001 USA
T 212.674.6300

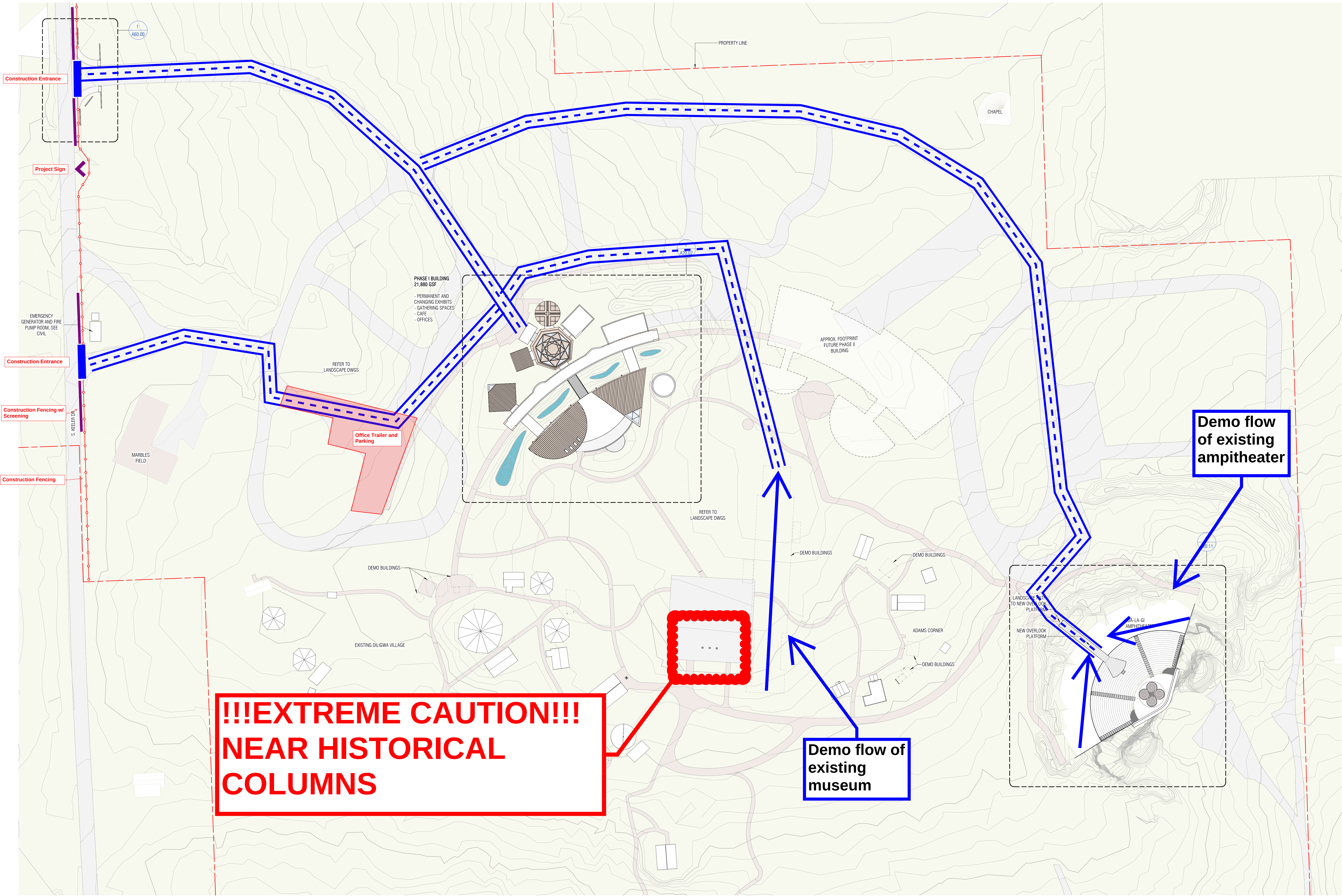
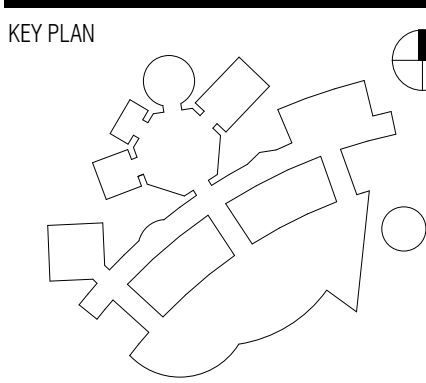
SIGNAGE & WAYFINDING
Patriot Design Inc.
250 Park Avenue South
New York, NY 10003 USA
T 212.685.7000

EXHIBIT DESIGN
Local Creative
6950 N. Central Park Avenue
Livestock, IL 60112 USA
T 224.233.0730

UNLESS A PROFESSIONAL SEAL WITH
SIGNATURE AND DATE IS AFFIXED, THIS
DOCUMENT IS PRELIMINARY AND IS NOT
INTENDED FOR CONSTRUCTION, RECORDING,
PURPOSES OR IMPLEMENTATION.

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NO.	DESCRIPTION	DATE



1 SITE PLAN - PHASE 1
1" = 50'-0"

PROJECT NUMBER	DRAWN BY
1033	Author
DATE	CHECKED BY
2026-05-08	Checker

PHASE
85% DESIGN DEVELOPMENT

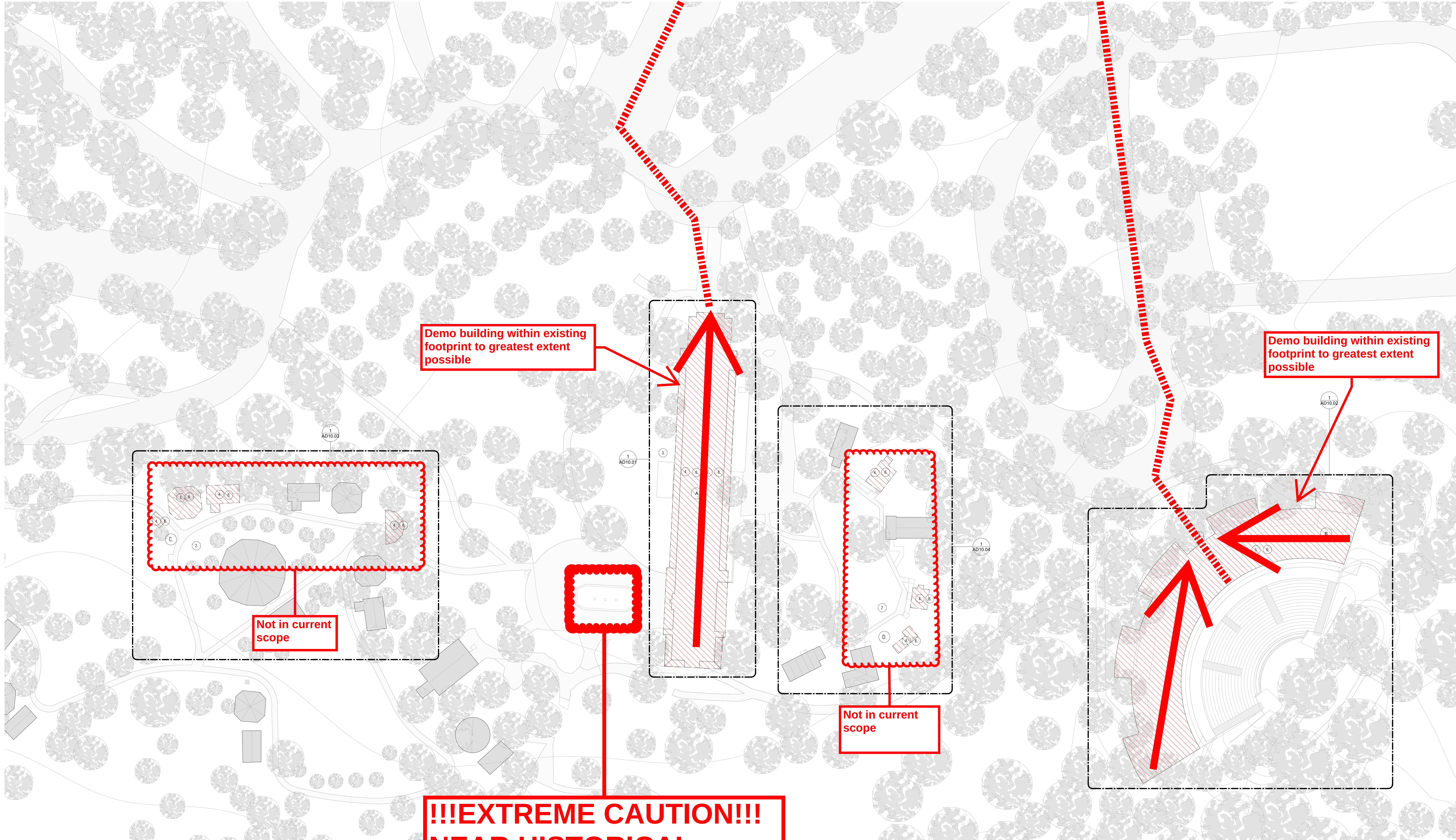
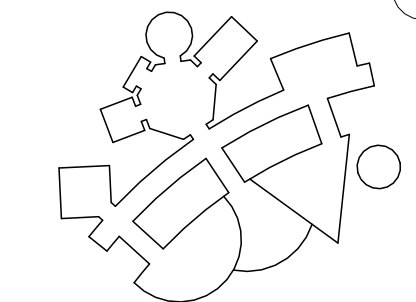
SCALE
1" = 50'-0"

DRAWING TITLE
SITE PLAN - OVERALL

SHEET NUMBER

A10.00

NO.	DESCRIPTION	DATE



1 OVERALL DEMOLITION SITE PLAN
1" = 30'-0"

DEMOLITION LEGEND	
	EXISTING PAVING/PATHWAYS - REF. CONSULTANT DRAWINGS FOR DEMOLITION INFORMATION
	EXISTING STRUCTURE - TO REMAIN
	CONSTRUCTION TO BE REMOVED
A	CHEROKEE NATION CULTURAL CENTER
B	AMPHITHEATER
C	DULWA VILLAGE
D	ADAMS CORNER

DEMOLITION KEY NOTES	
1	THERE IS A LOW POTENTIAL FOR ARCHAEOLOGICAL RESOURCES TO BE DISCOVERED IN THIS AREA. COORDINATE WITH CHEROKEE NATION THPO IN ACCORDANCE WITH THE ARCHAEOLOGY MANAGEMENT PLAN FOR THE CHEROKEE NATION HERITAGE CENTER.
2	THERE IS A MODERATE POTENTIAL FOR ARCHAEOLOGICAL RESOURCES TO BE DISCOVERED IN THIS AREA. COORDINATE WITH CHEROKEE NATION THPO IN ACCORDANCE WITH THE ARCHAEOLOGY MANAGEMENT PLAN FOR THE CHEROKEE NATION HERITAGE CENTER.
3	THERE IS A HIGH POTENTIAL FOR ARCHAEOLOGICAL RESOURCES TO BE DISCOVERED IN THIS AREA. COORDINATE WITH CHEROKEE NATION THPO IN ACCORDANCE WITH THE ARCHAEOLOGY MANAGEMENT PLAN FOR THE CHEROKEE NATION HERITAGE CENTER.
4	REMOVE ENTIRE BUILDING STRUCTURE.
5	DEMOLITION TO INCLUDE ROOF STRUCTURE AND ENCLOSED SPACES.
6	REMOVE ALL EXISTING MECHANICAL, PLUMBING, AND ELECTRICAL EQUIPMENT. CAP ALL UTILITY AND DRAIN LINES AS REQUIRED. REMOVE ALL MISC. STEEL, RAISED CONCRETE SLABS, REBAR ETC. REFER TO CONSULTANT DRAWINGS.
7	HAZARDOUS MATERIALS ARE PRESENT WITHIN THE EXISTING BUILDING. RADON, ASBESTOS, AND LEAD REPORTS ARE INCLUDED IN THE DEMOLITION SPECIFICATIONS. ABANDONMENT AND REMEDIATION SHALL BE PERFORMED BY A LICENSED CONTRACTOR IN ACCORDANCE WITH DEPARTMENT OF LABOR STANDARDS.
8	EXISTING EXTERIOR STONE IS TO BE SALVAGED. REFERENCE LANDSCAPE DOCUMENTS FOR QUANTITIES OF SALVAGED STONE. CONTRACTOR TO DEMOLISH SALVAGED ITEMS PRIOR TO DEMOLITION WORK.

DEMOLITION GENERAL NOTES	
CONTRACTOR SHALL INCLUDE AND PERFORM ALL DEMOLITION WORK REQUIRED TO ACCOMMODATE NEW WORK UNDER THIS CONTRACT. BEFORE SUBMITTING BID PROPOSAL, GENERAL CONTRACTOR TO VISIT THE SITE AND THE WORK AND FULLY INFORM THEMSELVES OF EXISTING CONDITIONS AND LIMITATIONS.	
ALL FLOORS ERECTED BY THE REMOVAL OF ELECTRICAL, PLUMBING, MECHANICAL, AND STRUCTURAL SYSTEMS ARE TO BE PATCHED.	
SITE SHALL BE MILLED AFTER DEMOLITION, REFER TO CIVIL AND LANDSCAPE DOCUMENTS.	
REFER TO LANDSCAPE DOCUMENTS FOR FULL SCOPE OF SITE DEMOLITION.	
PROPER DISPOSAL OF ALL DEMOLISHED MATERIAL, AND ASSOCIATED SITE DEBRIS.	
CAP ALL UTILITY AND DRAIN LINES AS REQUIRED.	
MAKE PROVISIONS FOR TEMPORARY UTILITY CONNECTIONS AS NECESSARY.	

DOCUMENT 003113

PRELIMINARY SCHEDULE

The Contractors / Suppliers will be required to follow the Milestone / Critical Path Schedule attached.

Activity ID	Activity Name	Original Duration	Remaining Duration	Start	Finish	2026						2027									
						Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul			
Cherokee Nation Heritage Center		677	643	01-Jun-26 A	30-Jan-29																
Milestones		617	617	25-Aug-26	30-Jan-29			◆			◆			◆							
Pre Construction		310	276	01-Jun-26 A	18-Aug-27																
Early Release Demolition Package		67	33	01-Jun-26 A	02-Sep-26																
Demo1000	Demolition Package Issue	35	0	01-Jun-26 A	18-Jun-26 A	Demolition Package Issue															
Demo1010	Demolition Package Bid	15	15	20-Jul-26*	07-Aug-26		◡	Demolition Package Bid													
Demo1020	Review Bids / Prepare GMP	5	5	10-Aug-26	14-Aug-26			◻	Review Bids / Prepare GMP												
Demo1030	Review/ Execute GMP	5	5	17-Aug-26	21-Aug-26			◻	Review/ Execute GMP												
Demo1060	Notice to Proceed - Demo	1	1	24-Aug-26	24-Aug-26			I	Notice to Proceed - Demo												
Demo1040	Issue Subcontracts	5	5	24-Aug-26	28-Aug-26			◻	Issue Subcontracts												
Demo1050	Demolition Pre-Construction Planning	5	5	25-Aug-26	31-Aug-26			◻	Demolition Pre-Construction Planning												
Demo1070	Produce SWPPP Plan	3	3	31-Aug-26	02-Sep-26			◻	Produce SWPPP Plan												
Design Development		0	0																		
Construction Documents		200	166	01-Jun-26 A	15-Mar-27		■	■													
Bidding		0	0																		
Permitting / Dept of Health		0	0																		
Material Procurements		140	140	02-Feb-27	18-Aug-27																
Construction		612	612	25-Aug-26	23-Jan-29																
Bid Package #1 - Demo		58	58	25-Aug-26	13-Nov-26																
Demolition Package		58	58	25-Aug-26	13-Nov-26																
Site-1170	Job Controls	5	5	25-Aug-26	31-Aug-26					◻	Job Controls										
Site-1200	Construction Fencing	5	5	25-Aug-26	31-Aug-26					◻	Construction Fencing										
Site-1270	GPRS Existing CHC	3	3	01-Sep-26	03-Sep-26					◻	GPRS Existing CHC										
Site-1230	Removal & Salvage of Monuments	10	10	04-Sep-26	18-Sep-26					◻	Removal & Salvage of Monuments										
Site-1240	Clear and Grub Access Road	10	10	18-Sep-26	01-Oct-26					◻	Clear and Grub Access Road										
Site-1250	Grade and Rock Access Road	10	10	02-Oct-26	15-Oct-26					◻	Grade and Rock Access Road										
Site-1260	Column Preservation and Restoration	20	20	28-Sep-26	23-Oct-26					◻	Column Preservation and Restoration										
Site-1220	Demo of Existing CHC, Amphitheater and Paving	40	40	21-Sep-26	13-Nov-26					◻	Demo of Existing CHC, Amphitheater and Paving										
Bid Package #2 - Building & Site		502	502	02-Feb-27	23-Jan-29																
Project Close Out		85	85	28-Sep-28	30-Jan-29																

Start Date: 01-Jun-26

Finish Date: 30-Jan-29

Data Date: 20-Jul-26

Run Date: 20-Jul-26

Remaining Level of Effort

Actual Level of Effort

Actual Work

Rem Work

Near Crit Rem

Remaining Work

Near Critical Remaining

Critical Remaining Work

% Complete

◆◆

Milestone

△

Start Constraint

△

Finish Constraint

Cherokee Nation Heritage Center

Bid Package #1 - Demo

DOCUMENT 004200
FORM OF PROPOSAL

Date:

PROPOSAL OF, _____ (hereinafter referred to as the
"Bidder"), a _____ organized and Existing under the laws of the
State of _____, doing business as
_____.

TO: Flintco, LLC
323 E. Reconciliation Way
Tulsa, Oklahoma 74120

Gentlemen:

The undersigned, as "Bidder", in compliance with the Contract Documents, declares that he has examined the site of the Work and informed himself fully in regards to all conditions pertaining to the place where Work is to be performed; that he has examined all the Drawings and Project Manuals for the Cherokee Heritage Museum Project as prepared by Anishinabe Design, Inc. and Contractual Documents relative thereto; and that he has satisfied himself relative to the Work to be performed.

Bidder hereby proposes and agrees to furnish all necessary labor, materials, tools, equipment and supplies, together with all other items of cost including housekeeping, haul-off of Bidders debris to on-site dumpster provided by others (unless specified differently in the individual bid packages), layout, insurance and supervision, required for the work called for on the Drawings, Project Manuals, and bid package within the time set forth herein and at the prices stated in written words and numerical format (in case of discrepancy, the amount indicated in words shall govern) on the individual bid package form(s) listed below.

Bidder acknowledges each package listed below is required to be bid individually and separately from all other bid packages listed on the bid form.

The following information is provided in order to define and describe the Scope of Work, which will be required of the successful Bidder. It is intended for the following information to be complementary with the requirements of all the other Bidding Documents. This Document will become a part of the successful Bidder's final Contract.

Bidder is submitting bids on the following package(s) - List Bid Package Number(s) and attach each to this bid proposal form:

TIME OF COMPLETION: Bidder agrees to complete the work as required by the Project Schedule issued by the Construction Manager. Time of performance is of the essence of this Contract and the Contractor shall perform all the requirements with all possible dispatch and shall execute all work in such a manner as not to delay the Owner from occupying the building by the substantial completion dates indicated on the schedule. The construction duration for this project includes weather conditions that are normal for this local. Construction duration time extensions will be considered for weather conditions that are abnormal and could not have been reasonably anticipated and had an adverse effect on the construction schedule. An adverse weather delay is specifically defined as any workday in which less than 60% of the scheduled work for that day cannot be completed due to weather-related conditions and that such work will have an effect on critical related trade work affecting the completion date.

OTHER CONDITIONS: Bidder agrees that his bid shall be good and may not be withdrawn for a period of **sixty (60) calendar days** after the actual date of the bid opening.

Bidder agrees, if awarded the contract, to execute an agreement in the form set forth in Document 005213 (Flintco Subcontract) to perform the proposed Work for the bid package(s) stated compensation within ten (10) days after the award and to deliver to the Construction Manager, within said ten (10) days, the required bonds and insurance policies in forms to be approved by the Construction Manager, along with all other specified contract related documents.

Bidder has no outstanding claims, lawsuits, arbitration proceedings or administrative proceedings by or against the owner or Flintco at this time and is not aware currently of any claims that Bidder may assert against owner or Flintco in the future. Bidder acknowledges and understands that its bid shall be rejected as non-responsive if its representations regarding outstanding or contemplated future claims against the owner or Flintco are untrue.

INSURANCE: During all phases of the Project, the Subcontractor shall purchase and maintain insurance as set forth in **Exhibit "A" – Subcontractor Insurance Requirements**, which is attached to and a part of each subcontract. An example of this may be found in Document 005213 of this Bid Book.

All insurance certificates must have an additional clause which states:

"Certificate Holder, Architect, Architect's Consultants and Owner are additional insured. Waiver of subrogation applies to all insurance policies in favor of certificate holder. Flintco, LLC is the "certificate holder".

Failure to complete this additional clause will impede payment for subcontractors.

Bidder understands that the Owner reserves the right to reject any or all Bids and to waive any informalities or irregularities therein.

We the Bidder have attached to this bid the following item:

1. Bid Package(s) to be included within this proposal.

ADDENDA: Receipt of the following addenda and CM Clarifications are hereby acknowledged:

Addendum No. _____, dated _____

Addendum No. _____, dated _____

Addendum No. _____, dated _____

Addendum No. _____, dated _____

Addendum No. _____, dated _____

Addendum No. _____, dated _____

Addendum No. _____, dated _____

CM Clarification No. _____, dated _____

CM Clarification No. _____, dated _____

CM Clarification No. _____, dated _____

CM Clarification No. _____, dated _____

CM Clarification No. _____, dated _____

CM Clarification No. _____, dated _____

CM Clarification No. _____, dated _____

ATTEST:

By: _____

Its: _____

[CORPORATE SEAL]

Respectfully Submitted by "Bidder",

(Company Name)

Doing business as

a _____

In the State of _____

By: _____

(Authorized Signature)

(Print Name)

Its: _____

(Title)

(Business Address)

(Telephone Number)

(Fax Number)

NOTE: If Bidder is a corporation, complete the information as requested above (i.e., state of incorporation) and attest document in the space provided. If Bidder is a partnership, give full name of all partners. Type name of each person signing under each signature.

ATTACHMENTS: Individual Bid Package(s) Form.

END OF DOCUMENT

CONFIDENTIALITY AND BUSINESS RELATIONSHIP/NON-COLLUSION REPRESENTATIONS

In connection with discussions and/or negotiations between the responding entity ("Bidder") and the applicable Cherokee Nation entity ("Company") (individually "Party" or collectively "Parties") regarding

PROJECT NAME: Cherokee Heritage Center

RFP NUMBER: 164221

Each Party agrees that any written information, drawings or data disclosed by the other Party as well as all information becoming known to either Party concerning the other Party's inventions, discoveries, improvements, methods, business plans, ventures, practices, enterprises, or operation, or any other information affecting the business operations of the other Party shall be deemed to be confidential and proprietary information owned by such Party, and shall be protected by the receiving Party in the same manner and with the same degree of care the receiving Party treats its own confidential or proprietary information ("Confidential Information"). The receiving Party agrees to and shall be fully responsible for all Confidential Information of the disclosing Party in the receiving Party's possession and the receiving Party shall promptly upon demand, return all such Confidential Information and reproductions therefrom to the disclosing Party or destroy the Confidential Information and certify such destruction to the disclosing Party. If either Party loses or makes an unauthorized disclosure of the other Party's Confidential Information, it shall notify such other Party immediately and use reasonable efforts to retrieve the lost or wrongfully disclosed Confidential Information.

Confidential Information shall not be disclosed, except to the extent required by law, to any third person or entity without the prior written consent of the disclosing Party other than to those directors, officers, employees, affiliates, agents or consultants with a need to know the Confidential Information in connection with the project referenced above. Except as permitted in the previous sentence, prior to disclosure to any such third person or entity, such third person or entity must have agreed in writing to treat the Confidential Information as confidential in the same manner as required of the receiving Party. The Parties shall use the Confidential Information only in connection with continuing discussions by the Parties concerning the Project, except as may otherwise be mutually agreed upon in writing.

Confidential Information shall be treated in the manner specified above until such time as such Confidential Information: (i) is otherwise available in the public domain; (ii) is established to have been lawfully known by the receiving Party prior to receipt of such Confidential Information from the disclosing Party or becomes known by the receiving Party through a third party not subject to the non-disclosure requirements of this Agreement; (iii) is developed by or on behalf of the receiving Party independent of any Confidential Information furnished by the disclosing Party under this Agreement or (iv) is required to be released by a valid law, regulation or court order, and sufficient notice is given by the receiving Party to the disclosing Party of any such requirement or request to permit the disclosing Party to seek an appropriate protective order or exemption from such requirement or request.

The receiving Party acknowledges that in the event of an unauthorized disclosure, the damages incurred by the disclosing Party may be difficult if not impossible to ascertain, and that the Disclosing Party may seek injunctive relief as well as monetary damages from the receiving Party. Neither the disclosure of Confidential Information, nor the ongoing discussions and correspondence between the receiving Party and the disclosing Party, shall constitute or imply a commitment or binding obligation between the parties or their respective affiliated companies.

Neither Party shall be: (a) responsible or liable for any business decisions made or inferences drawn by the other Party in reliance on this Agreement or in reliance on actions taken or disclosures made pursuant to this Agreement; or (b) liable to or through the other Party for amounts representing loss of profits, loss of business, or special, indirect, consequential, or punitive damages.

**CONFIDENTIALITY
AND
BUSINESS RELATIONSHIP/NON-COLLUSION REPRESENTATIONS**

This Agreement shall be binding upon Company with regard to the Project as if executed by Company and shall become effective upon signature by Bidder ("Effective Date"). The Agreement shall continue in force until terminated by either Party, notice is provided by Company that Bidder was not the winning bidder, or until superseded by a subsequent non-disclosure or definitive agreement containing confidentiality provisions. The obligations of the parties shall survive and continue beyond the expiration or termination of the Agreement for a period of two (2) years with regard to Confidential Information.

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY OR PRESENTED IN THE BID PROPOSAL DOCUMENTATION, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY NATURE WHATSOEVER WITH RESPECT TO ANY INFORMATION DISCLOSED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR AGAINST INFRINGEMENT.

The Parties acknowledge that this Agreement does not restrict the ability either to engage in their respective businesses, nor does it limit either Party's use or application of any information or knowledge acquired independently of the other without a breach of this Agreement in the course of such Party's business.

The Parties agree that this document may be electronically signed and that signatures appearing on this document are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

SIGNED: _____

TITLE: _____

DATE: _____

**CONFIDENTIALITY
AND
BUSINESS RELATIONSHIP/NON-COLLUSION REPRESENTATIONS**

_____, on behalf of _____ (Bidder name)
represents and warrants that the nature of any partnership, joint venture, or other business relationship presently in effect or which existed within one (1) year prior to the date of this statement with Company or other party to the services provided under the Agreement is as follows:

_____, on behalf of _____ (Bidder name)
represents and warrants that any such business relationship presently in effect or which existed within one (1) year prior to the date of this statement between any officer or director of Consultant and any officer, director, manager or member of the Board of Directors of Company or other party to the project is as follows:

_____, on behalf of _____ (Bidder name)
represents and warrants that the names of all persons having any such business relationships and the positions they hold with their respective companies or firms are as follows:

_____, on behalf of _____ (Bidder name)
represents and warrants that any family/relative relationships present between any officer, director or agent of Bidder and any officer, director, manager or member of the Board of Directors of Company other party to the Agreement is as follows:

_____, on behalf of _____ (Bidder name)
represents and warrants states that the names of all persons having any such family/relative relationships and the positions they hold with their respective companies or firms are as follows:

If none of the business relationships hereinabove mentioned exist, Representative should so state below

SIGNED: _____

TITLE: _____

DATE: _____

**CONFIDENTIALITY
AND
BUSINESS RELATIONSHIP/NON-COLLUSION REPRESENTATIONS**

_____, on behalf of _____ (Bidder name)
represents and warrants that (s)he is the agent authorized by the bidder to submit the attached bid. Representative further states that the bidder has not been a party to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding; or with any employee of Company or any affiliate or wholly-owned entity of Company as to quantity, quality or price in the prospective definitive Agreement, or any other terms of said prospective definitive Agreement; or in any discussions between bidders and any official of Company or any affiliate or wholly-owned entity of Company concerning exchange of money or other thing of value for special consideration in the letting of a definitive Agreement.

SIGNED: _____

TITLE: _____

DATE: _____

DOCUMENT 004600

BID PACKAGE GENERAL REQUIREMENTS

The scope of work for ALL bid packages shall include, but is not necessarily limited to, the following general items:

Project Coordination:

- 1.) Contractor is to furnish manpower, materials, and equipment necessary, as required by the project schedule, including interim milestone dates, and to furnish additional crews, equipment, etc. and/or overtime required to maintain the schedule if Contractor falls behind due to their own fault or due to inclement weather.
- 2.) Contractor is responsible for field engineering, layout and field layout from benchmarks and base building control furnished by the Construction Manager. The Construction Manager shall provide one horizontal and one vertical control point and transfer of this point is the responsibility of the contractor. Rough-In requirements are to be dimensioned off of column lines as shown on the contract documents.
- 3.) Contractor shall furnish hoisting, material transport, and all material handling for the scope of this bid package.
- 4.) Contractor shall furnish pumping and dewatering as required for the scope of this bid package. Any performed must be done so as not to hinder any other trades' work.
- 5.) Contractor will perform any saw cutting, patching, and removal of debris as required for the scope of this bid package. The Construction Manager must approve the quality of any cutting and patching work.
- 6.) Contractor shall furnish drinking water for its employees and its subcontractors' employees for the scope of this bid package.
- 7.) Contractor shall include all remobilization operations required to complete the scope of this bid package.
- 8.) Contractor shall include temporary power for the scope of their work until building temporary power is provided.
- 9.) Contractor shall coordinate all material deliveries with the Construction Manager and shall have a representative on site to receive all deliveries of materials under the scope of work of this bid package.
- 10.) Contractor shall clean up his work in such a manner as to maintain safe working conditions on the project, including but not limited to excess material, lunch trash, and dirt and debris on streets and sidewalks. All trash generated from this Contractor's work or its' forces shall be removed by the Contractor's own forces and Contractor's equipment. Trash shall be placed in an on-site dumpster provided by construction manager. Any waste that requires special disposal such as concrete, pavement or hazardous waste will be disposed of by Contractor and not placed in the on-site dumpster. Debris placed in the dumpster must fit within the confines of the dumpster; otherwise it is the responsibility of this contractor to remove such debris from the project in an acceptable manner. If after a 24-hour notice Contractor fails to clean-up trash, then the Construction Manager may clean up the trash and the cost thereof shall be charged to the Contractor.
- 11.) Contractor shall submit to Construction Manager an emergency contact list containing information on field supervisory personnel and management personnel complete with phone numbers prior to commencing work on the project.
- 12.) Contractor's field supervisory personnel shall attend weekly project coordination meetings while performing work on the site.
- 13.) Contractor shall inform the Construction Manager of a change to the managing onsite foreman/superintendent in writing five (5) days prior.
- 14.) This project will utilize Procore's (www.procore.com) project management and collaboration system for all project documentation. Applicable team members of this Contractor will be invited to and are required to create a Procore username (email) and password if they do not already have one. This Contractor will be expected to obtain drawings, models, sketches, RFIs, meeting minutes, coordination drawings, change information, schedule information, etc. via this application. Flintco will maintain and update the previously listed documents in Procore for use by the Contractor. It is the responsibility of this Contractor to regularly check and review updated documents as they are added and ensure any mobile device is synchronized with the most current information. It is required that this Contractor provide mobile iOS or Android devices with the Procore App installed to at least one individual on-site to provide real-time access to current posted drawings, specifications, RFIs, submittals, project documents, as well as any deficient observations or punch list items. Providing mobile access will improve communication, efficiency, and productivity for all parties.

- 15.) Contractor will utilize **Procore Pay** (www.procore.com), an automated qualification and payment processing service, on the Project. Unless otherwise directed or authorized in writing by Construction Manager, all payment applications and all supporting documents required by the Subcontract as a condition of payment to Contractor shall be in electronic format and shall be submitted to Construction Manager using Procore Pay. The Contractor shall be responsible for all fees and costs associated with Contractor's use of the Procore Pay. Fees to Contractor are calculated as 0.2% (twenty basis points) of the Subcontract Amount, as may be modified, with a minimum fee per subcontract of \$0 and a maximum fee per subcontract of \$4,000. Contractor shall create its Procore Pay account at www.procore.com. Contractor can call Procore Pay Support at 805-699-5647 or email pay-support@procorepay.com with any questions regarding Procore Pay.
- 16.) Model and work coordination will ultimately be governed by the printed contract documents. Trade contractors are responsible for their scope of work shown in the contract documents. Models must be verified back to the contract documents to be sure the contract scope is being installed and coordinated per design. Each trade contractor is responsible for coordinating their scope with other trades. Flintco makes no representations or warranties regarding the accuracy of information included in any building information models.
- 17.) Contractor shall periodically inspect the progress of project and attend weekly project coordination meetings prior to performing work on the site for purposes of coordinating future work of this contractor with other trades and construction manager.
- 18.) Contractor will be required to attend a "Preconstruction Meeting" and a "Partnering Meeting" as set up by the Construction Manager. Preconstruction Meetings will be held prior to contractors being allowed to work onsite to review safety, policies and procedures, schedule, etc. Partnering Meetings will be conducted with all Subcontractors, Construction Manager, Owner and Architect at least one time during the project as defined by the Construction Manager. Both meetings will require company personnel as defined by the Construction Manager.
- 19.) In order to provide additional value to the Owner by eliminating waste and focusing on continuous improvement, Flintco will be utilizing the Last Planner® scheduling system for scheduling coordination throughout this project. Flintco acknowledges that the "Last Planners" – the subcontractor foremen and project managers overseeing the crews putting work in place – must have the authority to make decisions and plan the work, in accordance with the Project Schedule. Contractors agree as a group to meet their deadlines, and each is held accountable not only to the Construction Manager, but also to their fellow contractors.
- 20.) All subcontractors will be required to actively participate in the Last Planner® schedule by providing input about their schedule, coordinating their scope of work with other trades, commitments for work completion, and suggestions for improvement. If you have previously worked with Flintco, you will recognize the language from Article 6 in the sample Subcontract, "The Subcontractor shall participate and cooperate in the development of schedules and other efforts to achieve timely completion of the Subcontractor Work by providing information on the timing and sequence of operations so as to meet the Contractors' overall schedule requirement." Flintco has a long-standing practice of requesting accurate input, commitments and feedback from subcontractors.
- 21.) Subcontractors will be required to participate in Last Planner® training sessions as part of the Preconstruction and/or Partnering Meetings.
- 22.) Phase planning sessions (a.k.a. Pull plans) will be held for each milestone, as established by the Construction Manager in the Project Schedule, to develop the overall sequence of work for that milestone. The subcontractor must be represented by both their project manager and foreman at these sessions. Some participation from second-tier subcontractors will be required, if identified as necessary by the Construction Manager and Subcontractor for accurate input and coordination.
- 23.) Look Ahead Schedules will be developed from the phase planning sessions. Subcontractors are expected to participate in the maintenance of the project look-ahead schedule on a weekly basis.
- 24.) Weekly Work Plans (WWP) will be developed by each foreman and brought for review to the weekly subcontractor meetings.
- 25.) Progress on WWP will be reviewed daily at a brief stand-up meeting between the subcontractors and Flintco. Daily progress and needs for the next day from either fellow subcontractors or Flintco will be reviewed.
- 26.) In order to focus on continuous improvement, completion of WWP will be tracked using Percent Plan Complete (PPC), so that trends for improvement can be established and identified. Trade partners are expected to accurately status tasks and provide input on variances on a weekly basis.
- 27.) Contractor shall conform to the Construction Manager's work hours.
- 28.) Contractor shall furnish protection of adjacent surfaces and repair of any damage caused by the work of this Contractor.
- 29.) Contractor's personnel are to remain in the work area and are not to use any of the owner's existing facilities. Personnel in areas other the work area will be removed from the project.

- 30.) Contractor shall be responsible for providing non-marking tires or "socks" for wheels and drip pans under any equipment that will be required to travel across the slabs. This includes but is not limited to scaffolds, lifts, pallet jacks, etc. It is the intent of the Project Manager / Construction Manager for the contractor to use all due diligence in minimizing marking of and damage to the concrete and floor surfaces.
- 31.) Contractor shall examine substrates and existing conditions upon which work is to be installed. Notification must be given to the Project Manager / Construction Manager in writing of conditions detrimental to timely and proper installation of work. Do not start the work until unsatisfactory conditions have been corrected. If work is started without notification of unsatisfactory conditions, it shall be construed as an acceptance of substrate by this Contractor, who shall repair unsatisfactory work caused by unsatisfactory substrate at no expense to the Owner.
- 32.) Contractor shall have supervision on-site for work performed in their contract including supplier deliveries and work that is being subcontracted within the scope of work by this Contractor.
- 33.) Contractor to provide a detailed layout of any blocking required for materials provided within the scope of this bid package for blocking that is not specifically listed to be installed by this bid package.
- 34.) This bid package includes a minimum 40-hour work week and overtime as necessary to maintain the Project Schedule. Any delays (such as weather, coordination conflicts, work congestion, etc.) will be made up through additional work hours and/or Saturday's and Sunday's as determined by Flintco. Contractor shall provide any premium or shift differential with the bid. Weeks that include holidays are not exempt from the mandatory 40-hour work week.
- 35.) Contractor is responsible to review the Contract Documents and existing conditions and immediately advise the Construction Manager of any adverse factors, conflicts, design issues or ambiguities, which might affect the execution of the contract work. Contractor is responsible to review all scope category descriptions and Contract Documents and coordinate his work accordingly. Contractor agrees to incorporate into his contract and coordinate his work with the requirements of all subsequent documents.
- 36.) If successful, the bidder will provide Flintco with a schedule of values dictated by the Construction Manager and a detailed progress schedule for completion based on the enclosed progress schedule.
- 37.) Contractor shall be responsible for the review of all drawings for coordination as it relates to the installation of this subcontractor's work.
- 38.) The Contractor shall thoroughly review the Project Schedule and clearly understand the necessary commitment that needs to be made on the Contractor's behalf. Purchasing of materials & equipment with the proper lead time along with providing sufficient manpower in order to achieve or improve the given schedule shall be included in the bid amount. Contractor shall include any premium costs for material delivery in order to maintain the project schedule.
- 39.) Bidders shall acquaint themselves with the current condition of the existing site/facility. By submitting a bid, the bidder will be deemed to have confirmed that the work within the bidder's scope can be completed in accordance with the schedule and phasing plan. Any shift differential or premium time required to achieve the Construction Manager's schedule shall be included.
- 40.) Contractor shall be responsible for the review of all drawings for coordination as it relates to the installation of this subcontractor's work.
- 41.) Use of Owner's facilities, restrooms, etc. is **not** permitted.
- 42.) Contractor and said workforce shall park only in a separate lot designated for construction parking.
- 43.) Contractor shall provide any required storage facilities for any materials or equipment as required for this scope of work.
- 44.) Contractors shall familiarize themselves with the jobsite egress and access limitations and bid accordingly.
- 45.) Contractor shall provide 24 hour fire watch during all phases of work that create a fire risk.

Safety:

- 46.) Contractor is to provide for its employees all necessary safety railing and fall protection as required by the authorities having jurisdiction and Flintco's standard safety policies and procedures.
- 47.) Contractor will furnish temporary barricades, flagmen and traffic control as required for the scope of this bid package.
- 48.) Contractor shall furnish all scaffolding, work platforms, equipment and supplies to complete all work performed under the scope of this bid package, and as required by the authorities having jurisdiction and Flintco's standard safety policies and procedures.

- 49.) Contractor shall furnish all temporary shoring and bracing that may be required under the scope of this bid package. If engineering is required for such bracing or shoring, cost of such engineering is to be included in this bid package.
- 50.) Contractor will prepare in an acceptable format a job specific safety plan including written hazard analysis and hazardous materials communication information prior to starting work.
- 51.) Contractor will prepare and submit a written hazardous chemical MSDS (Material Safety Data Sheet) portfolio before starting work. Portfolio must be in a three ring binder with subcontractor's name and "MSDS" clearly identified on the face and spine of the binder for easy recognition and accessibility. Portfolio will contain a tabbed index of all hazardous chemicals on site. Portfolio will contain only those chemicals actually on the project site. Add and deduct chemical MSDS sheets as necessary during the project. The contractor's onsite safety representative shall be thoroughly familiar with the hazardous chemical MSDS portfolio.
- 52.) Contractor to provide safety submittals and safety manuals as outlined in the Flintco Safety Manual (007319 Flintco Safety Manual and 007320 Flintco Safety Submittal Checklist).
- 53.) Contractor will comply with the Flintco Construction Safety requirements as outlined in the Flintco Safety Manual (007319 Flintco Safety Manual).
- 54.) Subcontractor shall utilize the software "SmartTagIt" for the daily pre-task planning (PTP) of work. Video submission must be submitted prior to work starting each day, but in no event later than 9:15am. All employees working onsite must be in attendance for discussion of PTP. Foreman/ Superintendent for subcontractor will be responsible for organizing and facilitating SmartTagIt usage daily. The submission shall identify the work/production goals to be conducted that day, how you are going to accomplish the goals, general materials used, tools, equipment, manpower, the risks associated with that work and the preventive measures that will be taken to eliminate or mitigate those risks. If multiple crews are onsite for this subcontractor, foreman shall ensure PTP is performed for each crew.
- 55.) Subcontractor shall follow Roof and Elevated Deck Access SOP for all elevated decks, roofs, etc. This prohibits the use of ladders for accessing elevated decks, and roofs. Alternative access methods shall not be used unless a variance request has been submitted and approved by the Flintco VP/Area Manager and HSE Area Manager.

Testing:

- 56.) Contractor will assist the Material Testing Laboratory in obtaining samples and gathering data as needed and shall notify the Construction Manager a minimum of 24 hours in advance of testing required under the scope of work of this bid package.
- 57.) Laboratory materials testing shall be provided by others, however, any re-testing required due to failed initial testing or areas not being ready for required testing due to the actions of this Contractor shall be paid for by this Contractor.
- 58.) Field testing including air infiltration, water testing etc. shall be provided by others unless specifically called out to be provided by this contract, however any re-testing required due to failed initial testing or areas not being ready for required testing due to the action of this Contractor shall be paid for by this Contractor.

Administrative:

- 59.) Payment shall only be due for the portion of the Work actually completed to the satisfaction of Flintco, the Architect and the Owner. It is an express condition precedent to the Subcontractor's right to payment that payments shall actually be received by Flintco from the Owner. Within ten (10) days after receipt by Flintco of payment from the Owner, Flintco shall make payment in the amount and to the extent received from the Owner, less any applicable retainage or other set off. Progress payment applications must be submitted by the Subcontractor each month in an amount equal to the estimated value of the labor, materials and equipment incorporated in the construction and materials and equipment suitably stored at the Project site, less the aggregate of previous payments. Retainage withheld for all subcontracts will be **ten percent (10%)** of the total completed and stored to date. The Subcontractor's Affidavit and Waiver of Lien for prior payments must be properly executed by an authorized representative of the Subcontractor and returned to Flintco prior to issuance of subsequent payments.
- 60.) Contractor will furnish all submittals, shop drawings, samples, mock-ups, and closeout documents required by the contract documents.

- 61.) **CONTRACTOR'S POLLUTION LIABILITY INSURANCE** shall be written on an occurrence basis for not less than the following minimum limits: \$1,000,000.00 EACH OCCURRENCE and \$1,000,000.00 AGGREGATE. **This will be a MANADATORY requirement for all trades who will be removing spoils from the site as part of their scope of work.**
- 62.) **PROFESSIONAL LIABILITY INSURANCE** for not less than the following minimum limits: \$1,000,000.00 EACH OCCURRENCE and \$1,000,000.00 AGGREGATE shall be required by all Subcontractors whose scope of work includes any engineering, any professional services, any testing services, any delegated design or any other services that require the use and interpretation of engineering principles, including but not limited to test and balance, fire suppression, fire alarm, electrical testing, materials testing, surveying, window and exterior envelope testing or commissioning services. A certificate from the licensed professional providing the service is acceptable.
- 63.) Contractor shall furnish all submittals, shop drawings, and samples within 10 days of receipt of notice to proceed.
- 64.) Any professional engineering services required by the contract documents for the assembly of submittals and shop drawings are the responsibility of this contractor.
- 65.) Contractor will furnish all licenses, permits, and certifications and arrange for inspections and testing as may be required by and for this Contractor's work, and as required by the authorities having jurisdiction.
- 66.) The successful bidder will be required to sign the form of agreement set forth in Document 005213 (Flintco Subcontract), and to provide insurance and bonds as required.
- 67.) This project will utilize a Subcontractor Default Insurance policy for Performance and Payment Bonding on subcontractors that are qualified. Bidders shall not include the cost of bonds in the base bid. The bonding cost will be provided as an add alternate listed on the bid packages in the space provided. Each subcontractor must be prequalified for the Subcontractor Default Insurance policy prior to execution of the subcontract. All contractors must have a current qualification file. Qualifications are updated annually. Inquire with the contact below to ensure your firm is up to date. Contractors without a current qualification file will receive a Prequal Request. Please complete the form completely and accurately. All information requested is required for prequalification purposes. If a subcontractor is not qualified for the Subcontractor Default Insurance policy, they shall furnish bonds with a surety company acceptable to the Owner and Construction Manager. **A Dual Obligatee rider shall be furnished with each bond naming the Owner and Flintco, LLC.** Bidder's bond surety shall be listed in the current revision of U. S. Department of Treasury Circular, "Surety Companies Acceptable on Federal Bonds." The Bidder shall deliver said bonds to the Construction Manager no later than the date of execution of the contract. Failure or neglecting to deliver said bonds, as specified, shall be retained as liquidated damages. Bonds shall be written for the sum equal to the contract price, including accepted alternate bids.
- To become prequalified for the Subcontractor Default Insurance policy, please contact:
- Matt Rogge
SDI Prequalification Coordinator
Alberici Group
Email: matt.rogge@alberici.com
- 68.) Contractor shall submit, with executed contract, Flintco's "Subcontractor/Supplier Certification".
- 69.) The term "substantial completion" is defined as substantial completion of the overall project or portions thereof as designated by the Owner, Architect, & Construction Manager.
- 70.) Contractor shall submit closeout documents within 30 days of completion of the scope of this bid package.
- 71.) Contractor will be required to provide all labor and burden rates on regular and overtime hours for change order purposes for approval prior to acceptance of the Subcontract Agreement by Flintco.
- 72.) **Tax Exempt Status:** This Project is **NOT** tax exempt. Include all applicable taxes including State, County and City sales tax.
- 73.) The Contractor agrees to furnish all labor, materials, tools, equipment, supplies, insurance, bonds, etc. required for additional work and change orders, for which no pre-agreed price has been fixed. The overhead and profit markup covers project management, superintendents, non-working foremen and other costs not directly related to the Work. The maximum markup as follows:
- a. Overhead and Profit Combined 15% (on self-performed work)
 - b. Overhead and Profit Combined on second tier sub 10%
 - c. Overhead and Profit returned on deductive change orders minimum Combined 10%
- 74.) Equipment owned by Contractor may be rented back at no greater than 85% of AED
- 75.) At the Construction Manager's discretion, invoices for rental equipment, material, freight, fuel, etc. shall be provided to substantiate costs of changes. Construction Manager has right to refusal on all change order requests.

- 76.) To be a qualified responsible bidder, at the time of bid submission, bidders shall have no outstanding claims, lawsuits, or arbitration or administrative proceedings by or against the owner or Flintco and shall not be aware at that time of any claims that it may assert against owner or Flintco in the future. The bid of any bidder that does not meet this requirement will be rejected as non-responsive.
- 77.) By submission of this proposal Subcontractor certifies that its proposal includes all impacts of executive orders, tariffs, taxes and import fees known as of the date of this proposal.
- 78.) **Contractors are to INCLUDE the costs associated with the TERO Daily Work Permits (\$25/day for each employee) as described in the TERO An Act.**

Company: _____
Contact Name: _____
Phone: _____
Email: _____
Fax: _____

Cherokee Heritage Center Phase 1

BID PACKAGE 2A: BUILDING DEMOLITION - COMPLETE

Specification Section	Description
DIVISION 0	Procurement and Contracting Requirements
DIVISION 1	General Requirements
013513.22	Archaeological Protection, complete
024100	Demolition, complete

(In addition to the Specification Sections listed, Bidders will include work from referenced specifications and other work normally associated with this trade whether referenced or not.)

Definition of Terms

Contractor = Bidder

Construction Manager = Flintco, LLC

Owner = Cherokee Nation Cultural Tourism

Architect = Anishinabe Design Inc

The scope of work of this bid package shall also include the following items, but without limiting the scope of work as provided above:

- 1.) This bid package is intended to be all inclusive of labor and equipment required for complete existing buildings. Contractor to demolish the existing buildings in their entirety including, but not limited to, concrete structure and foundations, steel structure, roofing, exterior skin, window systems, interior walls, interior finishes, misc. interior furnishings items complete, millwork, flooring, doors, MEP systems, sprinkler systems, elevators, stairs, handrails, concrete decks, elevated slabs, elevator pits and walls, concrete and steel beams, concrete walls, concrete columns, concrete slabs and concrete footings as shown on the Contract Documents and as required. Include chipping, saw cutting, and removal in accordance with the Contract Documents.
- 2.) Recover all refrigerant from mechanical units and systems before demolition.
- 3.) Remove existing utilities as shown on the Contract Documents. Include capping and abandoning of existing lines as shown. Include meters, sanitary sewer manholes, water lines, fire lines, sanitary sewer lines, storm water lines, electric service, transformers, emergency power feeds, condensate piping, steam pipes, chilled water, heat water, and gas lines. Provide protection of existing utilities and services as indicated on the Contract Documents.
- 4.) Demolition of Mechanical, Electrical, and Fire Sprinkler as shown on the Contract Documents to be by demolition contractor included but not limited to MEP make safe as required. Contractor to coordinate schedule dates with the appropriate subcontractors and the Construction Manager.
- 5.) Contractor to demolish the existing building concrete decks, elevated slabs, elevator pits and walls, concrete and steel beams, concrete walls, concrete columns, concrete slabs and concrete footings as shown on the Contract Documents and detailed on the Structural Drawings as required for a minimal disturbance to existing structure. Include chipping, saw cutting, and removal in accordance with the Contract Documents.
- 6.) Include sawcut and removal of the existing slabs shown on the demolition drawings for MEP. Layout of areas to be removed will be confirmed by MEP subcontractors. See structural drawings for footings in existing slab areas.
- 7.) Contractor to demolish and remove existing stairs as indicated in the Contract Documents.
- 8.) Include demolition of existing structural steel and concrete slabs on deck as shown on the Contract Document. Include steel joists, girts, beams, columns, decking, bracing, etc. as indicated.
- 9.) Remove existing slab and foundations as shown on the Contract Documents and detailed on the Structural Drawings as required for a minimal disturbance to existing structure.
- 10.) Contractor shall provide, install, and remove all shoring and temporary supports required for demolition and construction of new walls until permanent supports are in place.
- 11.) Contractor shall coordinate with Construction Manager and other trades that all items to remain are properly protected, capped, temporarily supported, and/or removed prior to demolition.
- 12.) All demolition and construction activities shall be coordinated with the Construction Manager and Owner to minimize disruption of normal daily functioning of residents and staff. Contractor shall take necessary precautions

Cherokee Heritage Center Phase 1

to prevent damage to Owner's occupied areas adjacent to areas of construction or occupied areas where various system connections or extensions are required.

- 13.) Coordinate with the Owner the items of salvage that are to be retained by the Owner. Contractor to remove and store in Owner's designated storage facility.
- 14.) Provide protection for all existing materials or items shown to remain, to be re-used, or relocated during demolition.
- 15.) All work shall be phased per the project schedule.
- 16.) Contractor to include removal of items that contain lead or asbestos per the report included in the Construction Managers Bid Book.
- 17.) If items are found that contain lead or asbestos, notify the Construction Manager in writing.
- 18.) Contractor to perform non-friable asbestos removal as described in the asbestos survey. Include all necessary permits and submittals to DEQ for a complete removal. Exclude air monitoring and third party testing.
- 19.) This bid package is intended to be all inclusive of labor, material, and equipment required for the asbestos abatement called out in the Asbestos Abatement Report in the Construction Manager's Bid Book. Quantities listed in this document are for the purpose of helping to define the areas. All asbestos visible in the areas referenced at the time of the pre-bid walk through shall be removed under the lump sum bid of this work. Quantities may vary from those listed in this document.
- 20.) Contractor will be required to do all notifications required to the Department of Labor and DEQ.
- 21.) It is the responsibility of this bid package to maintain a clean and safe working environment in accordance with applicable codes.
- 22.) Contractor responsible for on-site dumpsters required for the scope of work of this bid package.
- 23.) This bid package is intended to be all inclusive of labor and equipment required for complete selective demolition.
- 24.) Contractor is responsible for all Mechanical, Plumbing and Electrical demolition associated with the Contract Documents including but not limited to MEP make safe as required.
- 25.) Contractor is responsible for all Archaeological Protection as described in the Contract Documents.
- 26.) Demo contractor is responsible for providing a minimal pathway to remove all debris to minimize disturbances outside of demolition areas.
- 27.) **EXCLUDE the costs for Performance and Payment Bonds in the base bid.**
- 28.) Reference the attached document "An Act" for TERO requirements. **Subcontractors are to EXCLUDE the cost for Section 5; Title 40, § 1011; T. Employee Rights Fee of ½%. This cost will be paid by the Construction Manager.**
- 29.) Reference the attached TERO Statutory Requirements with the Project Labor Agreement and include all associated fees in the base bid for the project. **Subcontractors are to INCLUDE the cost for daily work permits of \$25/day for each employee if required.**

Work excluded from this bid package:

- 1.) Site demolition not specifically listed above.

BID PACKAGE 2A:

BUILDING DEMOLITION - COMPLETE

Cherokee Heritage Center Phase 1

BID PACKAGE – BASE BID

BASE BID to furnish and install materials as required by this bid package and listed specification sections.

@ _____ Dollars

\$ _____

ADDITIVE COST to furnish Performance and Payment Bonds for this Bid Package.

@ _____ Dollars

\$ _____

Company: _____

Contact Name: _____

Phone: _____

Email: _____

Fax: _____

Cherokee Heritage Center Phase 1

BID PACKAGE 2A: BUILDING DEMOLITION - COMPLETE

BID PACKAGE UNIT PRICES

Unit prices include all necessary material, plus cost for delivery, installation, insurance, bonds, applicable taxes, overhead, and profit.

BID PACKAGE UNIT PRICE # 1:

Additive cost to salvage exterior cast in place concrete panels with native sandstone.

@ _____ Dollars / Per Panel

\$ _____ PER Panel

BID PACKAGE UNIT PRICE # 2:

Additive cost to remove native sandstone from concrete wall panels.

@ _____ Dollars / Per Panel

\$ _____ PER Panel

BID PACKAGE UNIT PRICE # 3:

Additive cost to remove and salvage concrete columns and capitals in accordance with the contract documents.

@ _____ Dollars / Per Unit

\$ _____ PER Unit

Company: _____

Contact Name: _____

Phone: _____

Email: _____

Fax: _____

Cherokee Heritage Center Phase 1

BID PACKAGE 2A: BUILDING DEMOLITION - COMPLETE

BREAKOUT COST FOR TAX EXEMPT MATERIAL

Material cost is included in base bid above and is for informational purposes.

@ _____ Dollars

\$ _____

NATIVE AMERICAN CERTIFICATIONS

TERO Certified "Indian Owned Business" with majority owners Cherokee citizens	YES/NO (Please circle)
TERO Certified "Indian Owned Business"	YES/NO (Please circle)
"Major Cherokee Employer" as certified by TERO	YES/NO (Please circle)

Cherokee Heritage Center Phase 1

BID PACKAGE 2A: BUILDING DEMOLITION - COMPLETE

LABOR RATES		
DESCRIPTION (All rates are inclusive of overhead and profit)	UNIT	UNIT COST
Foreman labor rate – fully burdened (includes vehicles, tools, etc.)	Per HR	
Journeyman labor rate – fully burdened (includes vehicles, tools, etc.)	Per HR	
Apprentice labor rate – fully burdened (includes vehicles, tools, etc.)	Per HR	

DELINEATION OF NATIVE AMERICAN PARTICIPATION			
	COMPANY	TRADE	TERO CERTIFIED (YES or NO)
1-			
2-			
3-			
4-			
5-			
USE THIS AREA FOR ADDITIONAL COMMENTS REGARDING THE USE OF NATIVE AMERICAN COMPANIES OR THE EMPLOYMENT OF NATIVE AMERICANS:			

Cherokee Heritage Center Phase 1

Company: _____
Contact Name: _____
Phone: _____
Email: _____
Fax: _____

DOCUMENT 005213

FLINTCO SAMPLE SUBCONTRACT

SUBCONTRACT AGREEMENT

ARTICLE 1

AGREEMENT

This Subcontract Agreement ("Agreement") is entered into this 1st day of October in the year 2025 by and between
, referred to in this Agreement as the Contractor, and the

SUBCONTRACTOR

referred to in this Agreement as the Subcontractor for services in connection with this

PROJECT NAME

PROJECT NO.

LOCATION

whose OWNER
is

and whose

ARCHITECT/
ENGINEER is

NOTICE TO THE PARTIES SHALL BE GIVEN AT THESE ADDRESSES

Article 2. Safety

2.1 The Subcontractor shall perform the Subcontract Work in a safe, reasonable, and responsible manner. The Subcontractor shall take all reasonable measures to avoid injury, loss, or damage to persons or property including but not limited to:

- .1 Employees and other persons at or near the site;
- .2 Materials and equipment stored at the site or at off-site locations for use in performance of the Subcontract Work;
- .3 All property and structures located at or near the site and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Subcontract Work; and
- .4 Environmental conditions at or adjacent to the site.

2.2 The Subcontractor shall give all notices required by Laws (as defined in this Agreement) and the Subcontract Documents and comply with Laws concerning safety or established to prevent injury, loss or damage to persons or property, including, among others, the Occupational Safety and Health Act (OSHA), and all standards, rules, regulations and orders which have been or shall be adopted or issued thereunder.

2.3 The Subcontractor shall have a written site-specific Health Safety and Environmental Loss Prevention Plan ("Safety Plan") that conforms with applicable Laws. The Safety Plan shall always be available for review at the site. The Safety Plan shall be comprehensive, apply to Subcontractor's entire scope of work, and shall require the implementation of safety measures according to the best current industry practices pertaining to the Subcontract Work and the Project, including (but not limited to) establishing safety rules, fall protection requirements, warnings and notices, safety barriers, applicable permits and authorizations, proper notice procedures to protect persons and property at the site and adjacent to the site from injury, loss or damage, and written safety reports submitted to Contractor by Subcontractor at least monthly which reports shall describe any safety concerns identified by Subcontractor at the site. The Subcontractor shall comply with and enforce its Safety Plan. Subcontractor shall also comply with Contractor's Safety Manual as referenced in Exhibit C and any site-specific safety program(s) established by the Contractor. Establishment of a safety program by the Contractor shall not relieve the Subcontractor of its safety responsibilities. The Subcontractor shall be solely responsible for its own safety, its workers' safety and the safe performance of the Subcontract Work. If discrepancies occur between the Safety Plan and Contractor's Safety Manual, the most stringent approach will be adopted. The Subcontractor shall comply with the reasonable recommendations of insurance companies having an interest in the Project. The Subcontractor shall actively participate in any site wide safety programs and training as required by the Contractor at no additional cost.

2.4 The Subcontractor shall give adequate written notice to the Contractor in advance of carrying out any of the Subcontract Work which involves explosive or other dangerous methods of construction or hazardous procedures, materials or equipment. In no event shall such written notice be given less than three (3) business days prior to commencement of such Subcontract Work. Additional risk assessment activities such as a safety plan, permit to work, or checklist may be required by the Contractor. The Subcontractor shall use properly-qualified individuals or entities to carry out the Subcontract Work in a safe and reasonable manner so as to protect persons and property at the site and adjacent to the site from injury, loss or damage.

2.5 The Subcontractor shall designate in writing an employee who shall be on-site full-time, who shall act as the Subcontractor's designated safety representative, and who shall have the responsibility for Subcontractor's compliance with Subcontractor's Safety Plan. The name of Subcontractor's safety representative shall be submitted by Subcontractor to the Contractor in writing not less than ten (10) calendar days prior to commencing Subcontract Work at the site. Subcontractor shall provide written notice to Contractor within three (3) calendar days in the event that Subcontractor changes the identity of its safety representative.

2.6 The Subcontractor has an affirmative duty not to overload the structures or conditions at the site and shall take reasonable precautions to prevent unsafe conditions or risks of personal injury or property damage. The Subcontractor shall have the right to request, in writing, from the Contractor loading information concerning the structures at the site and Contractor will obtain such information from the Architect/Engineer and provide it to Subcontractor in a written response. The Subcontractor will not load the structure until such response is received.

2.7 The Subcontractor shall provide safety instructions to its employees on the operation and maintenance of equipment/tools. The Subcontractor shall not bring on site equipment/tool that is not properly guarded, in good condition, or in compliance with all required safety standards. The Subcontractor shall immediately remove from the site any equipment/tool not in compliance with all safety standards. The Subcontractor is responsible for controlling access to equipment/tools to prevent use by unauthorized persons.

2.8 The Subcontractor shall notify the Contractor immediately in writing following any incident involving personal injury, property damage, or any incident or "near miss" that could have resulted in personal injury or property damage, whether or not an injury or damage was sustained. An immediate notification shall be issued by the Subcontractor to the Contractor, followed by a detailed written report of the incident which shall be furnished to the Contractor within twenty-four (24) hours. Subcontractors may be required to participate in further investigative activities.

2.9 The Subcontractor shall stop any part of the Subcontract Work that the Subcontractor or Contractor deems unsafe until corrective measures satisfactory to the Contractor are taken. The Subcontractor agrees that it shall not have nor make any claim for damages arising from such stoppages. Should the Subcontractor fail to take appropriate corrective measures in a timely manner, the Contractor may do so at the cost and expense of the Subcontractor and may deduct the cost and expense thereof from any payments due or to become due to the Subcontractor. The Contractor's failure to stop the Subcontractor's unsafe practices shall not relieve the Subcontractor of the responsibility for those practices. Subcontractor shall indemnify Contractor and Owner from and against fines or penalties imposed because of safety violations caused by Subcontractor's failure to comply with safety requirements imposed by this Agreement and by Law.

2.10 The Subcontractor shall remove from the Project any person for whose acts Subcontractor is responsible who creates an unsafe condition, or who performs work in an unsafe manner on the Project, or who fails any drug and/or alcohol test given in connection with this Project, or who violates the Contractor's safety policies or procedures. The Subcontractor agrees not to assign that person to this Project or any of the Contractor's other projects for the period of time as reasonably requested by Contractor.

2.11 By executing this Agreement, Subcontractor acknowledges it has obtained a copy of all policies and procedures listed on Exhibit C, which are incorporated into this

Agreement by reference, and agrees to be bound thereby.

2.12 Subcontractor shall incorporate the entirety of this Article 2 into any and all subcontracts it enters into relating to the Subcontract Work, and require any and all sub-subcontractors to be bound thereby and comply with the obligations contained therein.

Article 3. Scope of Subcontract Work

3.1 Subcontract Work The Contractor retains the Subcontractor as an independent contractor, to provide all labor, tools, materials, equipment and services necessary or incidental to complete the part of the work which the Contractor has contracted with the Owner to provide on the Project as set forth in Exhibit A to this Agreement, consistent with the Project Schedule and in strict accordance with and reasonably inferable from the Subcontract Documents (the "Subcontract Work").

3.2 Contractor's Work The Contractor's work is the construction and services required of the Contractor to fulfill its obligations pursuant to its agreement with the Owner ("the Work"). The Subcontract Work is a portion of the Work.

3.3 Subcontractor Qualifications The Subcontractor represents it is fully experienced and qualified to perform the Subcontract Work and it is properly equipped, organized, financed and, if necessary, licensed and/or certified to furnish and execute the Subcontract Work.

3.4 Subcontract Documents The Subcontract Documents include this Agreement, the exhibits to this Agreement, all documents identified on Exhibit D, the agreement between Owner and Contractor, including all exhibits, addenda, plans, drawings, specifications, special or supplementary conditions and other documents incorporated therein ("Prime Contract"), together with all authorized changes, additions and modifications to this Agreement or the Prime Contract. Subject to the terms of this Agreement, the Subcontractor assumes toward the Contractor all the same duties, obligations, and liabilities that the Contractor assumes toward the Owner and Architect/Engineer under the Prime Contract, including but not limited to the requirements set forth in Exhibit X. Notwithstanding anything in this Agreement to the contrary, in no event shall Subcontractor's proposal or bid be a part of this Agreement nor considered a Subcontract Document. This Agreement and the rest of the Subcontract Documents are intended to supplement and complement each other and shall, where possible, be so interpreted. However, if any provision of this Agreement irreconcilably conflicts with a provision of the Subcontract Documents, the provision granting greater rights or remedies to the Contractor or imposing the greater duty, standard or responsibility or obligation on the Subcontractor shall govern. Upon request, the Contractor shall make available to the Subcontractor copies of the Subcontract Documents, although Contractor may redact financial information in the Prime Contract.

3.5 Interpretations Should Subcontractor have questions regarding the interpretation of the drawings, specifications, or any other Subcontract Document relating to the design or technical aspects of the Project, Subcontractor shall make submission of all such questions to the Contractor within three (3) business days of the Subcontractor's recognition of the occurrence of the event forming the basis of the question. Such questions shall be submitted, if necessary, by the Contractor to the Architect/Engineer for its interpretation. If there is no Architect/Engineer for this Project, the Subcontractor will comply with the Contractor's decision.

Article 4. Subcontractor's Responsibilities

4.1 Responsibilities All of the Subcontract Work is the sole and absolute responsibility of the Subcontractor. The Subcontractor agrees to perform the Subcontract Work using its best skill and judgment under the general direction of the Contractor and subject to the final approval of the Contractor, Architect/Engineer and Owner, so the Contractor may fulfill its obligations to the Owner. The Subcontractor shall furnish all labor, materials, equipment, and services, including but not limited to, competent supervision, shop drawings, samples, tools, and scaffolding (unless otherwise specified), as are necessary for the proper performance of the Subcontract Work. In addition to all warranties required by the Prime Contract, Subcontractor warrants that all Subcontract Work, including all materials and equipment, furnished under this Agreement shall be new, unless otherwise specified, of good quality, in conformance with the Subcontract Documents, and free from defective workmanship and materials. The Subcontractor shall be responsible for taking field dimensions, providing tests, obtaining required permits and affidavits, ordering of materials and all other actions as required to perform the Subcontract Work and meet the Project Schedule.

4.2 Errors, Inconsistencies and Omissions The Subcontractor shall make a careful analysis and comparison of the drawings, specifications, other Subcontract Documents and information furnished by the Contractor, Architect/Engineer or Owner relative to the Subcontract Work. The Subcontractor shall notify the Contractor in writing within three (3) business days of the Subcontractor's discovery of any errors, inconsistencies or omissions in the Subcontract Documents. The Contractor shall instruct the Subcontractor as to the measures to be taken when such instructions are received and the Subcontractor shall comply with the Contractor's instructions. Nothing in this Paragraph shall relieve the Subcontractor of responsibility for its own errors, inconsistencies and omissions.

4.3 Site Visit and Due Diligence The Subcontractor accepts responsibility for the inspection of conditions that could affect the Subcontract Work at the Project site, and based on that inspection, acknowledges its responsibility to satisfactorily perform the Subcontract Work without additional expense to the Contractor. The Subcontractor represents it has satisfied itself and has become fully acquainted with the nature and location of the Subcontract Work, the general and local conditions, particularly those bearing upon safety precautions, permits, inspections, code compliance, transportation, disposal, handling and storage of materials, availability of labor, materials, water, electric power, utilities, roads, weather conditions, river stages or similar physical conditions, the conformation and condition of the ground, the soil structure and subsurface conditions, obstructions, actual levels, excavating, filling in, the character of equipment and facilities needed for the prosecution of the Subcontract Work, the probability of new tax levies or increases in taxes, tariffs, duties, costs of materials, wage rates, work rules and all other matters which in any way might affect the Subcontract Work, or its cost or time for performance. The Subcontractor enters into this Agreement on the basis of its own examination, investigation and evaluation of all such matters and not in reliance upon any opinions or representations of the Contractor, the Owner or any of their respective officers, agents or employees. The Subcontractor shall promptly report any discrepancies between its observations and the Subcontract Documents to the Contractor in writing.

4.4 Increased Costs and/or Time

4.4.1 If the Subcontractor fails to perform the reviews, comparisons and obligations required in Paragraphs 4.2 and 4.3, and as otherwise required by the Subcontract Documents, fails to timely notify Contractor of any errors, inconsistencies or omissions it discovers, or performs Subcontract Work knowing it to be, or reasonably should have known it to be, contrary to any Laws, the Subcontractor shall pay the costs and damages to the Contractor that would have been avoided if the Subcontractor had performed those obligations and timely notified the Contractor.

4.4.2 The Subcontractor may assert a claim as provided in Article 6 if the Contractor's clarifications or instructions in response to requests for information are believed to

require additional time or cost.

4.5 Identification of Sub-subcontractors and Suppliers Prior to commencement of the Subcontract Work, the Subcontractor must provide to the Contractor, in writing, the names, addresses, and phone numbers of all sub-subcontractors (referred to as "Sub-subcontractor" or "Sub-subcontractors") and suppliers (referred to as "Supplier" or "Suppliers") that will be supplying labor, materials, services and/or equipment in relation to the Subcontract Work under this Agreement, including the names and contact information for each of their representatives. This same information must be provided prior to adding or changing any Sub-subcontractors or Suppliers during the course of the Project. Failure of the Subcontractor to provide, in writing, any of this information to the Contractor shall be grounds for the Contractor to withhold progress payments from the Subcontractor, which funds shall be released once Subcontractor has cured the failure.

4.6 Communications Unless otherwise provided in the Subcontract Documents and except for emergencies, the Subcontractor shall direct all communications involving the Owner or Architect/Engineer related to the Project to the Contractor.

4.7 Progress Reports The Subcontractor shall furnish periodic progress reports of the Subcontract Work as requested by the Contractor including the progress of delivery of materials or equipment to be provided under this Agreement that may be in the course of preparation or manufacture.

4.8 Deliveries Deliveries to the Project site must be pre-arranged with at least twenty-four (24) hours written notice, unless received by the Subcontractor.

4.9 Meetings Unless otherwise directed in writing by Contractor, the Subcontractor shall attend all kick-off meetings, Project meetings, emergency meetings, close-out meetings and Owner or Architect/Engineer walk-throughs. Failure to provide adequate representation at such meetings as directed by the Contractor shall be a breach of this Agreement.

4.10 Submittals The Subcontractor shall promptly submit for approval to the Contractor all shop drawings, samples, product data, manufacturers' literature and similar submittals required by the Subcontract Documents. The Subcontractor shall prepare and deliver its submittals to the Contractor in a manner consistent with the Project Schedule and in such time and sequence so as not to delay the Contractor or others in the performance of the Work. When its submittals are delivered to the Contractor, the Subcontractor shall advise the Contractor in writing of any deviations in the submittals from the requirements of the Subcontract Documents and shall expressly note such deviations in its submittals. In the absence of any such notifications, the Subcontractor shall warrant that its submittals are in conformance with the Subcontract Documents. The Subcontractor shall be responsible to the Contractor for the adequacy, accuracy, completeness and conformity of its submittals to the Subcontract Documents. The approval of any Subcontractor submittal shall not be deemed to authorize deviations, substitutions or changes in the requirements of the Subcontract Documents unless express written approval is obtained from the Contractor and the Owner authorizing such deviation, substitution or change. In the event the Subcontract Documents do not contain submittal requirements pertaining to the Subcontract Work, the Subcontractor agrees, upon request, to submit in a timely fashion to the Contractor, for approval, any shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required by the Contractor, the Owner or Architect/Engineer.

4.11 Deliverables Subcontractor shall provide Owner and Contractor the same ownership rights or licenses in any submittals, manuals or other deliverables prepared or submitted by Subcontractor for the Project ("Deliverables") as Contractor is required to provide Owner in the Prime Contract. If the Prime Contract is silent with respect to ownership of such Deliverables, Subcontractor grants Contractor an irrevocable, transferable, perpetual license to use the Deliverables prepared or submitted by Subcontractor to construct, start-up, commission, operate, maintain or modify the Project.

4.12 Royalties, Patents and Copyrights The Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems incorporated in the Subcontract Work. The Subcontractor shall defend, indemnify and hold the Contractor and the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of Subcontractor's selection of any patented or copyrighted materials, methods, or systems for the Subcontract Work, including those shown on approved submittals. However, if the Subcontractor has reason to believe that a particular design, process or product required by the Subcontract Documents is an infringement of a patent or copyright, the Subcontractor shall promptly furnish such information to the Contractor; failure to do so shall render Subcontractor liable to the Contractor and the Owner for any loss sustained as a result. If a court prohibits future use of any materials, methods, systems, products or services incorporated in the Subcontract Work because of an infringement, then Subcontractor shall procure the rights to use said materials, methods, systems, products or services for Contractor and Owner from the complaining party, or, subject to Contractor, Owner and Architect/Engineer approval, replace said materials, methods, systems, products or services with non-infringing materials, methods, systems, products or services.

4.13 Design Delegation

4.13.1 If the Subcontract Documents require the Subcontractor to provide design services, including but not limited to engineering calculations, the Subcontractor shall provide the design services necessary to satisfactorily complete the Subcontract Work. Design services provided by the Subcontractor shall be procured from licensed engineers or design professionals (the "Designer") retained by the Subcontractor as permitted by the Law of the place where the Project is located. The Designer's signature and seal shall appear on all drawings, calculations, specifications, certifications, shop drawings and other submittals prepared by the Designer. Shop drawings and other submittals related to the Subcontract Work designed or certified by the Designer, if prepared by others, shall bear the Subcontractor's and the Designer's written approvals when submitted to the Contractor. The Contractor shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed by the Designer. The Subcontractor shall be responsible for coordinating its design with the Project design. The standard of care for all design services performed or furnished by Subcontractor under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.

4.13.2 If the Designer is an independent professional, the design services shall be procured pursuant to a separate agreement between the Subcontractor and the Designer. The Subcontractor-Designer agreement shall not provide for any limitation of liability that is greater or broader than the limitation of liability between Contractor and Owner in the Prime Contract, if any, or exclusion from participation in the multiparty proceedings requirement of Paragraph 12.3. If applicable, the Designer(s) is (are)

The Subcontractor shall notify the Contractor in writing if it intends to change the Designer. The Subcontractor warrants the design furnished by the Designer will be in conformance with the information given and the design concept expressed in the Subcontract Documents.

4.13.3 The Subcontractor shall not be required to provide design services in violation of any Law.

4.13.4 Design Documents The Subcontractor shall provide all design documents, drawings, specifications, estimates, and schedules as required and further detailed in Exhibit A to this Agreement and the Subcontract Documents.

4.13.5 Ownership of Design Documents All documents prepared for or furnished to Contractor by Subcontractor as part of its design services (including but not limited to drawings, specifications and design submittals) are instruments of service. With respect to such instruments of service, Subcontractor shall provide Owner and Contractor the same ownership rights or licenses as Contractor is required to provide Owner in the Prime Contract. If the Prime Contract is silent with respect to ownership of such instruments of service, Subcontractor grants Contractor an irrevocable, transferable, perpetual license to use the drawings, specifications, design submittals and other documents prepared by Subcontractor or its Designer for the Project. This license is for the benefit of the Contractor, Owner and their assigns, and permits Contractor and Owner to retain other design professionals who may use the drawings, specifications and other documents. Subcontractor shall not be liable for injury from Contractor's reuse of the drawings, specifications, design submittals and other documents prepared by Subcontractor or its Designer pursuant to this Section 4.13 for the Project on a separate project in which the Subcontractor is not also involved.

4.14 Coordination The Subcontractor shall cooperate with the Contractor and other subcontractors whose work may affect the Subcontract Work, participate in the preparation of coordinated drawings, and specifically note and promptly advise the Contractor in writing of any such interference by other contractors or subcontractors.

4.15 Tests and Inspections The Subcontractor shall schedule all required tests, approvals and inspections of the Subcontract Work at appropriate times so as not to delay the progress of the Work. The Subcontractor shall give proper written notice to all required parties of such tests, approvals and inspections. The Subcontractor shall bear all expenses associated with tests, inspections and approvals required by the Subcontract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity approved by the Contractor and the Owner. Certificates of testing, approval or inspection required by the Subcontract Documents or the Law shall be secured by the Subcontractor and promptly delivered to the Contractor.

4.16 Cleanup The Subcontractor shall follow the Contractor's cleanup directions, and:

- .1 at all times keep the improvements, premises, adjacent property, roads and sidewalks free from debris and unsafe conditions resulting from the Subcontract Work; and
- .2 clean each work area prior to discontinuing Subcontract Work in the area.

The Subcontractor shall deposit only waste/rubbish from this Project that is non-toxic, non-hazardous and legally permissible for waste/rubbish containers in the waste/rubbish containers on site. Upon completion of the Subcontract Work, the Subcontractor shall remove from the Project and legally dispose of all temporary structures, debris and waste and clean all surfaces, fixtures, equipment and materials pertaining to or affected by the Subcontract Work. If the Subcontractor fails to commence compliance with cleanup duties within twenty-four (24) hours after notification from the Contractor of non-compliance, the Contractor may implement such cleanup measures as it deems necessary without further notice and deduct the cost from any amounts due or to become due the Subcontractor.

4.17 Hazardous Materials The Subcontractor shall at all times comply with all Laws relating to environmental protection, toxic wastes and hazardous substances, and shall be responsible for actions and inactions of Sub-subcontractors, Suppliers, and any other agents or independent contractors of the Subcontractor. The Subcontractor shall also have the same obligations to Contractor that the Contractor has to Owner under the Prime Contract with respect to any toxic wastes or hazardous substances. The Subcontractor shall be deemed to, and shall, have included in the Subcontract Price the containment, removal, disposal or neutralization of all toxic wastes and hazardous substances created, generated or transported to or from the Project site in conjunction with the Subcontract Work. The Subcontractor will be responsible for identifying toxic wastes and hazardous substances generated, released, caused by or resulting from the Subcontract Work and notifying the Contractor of its presence in writing as soon as it is identified. The Subcontractor will dispose of all of the Subcontractor's toxic wastes and hazardous substances, including all containers, by removing the same from the Project site immediately in the manner required by Law. The terms "toxic wastes" and "hazardous substances" shall have the same meaning as defined under federal environmental Laws and regulations. At all times the Subcontractor shall defend, indemnify and hold harmless the Contractor and Owner from any and all expenses, costs, damages, suits, fines, assessments, penalties and/or causes of action, including attorney's fees through all investigations, negotiations, hearings or appeals, relating to or arising out of the Subcontractor's failure to strictly comply with the terms of this Paragraph.

4.18 Protection of Subcontract Work The Subcontractor shall take necessary precautions to properly protect the Subcontract Work and the work of others from damage caused by the Subcontractor's operations. The Subcontractor is responsible for protection of its material, equipment and installation until the final acceptance by the Owner. Should the Subcontractor, its agents, servants or employees cause damage to the Work or property of the Owner, the Contractor or others, the Subcontractor shall promptly remedy such damage to the satisfaction of the Contractor. After giving the Subcontractor three (3) calendar days' notice in writing and Subcontractor's subsequent failure to commence and continue satisfactory correction of the damage, the Contractor may remedy the damage and deduct its costs from any amounts due or to become due the Subcontractor, unless such costs are promptly paid by insurance applicable to damages to property.

4.19 Layout Responsibility and Levels. The Subcontractor shall lay out and be strictly responsible for the accuracy of the Subcontract Work and for any loss or damage to the Contractor or others by reason of the Subcontractor's failure to lay out or perform Subcontract Work correctly. The Subcontractor shall exercise prudence so the actual final conditions and details shall result in alignment of finished surfaces.

4.20 Materials or Equipment Furnished by Others If the Subcontract Work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Subcontractor to exercise proper care in receiving, handling, storing and installing such items, unless otherwise provided in the Subcontract Documents. The Subcontractor shall examine the items provided and report to the Contractor in writing any items it discovers that do not conform to requirements of the Subcontract Documents. The Subcontractor shall not proceed to install nonconforming items without further instructions from the Contractor. Loss or damage due to acts or omissions of the Subcontractor shall be deducted from any amounts due or to become due the Subcontractor.

4.21 Substitutions No substitutions shall be made in the Subcontract Work unless permitted in the Subcontract Documents, and only upon the Subcontractor first receiving all approvals required under the Subcontract Documents for substitutions.

4.22 Systems and Equipment Startup If required by the Subcontract Documents, with the assistance of the Owner's maintenance personnel and the Contractor, the Subcontractor shall direct the check-out and operation of systems and equipment for readiness, and assist in the initial startup and the testing of the Subcontract Work.

4.23 Use of Contractor's Equipment The Subcontractor, its agents, employees, Sub-subcontractors or Suppliers shall use the Contractor's equipment only with the express written permission of the Contractor's designated representative and in accordance with the Contractor's terms and conditions for such use. If the Subcontractor or any of its agents, employees, Sub-subcontractors or Suppliers utilize any of the Contractor's equipment, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Contractor, including equipment which is operated by an employee of the Contractor under the direction of the Subcontractor, the Subcontractor shall defend, indemnify and be liable to the Contractor as provided in Article 9 for any loss or damage (including bodily injury or death) which may arise from such use, except to the extent that such loss or damage is caused by the negligence of the Contractor's employees operating the Contractor's equipment under the direction of the Contractor.

4.24 Compliance with Laws

4.24.1 The Subcontractor agrees to be bound by, and at its own costs comply with, all federal, state and local laws, building codes, rules, regulations, orders and other lawful requirements applicable to the Subcontract Work, including but not limited to OSHA, as amended, and all standards, rules, regulations and orders which have been or shall be adopted or issued thereunder, and all other laws with which the Contractor must comply (collectively referred to as "Law" or "Laws").

4.24.2 Where prescribed by Law pursuant to direct federal contracts or federally-financed or aided contracts, or otherwise required by Law, the Subcontractor agrees the following clauses found in the Subcontract Documents or in the Code of Federal Regulations (CFR) are incorporated in this Agreement and are binding on Subcontractor as if written herein word for word: the clauses entitled "Contract Work Hours and Safety Standards Act-Overtime Compensation"; "Apprentices and Trainees"; "Payrolls and Basic Records"; "Compliance with Copeland Act Requirements"; "Withholding"; "Subcontracts"; "Contract Termination-Department"; "Disputes Concerning Labor Standards"; "Compliance with Davis-Bacon and Related Act Requirements"; and "Certification of Eligibility".

4.24.3 The Subcontractor shall be liable to the Contractor and the Owner for all loss, cost and expense attributable to any acts or omissions by the Subcontractor, its Sub-subcontractors at any tier, Suppliers at any tier, and its and their respective employees and agents resulting from the failure to comply with Laws, including, but not limited to, any fines, penalties or corrective measures.

4.24.4 Subcontractor represents and warrants to Contractor that Subcontractor is in compliance with all immigration and work authorization laws, as applicable, including but not limited to laws prohibiting hiring and continued employment of unauthorized aliens, requiring verification and record keeping with respect to identity and eligibility for employment and prohibiting discrimination on the basis of national origin, United States citizenship, or intending citizen status. Subcontractor agrees to defend, indemnify and hold harmless Contractor from all liability, including liability for interest and penalties, Contractor incurs which results from or is attributable to Subcontractor's failure to comply with any provisions of any applicable Laws, including reimbursing Contractor for any moneys expended by Contractor to participate in or respond to any investigation, suit, civil or criminal immigration matter involving Subcontractor. As it relates to immigration compliance, Subcontractor shall be responsible for completing any and all required documentation in accordance with requirements set forth by the Owner, Contractor or applicable Law.

4.24.5 This Agreement is not intended to nor does it establish a partnership between the parties, nor make one party hereto a principal, a joint or single employer, fiduciary, agent or employee of the other. It does not authorize a party hereto to make or enter into any commitment for or on behalf of the other party. Subcontractor shall be solely responsible for its own employees, including without limitation the hiring, discipline and discharging of such employees, the assignment and scheduling of such employees' work, such employees' wages, benefits and other compensation, the direct supervision and the working conditions of such employees' work, and the specific manner and methods of such employees' work.

4.25 Confidentiality Subcontractor acknowledges and agrees that, during the course of performance of this Agreement, Subcontractor may possess or have access to Contractor's confidential information, including but not limited to any information (including any technical information, experience or data) regarding Contractor's plans, processes, products, costs, equipment, operations or customers (hereinafter referred to as "Contractor Confidential Information"). Subcontractor acknowledges and agrees that it shall not disclose any Contractor Confidential Information to any person or entity, except to the extent necessary to perform the Subcontract Work or fulfill Subcontractor's obligation under this Agreement. In such event, Contractor's Confidential Information shall only be used for purposes of completing the Subcontract Work or fulfilling Subcontractor's obligations under this Agreement, and any person or entity to whom such Contractor Confidential Information is provided shall be bound by the provisions of this Paragraph. Notwithstanding the foregoing, Subcontractor shall not be prevented from disclosing or using any information that Subcontractor can show has become a part of the public domain (other than by acts or omissions of Subcontractor), has been lawfully furnished or made known to Subcontractor by third parties (other than those acting directly or indirectly for Contractor) without restriction as to its use, or was in Subcontractor's possession at the time Subcontractor entered into this Agreement and was not acquired directly or indirectly from Contractor. In addition, to the extent the Prime Contract provides for the confidentiality of any of the Owner's proprietary or otherwise confidential information disclosed in connection with the performance of this Agreement, the Subcontractor is equally bound by the Owner's confidentiality requirements. Subcontractor also agrees not to publish the existence of this Agreement or use its work on this Project in any publicity, advertising or social media, without Contractor's advance, written approval.

4.26 Labor Harmony and Relations

4.26.1 The Subcontractor shall be responsible for all losses and damages as a result of delay or extra work resulting from any labor difficulties caused by the Subcontractor's workforce, including but not limited to strikes, picketing or other union or labor-related activity impacting the Subcontract Work or the work of others.

4.26.2 If the Subcontractor becomes involved in any labor difficulties which materially impede or delay Subcontract Work, the Contractor may, without prejudice to any other right or remedy, terminate this Agreement with the Subcontractor for default, giving the Subcontractor twenty-four (24) hours written notice of its intention to do so, and may thereupon take control of the Subcontract Work covered by this Agreement and may take possession of all materials and equipment thereon, and complete the Subcontract Work, in which case the Subcontractor shall not be entitled to receive any further payments until the Subcontract Work is completed. In such event, no sum shall be deemed due or to become due except as is provided in Paragraph 11.1.3.

4.26.3 Additional conditions, obligations and requirements relative to labor relations on the Project are attached as Exhibit E.

4.27 Permits, Fees, Licenses and Taxes The Subcontractor shall give timely notices to authorities pertaining to the Subcontract Work, and shall be responsible for all permits, fees, licenses, assessments, inspections, testing and taxes necessary to complete the Subcontract Work in accordance with the Subcontract Documents. The Subcontract Price includes all applicable sales, excise, transportation, unemployment compensation, social security, and any other taxes or tariffs presently existing or

subsequently imposed and levied, and the Subcontractor agrees to pay all of the above and to conform to all Laws in connection with such taxes. The Subcontractor further agrees to withhold taxes from the wages and salaries of all employees of the Subcontractor and pay the same in accordance with the Laws and regulations pertaining thereto. The Subcontract Price includes federal, state and municipal taxes now levied or in force or hereafter imposed on any and all tangible personal property sold or transferred to the Contractor under this Agreement and the Subcontractor agrees to pay such tax or taxes on such property, the cost of which is included in the Subcontract Price. Subcontractor's sole remedy and recovery for additional costs resulting from taxes or tariffs enacted after the date of this Agreement shall be limited to the proportional amounts Contractor recovers from Owner for such costs.

4.28 Assignment of Subcontract Work The Subcontractor shall not assign the whole or any part of this Agreement or the Subcontract Work without prior written approval of the Contractor.

4.29 Use of Artificial Intelligence Subcontractor shall promptly notify Contractor in writing if Subcontractor intends to use generative artificial intelligence ("Generative AI") to perform any portion of the Subcontract Work. To the extent Subcontractor uses Generative AI in connection with the Subcontract Work, Subcontractor represents and warrants that it will be used solely as a tool to assist human personnel and not as a substitute for appropriate professional judgment or human oversight. Subcontractor further warrants that all outputs generated through the use of Generative AI will be reviewed, verified, and approved by qualified individuals to ensure compliance with the requirements of the Subcontract Documents and all applicable Laws, regulations, and industry standards. Subcontractor's use of Generative AI or other artificial intelligence tools shall not relieve Subcontractor of any of its obligations under this Agreement. If the terms of the Prime Contract prohibit Generative AI, those terms shall control.

Article 5. Contractor's Responsibilities

5.1 Information and Services Provided by Contractor Upon Subcontractor's written request, and only to the extent the Contractor has obtained any information and services identified below from the Owner that may impact the Subcontract Work, the Contractor shall provide same to the Subcontractor. The Subcontractor shall be entitled to rely on such information and services to the same extent as the Contractor is entitled to rely on such information and services under the Prime Contract. However, the Contractor does not warrant the accuracy or completeness of such information or services.

- .1 All necessary information describing the physical characteristics of the Project site, including surveys, site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations.
- .2 Necessary approvals, site plan review, rezoning easements and assessments, necessary permits, fees and charges required for the construction, use, occupancy or renovations of permanent structures, including legal and other services required therefore.
- .3 Such information as the Contractor has obtained relative to the Owner's financial ability to pay for the Work.
- .4 Contract Documents issued by the Owner and the Architect/Engineer.

Article 6. Project Time and Claims

6.1 Project Schedule Development The Contractor frequently uses Critical Path Method scheduling to plan the Work. The Contractor requires input from those responsible for the work to develop and update the Project Schedule throughout the entire Project. Prior to the Subcontractor starting Subcontract Work and as requested by the Contractor, the Subcontractor shall provide detailed information regarding how the Subcontractor plans to perform the Subcontract Work. This information includes but is not limited to activities, durations, relationships, costs, crew sizing, labor hours, equipment and/or material quantities associated with each schedule activity. The Subcontractor has reviewed the most updated Project Schedule as of the date of this Agreement and incorporated all costs associated therewith in its Subcontract Price. The Subcontractor shall continuously monitor the Project Schedule, including any revisions thereto, and other work on the Project, and shall execute the Subcontract Work in accordance with the requirements of the Project Schedule, as revised and updated by Contractor.

6.2 Project Schedule Updates Updated Project Schedules will be made available to the Subcontractor throughout the life of the Project. The Subcontractor shall provide detailed information regarding updates to the Subcontract Work and as requested by the Contractor. This information includes but is not limited to updated actual start dates, actual finish dates, any revised planned start dates and planned finish dates, installed quantities/percent complete information, and changes to activity scope, sequence, duration or resources. The Subcontractor will be responsible to review each Project Schedule and provide written notification of any impacts to the Subcontract Work in accordance with Section 6.6. Failure to provide written notification in accordance with Section 6.6 shall be deemed Subcontractor's acceptance of the updated Project Schedule with no impacts, and Subcontractor's waiver of its right to make a claim relating to such Project Schedule update.

6.3 Lean Practices The Contractor frequently utilizes lean practices to plan, coordinate and execute the Work and requires the Subcontractor to participate. The Subcontractor shall reasonably share information and cooperatively collaborate in the lean practice efforts as required by the Contractor. Subcontractor shall designate a representative satisfactory to the Contractor who has authority to commit resources on behalf of the Subcontractor. The representative shall attend and participate in meetings as required by the Contractor. Planning and coordination tools utilized on the Project do not constitute the Project Schedule and any representation/information contained in any planning or coordination tools utilized on the Project do not modify the Project Schedule, change any contractual requirements or relieve Subcontractor from following the terms of this Agreement.

6.4 Time is of the Essence Time is of the essence with respect to Subcontractor's prosecution of the Subcontract Work so the entire Project may be completed in accordance with the Subcontract Documents and the Project Schedule.

6.5 Priority of Work The Subcontractor shall commence the Subcontract Work promptly within five (5) calendar days after the date of the notice to proceed issued by the Contractor. The Subcontractor shall commence, continue and complete its performance of the Subcontract Work in a prompt and diligent manner in such time, order, and manner as directed by the Contractor and in accordance with the Project Schedule without hindering the work of the Contractor or any other subcontractor, and so as to ensure completion as directed by the Contractor. Whenever, in the Contractor's opinion, the Subcontractor fails to maintain its part of the Project Schedule, the Contractor may direct the Subcontractor to take all steps, such as overtime or shift work, until the Subcontract Work is in accordance with such Project Schedule. Such steps shall be without additional cost to or compensation from the Contractor. Upon Contractor's request, Subcontractor shall provide information and evidence of material orders, lead times, shipping dates and other information reasonably requested by Contractor pertaining to the Subcontract Work.

6.6 Delays, Extensions of Time and Claims

6.6.1 Owner-Caused Delay Subject to Paragraph 6.6.2, if the commencement or progress of the Subcontract Work is delayed by Owner, Architect/Engineer, or anyone for whom Owner is responsible, without the fault or responsibility of the Subcontractor, the time for the Subcontract Work shall be extended by Subcontract Change Order to the extent obtained by the Contractor from the Owner pursuant to the Prime Contract, and the Project Schedule shall be revised accordingly.

6.6.2 Claims Relating To Owner The Subcontractor agrees to make all claims for additional compensation, additional time, or any other relief for which the Owner is or may be liable in the manner and within the earlier of three (3) business days prior to the time limits provided in the Subcontract Documents for like claims by the Contractor upon the Owner, or ten (10) business days after the occurrence of the event giving rise to the claim. The Subcontractor also agrees to make such claims in sufficient time for the Contractor to initiate such claims against the Owner in accordance with the Subcontract Documents. Failure to timely submit such claims shall waive Subcontractor's right to any relief resulting therefrom. Subcontractor's proportionate share of recovery that Contractor receives from the Owner shall be Subcontractor's sole and exclusive remedy for such claims.

6.6.3 Claims Relating to Contractor The Subcontractor shall give the Contractor written notice of all claims for additional compensation, additional time, or any other relief relating to the Subcontract Work or arising under this Agreement and not included in Paragraph 6.6.2 within ten (10) business days of the occurrence of the event giving rise to the claim; otherwise, such claim shall be deemed waived. All unresolved claims, disputes and other matters in question between the Contractor and the Subcontractor not relating to claims included in Paragraph 6.6.2 shall be resolved in the manner provided in Article 12.

6.6.4 Written Notices. All notices required in this Section 6.6 shall include a detailed factual narrative, a detailed analysis showing entitlement and a detailed analysis of the proposed change to the Subcontract Price, Project Schedule and/or other relief sought by the Subcontractor.

6.6.5 Strict Compliance Required Failure to timely and strictly comply with the notice requirements set forth in this Article shall be deemed a waiver of Subcontractor's right to pursue such claim and a waiver of any relief resulting therefrom, including but not limited to additional time or compensation. The acceptance and consideration of any claim out of time by the Contractor shall not create any precedent nor "course of dealing" between the Contractor and the Subcontractor, nor shall it waive the Contractor's right to insist on strict adherence by the Subcontractor to the claims procedures set forth in the Subcontract Documents.

6.6.6 Subcontractor Delays Should the progress of the Subcontract Work be delayed, obstructed or interfered with through any fault, action or failure to act by the Subcontractor or any of its officers, agents, employees, Sub-subcontractors or Suppliers so as to cause any additional cost, expense, liability or damage to the Contractor or the Owner, including legal fees or expenses incurred in defending claims arising from such delay or seeking reimbursement and indemnity from the Subcontractor and its surety hereunder, the Subcontractor agrees to compensate and indemnify the Contractor and the Owner against all such costs, expenses, damages and liabilities. In addition, the Subcontractor, at the Contractor's direction and at the Subcontractor's own cost and expense, shall work such overtime as may be necessary to make up for all time lost in the completion of the Subcontract Work and in the completion of the Project due to such delay. If the Subcontractor fails to make up for the time lost by reason of such delay, the Contractor has the right to use other subcontractors or suppliers and to take whatever other action the Contractor deems necessary to avoid delay in the completion of the Subcontract Work and the Project, the cost of which shall be borne by the Subcontractor. In the event Subcontractor delays timely performance of the Subcontract Work or the completion of the Project, Subcontractor shall be liable to the Contractor for liquidated damages, not as a penalty, to the same extent the Contractor shall be liable to the Owner under the Subcontract Documents, and the Contractor shall have no obligation to prove actual damages. Liquidated damages, when assessed, shall not exceed the Subcontractor's proportionate share of the responsibility as determined by Contractor pursuant to a generally accepted critical path method schedule analysis for such liquidated damages. In addition to liability for its proportionate share of liquidated damages, Subcontractor shall also be liable to Contractor for, and shall indemnify and hold Contractor harmless from and against, all other damages caused by Subcontractor's delay, including but not limited to other delay damages for which Contractor may be liable to Owner, delay damages and attorneys' fees incurred by Contractor and delay damages incurred by other subcontractors or suppliers. This Paragraph shall survive any abandonment by Subcontractor or termination of this Agreement. The Contractor may offset any such damages against the remaining balance due to the Subcontractor on the Subcontract Price, if any. The foregoing remedies are in addition to any remedies set forth in Article 11.

6.7 Mutual Waiver of Consequential Damages The Contractor and the Subcontractor waive claims against each other for consequential damages arising out of or relating to this Agreement, including damages for principal office expenses and the compensation of personnel stationed there; for loss of financing, business and reputation; and for loss of profit. This mutual waiver applies to consequential damages due to termination by the Contractor or the Owner in accordance with this Agreement or the Prime Contract. Notwithstanding the foregoing, the following damages shall not be deemed "consequential damages" for the purposes of this waiver, and Contractor does not waive its right to recover such damages from Subcontractor: (1) liquidated damages and other damages for which Subcontractor is liable pursuant to Section 6.6.6, (2) any damages for which Contractor is liable to the Owner, including those arising under Paragraphs 9.1 and 9.1.1 recoverable by the Owner against Contractor under the Prime Contract and (3) any damages recoverable from Subcontractor's insurance.

Article 7. Subcontract Price and Payment

7.1 The Contractor agrees to pay to the Subcontractor for the satisfactory completion of Subcontract Work the lump sum amount of

("Subcontract Price") which sum includes Performance and Payment Bonds per Exhibit G and is Tax Exempt in accordance with attached Exhibit I and is subject to additions or deductions as provided in Article 8. Any applicable alternates or unit prices are set forth in Exhibit A to this Agreement. The Subcontract Price includes all applicable sales, use, excise, transportation taxes, and any other taxes, tariffs and duties that have been or will be imposed and/or levied on the Subcontract Work (collectively, "Taxes") and the Subcontractor agrees to pay all Taxes and to conform to all applicable municipal, state and federal laws regarding collection, reporting and payment of Taxes not including those taxes provided for in Tax Exempt Certificate Exhibit I.

7.2 Schedule of Values Within ten days after execution of this Agreement, and as a condition to payment, the Subcontractor shall provide a schedule of values satisfactory to the Contractor. If cost loading is required or utilized on the Project, the Subcontractor shall align its schedule of values with its schedule activities reflecting the Work Breakdown Structure (WBS) or similar grouping of related activities. Failure to provide the schedule of values shall be grounds for the Contractor to withhold payment from the Subcontractor.

7.3 Progress Payments

7.3.1 Application The Subcontractor's progress payment application for Subcontract Work performed in the preceding payment period shall be submitted for approval of the Contractor in a form acceptable to Contractor and Owner and in accordance with the schedule of values submitted pursuant to Paragraph 7.2, as well as Paragraphs

7.3.2, 7.3.3, 7.3.4, and 7.3.5. The Subcontractor's application for payment shall be itemized and supported by substantiating data as required by the Contractor. Subcontractor shall submit a Sworn Statement in the format attached as Exhibit J, or such other form as may be requested by Owner, and shall furnish, in the form and substance requested by Contractor, all required reports and forms, lien waivers, and affidavits certifying that payment has been made for all labor, materials and services furnished in the performance of this Agreement as Contractor may require. Any payment under this Agreement is conditioned on Subcontractor's compliance with the conditions stated herein. If the Subcontractor is obligated to provide design services pursuant to Section 4.13, the Subcontractor's applications for payment shall show the Designer's fee and expenses as a separate cost item. The Subcontractor's application shall be notarized, if required, and, if allowed under the Subcontract Documents, may include properly authorized Work Change Directives. Provided the Subcontractor has complied with the requirements of this Paragraph 7.3.1, the Contractor shall incorporate the approved amount of the Subcontractor's progress payment application into the Contractor's payment application to the Owner for the same period and submit it to the Owner in a timely fashion.

7.3.2 Retainage The rate of retainage shall be equal to the percentage retained from the Contractor's payment by the Owner for the Subcontract Work.

7.3.3 Time of Application Unless otherwise provided for in the Subcontract Documents or directed by the Contractor, the Subcontractor shall submit progress payment applications to the Contractor no later than the **25th** day of each month for Subcontract Work performed up to the end of that month indicating the Subcontract Work completed and, to the extent allowed under Paragraph 7.3.5, materials suitably stored during the payment period.

7.3.4 Payment Management System. Provided Exhibit P is attached to and incorporated in this Agreement, Subcontractor acknowledges and agrees that Contractor will utilize an electronic payment management system (the "System"), to manage the payment application and payment processes during the Project, as further described in Exhibit P to this Agreement. All payment applications and all supporting documents required by this Agreement as a condition of payment to Subcontractor shall be in electronic format and shall be submitted to Contractor using the System.

7.3.5 Stored Materials Unless otherwise provided in the Subcontract Documents, and if approved in advance by the Owner, applications for payment may include materials and equipment not incorporated in the Subcontract Work but delivered and suitably stored at the site or at some other location agreed upon in writing. Approval of payment applications for such stored items on or off the site shall be conditioned upon submission by the Subcontractor of bills of sale and applicable insurance or such other procedures satisfactory to the Owner and the Contractor to establish the Owner's title to such materials and equipment, or otherwise to protect the Owner's and the Contractor's interest, including transportation to the site.

7.3.6 Time of Payments Progress payments to the Subcontractor for satisfactory performance of the Subcontract Work shall be made, to the extent received from the Owner, no later than ten (10) calendar days after receipt by the Contractor of payment from the Owner for the Subcontract Work, or such shorter period of time as required by Law. The Contractor's receipt of payment from the Owner shall be a condition precedent to the Contractor's obligation to remit payment to the Subcontractor, and payment for the Subcontract Work will be made to the Subcontractor by the Contractor if and only to the extent such payment is received by the Contractor from the Owner. The Subcontractor hereby acknowledges that it relies on its own evaluation of the credit worthiness of the Owner, and not the credit worthiness of the Contractor, with respect to payment for the Subcontract Work, and expressly assumes the risk of non-payment by the Owner thereof, for any reason including, without limitation, insolvency of the Owner. No partial or progress payment, or certificate therefore, shall constitute acceptance or approval by the Contractor of the Subcontract Work or material for which the partial payment is made. No partial or progress payment shall constitute a waiver by the Contractor of any right to require fulfillment of all the terms of this Agreement.

7.3.7 Deductions The Contractor shall have the right, but is not required, to set off against any amounts due or to become due to the Subcontractor any sum or sums owed by the Subcontractor to the Contractor under this Agreement or any other agreement between Contractor and Subcontractor. In the event of any breach by the Subcontractor of any provision or obligation of this Agreement, or in the event of or the assertion by other parties of any claim or lien against the Owner, the Contractor, the Contractor's Surety, the public improvement fund or the premises upon which the Subcontract Work was performed, which claim or lien arises out of the Subcontractor's performance of this Agreement, the Contractor shall have the right, but is not required, to retain out of any payments due or to become due to the Subcontractor an amount sufficient to completely protect the Contractor from any and all loss, damage or expense therefrom, until the claim or lien has been resolved or removed by the Subcontractor to the satisfaction of the Contractor.

7.3.7.1 If any claim or lien is made or filed with or against the Contractor, the Contractor's surety (if any), the Owner, the Project, or the Project funds by any person, entity, union or fund by any sub-subcontractor or supplier, of any tier, performing under Subcontractor, Subcontractor shall defend and indemnify Contractor, Contractor's surety, and Owner from and against any and all losses, damages, lawsuits and costs, including legal fees and expenses, arising from any such claim or lien to the extent Subcontractor has received payment by Contractor when due under this Agreement. To the extent any such lien is filed, Subcontractor shall also remove the lien or secure Contractor, Contractor's Surety and Owner against loss on account thereof with an adequate surety bond, satisfactory in the discretionary judgment of the Contractor and the Owner, in the amount required by any applicable state statute, or if no statute is applicable, then in an amount equal to 150% of the lien or payment claimed, within fourteen (14) calendar days. If the Subcontractor fails to so remove or secure such liens, the Contractor may remove the liens at the Subcontractor's expense, including bond costs and attorney's fees. This Paragraph shall be applicable even in the event the Subcontractor has posted a full payment and performance bond.

7.3.7.2 If the Subcontractor or any sub-subcontractor or supplier, of any tier, performing under Subcontractor causes damage to the Subcontract Work or any other work on the Project, Subcontractor shall defend and indemnify Contractor and Owner from and against any and all losses, damages, lawsuits and costs, including legal fees and expenses, arising from any such claim or damage.

7.3.7.3 Contractor shall also have the right to retain from any payment then due or thereafter due to Subcontractor an amount which the Contractor deems sufficient to satisfy, discharge and/or defend against any such claim, lien or damage, and make good any such nonpayment, failure, damage or default.

7.3.8 Withholding Notwithstanding any other provision, the Contractor may additionally withhold any payment or payments due or to become due to the Subcontractor if and to the extent the Contractor deems it necessary or desirable to protect itself against possible loss or damages for any reason including, but not limited to:

- .1 defective Subcontract Work not remedied to the satisfaction of the Contractor;
- .2 third-party claims or reasonable evidence indicating probable third-party claims arising from the acts or omissions of Subcontractor or any person or entity for whose acts or omissions Subcontractor is responsible;
- .3 failure or alleged failure of the Subcontractor to make payments to Sub-subcontractors or Suppliers as required;

- .4 inability, or reasonable doubt as to the ability, of the Subcontractor to complete the Subcontract Work within the required time or for the unpaid balance of the Subcontract Price;
- .5 damage to the Contractor or a separate subcontractor arising from the acts or omissions of Subcontractor or any person or entity for whose acts or omissions Subcontractor is responsible;
- .6 unsatisfactory prosecution of the Subcontract Work by the Subcontractor;
- .7 the Subcontractor's failure to provide the Contractor with insurance certificates in compliance with Exhibit B;
- .8 the Subcontractor's failure to provide the Contractor with performance and payment bonds if required by the Subcontract Documents;
- .9 the Subcontractor's failure to provide the Contractor with a written list of Sub-subcontractors and Suppliers as required by Paragraph 4.5 of this Agreement;
- .10 the Subcontractor's failure to provide the Contractor with weekly-certified payroll records if required by Subcontract Documents;
- .11 the Subcontractor's failure to provide a schedule of values pursuant to Paragraph 7.2 of this Agreement; and
- .12 payment of the fee as provided in Paragraph 7.5 of this Agreement.

The Contractor shall give the Subcontractor prompt notice following Contractor's discovery of reason to withhold any payments from Subcontractor.

7.3.9 Proper Application of Progress Payments Subcontractor agrees to promptly pay all Sub-subcontractors, workers, vendors and Suppliers of Subcontractor. Payment received by the Subcontractor shall be used to satisfy the indebtedness owed by the Subcontractor to its Sub-subcontractors, Suppliers, laborers or materialmen furnishing labor, equipment or materials for use in performing the Subcontract Work on this Project before it is used in any other manner. As a prerequisite for each payment, the Subcontractor shall provide, in a form satisfactory to the Owner and the Contractor, partial lien and claim waivers and affidavits from the Subcontractor, Sub-subcontractors and Suppliers for the completed Subcontract Work. Such waivers and affidavits may be made conditional upon payment. At any time, Contractor may demand additional written evidence of Subcontractor's capability to perform and of such payments to such persons by Subcontractor.

7.3.10 Payment Utilization In the event it appears to the Contractor that the labor, material and other bills incurred in the performance of Subcontract Work are not being currently paid, the Contractor may, but is not required to, take such steps as it deems necessary to ensure the money paid with any progress payment will be utilized to pay such bills, with such steps including, but not limited to, payment by checks made jointly payable to the Subcontractor and the Subcontractor's subcontractors and/or materialmen, or if Subcontractor fails to cooperate in effecting such joint payments, by direct payment to such parties and withholding from progress payments an amount to protect the Contractor from any and all potential or actual claims, losses, or damages, including reasonable attorneys' fees arising out of the same.

7.3.11 Payment Use Verification The Contractor shall have the right at all times to directly contact the Subcontractor's Sub-subcontractors and Suppliers to ensure the same are being paid promptly by the Subcontractor for the labor or materials furnished for use in performing the Subcontract Work.

7.4 Final Payment

7.4.1 Application Upon acceptance of the Subcontract Work by the Owner and the Contractor and receipt from the Subcontractor of evidence of fulfillment of the Subcontractor's obligations in accordance with the Subcontract Documents and Paragraph 7.4.2, the Contractor shall incorporate the approved amount of the Subcontractor's application for final payment into the Contractor's payment application to the Owner.

7.4.2 Requirements Before the Contractor shall be required to submit the Subcontractor's application for final payment to the Owner, the Subcontractor shall submit to the Contractor:

- .1 an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Subcontract Work for which the Owner, the Owner's property or the Contractor or the Contractor's surety might in any way be liable, have been paid or otherwise satisfied;
- .2 a sworn statement in the form of Exhibit J, or such other form as may be requested by Owner;
- .3 consent of Subcontractor's surety, if any, to final payment;
- .4 satisfaction of required closeout procedures;
- .5 at Contractor's option, a certification that insurance required by the Subcontract Documents will remain in effect beyond final payment and will not be canceled or allowed to expire without at least thirty (30) calendar days written notice to the Contractor;
- .6 other data, if required by the Contractor or the Owner, such as receipts, releases, and waivers of liens to the extent and in such form as may be designated by the Contractor or the Owner;
- .7 written warranties and equipment manuals; and
- .8 as-built drawings if required by the Subcontract Documents.

7.4.3 Time of Payment Provided Subcontractor has satisfied all requirements set forth in Paragraph 7.4.2, final payment of the balance due of the Subcontract Price

shall be made to the Subcontractor:

- .1 upon complete and full satisfaction of all claims, demands, disputes and obligations of the Subcontractor arising out of or related to this Agreement, including those between Contractor and the Subcontractor and between the Subcontractor and any third party; and
- .2 within thirty (30) calendar days after receipt by the Contractor of final payment from the Owner for such Subcontract Work, unless a shorter time period is required by Law. Contractor's receipt of final payment from the Owner for the Subcontract Work is a condition precedent to Contractor's obligation to remit final payment to Subcontractor.

7.4.3 Waiver of Claims Final payment shall constitute a waiver of all claims by the Subcontractor relating to the Subcontract Work, except those claims specifically reserved by Subcontractor in writing within the time required by this Agreement and, if this Agreement does not set forth a specific time for providing written notice, before final payment is made. Contractor shall make payment of such amounts not otherwise in dispute. Contractor's making of such final payment shall in no way relieve the Subcontractor of liability for the obligations assumed under Paragraphs 10.2.1 and 10.2.2, or for faulty or defective Subcontract Work discovered after final payment. Payment to the Subcontractor does not constitute or imply acceptance of any portion of the Subcontract Work.

7.5 Subcontractor's Assignment of Payments The Subcontractor shall not assign any money due or to become due under this Agreement, without the prior written consent of the Contractor. In the event the Subcontractor assigns, sells, encumbers or otherwise transfers its right to any money due or to become due under this Agreement to a third-party as security for any loan, financing or other indebtedness ("Assignment of Receivables"), such Assignment of Receivables shall not be effective against the Contractor until the Contractor receives written notice and proof of assignment as required by Law. If the Contractor makes any payments to an assignee/transferee or jointly to Subcontractor and an assignee/transferee pursuant to an Assignment of Receivables, Contractor shall be paid a fee equal to five percent (5%), up to a total cumulative fee of \$5,000, of each payment Contractor makes to any such assignee/transferee or jointly to Subcontractor and such assignee/transferee, which fee shall be deducted by Contractor from each such payment. The Subcontractor agrees that any Assignment of Receivables shall not relieve the Subcontractor of any of its agreements, duties, responsibilities or obligations under this Agreement and the Subcontract Documents and shall not create a contractual relationship or a third-party beneficiary relationship of any kind between the Contractor and such assignee or transferee. The Subcontractor shall defend, indemnify and hold harmless the Contractor, the Contractor's surety (if any), the Owner and their agents, consultants, members and employees from and against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees, expert's fees, consultant's fees, and related costs and expenses arising from (1) Subcontractor's failure to pay its Sub-subcontractors and Suppliers due to an Assignment of Receivables, and/or (2) any payment by Contractor to any assignee/transferee of Subcontractor pursuant to an Assignment of Receivables.

7.6 Sums Are Tentatively Earned All sums tentatively earned by Subcontractor by the partial or complete performance of the Subcontract Work and any balance of unearned Subcontract Price, if and when paid by Owner to the Contractor, shall constitute a fund for the purpose of (a) full and timely completion of the Subcontract Work and fulfillment of all Subcontract requirements, (b) payment of any backcharges or claims due Contractor from Subcontractor based upon this Agreement or otherwise, and (c) payment to the Sub-subcontractors, Suppliers, workers, design professionals, material and service suppliers of Subcontractor, and others who have valid and enforceable mechanic's lien claims or valid and enforceable bond claims (if the Project is bonded). Such tentative earnings shall not be due or payable to Subcontractor or anyone else claiming in Subcontractor's place and stead, including but not limited to a trustee in bankruptcy, receiver or assignee/transferee, until and unless such Subcontract Work is fully and satisfactorily completed, all Subcontract requirements are fulfilled, Contractor and such persons are fully paid and satisfied and the provisions of Paragraph 7.4.2 are fully satisfied. Subcontractor declares all funds received by Subcontractor from Contractor hereunder shall be deemed to be held by Subcontractor in trust for the benefit of those furnishing work, labor, materials, services, equipment, etc., to or through Subcontractor for the Subcontract Work.

7.7 Interest No interest shall accrue or be due the Subcontractor on any funds or payments described in Article 7, including reserves, paid within the time periods set forth herein, nor shall interest accrue or be due the Subcontractor for any funds withheld to protect the interests of the Contractor or the Owner as set forth in this Agreement.

Article 8. Changes in Subcontract Work

8.1 Subcontract Changes The Contractor and the Subcontractor agree the Contractor may add to, deduct from, revise or otherwise modify the Subcontract Work covered by this Agreement, and any changes so made shall be by a written Change Order or Work Change Directive, setting forth in detail the changes involved. Contractor shall not make changes in Subcontract Work, whether additions, deletions or other revisions in any manner except by written Change Order or Work Change Directive. Changes in the Subcontract Work shall be performed in accordance with applicable provisions of the Subcontract Documents.

8.1.1 A Change Order is a written instrument prepared by the Contractor and signed by the Subcontractor stating their mutual agreement upon the change in the Subcontract Work. Any cost and schedule adjustments set forth in a Change Order shall be a full accord and satisfaction for all cumulative impacts of the underlying change, and execution of a Change Order waives Subcontractor's rights to seek any additional time or costs associated with the work set forth in such Change Order, including but not limited to any delays, inefficiencies, lost productivity, resequencing of work, trade stacking or cumulative impact.

8.1.2 A Work Change Directive is a written directive that instructs Subcontractor to take some immediate action in connection with the Subcontract Work. Work Change Directives are issued when there is insufficient time to agree upon a Change Order, or the parties have been unable to agree upon the value or other terms of the Change Order. Subcontractor shall immediately proceed so as not to delay the progress of the Work and in accordance with the terms of the Work Change Directive. Any impact of a Work Change Directive on the Subcontract Price or Project Schedule shall be adjusted by a Change Order.

8.1.3 If the Contractor requests a proposal of cost for a change, the Subcontractor shall promptly comply with such request. Subcontractor shall not implement the change or incur any costs until a Change Order is fully executed or a Work Change Directive is issued.

8.2 The Subcontractor shall not be entitled to receive additional compensation for extra work or materials or changes of any kind except to the extent the same was ordered by the Contractor or any of its authorized representatives in writing through a Change Order or Work Change Directive. The Subcontractor shall be responsible for any costs incurred by the Contractor for changes of any kind made by the Subcontractor that increase the cost of the Work for either the Contractor or other subcontractors when the Subcontractor proceeds with such changes without a Change Order or Work Change Directive.

8.3 Unknown Conditions If in the performance of the Subcontract Work the Subcontractor finds latent, concealed or subsurface physical conditions which differ materially from those indicated in the Subcontract Documents or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to

exist, and not generally recognized as inherent in the kind of Subcontract Work provided for in this Agreement, the Subcontractor shall notify the Contractor before those conditions are disturbed, and subject to Paragraph 6.6.2, no later than three (3) calendar days after its observance of the conditions. The adjustment which the Subcontractor may receive in Subcontract Price and/or in the Project Schedule shall be limited to the adjustment the Contractor receives from the Owner on behalf of the Subcontractor (exclusive of the Contractor's markup).

8.4 Determination by Owner or Architect/Engineer Notwithstanding any other provision, Subcontractor shall be bound by all determinations by the Owner or Architect/Engineer as to additional compensation or time extensions, and Subcontractor's relief shall be limited to the additional compensation or time extension, if any, granted by Owner or Architect/Engineer to Contractor, unless the Contractor expressly agrees, in a written Change Order, to pay such additional compensation or to grant such extension.

8.5 Adjustments in the Subcontract Price If a Change Order requires an adjustment in the Subcontract Price, and is not a change covered by Article 8.4, the adjustment shall be established by one of the following methods:

- .1 mutual acceptance of an itemized lump sum, or
- .2 unit prices as indicated in the Subcontract Documents or as subsequently agreed to by the parties; or
- .3 costs determined in a manner acceptable to the parties and a mutually-acceptable fixed or percentage fee; or
- .4 another method provided in the Subcontract Documents.

If the Parties are unable to agree on the dispositions of a change order request or Work Change Directive, Contractor will either (i) issue a Notice denying Subcontractor's request or (ii) issue a unilateral Change Order setting forth the Contractor's final determination regarding the adjustments, subject to Subcontractor's right to pursue dispute resolution.

8.6 Substantiation of Adjustment If the Subcontractor does not respond promptly or disputes the method of adjustment to the Subcontract Price, the method and the adjustment shall be determined by the Contractor on the basis of reasonable expenditures and savings of those performing the Subcontract Work attributable to the change, including, in the case of an increase in the Subcontract Price, an allowance for overhead and profit of the percentage provided in Paragraph 8.7. The Subcontractor shall maintain for the Contractor's review and approval an appropriately itemized and substantiated accounting of the following items attributable to the Change Order:

- .1 direct labor costs, including Social Security, health, welfare, retirement and other fringe benefits as normally required, state workers' compensation insurance, and state occupational disease insurance;
- .2 costs of materials, supplies and equipment, whether incorporated in the Subcontract Work or consumed, including transportation costs;
- .3 costs of renting machinery and equipment other than hand tools;
- .4 costs of bond and insurance premiums, permit fees and taxes attributable to the change; and
- .5 costs of additional supervision and field office personnel services necessitated by the change.

8.7 Adjustments shall be based on the net change in the Subcontractor's reasonable cost of performing the changed Subcontract Work plus, in case of a net increase in cost, a sum for overhead and profit as provided in the Prime Contract, but no greater than fifteen percent (15%).

8.8 Emergencies In an emergency affecting the safety of persons and/or property, the Subcontractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Subcontract Price and/or the Project Schedule on account of emergency work, provided such emergency work is not the result of Subcontractor's fault, negligence or responsibility, shall be determined as provided in this Article.

8.9 No notice to the Subcontractor's surety shall be required for any such change, addition, or omission. The Subcontractor shall promptly arrange for an increase in the penal sum of any surety bond due to additions to the Subcontract Work, unless such increase is waived by the Contractor in writing.

8.10 Incidental Changes The Contractor may direct the Subcontractor to perform incidental changes in the Subcontract Work which do not involve adjustments in the Subcontract Price or Project Schedule. Incidental changes shall be consistent with the scope and intent of the Subcontract Documents. The Contractor shall initiate an incidental change in the Subcontract Work by issuing a written order to the Subcontractor. Such written order shall be carried out promptly and is binding on the parties.

Article 9. Indemnity and Insurance

9.1 Indemnity To the fullest extent permitted by Law, the Subcontractor shall defend, indemnify and hold harmless the Contractor, Owner and any other entities Contractor is required to indemnify in the Prime Contract to the same extent Contractor is obligated to defend, indemnify and hold harmless the Owner pursuant to the Prime Contract.

9.1.1 Notwithstanding any indemnification obligation of the Subcontractor to the contrary set forth in Paragraph 9.1, Subcontractor shall also defend, indemnify and hold harmless the Contractor, the Contractor's surety (if any), the Owner and all of their agents, consultants, members and employees (the "Indemnitees") from and against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees, expert's fees, consultant's fees, and related costs and expenses for bodily injury and property damage that may arise from the performance of the Subcontract Work to the extent of the negligent acts or omissions by, or the fault of, the Subcontractor, Sub-subcontractors of any tier, Suppliers or anyone employed directly or indirectly by any of them or by anyone for whose acts or omissions any of them may be liable. The Subcontractor agrees to purchase and maintain contractual liability insurance covering its obligations in this Article 9. These obligations shall not be interpreted to reduce or negate any other rights or obligations of indemnity otherwise existing with regard to any party or person described in this Article.

9.1.2 If Owner or any other person or entity asserts a claim or institutes a lawsuit, action or proceeding against the Contractor involving, actually or allegedly, the manner or sufficiency of the performance of the Subcontract Work, the Subcontractor shall, upon written request of Contractor, promptly assume the defense of such claim, suit, action or proceeding, at Subcontractor's expense. The Subcontractor shall indemnify and save harmless the Contractor and its agents, consultants, members and employees, from and against any liability, loss, damage, or expense, including attorneys' fees, expert's fees, and consultant's fees, and related costs and expenses, arising out of or related to such claim, suit, action or proceeding. The Contractor shall also be entitled to recover any attorneys' fees, expert's fees, and consultant's fees, and related costs and expenses, as well as other costs expended in enforcing this indemnification and defense obligation.

9.2 No Limitation on Liability In any and all claims against the Indemnitees by any employee of the Subcontractor, Contractor or its agents or employees, anyone directly or indirectly employed by the Subcontractor or anyone for whose acts or omissions the Subcontractor may be liable, the indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or types of damages, compensation or benefits payable by or for the Subcontractor under Worker's Compensation acts, disability benefit acts or other employee benefit acts.

9.3 Subcontractor's Insurance Before commencing the Subcontract Work, and as a condition of payment, the Subcontractor shall purchase and maintain insurance that will protect it and all additional insureds from the claims arising out of its operations under this Agreement, whether the operations are by the Subcontractor, or any of its consultants, Sub-subcontractors, Suppliers, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

9.4 Insurance Requirements The Subcontractor shall maintain insurance of the types, and at least the limits of liability specified, and with a company satisfactory to the Contractor as set forth in Exhibit B. Subcontractor shall comply with all requirements for insurance set forth in Exhibit B.

9.5 Damage or loss to property which results from negligence and which is not covered by property insurance shall be promptly remedied by Subcontractor, to the extent of the negligence attributed to acts or omissions of the Subcontractor, or anyone for whose acts or omissions the Subcontractor may be liable.

9.6 Bonding The Subcontractor shall furnish to the Contractor, as named Obligatee with others as Obligatees at Contractor's option, surety bonds to secure the faithful performance of the Subcontract Work and to satisfy all Subcontractor payment obligations related to Subcontract Work and shall include a cost or premium for the bond in the Subcontract price. If bonds are required, they shall be furnished by a surety acceptable to the Contractor, in the full amount of the Subcontract Price, and on the forms attached as Exhibit G.

9.6.1 If Subcontractor fails to promptly provide any required bonds, the Contractor may terminate this Agreement for default and enter into a subcontract for the balance of the Subcontract Work with another subcontractor. All damages, costs and expenses incurred by the Contractor as a result of said termination shall be paid by the Subcontractor.

Article 10. Uncovering/Correction of Subcontract Work

10.1 Uncovering of Subcontract Work The Contractor may direct the Subcontractor to uncover portions of the Subcontract Work for inspection by the Owner or the Contractor at any time. The Subcontractor is required to uncover such work whether or not the Contractor or the Owner had requested to inspect the Subcontract Work prior to it being covered. If the Subcontractor has covered any portion of the Subcontract Work in violation of the Subcontract Documents or contrary to a directive issued to the Subcontractor by the Contractor, the Subcontractor shall uncover such work for the Contractor's or the Owner's inspection and restore the uncovered Subcontract Work to its original condition at the Subcontractor's time and expense. In any other situation this Agreement shall be adjusted by change order for the cost and time of uncovering and restoring any work which is uncovered for inspection and proves to be installed in accordance with the Subcontract Documents, provided the Contractor had not previously instructed the Subcontractor to leave the work uncovered. If the Subcontractor uncovers Subcontract Work pursuant to a directive issued by the Contractor, and such work upon inspection does not comply with the Subcontract Documents, the Subcontractor shall be responsible for all costs and time of uncovering, correcting and restoring the work so as to make it conform to the Subcontract Documents. If the Contractor or some other entity for which the Subcontractor is not responsible caused the non-conforming condition, and Subcontractor was unaware of this condition when the work was covered, the Contractor shall be required to adjust this Agreement by change order for all such costs and time.

10.2 Correction of Subcontract Work

10.2.1 If the Subcontract Work is not in conformance with the Subcontract Documents, the Subcontractor shall promptly correct the Subcontract Work whether it has been fabricated, installed or completed. The Subcontractor shall be responsible for the costs of correcting such Subcontract Work, any additional testing, inspections, and compensation for services and expenses of the Owner, Architect/Engineer and the Contractor made necessary by the defective Subcontract Work.

10.2.2 In addition to the Subcontractor's obligations pursuant to this Section 10.2, the Subcontractor agrees to promptly, but in no event later than the time period required by the Prime Contract, correct, as directed by Contractor, all Subcontract Work performed under this Agreement which proves to be defective in workmanship or materials within the longer of (i) a period of one year from the date of Substantial Completion of the Work or (ii) such period of time as may be required by the Subcontract Documents. Substantial Completion occurs as defined by the Prime Contract. In the absence of such definition, Substantial Completion of the Work, or a designated portion, occurs on the date when construction is sufficiently complete in accordance with the Subcontract Documents so the Owner can occupy or utilize the Project, or a designated portion, for the use for which it is intended.

10.2.3 The Subcontractor's correction of Subcontract Work pursuant to this Section 10.2 shall extend the correction period required by the Subcontract Documents. If any Subcontract Work is first performed after Substantial Completion, such correction period shall be extended by the time period between Substantial Completion and the completion of that portion of Subcontract Work. Nothing contained in this Section 10.2 shall be construed to establish a period of limitation with respect to other obligations which the Subcontractor has under the Laws or under the Subcontract Documents. Establishment of the time period as described in Section 10.2 relates only to the specific obligation of the Subcontractor to correct the Subcontract Work, and has no relationship to time within which the obligation to comply with the Subcontract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Subcontractor's liability with respect to the Subcontractor's obligations.

10.2.4 If the Subcontractor's correction or removal of Subcontract Work destroys or damages completed or partially completed work or property of the Owner, the Contractor or any separate contractors, the Subcontractor shall be responsible for the cost of correcting such destroyed or damaged work or property.

10.2.5 If portions of the Subcontract Work which do not conform with the requirements of the Subcontract Documents are neither corrected by the Subcontractor nor accepted by the Contractor, the Subcontractor shall remove such Subcontract Work from the Project site if so directed by the Contractor.

Article 11. Default, Termination and Suspension

11.1 Default

11.1.1 If the Subcontractor is unable, refuses or fails to supply enough properly-skilled workers, proper materials or equipment, or maintain the Project Schedule, or fails to make prompt payment to its workers, unions, Sub-subcontractors or Suppliers, or violates or disregards Laws, violates safety policies, fails in the performance of any duties, obligations or responsibilities required under this Agreement, fails to provide and maintain the insurance and bonds required hereunder, or breaches a provision of this Agreement, the Subcontractor shall be deemed in default of this Agreement. If the Subcontractor fails within seventy-two (72) hours after written notification to commence and continue satisfactory correction of the default with diligence and promptness, then the Contractor, without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:

- .1 supply workers, materials, equipment and facilities as the Contractor deems necessary for the completion of the Subcontract Work or any part which the Subcontractor has failed to complete or perform after written notification, and charge the cost, including reasonable overhead, profit, attorneys' fees, costs and expenses to the Subcontractor;
- .2 contract with one or more additional contractors to perform such part of the Subcontract Work as the Contractor determines will provide the most expeditious completion of the Subcontract Work, and charge the cost to the Subcontractor;
- .3 withhold any payments due or to become due the Subcontractor pending corrective action in amounts sufficient to cover losses and compel performance to the extent required by and to the satisfaction of the Contractor;
- .4 terminate this Agreement for default; and
- .5 charge the Subcontractor an administrative fee of 15% of all costs incurred by the Contractor in exercising any of the above remedies.

11.1.2 In the event of a default affecting the safety of persons or property, or a default that cannot be cured, the Contractor may proceed with the remedies set forth in 11.1. without notice.

11.1.3 Termination for Default If Contractor elects to terminate this Agreement pursuant to Paragraph 11.1.1.4, the Subcontractor shall (1) cease operations as directed by the Contractor in the notice; and (2) take actions necessary, or that the Contractor may direct, for the protection and preservation of the Subcontract Work; and (3) except for the Subcontract Work directed to be performed prior to the effective date of termination stated in the notice, and unless Contractor notifies Subcontractor that it intends to take assignment of a particular subcontract or purchase order, terminate all existing subcontracts and purchase orders and not enter into further subcontracts and purchase orders. The Contractor may take possession of the Subcontract Work, materials, tools, appliances and equipment of the Subcontractor at the Project site, and through itself or others provide labor, equipment and materials to prosecute, complete and correct the Subcontract Work on such terms and conditions as shall be deemed by the Contractor as reasonable, and shall deduct the cost, including all claims, charges, expenses, losses, costs, damages, and attorneys' fees, incurred as a result of the Subcontractor's failure to perform, from any money then due or thereafter to become due to the Subcontractor under this Agreement. The Subcontractor shall not be entitled to any further payments under this Agreement and no sum shall be deemed due or to become due to the Subcontractor until the Subcontract Work has been completed and accepted by the Owner, all requirements of the Subcontract Documents have been fulfilled, and payment has been received by the Contractor from the Owner. In the event the unpaid Subcontract Price exceeds the Contractor's cost of completion and any and all incidental costs, including administrative, legal and other professional fees, the difference shall be paid to the Subcontractor, but if such expenses exceed the unpaid Subcontract Price, the Subcontractor shall pay the difference to the Contractor promptly.

11.1.4 If it is determined or agreed that the Contractor wrongfully exercised its right to terminate for default, the termination shall be converted to a termination for convenience, and Subcontractor's sole relief shall be the recovery as set forth in Paragraph 11.4. Under no circumstances shall the Subcontractor be entitled to recovery of overhead or profit on Subcontract Work not performed.

11.2 Suspension by Contractor The Contractor may order the Subcontractor in writing to suspend or delay or interrupt all or any part of the Subcontract Work for such period of time as may be determined to be appropriate for the convenience of the Contractor. Subcontract Work when required to be phased or interrupted shall not be deemed a suspension.

11.2.1 The Subcontractor shall notify the Contractor in writing within ten (10) business days, or such shorter period of time as required by the Prime Contract, after receipt of the Contractor's order suspending, delaying or interrupting the Subcontract Work of the effect of such order upon the Subcontract Work. To the extent allowed the Contractor under the Prime Contract and granted by Owner, the Subcontract Price or Project Schedule shall be adjusted by Subcontract Change Order for any increase in the time or direct cost of performance of this Agreement caused by such suspension, delay or interruption.

11.2.2 No claim relating to suspension shall be allowed for any costs incurred more than ten (10) business days prior to the Subcontractor's notice to the Contractor as provided in Paragraph 11.2.1.

11.2.3 Neither the Subcontract Price nor the Project Schedule shall be adjusted under this Section 11.2 for any suspension, delay or interruption to the extent that performance would have been suspended, delayed, or interrupted by the fault or negligence of the Subcontractor or by a cause for which the Subcontractor would have been responsible.

11.2.4 The Subcontract Price shall not be adjusted under this Section 11.2 for any suspension, delay or interruption to the extent that performance would have been suspended, delayed or interrupted by a cause for which the Subcontractor would have been entitled only to a time extension under this Agreement.

11.2.5 In the event the Subcontract Work suspended, delayed or interrupted is, for any reason, removed from the Contractor's or the Subcontractor's scope of work, the

Contractor shall be liable to the Subcontractor solely for the reasonable value of Subcontract Work performed by the Subcontractor (as reflected in the Subcontractor's approved schedule of values) prior to such removal, including reasonable overhead and profit on Subcontract Work performed, but only to the extent the Contractor receives payment from the Owner for such Subcontract Work as provided in Paragraph 7.3.6.

11.3 Suspension by Owner Should the Owner suspend the Prime Contract or any part of Contractor's Work which includes the Subcontract Work, the Contractor shall notify the Subcontractor in writing and, upon receiving notification, the Subcontractor shall immediately suspend the Subcontract Work. In the event of Owner suspension, the Contractor's liability to the Subcontractor shall be limited to the extent of the Contractor's recovery on the Subcontractor's behalf under the Subcontract Documents. The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an Owner suspension and Contractor may, at its sole discretion, permit the Subcontractor to prosecute the claim, in the name of the Contractor, for the use and benefit of the Subcontractor.

11.4 Termination for Convenience The Contractor may, at any time, terminate this Agreement, in whole or in part, for the Contractor's convenience and without cause. Upon receipt of written notice from the Contractor of such termination for the Contractor's convenience the Subcontractor shall (1) cease operations as directed by the Contractor in the notice; and (2) take actions necessary, or that the Contractor may direct, for the protection and preservation of the Subcontract Work; and (3) except for the Subcontract Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and not enter into further subcontracts and purchase orders. In the event of termination for the Contractor's convenience, the Contractor shall reimburse the Subcontractor for reasonable costs, overhead and profit it has incurred as of the date of the termination, less prior payments made, but in no event shall such amount exceed the proportionate share of the approved schedule of values for work completed, and in no event shall Subcontractor be entitled to profits or overhead on Subcontract Work not performed, materials not furnished, or any consequential losses.

11.5 Termination by Owner Should the Owner terminate the Prime Contract or any part which includes the Subcontract Work, the Contractor shall notify the Subcontractor in writing and upon written notification, this Agreement shall, unless assigned to the Owner pursuant to Paragraph 11.7, be terminated and the Subcontractor shall immediately stop the Subcontract Work, follow all of the Contractor's instructions, and mitigate all costs. In the event of Owner termination, the Contractor's liability to the Subcontractor shall be limited to the extent of the Contractor's recovery on the Subcontractor's behalf under the Subcontract Documents. The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of the Owner termination and Contractor may, at its sole discretion, permit the Subcontractor to prosecute the claim, in the name of the Contractor, for the use and benefit of the Subcontractor, or assign the claim to the Subcontractor.

11.6 Bankruptcy

11.6.1 Termination Absent Cure If the Subcontractor files a petition under the Bankruptcy Code, enters into an assignment for the benefit of creditors, or seeks any other relief due to insolvency, the Subcontractor shall be in default and Contractor may exercise the remedies set forth in Paragraph 11.1.1 without further notice. The Subcontractor agrees it is essential to the performance of this Agreement and the overall completion of the Project that the Subcontract Work continue without interruption, and further that this Agreement shall terminate if the Subcontractor or the Subcontractor's trustee rejects this Agreement or, if there has been a default, the Subcontractor is unable to give adequate assurance that the Subcontractor will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

11.6.2 Interim Remedies If the Subcontractor is not performing in accordance with the Project Schedule at the time a petition in bankruptcy is filed, or at any subsequent time, the Contractor, while awaiting the decision of the Subcontractor or its trustee to either reject this Agreement or to assume this Agreement and provide adequate assurance of its ability to perform, may avail itself of such remedies under this Article as are reasonably necessary to maintain the Project Schedule. The Contractor may offset against any sums due or to become due the Subcontractor all costs incurred in pursuing any of the remedies provided including, but not limited to, reasonable overhead, profit and attorney's fees. The Subcontractor shall be liable for the payment of the amount by which all such costs incurred exceed the unpaid balance of the Subcontract Price.

11.7 Contingent Assignment of Subcontract The Contractor's contingent assignment of the Subcontract to the Owner, as provided in the Prime Contract, is effective when the Owner has accepted the assignment by notifying the Subcontractor in writing. This contingent assignment is subject to the prior rights of a surety that may be obligated under the Contractor's bond, if any. The Subcontractor consents to such assignment and agrees to be bound to the assignee by the terms of this Agreement.

11.8 Survival The amount to be paid to Contractor pursuant to Paragraph 11.1.3, provisions pertaining to Subcontractor's warranties, Subcontractor's obligations to correct Subcontract Work, Subcontractor's insurance and bond obligations, Subcontractor's indemnity obligations, intellectual property, dispute resolution, confidentiality, and all other provisions intended by their nature to survive termination or abandonment of this Agreement, shall survive termination or abandonment of this Agreement.

Article 12. Disputes

12.1 Initial Dispute Resolution If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions between company officers of the Contractor and the Subcontractor with full authority to resolve the dispute. Such direct discussions are a condition precedent to any further dispute resolution proceedings between the parties.

12.2 Work Continuation and Payment Unless otherwise agreed in writing, the Subcontractor shall continue the Subcontract Work and maintain the Project Schedule pending any dispute, including but not limited to continuing work during any dispute resolution proceedings. As the Subcontractor continues to perform, the Contractor shall continue to make undisputed payments in accordance with this Agreement.

12.3 Multiparty Proceeding To the extent permitted by Subcontract Documents, all parties necessary to resolve a claim shall be parties to the same dispute resolution proceeding.

12.4 Disputes Relating to Owner To the extent disputes between the Contractor and the Subcontractor involve in whole or in part disputes between the Contractor and the Owner, disputes between the Subcontractor and the Contractor shall be decided by the same tribunal and in the same forum as disputes between the Contractor and the Owner. Subcontractor consents to be joined in any such proceeding. In the event the provisions for resolution of disputes between the Contractor and the Owner contained in the Subcontract Documents do not permit consolidation or joinder with disputes of third parties, such as the Subcontractor, resolution of disputes between

the Subcontractor and the Contractor involving in whole or in part disputes between the Contractor and the Owner shall be stayed pending conclusion of any dispute resolution proceeding between the Contractor and the Owner. Subcontractor agrees to be bound by the procedure and final determinations in Contractor's dispute resolution with the Owner, and Subcontractor shall not be entitled to receive any greater amount from Contractor than Contractor is entitled to and actually does receive from the Owner on account of Subcontractor's Work, less any markups or costs incurred by the Contractor and to which Contractor is otherwise entitled, and Subcontractor agrees that it will accept such amount, if any, received by Contractor from Owner as full satisfaction and discharge of such claims. Subcontractor's proportionate share of recovery that Contractor receives from the Owner shall be Subcontractor's sole and exclusive remedy for any such claims.

12.5 Disputes Between Contractor and Subcontractor

12.5.1 Initial Dispute Resolution If, at any time, any dispute or controversy shall arise between Contractor and Subcontractor regarding anything in any way pertaining to and/or arising under this Agreement or the Subcontract Work performed hereunder, and such controversy or dispute is not one described in Paragraph 12.4 and the dispute has not been resolved through direct discussions, the parties shall resolve their disputes pursuant to the Construction Industry Mediation Rules and Arbitration Rules of the American Arbitration Association, adjusted as set forth in this Article 12. The location of the mediation shall be the place of the Project; and shall occur within sixty (60) days of the date a request or demand is submitted to the American Arbitration Association, unless otherwise agreed by the parties. No later than fourteen (14) days prior to the mediation, each party shall serve upon the mediator and the other party its mediation position statement. No later than five (5) days prior to the mediation, each party shall serve upon the mediator and the other party a response to the other party's mediation position statement. After eight (8) hours of mediation conducted in a single day, if the matter is not resolved, each party shall submit its last, best and final offer and demand in writing to the mediator before adjourning the mediation that day ("Final Offers"). The mediator shall disclose the Final Offers to the parties.

12.5.2 Expedited Dispute Resolution If the dispute or controversy involves only claims for money and the dollar amount difference as disclosed in the Final Offers is less than \$500,000, as determined by the mediator, the mediator shall immediately assume the role of arbitrator. The arbitrator shall not consider any item of evidence other than the parties' respective mediation position statements, responses, and information disclosed during the mediation, as determined in the arbitrator's discretion. Within three (3) business days after receiving the Final Offers, the arbitrator shall issue an award adopting one and only one of the Final Offers, without modification or amendment. The parties hereby agree to the conversion of the mediator to an arbitrator, and agree that the award rendered by the arbitrator shall be final and binding, and judgment may be entered upon it in accordance with applicable Law in any court having jurisdiction thereof. Each party shall bear its own costs and fees associated with the Expedited Dispute Resolution proceeding described herein.

12.5.3 Dispute Resolution If the dispute or controversy involves claims other than for money or the dollar amount difference as disclosed in the Final Offers is \$500,000 or more, as determined by the mediator, the mediation shall be adjourned, and either party may submit the dispute to arbitration. The dispute or controversy shall be resolved by binding arbitration in accordance with the Construction Industry Rules of the American Arbitration Association then in effect. Venue for the arbitration shall be in the city identified in Contractor's address on page 1 of this Agreement, unless otherwise mutually agreed by the parties. Subcontractor and Contractor agree that the Federal Arbitration Act shall be applicable to the arbitration contemplated by this Paragraph. The award rendered by the arbitrator or arbitrators shall be final and binding, and judgment may be entered upon it in accordance with applicable Law in any court having jurisdiction thereof.

12.6 Cost of Dispute Resolution and Prevailing Party The cost of any mediation proceeding shall be shared equally by the parties participating. The prevailing party in any dispute arising out of or relating to this Agreement or its breach that is resolved by a dispute resolution procedure designated in the Subcontract Documents, other than an Expedited Dispute Resolution proceeding as set forth in Paragraph 12.5.2, shall be entitled to recover from the other party those reasonable attorneys' fees, costs and expenses (including but not limited to attorney's fees, expert witness fees, costs and expenses for all phases of the dispute) incurred by the prevailing party in connection with such dispute resolution process after direct discussions and mediation.

Article 13. Miscellaneous Provisions

13.1 Severability The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. 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 Agreement, or to exercise any right, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance. Any waiver by Contractor must be expressly provided in writing.

13.2 Titles The titles given to the Articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

13.3 Governing Law All matters relating to the validity, performance, interpretation or construction of this Agreement, or the breach of this Agreement, shall be governed by the Law in effect at the location of the Project.

13.4 Joint Drafting The parties expressly agree this Agreement was subject to negotiation and Subcontractor had the opportunity to obtain the assistance of counsel in reviewing its terms prior to execution and this Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

13.5 Extent of Agreement Nothing in this Agreement or the Subcontract Documents shall be construed to create a contractual relationship between persons or entities other than the Contractor and the Subcontractor. This Agreement is solely for the benefit of the parties, represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations, or agreements, either written or oral. No modification of this Agreement shall be binding unless the same is in writing signed by the Contractor and the Subcontractor. Any field tickets, daily reports, timesheets, delivery receipts, invoices, bills of lading, or similar documents ("Field Documentation") signed by Contractor personnel regardless of title, shall be deemed to have been signed solely for the limited purpose of acknowledging receipt of materials, equipment, or labor, or verifying factual information such as time on site or workforce counts. Such signatures shall not be construed as agreement to any terms or conditions contained in such Field Documentation, including but not limited to any provisions regarding pricing, change orders, claims, schedule impacts, indemnity, or modifications to this Agreement. In no event shall such Field Documentation be deemed to amend, supplement, or waive any rights or obligations under this Agreement. In the event the Subcontractor commences performance prior to the execution of this Agreement, the Subcontractor acknowledges and agrees that it shall be bound by the terms and conditions of this Agreement as of the date the Subcontract Work is commenced.

Article 14. Schedule of Exhibits to the Agreement

The following Exhibits are attached to and are a part of this Agreement.

Exhibit A:	The Subcontractor's Scope of Work, including alternative or unit prices
Exhibit B:	Insurance Requirements
Exhibit C:	Contractor's Policies and Procedures Acknowledgement
Exhibit D:	Specifications, Drawings and Addenda (The Subcontract Documents are identified in Article 3.4)
Exhibit E:	Labor Relations
Exhibit F:	Not Used
Exhibit G:	Performance and Payment Bond Forms
Exhibit I:	Tax Exemption
Exhibit J:	Subcontractor Sworn Statement
Exhibit P:	Payment Management System
Exhibit T:	Source of Payments for Texas Construction
Exhibit X:	Special Provisions

This Agreement is entered into as of the date entered in Article 1.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION THAT MAY BE ENFORCED BY THE PARTIES.

SUBCONTRACTOR

BY: _____

Print Name: _____

Print Title: _____

Designate type of organization: _____

Organized in the State of: _____ License Number: _____

with its principal place of business at: _____

CONTRACTOR

BY: _____

Print Name: _____

Print Title: _____

EXHIBIT A: THE SUBCONTRACTOR'S SCOPE OF WORK

FURNISH THE NECESSARY LABOR, SUPERVISION, MATERIALS, TOOLS, INCIDENTALS AND EQUIPMENT TO COMPLETE THE XXXXXXXXXX WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS, AND EXHIBIT D: SPECIFICATIONS, DRAWINGS, AND ADDENDA, INCLUDING BUT NOT LIMITED TO THE WORK SPECIFICALLY DESCRIBED IN SPECIFICATION SECTION(S) XXXXXXXXXX.

In addition to the above, this Subcontract also includes but is not limited to the following:

- 1.
- 2.

SAMPLE

EXHIBIT B: INSURANCE REQUIREMENTS

The insurance requirements set out in this Exhibit are independent from all other obligations of the Subcontractor under this Subcontract and apply whether or not required by any other provision of this Subcontract.

Contractor utilizes myCOI Central, a software management system used to track certificates of insurance and to track and verify insurance coverage. Upon Subcontractor's receipt of this Agreement, Subcontractor will receive an e-mail from registration@myCOItracking.com. Subcontractor must follow the instructions contained in the e-mail and complete the online registration. Upon completion of registration, Contractor will request proof of insurance directly from Subcontractor's insurance agent(s). In addition to the other terms and conditions contained herein, Subcontractor may not commence Work and no payments will be made, until Subcontractor is registered in myCOI Central and a compliant Certificate of Insurance has been received.

Certificates of Insurance ("Certificates") are to be issued on ACORD Form 25 and show that the below required insurance coverages in companies with a minimum A.M. Best's Rating of A-, VIII or companies acceptable to Contractor are in force. Required endorsements must be attached to such Certificates. All certificates must reference the specific project in the certificate description/comments area for identification purposes.

Subcontractor waives against Contractor any and all rights of recovery for loss, damage, or expense to the extent the same are recovered pursuant to valid and collectible policies of insurance except where such waiver is prohibited by law. In addition, Subcontractor waives all such claims against Owner and any other contractors, subcontractors, or suppliers to the same extent.

If coverage limits specified by the Owner are required of Subcontractor and if greater than the coverage limits reflected on the Certificates provided to Contractor, Subcontractor shall immediately obtain the required higher coverage limits and furnish Contractor with replacement Certificates showing proper coverage limits and otherwise complying with this Exhibit B.

Subcontractor shall maintain in effect all insurance coverage required under this Agreement at Subcontractor's sole expense and with insurance companies acceptable to Contractor. Subcontractor agrees to notify Contractor in writing, at least 30 days in advance, of any reduction by the insurers in required coverages or coverage limits, cancellation, or non-renewal of Subcontractor's policies. Subcontractor agrees to file new, complying Certificates showing proper renewal coverages and limits in force at least 10 days prior to expiration of the current policies.

(a) **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:**

- 1) Workers' Compensation coverage in accordance with the laws of the State within the jurisdiction the work is performed. In the event that the work of this contract falls within the Federal Employer's Liability Act, the Subcontractor shall extend Workers' Compensation Insurance to provide and maintain in full force and effect during the period covered by this Subcontract, insurance against the liability imposed under the above-mentioned Acts as applicable. No alternative or benefit plan in lieu of statutory Workers' Compensation coverage will be acceptable even in those jurisdictions where permitted.
- 2) Employer's Liability Coverage with a minimum limit of: \$1,000,000.00 Bodily Injury by Accident – Each Accident; \$1,000,000.00 Bodily Injury by Disease – Policy Limit; \$1,000,000.00 Bodily Injury by Disease – Each Employee

Where permitted by law the Subcontractor waives subrogation against Owner, Contractor, and others as required by the Owner-Contractor Agreement.

- (b) **COMMERCIAL GENERAL LIABILITY INSURANCE**, on a coverage form at least equal to that provided under ISO CG 00 01, latest available edition, on an occurrence basis. This policy shall include but not be limited to, personal injury, contractual liability, collapse, explosion, and underground (x, c & u) coverage, per project aggregate endorsement, completed operations and products liability coverage. Subcontractor shall identify on the Certificate any Residential, Mold, EIFS, Silica or other major exclusions that impact the Subcontractor's ability to insure its risk. If the Project includes any Residential components or the proposed design includes EIFS systems, then the Subcontractor shall obtain appropriate endorsements acceptable to Contractor as a condition of this Subcontract. The above coverage shall be written for not less than the following minimum limits:

\$1,000,000.00	GENERAL AGGREGATE (PER PROJECT ; if not PER PROJECT, the limit shall be \$2,000,000)
\$1,000,000.00	PRODUCTS-COMPLETED OPERATIONS AGGREGATE
\$1,000,000.00	PERSONAL & ADV. INJURY
\$1,000,000.00	EACH OCCURRENCE

Continuation of Coverage Subcontractor shall maintain Products-Completed Operations coverage under Commercial General Liability for the applicable Statute of Repose following Substantial Completion of the Work.

- (c) **AUTOMOBILE LIABILITY INSURANCE** including the following coverages: Owned, Hired, and Non-Owned vehicles shall be written for not less

than the following minimum limits: \$1,000,000.00 PER ACCIDENT

- (d) UMBRELLA (EXCESS) LIABILITY INSURANCE with combined single limits for bodily injury and property damage of not less than \$1,000,000.00 EACH OCCURRENCE and \$1,000,000.00 AGGREGATE. Such coverage shall be in excess of all liability insurance required under the above Paragraphs (a) 2, (b) and (c) and shall provide coverage as broad as the underlying coverage, including additional insured as required herein.

Continuation of Coverage Subcontractor shall maintain Products-Completed Operations coverage under Umbrella (Excess) Liability for the applicable Statute of Repose following Substantial Completion of the Work.

- (e) PROFESSIONAL LIABILITY INSURANCE is required for Subcontractor responsible for any professional services within their scope of Work. Coverage shall be written for not less than the following minimum limits: \$1,000,000.00 EACH CLAIM and \$1,000,000.00 AGGREGATE. Any retroactive date applicable to the policy shall precede the commencement of any professional services provided under this Agreement. Professional Liability Insurance coverage shall be maintained by the Professional Engineer/Subcontractor for not less than three (3) years beyond the completion of the project with no change in the original retroactive date. If Subcontractor enters into an agreement with a third-party Professional Engineer for professional services provided under this Agreement, Contractor will accept evidence of Professional Liability from such Professional Engineer as fulfillment of this requirement herein.
- (f) CONTRACTOR'S POLLUTION LIABILITY INSURANCE shall be written for not less than the following minimum limits: \$1,000,000.00 EACH OCCURRENCE and \$1,000,000.00 ANNUAL AGGREGATE. If coverage is written on a claims-made form, any retroactive date applicable to the policy shall precede the commencement of Work performed under this Agreement. This insurance shall be maintained for a period of three (3) years after completion of the Work by Subcontractor or its sub-subcontractors. Coverage shall include Contractor, Owner, and others as required by the Owner-Contractor Agreement as primary/non-contributory additional insureds.

Contractor, Owner, and others as required by the Owner-Contractor Agreement shall be added as additional insureds under the Commercial General Liability and Automobile Liability coverages. The coverage afforded the additional insureds for Commercial General Liability must provide coverage at least equal to that of ISO form CG 20 10 07/04 for ongoing operations and CG 20 37 07/04 for completed operations. It is agreed by the parties that such coverage will be primary and non-contributory and any coverage maintained by Contractor and/or Owner will be excess of Subcontractor's coverage. All limits of liability available to the Subcontractor shall inure to the benefit of the Additional Insureds, even if greater than the limits described herein.

The amount and types of insurance coverage required to be provided by Subcontractor herein, including any limitation on Subcontractor's obligation to include Contractor, Owner and others as required by the Owner-Contractor Agreement as Additional Insureds on Subcontractor's liability policies, shall not be construed to be a limitation of the liability on the part of the Contractor or any of its Subcontractors.

Subcontractor shall be responsible for securing whatever fire and extended coverage Subcontractor may deem necessary for protection against loss of owned, rented, or borrowed equipment and tools, including, but not limited to any tools, equipment, scaffolding, staging and trailers owned, rented, or borrowed by Subcontractor. Contractor shall have no liability with respect to such equipment and tools. Failure of the Subcontractor to secure such insurance or to maintain adequate levels of coverage shall not obligate Contractor for any losses on owned, rented, or borrowed equipment.

To the fullest extent permitted by law, all insurance policies procured, paid for, and maintained by the Subcontractor for the work performed according to this Subcontract must contain a Waiver of Subrogation in favor of the Contractor, Owner and others as required by the Owner-Contractor agreement. This Waiver of Subrogation is required not only with respect to insurance required of Subcontractor in this article, but also with respect to any other property, inland marine, liability, or other insurance the Subcontractor may have in force that may cover the work performed for this job.

Contractor shall have no duty to Subcontractor or to any of its insurers or their insurance agents to review any Certificates or copies of insurance furnished to Contractor or to determine whether the terms of each Certificate or policy of insurance comply with the insurance-related provisions of the Subcontract Documents. A failure of Contractor to detect that Subcontractor has not submitted Certificates, or proper Certificates, or is otherwise not in compliance with the insurance-related provisions of the Subcontract Documents shall not be considered a waiver or other impairment of any of Contractor's rights under such insurance-related provisions.

Number of Policies Commercial General Liability Insurance and other liability insurance may be arranged under a single policy for the full minimum limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability Policy. If the full minimum required limits are arranged under a combination of Primary and Excess or Umbrella policies, all policies will be primary and non-contributory and any coverage maintained by Contractor and/or Owner will be excess of Subcontractor's coverage.

Any deductibles or retentions under Subcontractor's policies shall be paid by, assumed by, for the account of, and at Subcontractor's sole risk.

If the Subcontractor fails to procure and maintain such insurance, in addition to the option of declaring Subcontractor in default for breach of a material provision of the Subcontract, Contractor shall have the right, but not the duty, to procure and maintain the same insurance, or other insurance that provides Contractor with equivalent protection, and Subcontractor shall furnish all necessary information to make effective and maintain such insurance. At the option of Contractor, the cost of said insurance purchased by Contractor shall be charged against and deducted from any monies then due or to become due to Subcontractor or Contractor shall notify Subcontractor of the cost thereof and Subcontractor shall promptly pay such cost.

If Subcontractor enters into any subcontract with any lower-tier subcontractor, Subcontractor shall require such lower-tier subcontractor to maintain insurance similar to that required of Subcontractor under this Agreement, including primary/non-contributory additional insured and waiver of subrogation provisions as required hereunder.

BUILDER'S RISK coverage including the interests of the Subcontractor will be provided by Contractor as identified in the Subcontract Documents. The Subcontractor is responsible for the Builder's Risk deductible for each loss to the extent losses payable under the Builder's Risk policy are attributable to Subcontractor's work, acts or omissions, or the work, acts or omissions of any lower tier subcontractor, or any other party for whom Subcontractor may be responsible. Contractor and Subcontractor waive all rights against each other and any of their subcontractors for damages caused by fire or other causes of loss to the extent covered by Builder's Risk insurance, except such rights as they have to proceeds of such insurance held by the Contractor or Owner as fiduciary. Subcontractor shall require all of its subcontractors, by appropriate agreement, written where legally required for validity, similar waivers each in favor of other parties enumerated herein.

SAMPLE

EXHIBIT C: CONTRACTOR'S POLICIES AND PROCEDURES ACKNOWLEDGEMENT

The following Policies and Procedures are available from the Contractor's website and this Subcontractor is required to implement policies consistent with these requirements.

- Health & Safety Manual
- Substance Free Workplace
- Firearm, Weapons-Free Workplace Policy
- Smoke-Free Work Environment
- Harassment Free Workplace Policy

Subcontractor acknowledges obtaining a copy of Contractor's policies and agrees to implement similar minimum policies related to Subcontractor's performance on the Project Site.

Firm Company Name
Signature of Authorized Representative
Name of Authorized Representative (Print or Type)
Title of Authorized Representative

EXHIBIT D: SPECIFICATIONS, DRAWINGS AND ADDENDA

Specifications

Drawings

Addenda

SAMPLE

EXHIBIT E: LABOR RELATIONS

SAMPLE

SUBCONTRACTOR PERFORMANCE BOND

BOND NO. _____

KNOW ALL PERSONS BY THESE PRESENTS; that

SUBCONTRACTOR
Address

as Principal (the "Subcontractor"), and

SURETY (or sureties)

Address

as Surety, are held and firmly bound unto _____, _____, as Obligor (hereinafter "Obligor"), in the penal sum _____ **Dollars (\$ _____)**, for the payment whereof Principal and Surety bind themselves for the performance of the Subcontract (as defined herein below), their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. The penal sum of this bond shall automatically increase in the amount of any change order(s) to the Subcontract hereafter entered into by Obligor and Principal, with or without notice to Surety.

WHEREAS, Principal, as "Subcontractor", entered into a subcontract agreement dated _____ with Obligor (the "Subcontract") for the Principal to perform _____ on the _____ (the "Project") for _____ (the "Owner"), which Subcontract is by reference made a part hereof as if fully set forth herein.

NOW, THEREFORE, the parties agree as follows:

1. **EFFECT OF OBLIGATION.** If the Principal shall fully, timely and faithfully perform all of its obligations under the Subcontract, each and every, all and singular, then this obligation shall be null and void; otherwise it shall remain in full force and effect.
2. **ALTERATION NOTICE WAIVER.** The Surety hereby waives notice of any change, alteration or extension of the Subcontract, including but not limited to an increase of the Subcontract amount and/or time, made by the Obligor.
3. **PRINCIPAL DEFAULT.** Whenever the Principal shall be, and is declared in writing by the Obligor to be in default under the Subcontract, and such default is not the result of a breach by the Obligor of its obligations under the Subcontract, the Surety after receipt of written notice of the default from the Obligor shall promptly, but in no event later than seven (7) days after receipt of the Obligor's notice of default, remedy the default or notify the Obligor in writing of its election that the Surety shall immediately proceed so as not to delay the timely completion of the Project in one of the following methods to remedy the default:

3.1 COMPLETE SUBCONTRACT. Complete the Subcontract in accordance with its terms and conditions. If the Surety elects to timely and without delay to the Project complete the Subcontract, the Surety shall arrange for completion of the Subcontract by a qualified and competent entity acceptable to the Obligee, in its sole discretion, that satisfies all the requirements of the Subcontract. If the Surety elects to complete the Subcontract, it shall be responsible for all costs to complete, and the Obligee shall make payments of the balance of the Subcontract price, as defined in paragraph 3.3 below, to the Surety as and to the extent the Surety incurs such costs to complete the Subcontract. In no event shall the Surety's liability for the cost to complete the Subcontract exceed the penal sum of this bond; or

3.3 PAY OBLIGEE. Pay the Obligee the cost incurred and to be incurred for completion of the Subcontract. If the Surety elects to pay the Obligee for completion of the Subcontract, the Surety shall pay the Obligee the cost incurred and to be incurred for completion of the Subcontract within ten (10) days after the Obligee presents an invoice to the Surety covering the cost of completion, to the extent such cost incurred exceeds the balance of the Subcontract price, as defined in paragraph 4 below. The cost incurred and to be incurred for completion of the Subcontract includes the responsibilities of the Principal for the entire cost as defined in the Subcontract including, but not limited to, costs relating to the correction of defective work, the Obligee's administrative, legal and design professional costs resulting directly from the Principal's default and liquidated and actual damages resulting from the Principal's default. In no event shall the Surety's liability for the cost incurred and to be incurred for the completion of the Subcontract exceed the penal sum of this bond.

4. BALANCE OF THE SUBCONTRACT PRICE. The term "balance of the Subcontract price" as used in this bond shall mean the total amount payable by the Obligee to the Principal under the Subcontract and any amendments to it, to the extent Obligee has received payment of such amount from the Owner, less the amount properly paid by the Obligee to the Principal under the Subcontract and less all damages and other amounts owed by the Principal to the Obligee under the Subcontract.

5. NOTICE. All notices hereunder shall refer to the bond number set forth on the face of this bond and shall be sent via certified mail, return receipt requested, or overnight delivery service with proof of delivery, to the following addresses:

Principal: _____

Surety: _____

Obligee: _____

6. RIGHT OF ACTION. No right of action shall accrue on this bond to or for the use of any person or entity other than the Obligee named herein, its heirs, executors, administrators, assigns or successors.

7. ATTORNEY'S FEES AND COSTS. Notwithstanding Paragraph 1 above, in the event Obligee brings legal action to enforce Surety's obligations under this bond, the prevailing party in such action shall be entitled to recover its attorney's fees together with the costs of suit.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto caused this bond to be duly signed and sealed
this ____ day of _____, 20__.

[PRINCIPAL]

[NAME/TITLE]:

[SURETY]

[NAME], Attorney-in-Fact

SUBCONTRACTOR LABOR AND MATERIAL PAYMENT BOND

BOND NO. _____

KNOW ALL PERSONS BY THESE PRESENTS; that

SUBCONTRACTOR
Address

as Principal (the "Subcontractor"), and

SURETY (or sureties)

Address

as Surety, are held and firmly bound unto _____, _____, as Obligees (hereinafter "Obligee"), in the penal sum _____ **Dollars (\$)**, for the payment whereof Principal and Surety bind themselves for the performance of the Subcontract (as defined herein below), their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. The penal sum of this Bond shall automatically increase in the amount of additive change order(s) to the Subcontract up to an aggregate of twenty percent change in the Subcontract amount.

WHEREAS, Principal as "Subcontractor" has by written agreement dated _____ entered into a subcontract agreement with Obligees for _____, which agreement is by reference made a part hereof as if fully set forth herein, and is hereinafter referred to as the "Subcontract."

NOW, THEREFORE, the parties agree that if the Principal shall promptly make payment to all Claimants as defined in this bond, for all labor, material and equipment used or reasonably required to be used in the performance of the Subcontract, then this bond shall be null and void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. **TIME FOR CLAIM.** The Principal and Surety hereby jointly and severally agree with the Obligees that every Claimant who has not been paid in full before the expiration of a valid claim in accordance with the contract between the project owner ("Owner") and Obligees and/or law governing the location of the project, may have a right of action on this bond. The Obligees shall not be liable for the payment of any costs or expenses including attorneys' fees in connection with any such right of action.

2. **RIGHT OF ACTION.** No suit or action shall be commenced on this bond by any Claimant:

2.1 After the expiration of any valid claim per the contract between the Owner and Obligees and/or law governing the location of the project.

2.2 Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

3. CLAIMANT. A Claimant is defined as an individual or entity that furnishes labor, materials or equipment for use in the performance of the Subcontract or any individual or entity having valid lien rights which may be asserted in the jurisdiction where the project is located. The intent of this bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service, internet service and rental equipment used in the Subcontract, architectural and engineering services required for performance of the work of the Principal, and all other items for which a lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

4. NOTICE. All notices hereunder shall refer to the bond number set forth on the face of this bond and shall be sent via certified mail, return receipt requested, or overnight delivery service with proof of delivery to the following addresses:

Principal: _____

Surety: _____

Obligee: _____

5. ALTERATION NOTICE WAIVER. The Surety hereby waives notice of any change, alteration or extension of the Subcontract, including but not limited to an increase of the Subcontract amount and / or time, made by the Obligee.

IN WITNESS WHEREOF, the Subcontractor and the Surety have hereunto caused this bond to be duly signed and sealed this ____ day of _____, 20__.

[PRINCIPAL]

[NAME/TITLE]:

[SURETY]

[NAME], Attorney-in-Fact

EXHIBIT I: TAX EXEMPTION CERTIFICATE

SAMPLE

SUBCONTRACT NO.

EXHIBIT J: SWORN CONSTRUCTION STATEMENT

Payment Application Number:

Project:

Subcontractor:

Contractor:

Owner:

Subcontractors, Suppliers and Payments

Subcontractor acknowledges that this statement is made to induce payment by Owner and Contractor, and that Owner and Contractor are permitted to rely on the information set forth herein.

Subcontractor hereby swears and affirms that the following table contains a list of all persons or entities furnishing labor, services, materials, fixtures, equipment, apparatus or machinery, forms or form work, from whom orders have been placed or with whom Subcontractor has contracted with for the performance of the Work on the Project.

Name	Address

Subcontractor swears and affirms that it has paid all of its suppliers, employees, subcontractors, unions or any others acting under or on behalf of Subcontractor for the above-described Project for any work performed, or labor, services, material, fixtures, equipment, apparatus or machinery supplied through the date of this Statement. Subcontractor further swears and affirms that there are no pending, open or threatened claims by any of its suppliers, employees, subcontractors, unions or any others acting under or on behalf of Subcontractor for the above-described Project, except as noted below:

Subcontractor agrees to indemnify, defend and hold harmless Contractor, Owner, any other party having an interest in the property on which the Project is constructed, Contractor's surety, and funds or monies for the Project, from and against any and all claims which may be asserted by suppliers, employees, subcontractors, unions or any others acting under or on behalf of Subcontractor the Project for any work performed, or labor, services, material, fixtures, apparatus or machinery supplied through the date of this Statement.

Labor and Safety Reporting

Subcontractor also swears and affirms that the following table is accurate and current as of the date of this Statement.

Labor and Safety DATA

Current Month:

	Subcontractor	Lower Tier Subcontractors
OSHA Recordable* Injuries/Illness		
Workhours - Total		
Workhours - Staff		
Workhours – Craft		
Total workhours this Month		
Total Workhours Project to Date		

Dated this ____ day of _____, ____

The undersigned, being duly sworn, deposes and says that he/she is:

Printed Name: _____

Company: _____

Title: _____

Signature: _____

Sworn to before me this ____ day of _____, 20____

Print Full Name _____ Signature and Seal _____

Notary Stamp with expiration date

EXHIBIT P: PAYMENT MANAGEMENT SYSTEM

Contractor will utilize Procore Pay (www.procore.com), an automated qualification and payment processing service, on the Project. Contractor anticipates that the use of Procore Pay may provide the following benefits to Subcontractor:

- Reduced paperwork;
- Expedited payment application review;
- Transparent view to track progress towards meeting requirements necessary for payment;
- Streamlined payment and lien waiver exchange.

Unless otherwise directed or authorized in writing by Contractor, all payment applications and all supporting documents required by the Subcontract as a condition of payment to Subcontractor shall be in electronic format and shall be submitted to Contractor using Procore Pay.

Subcontractor agrees to:

1. Provide Contractor with written confirmation prior to commencing the Subcontract Work that Subcontractor has successfully registered within Procore Pay for this Subcontract;
2. Maintain and provide Contractor with a current list of Procore Pay Administrators authorized to manage payment-related activities and bind Subcontractor via electronic signature. At the time of signing, the current Procore Pay Administrator for Subcontractor is:

Name: _____

Title: _____

Email: _____

Phone: _____

3. Enable payments to be received into Subcontractor's bank account, which Subcontractor shall keep current;
4. Maintain commercially reasonable controls designed to prevent unauthorized access to Subcontractor's use of Procore Pay through Subcontractor's credentials or other means;
5. Notify Contractor promptly in the event Subcontractor's use of Procore Pay or Subcontractor's bank account has been, or Subcontractor suspects has been, compromised; and
6. Notify Contractor within five (5) business days if payment issued to Subcontractor was not received.

Subcontractor shall create its Procore Pay account at www.procore.com. Subcontractor can call Procore Pay Support at 805-699-5647 or email pay-support@procorepay.com with any questions regarding Procore Pay.

EXHIBIT T: SOURCE OF PAYMENTS FOR TEXAS CONSTRUCTION

Contractor hereby provides the following source of payment and security information:

Property Owner:

Contractor's Surety:

Statement of Funding:

If the Project is funded by Private or State funds, Property Owner's statement of funding is attached.

SAMPLE

EXHIBIT X: SPECIAL PROVISIONS

SAMPLE

DOCUMENT 006400

SUBCONTRACTOR APPLICATION AND CERTIFICATION FOR PAYMENT

- 1.) Subcontractor shall digitally submit the payment application for each month applying for payment, the payment application process must be followed in order as presented here:
 - A. Submission and Approval of a detailed schedule of values for contract amount must be submitted for approval 30 days prior to submitting your first payment application.
 - a. Subcontractor will receive an email from the Project Team, via Procore, to submit a detailed breakdown of your schedule of values.
 - b. Schedule of values shall be itemized per item of work, labor, and material.
 - c. Schedule of values must be submitted to Flintco through Procore for review and approval.
 - B. Contractor will utilize **Procore Pay** (www.procore.com), an automated qualification and payment processing service, on the Project. Unless otherwise directed or authorized in writing by Construction Manager, all payment applications and all supporting documents required by the Subcontract as a condition of payment to Contractor shall be in electronic format and shall be submitted to Construction Manager using Procore Pay. The Contractor shall be responsible for all fees and costs associated with Contractor's use of the Procore Pay. Fees to Contractor are calculated as 0.2% (twenty basis points) of the Subcontract Amount, as may be modified, with a minimum fee per subcontract of \$0 and a maximum fee per subcontract of \$4,000. Contractor shall create its Procore Pay account at www.procore.com. Contractor can call Procore Pay Support at 805-699-5647 or email pay-support@procorepay.com with any questions regarding Procore Pay.
 - C. If invoicing for stored materials, contractor will be required to submit each of the following:
 - a. Transfer of title of stored materials to owner
 - b. Proof of property insurance for location where materials are stored.
 - c. Itemized list of stored materials including quantities.
 - d. Photos of stored materials.
- 2.) All invoices/payment applications must be submitted in the format as outlined above to be processed; otherwise, they will be REJECTED and accepted for the following month once they are submitted correctly.
- 3.) All invoices/payment applications must be received by FLINTCO in full by the **20th** of the month; including all required forms and back up documentation or they will not be processed for payment until the following month. If the **20th** falls on a weekend **or a holiday, they must be received by the preceding normal business day.**
- 4.) FLINTCO shall be contacted for inquiries of payment status, DO NOT contact the owner for inquiries of payment status.
 - a. All lien waivers must be returned to FLINTCO fully executed before the next payment will be issued.
 - b. Insurance must be kept up to date in MyCOI throughout the project to avoid delay in payments.
- 5.) Payment shall only be due for the portion of the Work actually completed to the satisfaction of Flintco, the Architect and the Owner. It is an express condition precedent to the Subcontractor's right to payment that payments shall actually be received by Flintco from the Owner. Within ten (10) days after receipt by Flintco of payment from the Owner, Flintco shall make payment in the amount and to the extent received from the Owner, less any applicable retainage or other set off. Progress payment applications must be submitted by the Subcontractor each month in an amount equal to **ninety percent (90%)** of the estimated value of the labor, materials and equipment incorporated in the construction and materials and equipment suitably stored at the Project site, less the aggregate of previous payments. The Subcontractor's Affidavit and Waiver of Lien for prior payments must be properly executed by an authorized representative of the Subcontractor and returned to Flintco prior to issuance of subsequent payments.
- 6.) Final payments will not be issued until all closeout requirements per the contract documents and per Flintco's requirements are satisfied. This includes but is not limited to resolution of all punch list items, supply and acceptance of all closeout documentation (record drawings, operation and maintenance data, warranties, etc.), execution and documentation of all training and demonstration, supply and documented transfer of all attic stock or surplus/extra materials, and any final documentation required for TERO utilization reporting. Additionally, a conditional waiver and

release on final payment will be provided by Flintco and will be required to be executed and returned prior to release of final payment.

DOCUMENT 006519

SUBCONTRACTOR PARTIAL RELEASE OF LIEN EXAMPLE

PLEASE SIGN AND NOTARIZE ATTACHED
AFFIDAVITS AND RETURN BOTH COPIES

FLINTCO, LLC
P.O. BOX 490
TULSA, OKLAHOMA 74101-0490

WAIVER OF LIEN – PARTIAL

****NOTE*******
**** Waiver of Lien MUST be signed ****
**** and returned before your next ****
**** check will be written. ****

TO ALL WHOM IT MAY CONCERN:

WHEREAS, I (We) the undersigned, have been employed by FLINTCO, LLC, an Oklahoma Corporation
to furnish work pursuant to subcontract dated _____ for the project known as :

NOW, THEREFORE, KNOW YE that the undersigned, for and in consideration of the sum of

(\$ _____), and other good and valuable consideration, the receipt whereof is hereby acknowledged,
does hereby waive and release any and all liens, or claim or right to liens on said above described building and
premises under the Statutes of the State of Oklahoma relating to Mechanic's Liens, on account of labor or materials, or
both, furnished up to this date by the undersigned to or on account of the said project under said contract and for which
payment has been made to the undersigned by or on behalf of FLINTCO, LLC

FURTHER, I (We) state that all bills for material or labor or other encumbrances due on payments previously paid to
us on this account have been paid by me (us) in full.

GIVEN UNDER MY HAND THIS _____ DAY OF _____, 19____.

Subcontractor of Supplier

SIGNATURE

NAME (printed) _____.

STATE OF _____ TITLE(printed)_____.

COUNTY OF _____.

Subscribed and sworn to me this _____ day of _____, 19_____.

My Commission Expires:

SEAL

Notary Public

FINAL WAIVER AND RELEASE BY SUBCONTRACTOR/SUPPLIER EXAMPLE

Whereas, the undersigned has been employed by Flintco, LLC, to furnish labor and materials for the project known as _____ (“Project”).

Now, therefore, the undersigned for and in consideration of (and contingent upon receipt of) the payment of **FINAL PAYMENT AMOUNT DOLLARS (\$0,000.00)**, and for other good and valuable consideration the sufficiency of which is hereby acknowledged, the undersigned does hereby waive, release and relinquish any and all rights, claims, demands, liens, claims for relief, causes of action and the like, whether arising at law, under a contract, in tort, in equity or otherwise, which the undersigned has now, may have had or may have in the future, arising out of the performance of work or the furnishing of labor or material for the Project.

The Waiver and Release, applies to all facts, acts, events, circumstances, changes, constructive or actual delays, accelerations, extra work, disruptions, interferences and the like which have occurred, or may be claimed to have occurred, prior to the date of this Waiver and Release, whether or not known to the undersigned.

This Waiver and Release, is intended to apply to and protect **Flintco, LLC’s** payment and performance bond surety, if any, as well as anyone against whom a claim is asserted by virtue of involvement or relationship with **Flintco, LLC**, the Owner, or the surety in connection with any claim, demand, lien, claim for relief, cause of action and the like waived, released and relinquished by the terms of this Waiver and Release.

This Waiver and Release is freely and voluntarily given and the undersigned acknowledges, warrants and represents that it has fully reviewed the terms and conditions of this Waiver and Release, that it is fully informed with respect to the legal effect of this Waiver and Release and that it has voluntarily chosen to accept the terms and conditions of this Waiver and Release in return for the payment recited above.

The undersigned further represents that all of its obligations-legal, equitable or otherwise-related to or arising out of its work on the Project have been fully paid and satisfied including, but not limited to, the following:

- Employees, laborers, materialmen and subcontractors employed by the undersigned.
- Labor, materials, equipment and suppliers, furnished by others to the undersigned, and
- Sales and use taxes, social security taxes, income tax withholding, unemployment insurance obligations, privilege taxes, license fees, and any other taxes and obligations imposed by governmental authorities.

With respect to the forgoing representations and warranties, the undersigned does hereby agree to indemnify and hold harmless **Flintco, LLC**, its payment and performance bond surety, if any, the Owner and any others against whom a claim is asserted by virtue of involvement of relationship with them, from any and all claims, damages, losses expenses and the like, including legal expenses and attorney’s fees incurred by reason of any claim that the undersigned has not fully paid for all labor, materials and expenses incurred in connection with its work on the Project.

The undersigned further agrees that making and receipt of payment and execution of this Waiver and Release shall in no way release the undersigned from its continuing obligations with respect to the completion of any work remaining undone, punch list work, warranty and guaranty work and any other obligations of the undersigned to **Flintco, LLC**. Moreover, if the undersigned has furnished a bond in connection with the performance of its work, the surety for the undersigned does hereby consent to and agree to be bound by the terms and conditions of this Waiver and Release and does hereby agree to guarantee the performance of the undersigned with respect to each and every term and condition of this Waiver and Release and to continue in effect the obligations assumed with respect to the original subcontract or purchase order between the undersigned and **Flintco, LLC**.

The undersigned also acknowledges the total amount paid to date to be \$ _____

IN WITNESS WHEREOF, on behalf of the undersigned, with full authority, I have executed this instrument under seal

this _____ day of _____, 20_____.

SUBCONTRACTOR:
(Company Name)

STATE OF: _____ By: _____

COUNTY OF: _____ Title: _____

Subscribed and sworn to before me this date: _____

Notary Public: _____

My Commission Expires: _____

Note: Waiver and Release must be signed by an officer of your company, notarized and returned before additional payments can be released.

DOCUMENT 006521

INVOICE AFFIDAVIT/NON-KICKBACK STATEMENT
(Affidavit for Payment of Claim)

STATE OF _____)
) ss.
COUNTY OF _____)

The undersigned _____, of lawful age, being first duly sworn, on oath states: that this invoice or claim is true and correct; the work, services, or materials as shown by this invoice or claim have been completed or supplied in accordance with the plans, specifications, orders or requests furnished the claimant: that claimant has made no payment directly or indirectly to any elected official, officer, or employee of Cherokee Nation, of money or other thing of value to obtain payment of the invoice or procure the contract or purchase order pursuant to which an invoice is required.

Affiant

NOTARY PUBLIC

Subscribed and sworn to before me this ____ day of _____, 20__.

Notary

My Commission Expires:

ACCORDING TO OKLAHOMA STATE LAW, ALL INVOICES OF \$25,000 OR MORE FROM AN ARCHITECT, CONTRACTOR, ENGINEER OR SUPPLIER OF MATERIAL MUST HAVE THE ABOVE AFFIDAVIT SIGNED, NOTARIZED AND RETURNED BEFORE PAYMENT CAN BE PROCESSED

END OF SECTION

DOCUMENT 007319

FLINTCO SAFETY MANUAL

Trade Partner's Safety Programs and Site Requirements

The following are general construction site Health, Safety and Environmental requirements that all tiers of trade partners shall comply with.

Before coming onto the project, each employee, which includes any full-time employee, part-time employee, temporary employee, or independent contractor, must complete the Flintco Annual Safety Orientation. This can be done offsite prior to coming onto the jobsite. Users must log into the portal below to complete.

Once complete, each employee must show verification of completion before coming onto the project. This can be done by logging on to their account (from their phone or iPad) and showing Flintco personnel the QR code for completion.

All employees entering the project site must participate in a project specific orientation, and upload any trainings, certifications, etc. prior to coming onto the site.

Flintco Trade Partner Portal: <https://tpp.flintco.com>

Site Safety is Your Company's Responsibility

Each trade partner and all tiers of trade partners shall comply with the most stringent requirements established in OSHA/CAL-OSHA, Flintco, LLC policies, all applicable State and Federal Laws, local ordinances, rules, and regulations bearing on the safety of persons and property.

Each trade partner is completely responsible for compliance of all their trade partners Health, Safety and Environmental requirements.

Each trade partner's Project Superintendent has full and complete responsibility for the safety and health of their employees and the employees of

all tiers of trade partners. Each trade partner's Superintendent shall always be present to provide total supervision for their sub-tier trade partners. In no case will the presence of a Safety Representative relieve the Superintendents of this responsibility.

If your company is going to change onsite management (superintendent/foreman), written notice is to be sent to the Flintco, LLC project manager and/or superintendent a minimum of five days prior to the exchange.

Safety Programs

Each trade partner shall have a written Health, Safety and Environmental Loss Prevention Plan that includes a written Hazard Communication/ Employee Right-to-Know Program which conforms to the requirements addressed in OSHA/CAL-OSHA on the job site. This program shall be available and provided to Flintco upon request.

Each trade partner's Health, Safety and Environmental Loss Prevention Plan shall be the governing document that all tiers of trade partners shall comply with.

As requested, each trade partner shall file a copy of their program in their safety file located in the Flintco, LLC construction office prior to beginning work on the project. A copy of the program shall be maintained on site and available for employee review. Each tier of trade partner shall be provided with a copy of the trade partner's Health, Safety and Environmental Loss Prevention Plan. The trade partner's Hazard Communication Program shall be tailored to reflect the specific exposures encountered on the jobsite by their employees and agents and the employees of all tiers of trade partners.

Employees shall be given specific training to the

Hazard Analysis. The training shall be documented and maintained on file.

Each trade partner will hold a pre-work meeting prior to the start of work on a daily basis. This meeting shall consist of identifying the tasks/ hazards/and controls for the work being performed that day.

A PTP (Pre-task Plan) using SmartTagIt shall be prepared as a supplement to the JHA (Job Hazard Analysis). The PTP is to be completed, documented, and signed by all workers in the pre-work meeting by the trade partner's supervisor and Competent Person using SmartTagIt.

Record Keeping and Files

The following documentation shall be in the trade partner's Safety Files, located in the Flintco, LLC office, as requested.

- Employee orientation training
- A complete, indexed, and tabbed SDS binder, containing a Table of Contents and Safety Data Sheets for all chemicals and materials to be brought onto the jobsite
- Written Safety and Health Loss Prevention Plan which includes a Job Hazard Communication/ Employee Right-to-Know Program
- Employee training records and certifications
- Designated Competent Person identified

Safety Representatives

Trade partners shall designate a Superintendent/ Foreman and Competent Person to oversee the trade partner's health, safety, and environmental activities and to perform the duties outlined under safety responsibilities. If the Superintendent/ Foreman and Competent Person is unable to perform the safety duties to the satisfaction of Flintco, LLC, the trade partner will replace the safety representative with a full-time safety representative who will have no other duties other than those outlined under safety representative responsibilities of this section.

The Superintendent/Foreman and Competent Person shall be present on site during all trade partner and sub-tier work activities. If overtime, weekend, or double shift work occurs the trade partner shall provide a written plan outlining how the trade partner will meet the safety requirements as outlined above. The trade partner shall identify an alternate Superintendent/Foreman and Competent Person in the event the primary Superintendent/Foreman and Competent Person is absent from the project.

Safety Representative Credentials

Each trade partner must have a designated Superintendent/Foreman and Competent Person that meet the following requirements:

- Minimum of five years of verifiable experience in the work scope that the Safety Representative will be overseeing (i.e., excavation, electrical or masonry etc.) This means, for example in fire protection, installing sprinkler pipe, sprinkler heads, risers, valves, etc. – actual construction work. Office manager type work, site administrative type work or other non-direct construction work does not meet the experience requirement.

A copy of the Superintendent/Foreman and Competent Person's credentials must be provided if requested and maintained on file in each trade partner's safety file.

Safety Responsibilities

Each trade partner's Competent Person, Project Manager and Superintendent shall attend a Pre-Construction meeting with Flintco, LLC prior to that trade partner's scope of work beginning on the project.

The Flintco, LLC Project Safety Coordinator and/or Superintendent will schedule and chair a monthly Safety Committee Meeting. Each trade partner's safety representative is required to attend the monthly Safety Committee Meeting. Each trade partner's "recordkeeping and files" as outlined in the above subsection shall be accurately maintained

by each trade partner's onsite Superintendent/Foreman and Competent Person.

Each trade partner's safety representative will ensure Safety Orientation for their employees is completed on the Trade Partner Portal and Site Specific Orientation is completed prior to the employee's start of work and access to the jobsite.

Competent Person Requirements

Each trade partner shall provide a matrix outlining employee(s) designated as a qualified competent person(s) ("Competent Person"). The qualifications for a Competent Person are identified in the various Subparts of OSHA/CAL- OSHA. NOTE: Certain subparts of OSHA/CAL-OSHA have interpretations as to the qualifications and training required to be designated as a Competent Person (i.e., Subpart P-Excavations; Subpart L-Scaffolding; etc.)

Prior to any work activity beginning in which OSHA/CAL-OSHA requires a competent person, each trade partner shall identify an individual(s) and provide it to Flintco, LLC either electronically or in writing.

Accident Investigations & Incident "Near Miss" Investigations

All incidents/injuries shall be reported by each trade partner's Superintendent/Foreman and Competent Person to Flintco, LLC immediately. The trade partner's Superintendent/foreman, injured employee, and any relevant witnesses will participate in Flintco's incident investigation.

Job-Site Inspections and Observations

- Inspection follow-up shall be performed by each trade partner to ensure corrective measures have been accomplished. Documentation of corrective measures with specific actions shall be provided in Procore.
- Each trade partner shall correct all safety and health-related deficiencies during the same working shift in which they were identified.

Site Requirements

1. Do NOT work alone. Someone should always be around in case of an emergency.
2. It is each employee's responsibility when entering different project work areas to find out what safety precautions are required. Stay alert.
3. Safety Glasses with side shields which meet ANSI Z87.1-1989 (this includes prescription eyeglasses with side shields) shall always be worn by all personnel outside the area designated as Trailer Row. Using approved safety glasses that fit over prescription glasses will be acceptable. Flimsy plastic side shields shall not be allowed. Prescription glasses with or without side shields, that do not meet ANSI Z87.1-1989 are NOT safety glasses.
4. Face and eye protection must be worn when chipping and grinding or where flying debris activities take place. Examples are but not limited to, powder actuated tools, electric or air-operated grinding tools, electric or air-operated impact tools, chop saws, masonry saws, chain saws, drilling tools going into overhead concrete, etc.
5. ANSI certified high visibility/reflective clothing shall be worn on the construction site. Shirts with sleeves (at least t-shirt length 4") and full-length pants shall be required. No Shorts, No Tennis Shoes, and No Tank Tops.
6. Gloves/Hand Protection - minimum cut level 2 or task appropriate is required to prevent injuries to hands during construction activities.
7. Boots with proper leather uppers above the ankle, and hard soled and any other required or appropriate safety equipment for specified task shall be worn at all times.
 - Footwear must be maintained in good condition and free of excessive wear, such as traction being worn off, soles separating, holes, heels worn down, etc.
8. 8. All trade partner employees, truck drivers, delivery personnel, visitors and lower tier contractors and suppliers on site shall wear safety helmets that meet the requirements of ANSI Type II or EN12492 with integrated chinstrap fastened and in conformance with manufacturer's recommendations for proper use at all times outside the area designated as Trailer Row.

Hearing Protection is required by **OSHA CFR 1926.101** and shall be used when required.
9. Fall Protection is required when working at heights greater than 6'. The following must be followed on all Flintco, LLC Projects:
 - All employees shall receive documented training pertaining to the recognition and elimination of fall hazards.
 - Floor and roof openings 2" or greater shall be covered with materials that are capable of supporting at least two times the load expected to be imposed.
 - All floor edges where fall distance is 6' or greater, and all roof edges shall be protected by a standard guardrail with toe board or a warning line system in compliance with **OSHA 1926.502(f)**.
 - When employees are working outside a protective guardrail or warning line system at height greater than 6', employees must wear a Personal Fall Arrest System (PFAS) that is

- attached to a designated anchor point.
 - Flintco requires SRLs (Self-Retracting Lanyards) for all fall protection connection devices. 6' lanyards are not permitted on Flintco jobsites.
 - 100% tie off in all aerial and scissor lifts using SRL (Self-Retracting Lanyard).
 - PFAS shall be worn while working from a suspended scaffold and connected to an independent lifeline.
 - Safety nets shall be provided when workplaces are more than 25' above the ground/floor or where other fall protection devices are impractical.
 - Positioning belts of the two D-ring type SHALL NOT be used for fall protection.
10. Respiratory Protection shall be provided when the possibility of occupational diseases is present. Engineering controls shall be implemented to prevent exposure to employees, if engineering controls can't be utilized then, the employer shall provide other means of respiratory protection.
 11. All employers shall develop, implement, and maintain a written hazardous communication program. Employees must be trained on chemicals they can be exposed to and be able to read and understand the Safety Data Sheet/ Label.
 12. All chemical materials used shall have an SDS (Safety Data Sheets) included with the Safety Submittal Package electronically and to be filed at the Flintco, LLC project office in a hard copy indexed, tabbed, in a binder.
 13. All fuels stored in quantities greater than 25 gallons shall be stored at least 20ft from any storage building and have a fire extinguisher within 25 ft. All fuels stored in excess of 25 gallons shall have a secondary containment.
 14. Only UL-approved metal fuel cans with flame arresters and self-closing pour spouts shall be allowed on site. Fuel cans shall not be stored inside the building, or inside trailers. Cans shall be brought inside the building only to fuel equipment and then removed immediately.
 15. Trade Partners are to provide First Aid supplies for their crew and have them readily available in case of use.
 16. All vehicles on the construction site including the heavy equipment shall have a fire extinguisher in an accessible location.
 17. Only "ABC" fire extinguishers are allowed on the construction site.
 18. All equipment inside any building shall have an "ABC" rated fire extinguisher mounted in an accessible location.
 19. Outside the buildings, gas-powered equipment, and diesel-powered equipment shall have an "ABC" rated fire extinguisher mounted in an accessible location within 25' during operation.
 20. All "ABC" fire extinguishers shall be fully charged, inspected, and tagged for service.
 21. Other types of equipment shall have a fire extinguisher as mandated by OSHA/CAL-OSHA.
 22. Emergency procedures shall be followed. All emergency rally points will be covered in the site-specific orientation and Emergency Action Plan.
 23. Incident Notification
 - Employees must report all incident to their supervisor immediately. Examples are recordable, lost time, first aid, near miss, property damage and any situation that requires emergency response or emergency rescue.
 - Supervisors must report all incidents to Flintco, LLC immediately.
 - Trade Partners/Flintco shall conduct an incident investigation after all incidents.

24. Post-Incident Drug/Alcohol Testing Protocol - If the conduct of a trade partner's employee(s) contributed or could have contributed to an accident while at work which results in an injury to the employee(s) or another person or damage to property, including damage to equipment, the employee(s) may be required to undergo drug and or alcohol testing. The trade partner's company will conduct a post-accident test, and the trade partner's company will require employees whose conduct contributed or could have contributed to the accident to undergo a drug or alcohol test, regardless of whether or not they reported an injury. The cost of the screening shall be the responsibility of the trade partner's company. Screening shall be initiated as soon as possible, but not later than two (2) hours after the incident occurrence. Any worker's refusal to submit to screening shall be treated in the same manner as a "positive" finding. Any worker who withholds notification of an incident for longer than one (1) hour after the alleged event shall be evaluated by the Flintco HSE Area Manager or HSE Regional Director and, if determined to be negligent in the sole discretion of Flintco, shall be subject to being permanently removed from the project.
25. All walkways, ramps, stairways, emergency exits, and access points to ladders shall be kept free of debris.
26. All laydown areas, parking lots, and temporary facilities shall be kept clean at all times.
27. All materials on the construction site shall be stored/staged on dunnage. Do not stack material in such a manner that the material could become unstable and topple.
28. There shall be a trash can by all water cans for cup disposal. Water cans must be kept clean at all times with tape around the lid with the current day's date handwritten on the tape.
29. Keep all trash clear from electrical panels.
30. Remove slip and trip hazards from the floor. Examples are trash, lumber, extension cords, conduit, pipe, and pallets.
31. Impalement Protection
- All reinforcing steel, grade pins, conduit, copper pipe, and all thread that an employee could fall onto or into (this includes horizontal steel) shall have a protective cap.
 - All protective caps must be in suitable condition and shall not be damaged.
 - All protective caps shall be covered with a square, reinforced rebar cap.
 - Goal post protective caps must have a 2X4 placed on top for protection.
32. Clean up and housekeeping shall be top priority. The project shall be kept clean and orderly at all times. The work area SHALL be cleaned on a continuous basis; no debris or trash will be permitted.
33. Remove all nails and screws from scrap lumber.
34. When lifting heavy or awkward material, get help or use a mechanical device such as a forklift, pallet jack, or team lift. Never lift over 50 lbs. unassisted.
35. Always keep the walk area clear of debris when carrying material.
36. All ladders must be inspected daily or prior to use. Ladders that are found unserviceable shall be removed from service immediately.

37. All aluminum, metal type or wooden (other than job built per ANSI standard, ANSI A14.4 1992) ladders are prohibited. Ladders shall reach three feet above the landing for safe access. All ladders shall be positioned on a stable surface and secured to prevent displacement.
38. Ladders shall be placed in the work area so that the employee is able to face the ladder. Maintain a “three-point” contact with the ladder when ascending or descending.
39. Never carrying tools or material while ascending or descending a ladder.
40. Job-made ladders may be utilized on the jobsite. Job-made ladders shall be constructed as per the requirements in ANSI A14.4 1992 and have a walk-through handrail which extends three feet above the landing. Offset entrance or gate shall be provided as not to allow direct access to ladder.
41. Always choose the appropriate ladder for the work being performed.
42. Keep stairs free of tripping hazards.
43. Metal stair pans must be filled or blocked before use. Unfilled metal stair pans SHALL NOT be used.
44. All scaffolding use must be erected, dismantled, moved, operated, and repaired under the supervision of a Competent Person.
45. All scaffolding and components must be inspected by a Competent Person.
46. All employees working on a scaffold must be trained by a qualified person on the recognition of hazards associated with scaffolds.
47. All scaffolding shall be placed on footing that is sound, ridged, and capable of supporting the intended load without settling or displacement. Mud sills shall be used under all supporting legs of scaffold that is erected on the ground.
48. All scaffolding shall be erected plumb and level under the supervision of a qualified or competent person. All scaffolds must be erected per manufactures specifications. A qualified competent person shall conduct a documented inspection of all scaffolding prior to each use and tag the scaffolding in an appropriate manner that is visible for all workers to see.
49. Guardrail requirements for scaffolding:
- Baker/Perry/Narrow Frame type scaffolding shall have guardrails (top, mid and toe) installed on all open sides regardless of height.
 - When the requirement for guardrails (top, mid and toe) to be installed on open sides cannot be met, a personal fall arrest system (PFAS) shall be connected to a self-retracting lifeline (SRL) anchored overhead.
 - ALL supported scaffold poles, legs, frames, and uprights shall bear on base plates that are positively secure to mud sills.
50. All scaffolding must be erected per the manufacture’s specifications.
51. All hand and power tools shall be inspected daily prior to use. Tools shall be maintained in a safe condition (this includes employee furnished tools). Any tool which is not in compliance with any applicable requirement of this part is prohibited and shall be removed from service.
52. Guard(s) on tool(s) shall be in operating condition. Any tool that requires a manufactured guard or handle shall not be removed from the tool.
53. Tools shall not be altered or used in a manner that it is not intended for.
54. Power operated hand tools shall be of the double insulated type or comply with the grounding requirements in **OSHA CFR 1926 subpart K**.

55. All electrical extension cords and power tool cords shall be inspected before each use.
56. All handheld circular saws, table saws, and radial arm saws shall be locked by means of disconnecting the power source and the male end of the cord tagged or in plain view of the operator at all times while changing the sawblade.
57. All cords shall be ran seven (7) feet overhead and protected from sharp objects.
58. All extension cords must be 12g or larger.
59. Damaged or defective equipment shall not be used.
60. All pneumatic power tools and hoses shall be secured by a positive means at each connection.
61. All fuel operated power tools will be stopped, and motors will not be running while refueling is in progress.
- A 10 lb. ABC fire extinguisher must be within 5' of all fueling operations.
62. Employees operating Powder Actuated Tools must be trained and have their training certifications in their possession.
63. Sawhorses or work benches shall be utilized to secure material prior to using handheld circular saws, grinders, bandsaws, drills, and similar tools.
64. All electrical power tools and/or equipment shall be plugged into a GFCI (ground fault circuit protection), at the source of electrical power. All frayed and/or damaged electrical cords shall be removed from service and repaired. Cords and tools will be inspected before use.
- Materials being cut with power tools should never be held by hand.
65. All portable generators including generator/ welders used on the jobsite shall have a GFCI that is an integral part of the generator. The GFCI shall function properly. The GFCI when tested shall trip between 3mA and the 7mA settings on a multi-range GFCI tester.
66. A weekly documented inspection of each generator shall be conducted to ensure GFCI is functioning.
67. Any generator, in which the GFCI does not function, shall be tagged, and removed from service immediately.
68. All generators shall have a unique identification number and the trade partner name in a visible location.
69. Electrical Panels and associated devices shall not be accessed by anyone except for those authorized by the electrical trade partner(s). Once one area of the job site is energized, all areas of the job site are considered energized. The electrical trade partner(s) is responsible for the security of the electrical panels and associated devices to prevent access by unauthorized workers.
70. Only company vehicles, with company insurance shall be allowed on the construction site. The company's name and/or logo shall be visible from a distance of 25 feet away and shall be located on both sides of all company vehicles including heavy equipment.
71. Posted speed limit shall always be adhered to. 10 mph will be the site speed limit unless otherwise posted.
72. Trade partners on Flintco, LLC projects are responsible for providing drinking water for their personnel.
73. Excavation work shall be performed in accordance with OSHA/CAL-OSHA.
74. Prior to any excavation, an excavation plan shall be included in the trade partners Safety Submittal Package for review.
75. All soil shall be treated as Class C soil. Soils may

be reclassified by a registered professional engineer. The reclassification must be documented and must be specific to a certain work area.

76. Flagging and/or suitable warning devices will be required around all trench and excavation work at least three (3) feet (this distance can be exceeded if site specific requires) from the edge of the excavation.
77. Spoil piles shall be put at least two (2) feet back from the edge of the excavation.
78. A safe means of access and egress shall be provided from excavations regardless of their depth at intervals that provide no more than 25 feet of lateral travel.
79. Excavations with vertical walls 6' or greater will present a fall hazard and workers shall be protected.
80. A qualified competent person shall be present anytime excavation work is performed.
81. All underground utilities shall be located prior to any excavation work occurring. The responsible trade partner shall be notified to assist with this location. As-built drawings and utility locators shall be used to locate all underground utilities. Trade partners working around overhead utility lines shall ensure that all equipment, materials, and personnel are at least 10 feet from the overhead lines.
82. All employees shall OBEY all posted safety signs and flagging.
83. Flag, barricade, or sign areas to keep employees from exposures to potentially hazardous work conditions. Supervisors contact information to be posted at the flagged, barricaded, or other controlled/limited access areas.
84. Trade partners or employees shall not remove or bypass any barricades, barriers or other protective devices from tools, equipment, or hazardous locations. All deficiencies shall be reported immediately to the supervisor
85. Seatbelts shall be worn at all times in vehicles including heavy equipment operated within the limits of construction. All heavy equipment shall have ROPS (roll over protection), and seatbelts.
86. Mules, gators, or golf type carts shall have ROPS (roll over protection) and seatbelts for operator and all passengers.
87. All vehicles on the construction site including heavy equipment shall have a fire extinguisher in an accessible location.
88. No one shall ride in a vehicle or mobile equipment unless they are on a seat. Exceptions: Scissors and Boom Lifts. Riding in the back of pick-ups shall not be allowed.
89. Accessories to all mobile equipment (blades, bucket, stringer bits, etc.,) when parked shall be lowered in the down position with ignition keys removed from switch.
90. All equipment including cranes, forklifts, skid steer loaders etc. shall have a reverse signal/ back-up alarm audible above surrounding background noise.
91. All employees who operate equipment shall be educated in the safe operation of that equipment; documentation of this training shall be maintained on file each trade partner's safety records and included on the Trade Partner Portal. Only trained employees shall be allowed to operate that piece of equipment. When mounting or dismounting equipment, employees shall maintain three points of contact.
92. Each fuel storage tank brought onto the construction site shall be provided with its own secondary containment unit. All fuel tanks shall be grounded in accordance with NFPA requirements.
93. All fuel secondary containment will be pumped out after any rain.

94. The following requirements shall be followed for all cranes entering the construction areas.

- All cranes operating on the jobsite shall be equipped with a functioning “Anti-Two Block” device and a functioning load moment indicator.
- The operator shall know the weight of every suspended load, regardless of the size.
- Stable cribbing shall be used for all lifts with outriggers.
- Outriggers will be fully extended.
- All crane operators shall be qualified prior to operating any crane on the jobsite.
- Taglines shall be used on all suspended loads to stabilize the load. Employees shall not use their hands to stabilize the load. All taglines shall be of a continuous length, which are free of knots or other items.

All crane documentation is to be submitted to the Flintco, LLC project team and HSE Area Manager before the crane is brought onto the jobsite.

- A copy of the operator’s license
- A copy of all Rigger certifications
- Current 3rd party annual crane inspection
- Lift plan for heaviest/furthers pick, including load charts and rigging to be used.

95. Critical lifts require approval by the Area VP and HSE Area Manager prior to performing lift. The following are considered critical lifts:

- Lifts exceeding 75% of crane's manufactured load chart capacity
- Lifting over an occupied building
- Tandem picks or multi crane lifts
- Lifts over “active” Process Piping, in excess of 50,000 lbs.
- Lifts that either due to the extreme lead-time for replacement or value of the material, could adversely impact the project.

96. All personnel must remain off trailers while

materials are being hoisted. When accessing tractor trailers, only engineered ladders designed for that purpose shall be used. If an engineered mobile fall protection system is implemented, all manufacturer documentation and training records must be submitted to Flintco for review. This policy ensures compliance with OSHA 1926 Subpart CC, Flintco’s HSE Manual Crane & Rigging section, and all applicable manufacturer requirements.

97. Persons working in any aerial boom-type lifts shall be tied off, at all times.

- Prior to any aerial lift work, a fall protection and rescue plan shall be presented to the Flintco, LLC project team for review.
- Documentation shall be provided in the trade partner portal of worker training and a training completion card shall be on employee’s person.
- Workers shall be connected with personal fall arrest system (PFAS) to the self-retracting lifeline (SRL) manufacturers engineered anchor point.
- Personal fall arrest system (PFAS) shall be rigged such that a worker can neither free fall more than 6’ or contact any lower level, one of three methods:
- Use of a tether anchored to the manufacturers engineered anchor point as a fall restraint.
- Use of a positioning hooks connected to the manufacturers engineered anchor point as fall restraint.
- Use of a self retracting lifeline connected to the manufacturers engineered anchor point as fall arrest.
- Employees SHALL be tied off using a self-retracting lifeline (SRL). Six (6) foot lanyards are not permitted in lifts.
- After the working height has been obtained, shut off all lift motors until ready to relocate.
- Fire extinguishers, fully charged, inspected and tagged shall be installed in an accessible location in the mobile elevated work platform (MEWP) basket.

- Housekeeping shall be done continuously. Employees shall not be allowed to work in lifts cluttered and disorganized.
 - All mobile elevated work platform (MEWP) shall have a unique identification number and the trade partner name posted in a visible location.
 - All mobile elevated work platform (MEWP) shall be operated on a level-working surface. The working surface shall be capable of supporting the weight of the lift without the tires sinking into the surface.
 - No tools or materials shall be suspended from the outside of the mobile elevated work platform (MEWP) basket. Only approved manufacturer's attachments shall be used. Only company vehicles, with company logos, shall be allowed on the construction site. The company's name and/or logo shall be visible from a distance of 25' and shall be located on both sides of the vehicle.
98. As described in each trade partner's Safety Program work permits shall be utilized for those work activities that specifically require them. (Examples are confined space, electrical hot work, welding, painting, work where underground utilities are present, etc.). The use of torches shall not be permitted on formwork/false work at any time. A hot work permit shall be filled out prior to any hot work activity.
99. Lockout and tagging disconnects, circuit breakers and supply valves as well as energy isolating devices shall be used.
100. Any work creating a spark or using a flame is considered to be "Hot Work" and will require a permit provided by Flintco, LLC and signed off by trade partner's Site Safety Representative or Superintendent and Flintco HSE staff or Flintco Superintendent. A fire watch shall be stationed to provide coverage for each welding, cutting, and other hot work operations. A fire watch may cover multiple operations with a 100-foot
101. There will be no smoking/tobacco products, eating or drinking (except for water) in the building after the installation of finished products begins. The initiation of this policy will be at the discretion of Flintco, LLC. All breaks will be taken in designated locations only.
102. All employees shall always conduct themselves in a worker like manner. Any harassment of other personnel, horseplay/fighting or disruptive activities of any kind shall result in immediate dismissal/removal from the job site.
103. No one shall knowingly be permitted to work while their ability or alertness is so impaired by fatigue, illness, or other cause that they may expose the individual or others to injury.
104. Workers shall report unsafe conditions to their supervisors immediately. No worker shall be required or knowingly be permitted to work in an unsafe place, unless for the purpose of correcting the hazard and then only after all safety precautions have been implemented. Animals of any kind are not permitted on/around the active part of the project site. Animals on the part of the active part of a project site pose a risk and create an unnecessary distraction.
105. Animals of any kind are not permitted on/around the active part of the project site. Animals on the active part of the project site pose a risk and create an unnecessary distraction.
106. Any person or persons on the jobsite must have either completed the employee orientation program or have filled out a Flintco, LLC visitor release form. In either case, the documentation must be in the Flintco, LLC construction office prior to the person entering the jobsite and must be accompanied by a member of that trade partners firm.
107. Concrete trucks shall have the chute in the raised and locked position while traveling on the jobsite.
108. Trailers- no one will be allowed to move a trailer or any other device for living on site unless written approval has been obtained from

109. Glass containers of any kind shall not be brought onto the construction site.
110. All arrivals of trailers, storage containers, and large deliveries must be coordinated with Flintco, LLC at least 3 days in advance. The adjacent streets around the jobsite shall not be blocked at any time without approved signage and certified flagmen in place.
111. Project drug and substance abuse policy:
112. The use, possession, sale, transfer, acceptance, or purchase of illegal drugs at any time is strictly prohibited. The use, possession of an open container, personal sale, transfer, or acceptance of alcohol on the property or while performing business on a Flintco jobsite is strictly prohibited. Any violation of this policy will be grounds for immediate termination and may result in a report to the appropriate law enforcement authorities.
113. No prescription drug shall be used by any person, other than to whom it was prescribed. Such substances or non-prescription (over the counter) must be used only as prescribed or indicated.
114. A drug-free” workplace plan shall be established which describes the trade partner’s commitment to achieving a drug- free workplace as outlined above. Prior to beginning any work activities on site, each trade partner shall provide a copy of their “drug-free” plan.
115. Stretch and Flex Program – Start each day by warming up the muscles, which improves elasticity and helps to meet the job’s physical demands.

116. Flintco 4 LIFE Essentials:

- You have the authority to refuse or stop unsafe work.
- You must attend safety orientation prior to any work.
- You must complete a pre-task plan using SmartTagIt for each task.
- You must wear a safety helmet.
- You must wear eye protection.
- You must wear high visibility clothing/ vest.
- You must wear work boots.
- You must wear hand protection.
- You must use fall protection above 6’.
- You must use lock-out/tag-out procedures on energized systems.
- You must immediately report incidents/ accidents.
- You must use continuous clean housekeeping procedures.
- Disabling safety devices or guards is prohibited.
- Drug and alcohol use and/or possession is prohibited.
- Concealed or open carry firearms is prohibited.
- Workplace violence or threat of violence is prohibited.

Cell Phone and Personal Radio/ Speakers Usage

The use of personal cell phones/personal electronic devices and earbuds/earphones/Bluetooth devices/radios while at work present a hazard and/ or distraction to the user and/or co-employees. This policy is meant to ensure that cell phone/personal electronic device use while at work is both safe and does not disrupt business operations.

Therefore, personal cell phones/personal electronic devices and earbuds/earphones/Bluetooth devices are not allowed on any Flintco, LLC jobsite except as described:

Employees of Flintco, LLC on-site project staff is authorized to carry cell phones in accordance with policy below.

Employees of trade partners/ suppliers: Any employee that the trade partner/supplier deems necessary to conduct business operations must get written permission from a member of the Flintco, LLC staff prior to use of cell phone on project site. They must then use the cell phone in accordance with policy below.

Cell Phone/Personal Electronic Devices Policy

Use of cell phones/personal electronic devices is permissible during work hours for company business only. Personal use of cell phones/

electronic devices is only permitted during breaks and at lunch time and in designated areas. Before accepting an incoming or making an outgoing call, make sure that such activity will not compromise safety. When operating equipment, driving a vehicle on the jobsite or while performing any jobsite activity that a distraction may cause a potential safety threat, let all incoming calls go unanswered and texting is prohibited. You then may return the call when you have stopped the equipment, pulled the vehicle to a safe area, or put yourself and those around you in a safe environment before returning the call.

Violating this policy will result in disciplinary action up to and including removal or termination.

Please contact your immediate supervisor should you have any questions or concerns.

DOCUMENT 007320

FLINTCO SAFETY SUBMITTAL CHECKLIST



FLINTCO, LLC/Oakridge SAFETY SUBMITTAL CHECK LIST

This checklist shall be completed, returned and information submitted prior to the commencement of construction activities and maintained on file for future use.

Mandatory Submittals From All Contractors

- ☐ Provide all Safety Data Sheets, for only materials used on this project, in electronic format. The hard copy binder indexed and tabbed, shall be provided to the project site.
- ☐ Provide a certification card of CPR/First Aid trained employees on site (minimum of 1), to be onsite at all time work is being performed by your company and all sub tier contractors.
- ☐ Provide sign off sheets from Chapter 13 (page 16)
- ☐ Provide documentation of your company's qualified Competent Person as defined by OSHA (if applicable) Documentation shall include experience, training, and qualifications (page 17).
- ☐ Provide documentation of the SSR's (site safety representative) completed OSHA 30 or greater. To be onsite at all time work is being performed by your company and all sub tier contractors (page 18).

Mandatory Project Procedures & Acknowledgement

Y N/A

- ☐ ☐ Safety Manual - Confirm that your company has a written safety manual, including company substance abuse policy Hazcom program.
- ☐ ☐ Hazard Analysis - Prepare and make available for onsite audits - Written Site Specific JHA / Job Hazard Analysis (analysis for contractors entire scope of work) and daily PTP / Pre Task Plan.
- ☐ ☐ Planning - Prepare and make available for audits - Written excavation plans, fall protection and rescue plans, lift plans, critical lift plans, and any other plans that may be applicable to the scope of work that your company or sub tiers contractors will be performing.
- ☐ ☐ Equipment Operation – Prepare and make available for audits that all personnel on the project from your company who will operate equipment are qualified and authorized (i.e. scissor lift, boom lift, backhoe, skid steer, laser, and powder actuated tools, etc.). Documentation of the training should include: a) Attendance b) Trainers names, c) Date the training took place, d) Employee name.
- ☐ ☐ Fall Protection - Prepare and make available for audits – All contractors are required to prepare and maintain a written fall protection plan if your scope of work will include workers being exposed to a fall. All employees are required to attend a fall protection class/ training session. Documentation of the training should include: a) Attendance b) Trainers names, c) Date the training took place, d) Employee name.
- ☐ ☐ Scaffolding – You understand that scaffolds must be inspected, signed off including date by a Competent Person prior to each shift and scaffolding shall be tagged with a pass or fail. You understand that all employees are required to attend a scaffolding class/ training session. Documentation of the training should include: a) Attendance b) Trainers' names, c) Date the training took place, d) Employee name.

☐ ☐

General/Specialized Training – Prepare and make available for audits that all employees have education and training in the recognition, avoidance, and prevention of unsafe conditions as required by OSHA for the tasks they are performing. Prepare and make available for audits - proof of training such as a form letter, on company letterhead, stating training, trainer, date of training, and the names of all employees who participated in the training is acceptable.

☐ ☐

Respirable Crystalline Silica – Prepare and make available for audits that all employees have education and training in the recognition, avoidance, and prevention of respirable crystalline silica as required by OSHA for the tasks they are performing. Prepare and make available for audits - proof of training such as a form letter, on company letterhead, stating training, trainer, date of training, and the names of all employees who participated in the training is acceptable.

☐ ☐

Housekeeping - Housekeeping is of the highest priority on this project. Clean as you go will be practiced throughout all work activities. This will promote a safe working environment and displays the professionalism of your craft. As per your contract, the area of your daily activities shall be broom swept daily. Eating, use of tobacco products, e cigarettes/vapor devices may be prohibited in any or all of the work areas

☐ ☐

Ensure that all workers know they are authorized to STOP work for unsafe conditions without penalty.

JOB NAME: _____

COMPANY NAME: _____

FOREMAN: _____

CONTACT NUMBER: _____

DATE: _____

SUPERINTENDENT: _____

CONTACT NUMBER: _____

DATE: _____

PROJECT MANAGER: _____

CONTACT NUMBER: _____

DATE: _____

CORPORATE SAFETY REPRESENTATIVE: _____

CONTACT NUMBER: _____

DATE: _____

(THIS FORM IS TO BE KEPT ON FILE AT THE PROJECT)

DOCUMENT 007380

ZERO PUNCHLIST PROCEDURES

PART 1 - GENERAL

1.1 DESCRIPTION:

- A. The goal of this project is to obtain a minimal amount of punchlist items when the Substantial Completion Punchlist is developed and to complete this punchlist within 30 days of Substantial Completion. This can be achieved by identifying and correcting defective work as soon as possible to minimize interference with other work ongoing. Achievement of this goal will reduce project costs for all entities, improve owner satisfaction and enable final payment to be received at the earliest possible date.

1.2 DEFINITIONS:

- A. **Zero Punchlist** is obtained when a project reaches final completion no more than 30 days after substantial completion with no punchlist items remaining. (All Owner Punchlist items must be complete 30 days after substantial completion of the project.)
- B. **Punchlist Complete** requires a punchlist signed off by the architect or owner, or other documentation confirming that the punchlist is complete.
- C. **Rolling Punchlist** is a punchlist that is created at the beginning of the project, that is used to record all deficiencies when observed and the date they are corrected. This list is updated at least bimonthly.

1.3 EXCEPTIONS:

- A. Change order work that is approved too late to be completed by the Contract substantial completion date shall have a separate date for completion established in writing with Architect / Owner approval.
- B. Warranty work shall be separate from punchlist items.

1.4 OBJECTIVES:

- A. Improve owner satisfaction.
- B. Reduce project cost for contractors as well as owner.
- C. Receive final payment earlier.
- D. Improve employee moral.
- E. Increase efficiency.
- F. Create a team effort between the Contractor, Construction Manager, Owner, and Architect to provide high quality with minimal conflicts.
- G. Establish quality standards at an early date.

1.5 PROCEDURES:

- A. Establish Zero Punchlist Team including Contractor, Construction Manager, Architect and Owner. The goal of this team is to develop standards of quality, create a team effort between these entities and to provide a high quality with minimal conflicts. An individual from each entity shall be assigned at the beginning of the project for participation on the team.
- B. Samples and Mockups will be established at the earliest possible date. These will be used to determine the level of quality that will be acceptable. (Examples of mockups will include the following; precast sample, finished cell, millwork, painted materials, etc.)
- C. The Rolling Punchlist will be established at the beginning of each contract. This list will be developed and maintained by the Construction Manager. The Zero Punchlist team shall review this list on a bimonthly basis at the Contractor's Meeting and Project Meeting.
- D. Zero Punch Goals for this project include the following:
 - 1. Zero Punchlist Benchmarks:
 - a) Recognize quality issues before they impact schedule.
 - b) Average length of rolling punchlist item less than 10 days.
 - c) Rolling punchlist items shall be completed two-weeks prior to Substantial Completion Punchlist.
 - d) Secure sign off of Substantial Completion Punchlist within 30days after substantial completion.
 - e) Final payment within 60 days of substantial completion.
- E. Establish Quality Issues and Assignments by Zero Punchlist Team.
- F. Consider "fresh eyes" review – non-project team member review.
- G. Check systems as well as aesthetics – obtain system test prior to Substantial Completion Punchlist.
- H. Verify O & M manuals, record drawings and other project close out requirements will be completed within 30 days of Substantial Completion.

DOCUMENT 007390

QUALIFICATION OF BIDDERS

PROJECT: Cherokee Nation Heritage Center

SITE: Tulsa, OK

- I. Each prospective Bidder may be required to submit a Contractor's Qualification Statement, AIA Document to the Construction Manager after the bid opening. Submittal of an advertising brochure is not permitted. Such statement shall be notarized. A financial statement is not required with the qualification statement, however, the apparent three lowest bidders may be required to submit a notarized current statement within 72 hours after the bid opening. **Bidders shall pay special attention to the last paragraph of the Invitation to Bid which states, "The Owner reserves the right to waive any informalities, or to reject any or all bids."**
- II. The following qualification procedures shall be followed:
 1. Contractor's Qualification Statement, AIA Document A305. Give special attention to questions 3.4, 3.5, and 3.6. In answering these questions, include all projects that are similar in size and scope to the project now bidding.

- III. The Owner as referred to herein shall be:

Cherokee Nation

END OF DOCUMENT

DRAFT AIA® Document A305™ – 2020

Contractor's Qualification Statement

THE PARTIES SHOULD EXECUTE A SEPARATE CONFIDENTIALITY AGREEMENT IF THEY INTEND FOR ANY OF THE INFORMATION IN THIS A305-2020 TO BE HELD CONFIDENTIAL.

SUBMITTED BY:

(Organization name and address.)

« »

SUBMITTED TO:

(Organization name and address.)

« »

TYPE OF WORK TYPICALLY PERFORMED

(Indicate the type of work your organization typically performs, such as general contracting, construction manager as constructor services, HVAC contracting, electrical contracting, plumbing contracting, or other.)

« »

THIS CONTRACTOR'S QUALIFICATION STATEMENT INCLUDES THE FOLLOWING:

(Check all that apply.)

- [« »] Exhibit A – General Information
- [« »] Exhibit B – Financial and Performance Information
- [« »] Exhibit C – Project-Specific Information
- [« »] Exhibit D – Past Project Experience
- [« »] Exhibit E – Past Project Experience (Continued)

CONTRACTOR CERTIFICATION

The undersigned certifies under oath that the information provided in this Contractor's Qualification Statement is true and sufficiently complete so as not to be misleading.

Organization's Authorized Representative
Signature

« »

Date

« »

Printed Name and Title

NOTARY

State of: « »

County of: « »

Signed and sworn to before me this « » day of « » « »

Notary Signature

My commission expires: « »

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

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DRAFT AIA® Document A305™ – 2020

Exhibit A

General Information

This Exhibit is part of the Contractor's Qualification Statement, submitted by « » and dated the « » day of « » in the year « »
(In words, indicate day, month and year.)

§ A.1 ORGANIZATION

§ A.1.1 Name and Location

§ A.1.1.1 Identify the full legal name of your organization.

« »

§ A.1.1.2 List all other names under which your organization currently does business and, for each name, identify jurisdictions in which it is registered to do business under that trade name.

« »

§ A.1.1.3 List all prior names under which your organization has operated and, for each name, indicate the date range and jurisdiction in which it was used.

« »

§ A.1.1.4 Identify the address of your organization's principal place of business and list all office locations out of which your organization conducts business. If your organization has multiple offices, you may attach an exhibit or refer to a website.

« »

§ A.1.2 Legal Status

§ A.1.2.1 Identify the legal status under which your organization does business, such as sole proprietorship, partnership, corporation, limited liability corporation, joint venture, or other.

« »

- 1 If your organization is a corporation, identify the state in which it is incorporated, the date of incorporation, and its four highest-ranking corporate officers and their titles, as applicable.

« »

- 2 If your organization is a partnership, identify its partners and its date of organization.

« »

- 3 If your organization is individually owned, identify its owner and date of organization.

« »

ADDITIONS AND DELETIONS:

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- .4 If the form of your organization is other than those listed above, describe it and identify its individual leaders:

<< >>

§ A.1.2.2 Does your organization own, in whole or in part, any other construction-related businesses? If so, identify and describe those businesses and specify percentage of ownership.

<< >>

§ A.1.3 Other Information

§ A.1.3.1 How many years has your organization been in business?

<< >>

§ A.1.3.2 How many full-time employees work for your organization?

<< >>

§ A.1.3.3 List your North American Industry Classification System (NAICS) codes and titles. Specify which is your primary NAICS code.

<< >>

§ A.1.3.4 Indicate whether your organization is certified as a governmentally recognized special business class, such as a minority business enterprise, woman business enterprise, service disabled veteran owned small business, woman owned small business, small business in a HUBZone, or a small disadvantaged business in the 8(a) Business Development Program. For each, identify the certifying authority and indicate jurisdictions to which such certification applies.

<< >>

§ A.2 EXPERIENCE

§ A.2.1 Complete Exhibit D to describe up to four projects, either completed or in progress, that are representative of your organization's experience and capabilities.

§ A.2.2 State your organization's total dollar value of work currently under contract.

<< >>

§ A.2.3 Of the amount stated in Section A.2.2, state the dollar value of work that remains to be completed:

<< >>

§ A.2.4 State your organization's average annual dollar value of construction work performed during the last five years.

<< >>

§ A.3 CAPABILITIES

§ A.3.1 List the categories of work that your organization typically self-performs.

<< >>

§ A.3.2 Identify qualities, accreditations, services, skills, or personnel that you believe differentiate your organization from others.

<< >>

§ A.3.3 Does your organization provide design collaboration or pre-construction services? If so, describe those services.

<< >>

§ A.3.4 Does your organization use building information modeling (BIM)? If so, describe how your organization uses BIM and identify BIM software that your organization regularly uses.

<< >>

§ A.3.5 Does your organization use a project management information system? If so, identify that system.

<< >>

§ A.4 REFERENCES

§ A.4.1 Identify three client references:

(Insert name, organization, and contact information)

<< >>

§ A.4.2 Identify three architect references:

(Insert name, organization, and contact information)

<< >>

§ A.4.3 Identify one bank reference:

(Insert name, organization, and contact information)

<< >>

§ A.4.4 Identify three subcontractor or other trade references:

(Insert name, organization, and contact information)

<< >>

DRAFT AIA® Document A305™ – 2020

Exhibit B

Financial and Performance Information

This Exhibit is part of the Contractor's Qualification Statement, submitted by « » and dated the « » day of « » in the year « »
(In words, indicate day, month and year.)

§ B.1 FINANCIAL

§ B.1.1 Federal tax identification number:

« »

§ B.1.2 Attach financial statements for the last three years prepared in accordance with Generally Accepted Accounting Principles, including your organization's latest balance sheet and income statement. Also, indicate the name and contact information of the firm that prepared each financial statement.

« »

§ B.1.3 Has your organization, its parent, or a subsidiary, affiliate, or other entity having common ownership or management, been the subject of any bankruptcy proceeding within the last ten years?

« »

§ B.1.4 Identify your organization's preferred credit rating agency and identification information.

(Identify rating agency, such as Dun and Bradstreet or Equifax, and insert your organization's identification number or other method of searching your organization's credit rating with such agency.)

« »

§ B.2 DISPUTES AND DISCIPLINARY ACTIONS

§ B.2.1 Are there any pending or outstanding judgments, arbitration proceedings, bond claims, or lawsuits against your organization, its parent, or a subsidiary, affiliate, or other entity having common ownership or management, or any of the individuals listed in Exhibit A, Section 1.2, in which the amount in dispute is more than \$75,000?

(If the answer is yes, provide an explanation.)

« »

§ B.2.2 In the last five years has your organization, its parent, or a subsidiary, affiliate, or other entity having common ownership or management:

(If the answer to any of the questions below is yes, provide an explanation.)

- .1 failed to complete work awarded to it?

« »

- .2 been terminated for any reason except for an owners' convenience?

ADDITIONS AND DELETIONS:

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« »

- .3 had any judgments, settlements, or awards pertaining to a construction project in which your organization was responsible for more than \$75,000?

« »

- .4 filed any lawsuits or requested arbitration regarding a construction project?

« »

§ B.2.3 In the last five years, has your organization, its parent, or a subsidiary, affiliate, or other entity having common ownership or management; or any of the individuals listed in Exhibit A Section 1.2:
(If the answer to any of the questions below is yes, provide an explanation.)

- .1 been convicted of, or indicted for, a business-related crime?

« »

- .2 had any business or professional license subjected to disciplinary action?

« »

- .3 been penalized or fined by a state or federal environmental agency?

« »

DRAFT AIA® Document A305™ – 2020

Exhibit C

Project Specific Information

This Exhibit is part of the Contractor's Qualification Statement, submitted by « » and dated the « » day of « » in the year « »
(In words, indicate day, month and year.)

PROJECT:

(Name and location or address.)

« »
« »

CONTRACTOR'S PROJECT OFFICE:

(Identify the office out of which the contractor proposes to perform the work for the Project.)

« »

TYPE OF WORK SOUGHT

(Indicate the type of work you are seeking for this Project, such as general contracting, construction manager as constructor, design-build, HVAC subcontracting, electrical subcontracting, plumbing subcontracting, etc.)

« »

CONFLICT OF INTEREST

Describe any conflict of interest your organization, its parent, or a subsidiary, affiliate, or other entity having common ownership or management, or any of the individuals listed in Exhibit A Section 1.2, may have regarding this Project.

« »

§ C.1 PERFORMANCE OF THE WORK

§ C.1.1 When was the Contractor's Project Office established?

« »

§ C.1.2 How many full-time field and office staff are respectively employed at the Contractor's Project Office?

« »

§ C.1.3 List the business license and contractor license or registration numbers for the Contractor's Project Office that pertain to the Project.

« »

§ C.1.4 Identify key personnel from your organization who will be meaningfully involved with work on this Project and indicate (1) their position on the Project team, (2) their office location, (3) their expertise and experience, and (4) projects similar to the Project on which they have worked.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

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§ C.1.5 Identify portions of work that you intend to self-perform on this Project.

<< >>

§ C.1.6 To the extent known, list the subcontractors you intend to use for major portions of work on the Project.

<< >>

§ C.2 EXPERIENCE RELATED TO THE PROJECT

§ C.2.1 Complete Exhibit D to describe up to four projects performed by the Contractor's Project Office, either completed or in progress, that are relevant to this Project, such as projects in a similar geographic area or of similar project type. If you have already completed Exhibit D, but want to provide further examples of projects that are relevant to this Project, you may complete Exhibit E.

§ C.2.2 State the total dollar value of work currently under contract at the Contractor's Project Office:

<< >>

§ C.2.3 Of the amount stated in Section C.2.2, state the dollar value of work that remains to be completed:

<< >>

§ C.2.4 State the average annual dollar value of construction work performed by the Contractor's Project Office during the last five years.

<< >>

§ C.2.5 List the total number of projects the Contractor's Project Office has completed in the last five years and state the dollar value of the largest contract the Contractor's Project Office has completed during that time.

<< >>

§ C.3 SAFETY PROGRAM AND RECORD

§ C.3.1 Does the Contractor's Project Office have a written safety program?

<< >>

§ C.3.2 List all safety-related citations and penalties the Contractor's Project Office has received in the last three years.

<< >>

§ C.3.3 Attach the Contractor's Project Office's OSHA 300a Summary of Work-Related Injuries and Illnesses form for the last three years.

§ C.3.4 Attach a copy of your insurance agent's verification letter for your organization's current workers' compensation experience modification rate and rates for the last three years.

§ C.4 INSURANCE

§ C.4.1 Attach current certificates of insurance for your commercial general liability policy, umbrella insurance policy, and professional liability insurance policy, if any. Identify deductibles or self-insured retentions for your commercial general liability policy.

§ C.4.2 If requested, will your organization be able to provide property insurance for the Project written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis?

<< >>

§ C.4.3 Does your commercial general liability policy contain any exclusions or restrictions of coverage that are prohibited in AIA Document A101-2017, Exhibit A, Insurance A.3.2.2.2? If so, identify.

<< >>

§ C.5 SURETY

§ C.5.1 If requested, will your organization be able to provide a performance and payment bond for this Project?

<< >>

§ C.5.2 Surety company name:

<< >>

§ C.5.3 Surety agent name and contact information:

<< >>

§ C.5.4 Total bonding capacity:

<< >>

§ C.5.5 Available bonding capacity as of the date of this qualification statement:

<< >>

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Exhibit D

Contractor's Past Project Experience

	1	2	3	4
PROJECT NAME				
PROJECT LOCATION				
PROJECT TYPE				
OWNER				
ARCHITECT				
CONTRACTOR'S PROJECT EXECUTIVE				
KEY PERSONNEL (include titles)				
PROJECT DETAILS	Contract Amount Completion Date % Self-Performed Work	Contract Amount Completion Date % Self-Performed Work	Contract Amount Completion Date % Self-Performed Work	Contract Amount Completion Date % Self-Performed Work
PROJECT DELIVERY METHOD	☐ Design-bid-build ☐ Design-build ☐ CM constructor ☐ CM advisor ☐ Other:	☐ Design-bid-build ☐ Design-build ☐ CM constructor ☐ CM advisor ☐ Other:	☐ Design-bid-build ☐ Design-build ☐ CM constructor ☐ CM advisor ☐ Other:	☐ Design-bid-build ☒ Design-build ☐ CM constructor ☒ CM advisor ☐ Other:
SUSTAINABILITY CERTIFICATIONS				

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Exhibit E

Contractor's Past Project Experience, Continued

	1	2	3	4
PROJECT NAME				
PROJECT LOCATION				
PROJECT TYPE				
OWNER				
ARCHITECT				
CONTRACTOR'S PROJECT EXECUTIVE				
KEY PERSONNEL (include titles)				
PROJECT DETAILS	Contract Amount Completion Date % Self-Performed Work	Contract Amount Completion Date % Self-Performed Work	Contract Amount Completion Date % Self-Performed Work	Contract Amount Completion Date % Self-Performed Work
PROJECT DELIVERY METHOD	☐ Design-bid-build ☐ Design-build ☐ CM constructor ☐ CM advisor ☐ Other:	☐ Design-bid-build ☐ Design-build ☐ CM constructor ☐ CM advisor ☐ Other:	☐ Design-bid-build ☐ Design-build ☐ CM constructor ☐ CM advisor ☐ Other:	☐ Design-bid-build ☒ Design-build ☐ CM constructor ☒ CM advisor ☐ Other:
SUSTAINABILITY CERTIFICATIONS				