



Bid Participants:

*Brian Cooper,
Project Director*

*Lance Lewis,
Senior Project Manager*

*Ross Smith,
Project Manager*

*Wes Martin,
Superintendent*

*Brian Soldier,
Superintendent*

*Construction Manager's
Bid Book*

**Cherokee Nation Hard Rock
Casino Exterior Renovation
Phase II & III Guitar Pick
Plaza**

(December 22nd, 2020)

Construction Manager's Bid Book

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INVITATION TO BIDDERS

Cherokee Nation, hereinafter referred to as Owner and Cooper Flintco, LLC hereinafter called the Construction Manager, will receive SEALED bids to provide the work included in the **Cherokee Hard Rock Casino Exterior Renovation Phase II & III Guitar Pick Plaza** located at Catoosa, OK, on **December 22nd, 2020 at 5:00 PM CST**.

There will NOT be a pre-bid meeting for this solicitation however, bidder(s) has the responsibility for inspection of all work sites, and familiarization with all conditions concerning the Work. Failure or neglect of the bidder to discharge this responsibility will not excuse nonperformance. To schedule a site walk, please contact Ross Smith – 918-313-8866. Ross.smith@flintco.com

Due to the issues with COVID-19 all bid package documents shall be filled out and e-mailed to Cherokee Nation Businesses at the following address: [HR Ext .pvvyfqpmpnoyu4tq@u.box.com](mailto:HR_Ext_pvvyfqpmpnoyu4tq@u.box.com) to be received no later than **5:00PM CST on December 22, 2020**. Please notify Buyer, Tina Jones, when bid is sent so verification of receipt can be confirmed.

A **Bid Security**, as stipulated in the bid documents, **in the amount of 5%** of the bid may be required to accompany the sealed proposal of each bidder if the amount of the bid exceeds \$100,000.

Please contact Ross Smith with Cooper Flintco at (918) 313-8866 if you would like to set up a job walk prior to bid. All questions in regards to the bid, or documents, are to be submitted in writing via email to Tina Jones at tina.jones@cnent.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. They will also be available for review at the Dodge Plan Room, Southwest Construction News and Bid News Construction Reports.

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

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.

1.01 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.

1.02 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/she 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.

1.03 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.

1.04 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.

1.05 BID SECURITY:

A bid security 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.

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.

1.06 PERFORMANCE BOND, LABOR AND MATERIAL PAYMENT BOND AND DEFECT BOND:

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. Furnish bonds with a surety company acceptable to the Owner and Construction Manager on the required Document 006113 form provided. **A Dual Obligee 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.

1.07 CONTRACTORS:

There shall be only one contractor named for each classification listed.

1.08 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.

1.09 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**.

1.10 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 himself 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.

1.11

PROPOSAL PROCEDURE:

- A. Due to the issues with COVID-19 all bid package documents shall be filled out and e-mailed to Cherokee Nation Businesses at the following address: HR_Ext_pvvyqfmpnoyu4tq@u.box.com to be received no later than 5:00PM CST on December 22, 2020. Please notify Buyer, Tina Jones, when bid is sent so verification of receipt can be confirmed. Include all the information listed below.
1. Proposal Form, complete with every blank filled in
 2. Bid Package General Requirements, initialed and signed
 3. Bid Package, complete with every blank filled in
 4. Non-Collusion Affidavit, notarized
 5. Business Relationship Affidavit, notarized
 6. Bid security.
 7. TERO Certificate if applicable
 8. AIA A305 Qualification Statement
- B. The Bidder, by his failure to include every listed Items 2 through 10 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.

1.12

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: Cherokee Nation is a sales tax exempt organization. In order for your firm to realize tax exemption for City County and State sales taxes, Cherokee Nation must pay suppliers directly for materials incorporated into the project. Sales tax exemption applies only for materials incorporated into the project. This does not apply to rental equipment or materials not permanently incorporated into the project.
- E. Tax Exempt Billing Information
 - 1. Invoices from suppliers for materials must be addressed to the owner. These invoices can be addressed to the owner C/O (Subcontractor or Supplier).
 - 2. If purchase orders are required from your suppliers submit the following information to Flintco
 - A. Vendor name, complete address, contact, telephone number and fax number.
 - B. Description of materials with unit prices, lump sum and quantities.
 Submit these items in a timely manner so Flintco has sufficient time to create and obtain the required signatures and process the Purchase Order. This must be completed prior to receiving payment for invoices.
 - 3. If your suppliers require a credit application from the owner, send them to Flintco to be processed.
 - 4. Subcontractors are responsible to receive invoices from suppliers, verify quantities and amounts and forward invoices with your monthly pay application to Flintco each month. Invoices from suppliers are not to be sent directly to the Owner or Flintco.
 - 5. Flintco will receive, check, and submit invoices from subcontractors to the owner.
 - 6. Lien waivers will be issued to subcontractors and suppliers with payments. These must be returned prior to the next payment.
 - 7. Invoices must be in excess of five hundred dollars **(\$500.00)** to qualify for tax exemption.
 - 8. Flintco will forward payment from owner to subcontractors and suppliers once payment is received from the owner.
- F. Retainage will not be held on materials invoiced to and paid directly by "owner".

The Owner is tax exempt for all city, county and state sales tax for all work that is performed within the areas designated as Trust Land as shown in the bid documents.

- 1.13 CONTRACT:
The form of agreement, which the successful Bidder, as Contractor, shall be required to execute is the Flintco Standard Subcontract Agreement, which is attached as Document 005213.
- 1.14 COMPLETION TIME:
A. It is agreed that work performed under this contract shall commence when the Notice to Proceed has been distributed by Flintco 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.

1.15 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.

1.16 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.

1.17 SOIL BORINGS:

- A. A soil investigation report has been made on this project and a log of borings prepared. This report was obtained only for use by the Architect/Engineer in design and is not a part of the Contract Documents. Log of borings is available for contractor's information only, and is not a warranty of subsurface conditions. Architect/Engineer assumes no responsibility for this report or log of borings.
- B. Bidders shall visit site and acquaint themselves with site conditions. Prior to bidding, bidders may make their own subsurface investigations to satisfy themselves with site and subsurface conditions. Fill all excavated areas at conclusion of investigation.

1.18 PRE-BID CONFERENCE

There will NOT be a pre-bid meeting for this solicitation however, bidder(s) has the responsibility for inspection of all work sites, and familiarization with all conditions concerning the Work. Failure or neglect of the bidder to discharge this responsibility will not excuse nonperformance. To schedule a site walk, please contact Ross Smith (918) 313-8866.

1.19 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.

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 ~~n~~**N**ation, ~~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.

- HG.** 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.
- HI.** To engage in the process of certifying businesses as "Indian-owned economic enterprises" and to determine whether businesses may be given Indian preference.
- IJ.** 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.**
- KJ.** To negotiate agreements with unions to insure union compliance with this Title.
- LK** 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.~~
- MKML.** To establish counseling programs to assist Indians in obtaining and retaining employment.
- NLNM.** To require employers to submit reports and take all actions deemed necessary by the TERO for the fair and vigorous implementation of this Act.
- OMON.** To enter into cooperative agreements with employment rights agencies such as EEOC, HRC, and OFCCP to eliminate adverse discrimination against Indians.
- PNPO.** To take such actions as are necessary to achieve the purposes and objectives of the Cherokee Nation employment rights program established in this Title.
- QO.P** ———To publish a listing of certified "Indian-owned economic enterprises."
- RP.Q** To review and propose changes to this Title and related regulations as necessary.
- SQ.R** To ~~hold hearings~~ **participate and cooperate in appeal hearings** in accordance with this chapter.
- TR.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.
- US.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.**
- VT.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, Title40 § 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 any 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 ~~at~~ **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 ~~top~~ **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

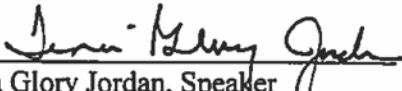
The provisions of this act shall become effective thirty (30) days from and after the date of its passage and approval.

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.

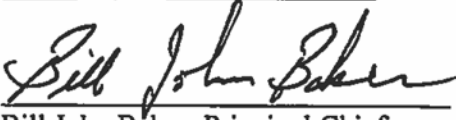
Enacted by the Council of the Cherokee Nation on the 10th day of February, 2014.


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 her 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



GWXS DHP
CHEROKEE NATION®
P.O. Box 948 • Tahlequah, OK 74465-8948 • 918-452-5089 • cherokee.org

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.



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 _____ 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.

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.

For the Contractor:

For TERO:

Signature

Signature

Title

Title

Date

Date

Address

E-mail

Phone #

Jobsite Contact



CORE CREW/Project Workers list

For Cherokee Nation Construction Projects

TERO



Contractor: Sub Contractor:

TERO: yes no TERO: yes no

Project Name: Location:

Phone # email :

Core Crew	Name	Position	ID #	Native American(y/n)
As defined in Legislative Act 01-14, section 4, E		owner	TERO Use Only	
		Project Manager		
		Supervisor		
Project Crew				

Contractor Signature TERO Staff Signature _____

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

12/13/2016 _____ Signature _____ Title _____ Date 6:02 PM

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: Cooper Flintco, LLC
1624 West 21st Street
Tulsa, Oklahoma 74107

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 Hard Rock Casino Exterior Renovation Phase 2 & 3. Project as prepared by Edmondson Reed Architects 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:

_____	_____
_____	_____
_____	_____

MULTIPLE BID PACKAGE DISCOUNT: If all of the above bid packages are accepted by the Owner and awarded to the same contractor a discount of \$ _____ can be deducted from the sum of the total of all the above bid packages.

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 affect 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 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.

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 and Owner are additional insured. Waiver of subrogation applies to all insurance policies in favor of certificate holder. Flintco 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 _____

Bulletin No. _____, dated _____
Bulletin No. _____, dated _____
Bulletin No. _____, dated _____
Bulletin No. _____, dated _____
Bulletin No. _____, dated _____
Bulletin No. _____, dated _____
Bulletin No. _____, dated _____
Bulletin No. _____, dated _____
Bulletin 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

DOCUMENT 004513

QUALIFICATION OF BIDDERS

PROJECT: Cherokee Hard Rock Casino Exteriors Renovation Phase II & III Guitar Pick Plaza

SITE: Catoosa, OK

- I. Each prospective Bidder may be required to submit a Contractor's Qualification Statement, AIA Document to the Construction Manager with their bid. 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 Businesses

END OF DOCUMENT

DRAFT AIA[®] Document A305[™] - 1986

Contractor's Qualification Statement

The Undersigned certifies under oath that the information provided herein is true and sufficiently complete so as not to be misleading.

SUBMITTED TO:

ADDRESS:

SUBMITTED BY:

NAME:

ADDRESS:

PRINCIPAL OFFICE:

Corporation

Partnership

Individual

Joint Venture

Other

NAME OF PROJECT (if applicable): Generic

TYPE OF WORK (file separate form for each Classification of Work):

General Construction

HVAC

Electrical

Plumbing

Other (please specify)

§ 1. ORGANIZATION

§ 1.1 How many years has your organization been in business as a Contractor?

§ 1.2 How many years has your organization been in business under its present business name?

§ 1.2.1 Under what other or former names has your organization operated?

§ 1.3 If your organization is a corporation, answer the following:

§ 1.3.1 Date of incorporation:

§ 1.3.2 State of incorporation:

§ 1.3.3 President's name:

§ 1.3.4 Vice-president's name(s)

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.

This form is approved and recommended by the American Institute of Architects (AIA) and The Associated General Contractors of America (AGC) for use in evaluating the qualifications of contractors. No endorsement of the submitting party or verification of the information is made by AIA or AGC.

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§ 1.3.5 Secretary's name: [REDACTED]

§ 1.3.6 Treasurer's name: [REDACTED]

§ 1.4 If your organization is a partnership, answer the following:

§ 1.4.1 Date of organization: [REDACTED]

§ 1.4.2 Type of partnership (if applicable): [REDACTED]

§ 1.4.3 Name(s) of general partner(s)
[REDACTED]

§ 1.5 If your organization is individually owned, answer the following:

§ 1.5.1 Date of organization: [REDACTED]

§ 1.5.2 Name of owner:
[REDACTED]

§ 1.6 If the form of your organization is other than those listed above, describe it and name the principals:
[REDACTED]

§ 2. LICENSING

§ 2.1 List jurisdictions and trade categories in which your organization is legally qualified to do business, and indicate registration or license numbers, if applicable.
[REDACTED]

§ 2.2 List jurisdictions in which your organization's partnership or trade name is filed.
[REDACTED]

§ 3. EXPERIENCE

§ 3.1 List the categories of work that your organization normally performs with its own forces.
[REDACTED]

§ 3.2 Claims and Suits. (If the answer to any of the questions below is yes, please attach details.)

§ 3.2.1 Has your organization ever failed to complete any work awarded to it?
[REDACTED]

§ 3.2.2 Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers?
[REDACTED]

§ 3.2.3 Has your organization filed any law suits or requested arbitration with regard to construction contracts within the last five years?
[REDACTED]

§ 3.3 Within the last five years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract? (If the answer is yes, please attach details.)
[REDACTED]

§ 3.4 On a separate sheet, list major construction projects your organization has in progress, giving the name of project, owner, architect, contract amount, percent complete and scheduled completion date.



§ 3.4.1 State total worth of work in progress and under contract:



§ 3.5 On a separate sheet, list the major projects your organization has completed in the past five years, giving the name of project, owner, architect, contract amount, date of completion and percentage of the cost of the work performed with your own forces.



§ 3.5.1 State average annual amount of construction work performed during the past five years:



§ 3.6 On a separate sheet, list the construction experience and present commitments of the key individuals of your organization.



§ 4. REFERENCES

§ 4.1 Trade References:



§ 4.2 Bank References:



§ 4.3 Surety:

§ 4.3.1 Name of bonding company:



§ 4.3.2 Name and address of agent:



§ 5. FINANCING

§ 5.1 Financial Statement.

§ 5.1.1 Attach a financial statement, preferably audited, including your organization's latest balance sheet and income statement showing the following items:

Current Assets (e.g., cash, joint venture accounts, accounts receivable, notes receivable, accrued income, deposits, materials inventory and prepaid expenses);

Net Fixed Assets;

Other Assets;

Current Liabilities (e.g., accounts payable, notes payable, accrued expenses, provision for income taxes, advances, accrued salaries and accrued payroll taxes);

Other Liabilities (e.g., capital, capital stock, authorized and outstanding shares par values, earned surplus and retained earnings).

§ 5.1.2 Name and address of firm preparing attached financial statement, and date thereof:

[Redacted]

§ 5.1.3 Is the attached financial statement for the identical organization named on page one?

[Redacted]

§ 5.1.4 If not, explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent-subsiary).

[Redacted]

§ 5.2 Will the organization whose financial statement is attached act as guarantor of the contract for construction?

[Redacted]

§ 6. SIGNATURE

§ 6.1 Dated at this [] day of [] []

Name of Organization: []

By: []

Title: []

§ 6.2

[Redacted]

M [] being duly sworn deposes and says that the information provided herein is true and sufficiently complete so as not to be misleading.

Subscribed and sworn before me this [] day of [] 20 []

Notary Public: []

My Commission Expires: []

DOCUMENT 004519

NON-COLLUSION AFFIDAVIT

STATE OF _____)
) ss.
COUNTY OF _____)

_____, of lawful age, being first duly sworn, on oath says that (s)he is the agent authorized by the bidder to submit the attached bid. Affiant 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 Cherokee Nation employee as to quantity, quality or price in the prospective Contract, or any other terms of said prospective Contract; or in any discussions between bidders and any Cherokee Nation official concerning exchange of money or other thing of value for special consideration in the letting of a Contract.

Signed: _____

TITLE: _____

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

Notary Public

My Commission Expires: _____

END OF DOCUMENT

DOCUMENT 004520

BUSINESS RELATIONSHIP AFFIDAVIT

STATE OF)
) ss.
COUNTY OF)

_____, of lawful age, being first duly sworn, on oath states 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 Cherokee Nation or other party to the services provided under the Agreement is as follows:

Affiant further states 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 Cherokee Nation or other party to the project is as follows:

Affiant further states 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:

Affiant further states that any family/relative relationships present between any officer, director or agent of Consultant and any officer, director, manager or member of the Board of Directors of Cherokee Nation other party to the Agreement is as follows:

Affiant further 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, affiant should so state.)

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

Notary Public

My Commission Expires: _____

END OF DOCUMENT

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 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.
- 9.) 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.
- 10.) 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.
- 11.) Contractor's field supervisory personnel shall attend weekly project coordination meetings while performing work on the site.
- 12.) Contractor shall inform the Construction Manager of a change to the managing onsite foreman/supertintendent in writing five (5) days prior.
- 13.) 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.
- 14.) Contractor shall comply with "Zero by Design" policies and procedures.
- 15.) 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.
- 16.) 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.

- 17.) 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.
- 18.) Subcontractors will be required to participate in Last Planner training sessions as part of the Preconstruction and/or Partnering Meetings.
- 19.) Pull Planning sessions 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.
- 20.) Rolling Six-Week Look Ahead Schedules will be developed from the pull planning sessions and distributed to the project team.
- 21.) Weekly Work Plans (WWP) will be developed by each foreman and brought for review to the weekly subcontractor meetings.
- 22.) 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.
- 23.) 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.
- 24.) Contractor shall conform to the Construction Manager's work hours.
- 25.) Contractor shall furnish protection of adjacent surfaces and repair of any damage caused by the work of this Contractor.
- 26.) 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.
- 27.) 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.
- 28.) Contractor shall examine substrates 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.
- 29.) 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.
- 30.) 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.
- 31.) This bid package includes a required 6 day work week as indicated in the Preliminary Project Schedule, and any normal delays (such as weather, coordination conflicts, & work congestion) will be made up. Contractor shall provide any premium or shift differential with the bid. **Working hours for this project are from 6am to 6pm.**
- 32.) **Deliveries of material to the laydown areas will be between 5am and 8 am and must coordinated at least 72 hours in advance with the Construction Manager. All delivery trucks must follow the delivery route established.**
- 33.) Contractor is responsible to review the Contract Documents and immediately advise the Construction Manager of any adverse factors, conflicts, 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.
- 34.) 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.

- 35.) Contractor shall be responsible for the review of all drawings for coordination as it relates to the installation of this subcontractor's work.
- 36.) 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.
- 37.) 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.
- 38.) Contractor shall be responsible for the review of all drawings for coordination as it relates to the installation of this subcontractor's work.
- 39.) Use of Owner's facilities, restrooms, etc. is **not** permitted.
- 40.) Contractor and said workforce shall park only in a separate lot designated for construction parking.
- 41.) Contractor shall provide any required storage facilities for any materials or equipment as required for this scope of work.
- 42.) Contractors shall familiarize themselves with the jobsite egress and access limitations and bid accordingly.
- 43.) Contractor shall provide 24 hour fire watch during all phases of work that create a fire risk.

Safety:

- 44.) 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.
- 45.) Contractor will furnish temporary barricades, flagmen and traffic control as required for the scope of this bid package.
- 46.) 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.
- 47.) 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.
- 48.) 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.
- 49.) 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.
- 50.) Contractor to provide safety submittals and safety manuals as outlined in the Flintco Safety Manual.
- 51.) Contractor will comply with the Flintco Construction Safety requirements as outlined in the Flintco Safety Manual (00125 Flintco Safety Manual).

Testing:

- 52.) 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.
- 53.) 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.

- 54.) 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:

- 55.) 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.
- 56.) Contractor will furnish all submittals, shop drawings, samples, mock-ups, and closeout documents required by the contract documents.
- 57.) Contractor will furnish all insurance including Professional liability insurance for any delegated design and Construction Pollution Liability insurance for all contractors hauling existing material offsite.
- 58.) Contractor shall furnish all submittals, shop drawings, and samples within 10 days of receipt of notice to proceed.
- 59.) Any professional engineering services required by the contract documents for the assembly of submittals and shop drawings are the responsibility of this contractor.
- 60.) 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.
- 61.) Contractor will be expected to sign the form of agreement as required in the Contract Documents and Document 005213 Flintco Subcontract Sample.
- 62.) Contractor shall include the cost of bonds in this bid package as an additive alternate.
- 63.) Contractor shall submit, with executed contract, Flintco's "Subcontractor/Supplier Certification".
- 64.) The term "substantial completion" is defined as substantial completion of the overall project or portions thereof as designated by the Owner, Architect, & Construction Manager.
- 65.) Contractor shall submit closeout documents within 30 days of completion of the scope of this bid package.
- 66.) 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.
- 67.) Material purchased for work is Tax Exempt on purchases greater than **\$500.00**. Contractor shall include the non-taxed cost for this material in its proposal. Contractor shall provide original invoices with its pay applications for this material. These invoices will be paid direct by the Owner to the individual vendor(s) or supplier(s). Any material cost in excess of the quoted estimate (as identified in the Proposal) will be the responsibility of the Contractor, as will any associated tax liability. Any savings realized will remain with the Contractor.
- 68.) The Contractor agrees to furnish all labor, materials, tools, equipment, supplies, etc. required for additional work and change orders, for which no pre-agreed price has been fixed, for the maximum markup as follows:
- a. Overhead and Profit Combined 10%
 - b. Overhead and Profit on lower tier vendors Combined 10%
 - c. Overhead and Profit returned on deductive change orders minimum Combined 10%
- 69.) Equipment owned by Contractor may be rented back at no greater than 85% of AED
- 70.) 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.
- 71.) **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: _____

DOCUMENT 005213

COOPER FLINTCO SAMPLE SUBCONTRACT

SUBCONTRACT AGREEMENT

ARTICLE 1

AGREEMENT

This Agreement is entered into this _____ day of _____ in the year _____ by and between Cooper Flintco, LLC 1624 W. 21st St., Tulsa, Oklahoma, referred to in this Agreement as the Contractor, and the

SUBCONTRACTOR XXSubcontractor NameXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXX, XX XXXXX

ATTENTION: XXXXXXXXXXXXXXXX

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

PROJECT NAME XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
PROJECT NUMBER XXXXX
LOCATION XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXX, XX XXXXX

whose

OWNER is XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXX, XX XXXXX

and whose

ARCHITECT is XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXX, XX XXXXX

NOTICE TO THE PARTIES SHALL BE GIVEN AT THESE ADDRESSES

2. Safety

2.1 The Subcontractor agrees that the prevention of accidents to workmen and property engaged upon or in the vicinity of the Subcontract Work is its responsibility. The Subcontractor agrees to comply with all Federal, State, Municipal and local laws, ordinances, rules, regulations, codes, standards, orders, notices and requirements concerning safety as shall be applicable to the Subcontract Work, including, among others, the Federal Occupational Safety and Health Act of 1970, as amended, and all standards, rules, regulations and orders which have been or shall be adopted or issued thereunder, and with the safety standards established during the progress of the Subcontract Work by the Contractor.

2.2 When so ordered, the Subcontractor shall stop any part of the Subcontract Work which the Contractor deems unsafe until corrective measures satisfactory to the Contractor have been 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. Failure on the part of the Contractor to stop unsafe practices shall in no way relieve the Subcontractor of its responsibility therefore.

2.3 The Subcontractor will follow the provisions of all applicable statutes and ordinances which require persons or firms doing excavation to do so only after giving notice to utility companies and obtaining information on the location of utilities (such as "one-call" systems).

3. Subcontractor Representations

3.1 The Subcontractor acknowledges receipt of all policies listed in Exhibit C. Subject to applicable law the Subcontractor further agrees to be bound by these policies as part of this Agreement. The Subcontractor represents and agrees that it has carefully examined and understands this Agreement and the other Subcontract Documents, has investigated the nature, locality and site of the Subcontract Work and the conditions and difficulties under which it is to be performed, and that it 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.

3.2 The commencement of the Subcontract Work by the Subcontractor on the site of the Project shall constitute the legal and binding acceptance by the Subcontractor of this Agreement. For purposes of this paragraph the mobilization of equipment, delivery of materials or the performance of actual labor on the Project site, whichever occurs first, shall constitute a "commencement" of Subcontract Work by the Subcontractor. The Contractor reserves the right, however, to insist on a signed Agreement prior to the making of any payment to the Subcontractor.

4. Bonds

If required by the Contractor, a Performance Bond and a Separate Payment Bond satisfactory to the Contractor, in its sole determination are required to be furnished in the full amount of the Subcontract Amount. If Bonds are required they shall be furnished by a surety acceptable to the Contractor, in the full amount of the Subcontract Amount, and on the forms attached as Exhibit G. Subcontractor must also furnish any applicable statutory bonds if required by the state in which the Project is located.

5. Subcontractor Duties

5.1 Subcontract Work. The Contractor retains the Subcontractor as an independent contractor, to provide all labor, 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 Subcontractor agrees to perform such part of the work (hereafter called "Subcontract Work") for the Project under the general direction of the Contractor and subject to the final approval of the Contractor, Architect/Engineer or other specified representative of the Owner.

5.2 Subcontract Documents. The Subcontract Documents include this Agreement, Agreement between the Owner and the Contractor ("Prime Contract"), including all addenda, modifications, revisions, plans, drawings, specifications, details, together with all general, technical, supplementary and special terms and conditions, any invitations for bids or information for bidders, if any, to the extent applicable, and all other documents listed in or referred to by the Prime Contract. The Contractor and the Subcontractor are mutually bound by the terms of this Subcontract. To the extent the terms of the Prime Contract apply to the work of the Subcontractor, then the Contractor assumes toward the Subcontractor all the obligations, rights, duties and redress that the Owner under the Prime Contract assumes toward the Contractor. In the identical way, the Subcontractor assumes toward the Contractor all the same obligations, rights, duties and redress that the Contractor assumes toward the Owner and Architect/Engineer under the Prime Contract. 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.

5.3 Design Delegation. If the Subcontract Documents (1) specifically require the Subcontractor to provide design services and (2) specify all design and performance criteria, 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, 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 or approvals performed by the Designer.

5.3.1 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 or exclusion from participation in the multiparty proceedings requirement of Paragraph 21.6. 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. The Subcontractor shall not be responsible for the adequacy of the performance or design criteria required by the Subcontract Documents furnished by the Owner, Architect/Engineer or Contractor

5.3.2 The Subcontractor shall not be required to provide design services in violation of any applicable law.

5.4 Clean Up. The Subcontractor is responsible for its own "clean-up" and keeping the Subcontract Work areas "broom clean". If the Contractor determines the Subcontract Work area to be unsatisfactorily cleaned, the Contractor will so advise the Subcontractor. If the Subcontractor fails to commence cleaning procedures within twenty four (24) hours and continue to clean said area to the Contractor's satisfaction, the Contractor may without further notice execute and complete such clean up activities as the Contractor deems necessary and charge the cost to the Subcontractor or deduct such cost from payments due to the Subcontractor. The Subcontractor is responsible to clean the mud and gravel off its vehicles (including vehicles operated by its subcontractors and suppliers) prior to leaving the site. Any mud or gravel that is tracked onto the surrounding roads shall be removed immediately. The Contractor has the right to clean up surrounding roads immediately upon the Subcontractor's failure to do so, the cost of which shall be deducted from the Subcontractor's next payment.

5.5 Protection of Subcontract Work. The Subcontractor is responsible for protection of its material, equipment and installation until the final acceptance by the Owner and the Architect.

5.6 Protection of the Project. The Subcontractor shall confine operations at the Project site to areas permitted by the Contractor and shall not unreasonably encumber the Project site with materials or equipment. The Subcontractor is responsible for any damage caused to adjacent property or access roads by the Subcontractor, its subcontractors or suppliers during the course of the Subcontract Work.

5.7 Supervision. All of the Subcontract Work is the sole and absolute responsibility of the Subcontractor; shall be initiated, managed, performed and completed by qualified, competent, skilled and reputable supervisors, administrators, mechanics and laborers, all of which are satisfactory to the Contractor; shall be in full compliance with the Subcontract Documents including this Subcontract; and shall meet the approval and acceptance of the Contractor and the Owner or its authorized representative.

6. Schedule

Time is of the essence. The Subcontractor shall commence the Subcontract Work under this Subcontract when notified by the Contractor and shall complete the Subcontract Work in a diligent manner in accordance with the Subcontract Documents and the Schedule of Work as set forth in Exhibit E so that progress or completion of the Project will not be delayed and in such a manner that the Contractor, any other subcontractors, and any separate contractors of the Owner shall not be delayed or impeded in their work. The Subcontractor shall participate and cooperate in the development of schedules and other efforts to achieve timely completion of the Subcontract Work by providing information on the timing and sequence of operations so as to meet the Contractor's overall schedule requirements. The Subcontractor shall continuously monitor the Project Schedule including any revisions thereto, and other work on the Project so as to execute the Subcontract Work in accordance with the

requirements of the Project Schedule. The Subcontractor agrees to be responsible for, carry out, and perform all time guarantees upon work or materials referred to in the Subcontract Documents relating to any labor performed or material furnished under this Subcontract.

7. Payment

7.1 In consideration of faithful and timely performance by the Subcontractor of all the covenants and the conditions aforesaid, the Contractor agrees to pay the Subcontractor, subject to other provisions hereof, including authorized additions and deletions, the sum of

Zero and 00/100 DOLLARS

(\$0.00)

(the "Subcontract Amount") [which amount is Tax Exempt in accordance with attached Exhibit H]. Payment shall only be due for the portion of the Subcontract Work actually completed to the satisfaction of the Contractor, the Architect and the Owner. Within ten (10) days after receipt by the Contractor of payment from the Owner, the Contractor shall make payment in the amount and to the extent received from the Owner, less any applicable retainage or other set off. However, receipt of payment by the Contractor from the Owner for the Subcontract Work is a condition precedent to the obligation by the Contractor to pay the Subcontractor for the Subcontract Work in accordance with the preceding sentence, and payment for the Subcontract Work will be made to 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. Notwithstanding Subparagraph 5.2 of this Agreement, the provisions of this Section shall prevail over any conflicting provisions in the Prime Contract. Progress payment applications must be submitted by the Subcontractor each month in an amount equal to **One Hundred** percent (**100%**) 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 the Contractor prior to issuance of subsequent payments.

7.2 Within fifteen (15) days from the date payment is requested, the Subcontractor shall furnish the Contractor with a tabulated breakdown of the portion of the Subcontract Work included in the payment request, listing items of the work in sufficient detail as determined by the Contractor to easily facilitate payment requests to be checked by the Contractor as the work progresses.

7.3 Each payment request or invoice must be received by the Contractor by the **XX** day of the month to be processed with the Contractor's payment application that month. Invoices and payment requests received that are inaccurate or without substantiation, or after said day of the month will be held until corrected and substantiated, and then processed with the following month's payment application.

7.4 The Subcontractor shall submit its request for partial payment conforming to the standard Contractor billing form, with schedule of values attached thereto, representing a true and accurate estimate of the Subcontract Work completed, and materials stored during the immediately preceding month or such other immediately preceding period as directed by the Contractor. In addition, if allowed by the Subcontract Documents, all invoices and insurance certificates shall be included for all stored materials in an off-site storage area applicable to the payment request.

7.5 The Subcontractor shall, additionally with each payment request, submit copies of payrolls to document the value of work in place and a Partial Release of Lien from all lower tier subcontractors and major material suppliers for which payment has previously been made to the Subcontractor by the Contractor.

7.6 If the Contractor, in its sole discretion, deems it necessary, the Subcontractor agrees to receive each of its progress payments and final payment in the form of multiple checks issued jointly between the Subcontractor's lower tier subcontractors and major material suppliers and the Subcontractor. Lower tier subcontractors that are to receive part or all of their progress payments as joint checks shall additionally submit with their Payment Requests all invoices from each lower tier subcontractor and major supplier and the net payments to be issued to each.

7.7 No partial 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 payment shall constitute a waiver by the Contractor of any right to require fulfillment of all the terms of this Subcontract. Neither the final payment nor any partial payment, nor any certificate for either, shall constitute acceptance by the Contractor of defective work or improper materials or of any element of the Subcontractor's performance determined to be at variance with this Subcontract.

7.8 The Contractor shall have the right to set off any amounts the Subcontractor owes to the Contractor under this Subcontract or bylaw against the remaining balance under this Subcontract, or against any amounts due the Subcontractor under any other agreements with the Contractor.

7.9 **Final Payment.** Final payment by the Contractor to the Subcontractor shall not become due and payable to the Subcontractor until the following express conditions precedent have been met: (1) The completion of the Subcontract Work required by this Subcontract and acceptance of the Subcontract Work by the Contractor, the Owner and the Architect; (2) execution and delivery by the Subcontractor, in a form satisfactory to the Contractor, of a general release running to and in favor of the Contractor and the Owner; and (3) complete and full satisfaction of all claims, demands, disputes and obligations of the Subcontractor arising out of or related to this Subcontract, including those between the Contractor and the Subcontractor and between the Subcontractor and any third party. Should there be any such claim, lien or unsatisfied

obligation, whether before or after final payment is made, the Subcontractor shall deliver payment to the Contractor an amount equal to whatever cost the Contractor and/or the Owner must pay to discharge or defend against any such claim, obligation, lien or action brought, or any judgment thereon and all costs, including legal fees and expenses and a 15% Administrative Fee, incurred in connection therewith.

8. Hazardous Materials

The Subcontractor shall at all times comply with all rules and regulations of any municipality, state or federal environmental protection, and toxic waste and hazardous substances laws, ordinances and regulations, and how they relate to the Subcontract Work, and shall be equally responsible for actions and inactions of subcontractors, sub subcontractors, and any other agents or independent contractors of the Subcontractor. The Subcontractor shall be deemed to, and shall, have included in the Subcontract Amount 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 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 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.

9. Compliance with Laws

9.1 The Subcontractor agrees to be bound by, and at its own costs comply with, all federal, state and local laws, ordinances and regulations (the "Laws") applicable to the Subcontract Work, including but not limited to safety, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, sexual and racial harassment, and all other Laws with which the Contractor must comply.

9.2 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 Subcontract and binding on Subcontractor as if written herein word for word: the clauses entitled "Equal Opportunity Clause" (41 CFR Sections 60-1.4 & 60-4.3); "Affirmative Action Obligations of Contractors and Subcontractors for Disabled Veterans of the Vietnam Era" (41 CFR Section 60-250.4); "Affirmative Action Obligations of Contractors and Subcontractors for Handicapped Workers" (41 CFR Section 60-741.1); "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" and such other clauses as the Federal Government has required by law or contract. Subcontractor agrees to include all such clauses in any non-exempt, lower-tier subcontracts.

9.3 Immigration Compliance. The Subcontractor represents and warrants to the Contractor that the Subcontractor is in compliance with, and shall remain in compliance with, the provisions of the Immigration Reform and Control Act of 1986 (The "Act") and all other Federal, State, and/or local immigration statutes/ordinances, as applicable, including, but not limited to the provisions of the Act 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. The Subcontractor agrees to indemnify the Contractor and to hold the Contractor harmless from all liability, including liability for interest and penalties, the Contractor incurs which results from or is attributable to the Subcontractor's failure to comply with any provisions of the Act, and or applicable Federal, State, and/or local immigration statute/ordinance, including reimbursing the Contractor any monies expended by the Contractor in participating in or responding to any investigation/suit/civil or criminal immigration matter involving the Subcontractor. As it relates to immigration compliance, the Subcontractor shall be responsible for completing any and all required documentation in accordance with requirements put forth by the Owner, Contractor or applicable law.

9.4 The Subcontractor shall be liable to the Contractor and the Owner for all loss, cost and expense attributable to any acts of commission or omission by the Subcontractor, its Sub-Subcontractors 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, restitution, judgments, and other damages resulting from such acts of commission or omission.

10. Insurance

10.1 The Subcontractor agrees to procure, pay for and maintain in full force and effect during the course of the performance of the Subcontract all insurance required by the laws of the state in which the Subcontract Work covered by this Subcontract is being performed, and in such form and amounts as described in Exhibit B which is attached hereto and incorporated into this Subcontract. The Subcontractor shall not commence the Subcontract Work nor receive any payment hereunder until Certificate of such insurance is furnished to the Contractor.

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

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

10.4 The Subcontractor shall identify by 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 the Contractor as a condition of this Subcontract.

10.5 The Subcontractor shall at its own expense provide insurance coverage for materials stored off the site after written approval of the Contractor at the value established in the approval, and also for portions of the Subcontract Work in transit until such materials are permanently incorporated into the Project. The risk of loss for material and equipment provided by this Subcontract, whether in a deliverable state or otherwise, shall remain with the Subcontractor. Any damages to the material and equipment or loss of any kind occasioned in transit shall be borne by the Subcontractor, notwithstanding the manner in which the goods are shipped or who pays the freight or other transportation costs.

11. Indemnity

11.1 General Indemnity. To the fullest extent allowed by law, the Subcontractor agrees to defend, indemnify and hold harmless the Contractor to the same extent Contractor is obligated to defend, indemnify and hold harmless the Owner. In the absence of such Owner-required defense and indemnification, the Subcontractor shall defend, indemnify and hold harmless the Contractor, the Contractor's other subcontractors, the Architect/Engineer, the Owner and their agents, consultants, members and employees (the Indemnitees) from and against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees, 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, the Subcontractor's sub-subcontractors 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. These obligations shall not be interpreted to reduce or negate any other rights or obligations of indemnity otherwise existing with regard as to any party or person described in this Article.

11.2 Patents. The Subcontractor hereby agrees to defend, indemnify and hold harmless the Contractor and the Owner from and against any and all liability, loss or damage and to reimburse the Contractor and the Owner for any costs, including legal fees and expenses, which the Contractor and the Owner may incur because of claims or litigation on account of infringement or alleged infringement of any letters patent or patent rights by reason of the Subcontract Work, or materials, equipment or other items used by the Subcontractor in its performance.

11.3 No Limitations. In furtherance to, but not in limitation of the indemnity provisions in this Subcontract, the Subcontractor hereby expressly and specifically agrees that its obligation to indemnify, defend and hold harmless as provided in this Subcontract shall not in any way be affected or diminished by any statutory or constitutional immunity it enjoys from suits by its own employees or from limitations of liability or recovery under worker's compensation laws.

12. Termination for Convenience

12.1 It is understood that the basic assumption underlying the mutual obligations and responsibilities entered into by the parties to this Subcontract is the continued performance with respect to the Prime Contract that exists between the Contractor and the Owner. If, for any reason, the Prime Contract is breached, rescinded or terminated, the Contractor shall have the right to immediately terminate this Subcontract. In no event shall the Contractor be obligated to the Subcontractor for any anticipatory profits or any damages incurred by the Subcontractor as a result of the termination of this Subcontract, unless approved and paid by the Owner. The Subcontractor agrees that the Contractor's decision or determination regarding the pro rata share of any monies received from the Owner as damages or compensation for said breach, rescission or termination of the Agreement shall be final and conclusive and that the Subcontractor shall have no claim or cause of action against the Contractor for any reason or greater amount.

12.2 The Contractor shall have the right at any time by written notice to the Subcontractor, to terminate this Subcontract without cause and require the Subcontractor to cease work. In the event of such a termination for convenience, the Subcontractor shall be entitled to payment pursuant to the terms of the Subcontract for the portion of the Subcontract Work actually completed as of the date of termination, together with

reasonable costs of demobilization and such other reasonable costs as may be encountered by the Subcontractor and directly attributable to such termination provided that such amount may be reduced by all amounts for which the Subcontractor is liable or responsible. However, the Subcontractor shall only be entitled to profit on that portion of the work actually completed and approved for payment to the date of termination together with retainages withheld from prior payments. The Subcontractor waives any claim for loss of anticipated profits or other damages in the event the Contractor exercises this clause.

13. Failure of Performance

13.1. Non-Conforming Subcontract Work. The Subcontractor shall provide sufficient, safe and proper facilities at all times for inspection by the Architect, the Owner or the Contractor of the Subcontract Work in the field, at shops or at any other place where materials required hereunder are in course of preparation, manufacture, treatment or storage. The Subcontractor shall, within twenty four (24) hours after receiving written notice from the Contractor to that effect, proceed to remove from the site any materials condemned by the Architect, the Owner, or the Contractor, whether worked or unworked, and to take down all portions of the Subcontract Work which the Architect, the Owner or the Contractor has condemned in writing, as unsound or improper, or as in any way failing to conform to the drawings, specifications and addenda and shall take full financial responsibility for all damage caused by such removal. In the event that all or any portion of the Subcontract Work as condemned should be of such a nature, or the time available should be so limited, that in the judgment of the Architect, the Owner or the Contractor it would not be expedient to order the same replaced or corrected, the Contractor, at its option, may deduct from the payments due or to become due to the Subcontractor such amount or amounts as in the opinion of the Architect or the Owner shall represent the difference between the fair and reasonable value of the Subcontract Work so condemned and its value had it been executed in conformity with the Subcontract Documents.

13.2 Notice to Cure If the Subcontractor is unable, refuses or fails to supply enough properly-skilled workers, proper materials, correct non-conforming Subcontract Work, or maintain the Schedule of Work, or fails to make prompt payment to its workers, subcontractors or suppliers, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of a provision of this Agreement, the Subcontractor shall be deemed in default of this Agreement. If the Subcontractor fails within three (3) business days 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:

13.2.1 to 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;

13.2.2 to 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; and/or

13.2.3 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.

13.2.4 terminate the Subcontractor for default by delivering written notice of such termination to the Subcontractor.

13.2.5 to charge to the Subcontractor an Administrative Fee of 15% of all costs incurred by the Contractor in exercising any of the above remedies.

In the event of an emergency affecting the safety of persons or property, the Contractor may proceed as above without notice, but the Contractor shall give the Subcontractor notice promptly after the fact as a precondition of cost recovery.

13.3 Termination for Default. If the Subcontractor has been terminated for default, the Contractor may take possession of the plant and 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 Subcontract Work on such terms and conditions as shall be deemed by the Contractor as necessary, and shall deduct the cost, including without restriction 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.

13.3.1 If the Contractor so terminates the employment of the Subcontractor, 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 Subcontract Work has been completed and accepted by the Owner, all Subcontract requirements have been fulfilled, and payment has been received by the Contractor from the Owner. In the event the unpaid subcontract earnings exceed 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 subcontract earnings, the Subcontractor agrees to pay the difference to the Contractor promptly.

13.3.2 If it is determined or agreed that the Contractor wrongfully exercised any option under this Article, the Contractor shall be liable to the Subcontractor solely for the reasonable value of Subcontract Work performed by the Subcontractor prior to such action, including reasonable overhead and profit on the Subcontract Work performed, less prior payments made. Under no circumstances shall the Subcontractor be entitled to recovery of claimed lost future profits.

14. Delays

14.1 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, 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 and its surety agree to compensate and indemnify the Contractor and the Owner against all such costs, expenses, damages and liabilities.

14.2 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 to the completion of the Project, either by its acts or omissions, and such delays result in the Contractor being charged by the Owner with actual or liquidated damages, then the Subcontractor shall reimburse the Contractor the full amount of all such damages and charges resulting from the delays caused by the Subcontractor. The Contractor may offset any such damages against the remaining balance due to the Subcontractor on the Subcontract Amount, if any.

14.3 If the commencement and/or progress of the Subcontract Work is delayed 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 Schedule of Work shall be revised accordingly.

15. Changes

15.1 Subcontract Changes. The Contractor and the Subcontractor agree the Contractor may make changes to the Subcontract Work, including but not limited to; additions, deletions or revisions. Any changes made to the Subcontract Work involved, or any other parts of this Agreement, shall be by a written Change Order. To the extent that any such change impacts Subcontractor's cost of or time for performance, the Subcontract Amount and Subcontract Schedule shall be equitably adjusted to compensate for such impact. Changes shall be initiated by one of the three methods outlined below, or as provided in the Prime Contract and shall be incorporated into the Subcontract by a Change Order.

15.1.1. Request for Change Proposal. A Request for Change Proposal (RFCP) is a written request that informs Subcontractor about a potential change in the Subcontract Work and requests a proposal for the potential change. Subcontractor shall promptly reply with such request. Subcontractor shall not implement the change or incur any costs until a Change Order is fully executed.

15.1.2. Construction Change Directive. A Construction Change Directive (CCD) is a written directive that instructs Subcontractor to take some immediate action in connection with the Subcontract Work. CCDs are issued when there is not time to issue a RFCP or Change Order. Subcontractor shall immediately proceed so as not to delay the progress of the Work and in accordance with the terms of the CCD. Any impact of a CCD on the Contract Price or Schedule shall be adjusted by a Change Order.

15.1.3. Change Order Requests. Within seven (7) calendar days after the occurrence of any event or observance of any condition that Subcontractor believes entitles Subcontractor to an adjustment in Subcontract Amount and/or Subcontract Schedule, Subcontractor shall prepare and submit a Change Order Request (COR) to Contractor. The COR shall include a detailed factual narrative, a detailed analysis showing entitlement and a detailed analysis of the proposed change to the Subcontract Amount and/or Subcontract Schedule.

15.2 Change Orders. A Change Order (CO) is a written instrument prepared by the Contractor and signed by the Subcontractor stating their agreement with the change in the Subcontract Work and any adjustment to the Subcontract Amount and/or Subcontract Schedule. All changes and/or additions in the Subcontract Work ordered in writing by the Contractor shall be deemed a part of the Subcontract Work and shall be performed and furnished in strict accordance with all terms and conditions of this Agreement and the Subcontract Documents, including the current Schedule of Work.

Change Orders will be used to implement approved Requests for Change Proposals, Construction Change Directives and Change Order Requests. Upon receipt of a properly documented COR or CCD, the parties shall negotiate in good faith to determine if the Subcontractor is entitled to a Change Order and, if so, the appropriate equitable adjustment. Any adjustment to the Subcontract Amount shall be established by one of the following methods:

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

If the Parties are unable to agree on the dispositions of a COR or CCD, 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. Any cost and schedule adjustments shall be a full accord and satisfaction for all cumulative impacts of the underlying change.

15.3 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 representatives. 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 Construction Change Directive.

15.4 Determination by Owner or Architect/Engineer. Notwithstanding any other provision, if the Subcontract Work for which the Subcontractor claims additional compensation is determined by the Owner or Architect/Engineer not to entitle the Contractor to a Change Order, additional compensation or a time extension, the Contractor shall not be liable to the Subcontractor for any additional compensation or time extension for such Subcontract Work, unless the Contractor agrees in writing to pay such additional compensation or to grant such extension.

16. Claims

16.1 A Claim is a written demand by Subcontractor seeking an adjustment in the Subcontract Amount and/or Subcontract Schedule or some other relief under the terms of the Subcontract for events other than a RFCP that has been denied in writing. Subcontractor shall provide Notice to Contractor of any potential Claim within seven (7) calendar days after the event giving rise to the Claim. Within fifteen (15) calendar days thereafter, Subcontractor shall submit a detailed factual narrative, a detailed analysis showing entitlement and a detailed analysis of the alleged change to the Subcontract Amount and/or Subcontract Schedule. Claims not timely made, in writing, by the Subcontractor shall be deemed to have been abandoned and waived. 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 contract claims procedures. If Contractor denies Subcontractor's Claim, Subcontractor may pursue the matter under Article 21 Dispute Resolution.

16.2 The Subcontractor shall not delay or suspend the Subcontract Work because of the pendency of or the denial by the Contractor of any such claim or because of the continuance of the condition out of which the claim arose, but shall proceed diligently in performing the Subcontract Work while the claim is being resolved by agreement or being fully adjudicated.

16.3 In the event the Subcontractor asserts that it should receive additional compensation because of an act or omission on the Owner's part, or someone for whom the Owner is responsible, the Subcontractor shall promptly submit the claim to the Contractor in writing at least three (3) working days before the date the Contractor is required to submit such claims under the Prime Contract. If timely submitted with all documentation required by the Prime Contract, the Contractor will, on behalf of the Subcontractor, submit the same to the Owner for its consideration. Failure of the Subcontractor to submit such claims in a timely and proper manner shall result in a waiver of such claim and the Contractor is not required to submit it to the Owner, and the Subcontractor shall be bound to the same consequence which the Contractor would suffer under the Prime Contract.

16.4 The Subcontractor shall fully cooperate with the Contractor in the submission of such pass through claims, shall prepare all supporting data and do everything else necessary to properly present the claims, including payment of legal fees incurred by the Contractor to prepare, submit and negotiate or otherwise resolve such claim. Should the Owner allow and pay additional compensation to the Contractor on account of such pass through claim asserted by the Subcontractor, the Contractor will pay the same to the Subcontractor, less the Contractor's overhead, costs, expenses, legal fees and a 15% Administrative Fee.

16.5 It shall be an express condition precedent to any obligation on the part of the Contractor to make payment of any cost, reimbursement, compensation or damages to the Subcontractor hereunder that the Contractor shall first be determined to be entitled to such compensation on behalf of the Subcontractor and then receive such payment from Owner, and Subcontractor expressly acknowledges that the Contractor is not obligated or required to pursue the Subcontractor's claim against the Owner if the Contractor, in its sole discretion, after review of the Subcontractor's claim, has deemed the claim to lack merit in whole or in part.

16.6 If at any time a controversy should arise between the Contractor and the Subcontractor with respect to any matter in this Subcontract which the Contractor determines is not a claim, dispute or controversy which should involve or be asserted against the Owner, the decision of the Contractor relating to the subject of the controversy shall be followed by the Subcontractor

17. Taxes

The Subcontract Amount includes all sales, excise, transportation, unemployment compensation, social security, and any other taxes presently existing or subsequently imposed and levied and the Subcontractor agrees to pay all of the above and to conform to all applicable municipal, state and federal 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 federal and state laws and regulations pertaining thereto. The Subcontract Amount 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 Subcontract and the Subcontractor agrees to pay such tax or taxes on such property, the cost of which is included in the Subcontract Amount.

18. Liens

18.1 The Subcontractor shall promptly pay when due all its project creditors, together with the project creditors of all those below it in the contractual chain.

18.2 If the Project involves private work, the Subcontractor shall keep the property and improvements free and clear of all mechanic, materialmen and similar lien claims or statements. In the event any such lien is filed, asserted or claimed, the Subcontractor shall immediately secure its release either by paying the lien claimant, by filing a lien release bond, or by any other means permitted by law. If not so released, the Contractor may retain an amount equal to 150% of the lien or claim and may pay the claimant and offset that amount, plus any legal fees from the amount so retained. If the Project involves public work, the Subcontractor shall promptly pay and secure releases from all of its project creditors, including all those below it in the contractual chain, who are entitled to assert claims against the Contractor or its surety.

18.3 If any claim or lien is made or filed with or against the Contractor, the Owner, the Project, the Premises or the Project funds by any person claiming that the Subcontractor or any subcontractor or other person under subcontract to the Subcontractor, or any person or entity employed or engaged by the Subcontractor at any tier, has failed to make payment for any labor, services, materials, equipment, taxes or other obligations furnished or incurred in connection with the Subcontract Work, or if the Subcontractor or any subcontractor or other person under subcontract to the Subcontractor, or any person or entity employed or engaged by the Subcontractor at any tier causes damage to the Subcontract Work or any other work on the project, or if the Subcontractor fails to perform or is otherwise in default of any term or provision of this Subcontract, the Contractor shall have the right to retain from any payment then due or thereafter due an amount which the Contractor deems sufficient to (1) satisfy, discharge and/or defend against any such claim or lien, (2) make good any such nonpayment, failure, damage or default, and (3) defend, indemnify and hold harmless the Contractor and the Owner against any and all losses, damages and costs, including legal fees and expenses, incurred by either or both of them. The Contractor shall require proof that any such nonpayment, claim or lien is fully satisfied, dismissed and discharged before any remaining retained funds will be released. The Contractor shall, in addition, have the right to apply and charge against the Subcontractor so much of the amount retained as may be required for the foregoing purposes and the Subcontractor shall pay and reimburse the Contractor and the Owner all such losses, damages, and costs incurred by them which exceed the retained funds.

19. Assignment

To the fullest extent permitted by law, the Subcontractor agrees that it shall not assign, sell, transfer, delegate or encumber any rights, duties or obligations arising under this Subcontract including, but not limited to, any right to receive payments hereunder, without the prior written consent of the Contractor in its sole discretion and the giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. In the event the Subcontractor assigns, sells, encumbers or otherwise transfers its right to any funds due or to become due under this Subcontract as security for any loan, financing or other indebtedness ("Assignment"), notification to the Contractor of such Assignment must be sent by certified mail, return receipt requested, to the Contractor and the Assignment shall not be effective as against the Contractor until the Contractor provides its written consent to such Assignment. The Subcontractor agrees that any such Assignment shall not relieve the Subcontractor of any of its agreements, duties, responsibilities or obligations under this Subcontract 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.

20. Guarantee/Warranty

For a period equal to that imposed upon the Contractor under the Prime Contract, but in no event less than one year from the date of the Owner's final acceptance of the Subcontract Work, the Subcontractor guarantees and warrants that the Subcontract Work complies with the Subcontract Documents requirements and is free from defects in material and workmanship. The Subcontractor shall remain liable for defects in the Subcontract Work for the same period the Contractor remains liable to the Owner under the Prime Contract, or as required by law, whichever is greater. This guarantee/warranty shall include, but is not limited to, the cost of all labor, material and related items necessary to correct any such defect, plus the cost of repairing any damage to other items which may have been caused by the defective material or workmanship. If the Subcontractor fails to begin warranty work within forty-eight (48) hours of being notified that such work is necessary, the Contractor may, at its option, perform the necessary remedial work or secure its performance by others and charge the Subcontractor with the cost thereof, plus a 15% Administrative Fee. Nothing in this paragraph shall shorten the statute of limitations on any action by the Contractor for breach of contract, negligence or other cause of action against the Subcontractor.

21. Dispute Resolution

21.1 Scope of Disputes Provisions. All Claims, disputes or other matters in question between the parties to this Subcontract which arise out of or relate to this Agreement (or the breach thereof), whether in contract or tort, (hereinafter "Dispute") shall be subject to the dispute resolutions set forth below.

21.2 Initial Dispute Resolution/Mediation. A Dispute which either party desires to pursue shall be set forth in a detailed written statement of claim submitted to the other party providing the specific basis upon which monetary or other relief is claimed to be due, the specific contractual provision(s) supporting the claim and an itemization of the amount claimed to be due. Following submission of the detailed statement of claim, Contractor and Subcontractor shall endeavor to settle the Dispute first through face to face direct discussions between corporate officers of the Contractor and Subcontractor which discussions shall be held at the Contractor's office location involved with the Project within thirty (30) calendar days of a request by either party. If the Dispute cannot be resolved through direct discussions, the parties shall participate in mediation under the Construction Industry Mediation Rules of the American Arbitration Association as a condition precedent and before recourse to any other form of binding dispute resolution. The location of the mediation shall be the same city as the location of the Project, unless the parties agree on another location. Upon written notice requesting mediation provided to the other party and the American Arbitration Association, the parties agree to proceed with the mediation as scheduled by the mediator. Either party may terminate the mediation at any time after the first session, but the decision to terminate must be personally delivered to the other party and the mediator.

21.3 Binding Dispute Resolution. In the event Contractor and Subcontractor cannot resolve the Dispute through direct discussions or mediation as contemplated above, then the Dispute shall, at the sole discretion of Contractor, be decided either by submission to (a) arbitration administered by the American Arbitration Association or other arbitration tribunal mutually agreed upon by the parties; or (b) litigation subject to the exclusive jurisdiction and venue of the location of the Project.

21.4 Arbitration Election

21.4.1 In the event Contractor exercises its exclusive right to resolve the Dispute in arbitration, such arbitration shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association or the applicable rules of such other arbitration tribunal as the parties may mutually determine in effect at the time the arbitration is commenced as modified by the terms hereof. Any arbitration hereunder shall be held at the location of the Project.

21.4.2 Should Contractor exercise its exclusive right to resolve the Dispute by arbitration, then within fourteen (14) days after Contractor gives Subcontractor notice of Contractor's election of arbitration, the parties shall use good faith efforts to select a single arbitrator mutually acceptable to both parties. If the parties are unable to select an arbitrator, then the parties will select the arbitrator(s) from a panel of experienced construction arbitrators on the American Arbitration Association's large complex case panel or a comparable panel of experienced construction arbitrators maintained by such other arbitration tribunal mutually selected by the parties then in effect. In the event the amount in Dispute exceeds \$1,000,000.00, Contractor and Subcontractor agree the arbitration shall be heard by a panel of three (3) arbitrators; otherwise, the Dispute shall be heard by a single arbitrator.

21.4.3 The parties will enter into an Electronically Stored Information Agreement outlining the scope and volume for ESI discovery, which shall take into account the amount and complexity of the Dispute.

21.4.4 The arbitration award shall be final and binding upon the parties, shall include attorneys' fees and costs to the prevailing party or parties, and may be entered as a judgment in any court having proper jurisdiction. In any arbitration the Arbitrator(s) shall have no power to render an award which has the effect of altering or amending or changing in any way any provisions of this Subcontract.

21.4.5 The parties stipulate and agree that the performance of this Subcontract is a transaction involving interstate commerce. Notwithstanding other provisions in the Subcontract, or choice of law provisions to the contrary, this agreement to arbitrate shall be

enforced pursuant to, and governed by, the Federal Arbitration Act, 9 U. S. C. §1 et seq., which shall not be superseded or supplemented by any other arbitration act, statute or regulation.

21.4.6 At the sole discretion of Contractor, any arbitration with Subcontractor shall be consolidated with any other arbitration proceeding relating to the work under the General Contract.

21.5 Litigation Election. In the event Contractor elects not to exercise its exclusive right to resolve the Dispute by arbitration, or in the event the Dispute between Contractor and Subcontractor, or any portion thereof, is found to be non-arbitrable, then the parties hereby agree that the Dispute or a portion thereof (as the case may be) shall be subject to exclusive jurisdiction and venue at the location of the Project. In any such Dispute or portion thereof which is resolved by litigation, Subcontractor expressly waives any right to trial by jury.

21.6 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. 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.

21.7 Stay of Proceedings. (a) 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 any Dispute between Contractor and Subcontractor involving in whole or in part disputes between Contractor and Owner shall be stayed pending conclusion of any dispute resolution proceeding between Contractor and Owner. (b) In the event that any action is filed prior to exhaustion of remedies under the Subcontract; such action shall be stayed pending conclusion of any dispute resolution proceedings.

21.8 Work Continuation and Payment. Unless otherwise agreed in writing, Subcontractor shall continue the Subcontract Work and maintain the Schedule of Work during any dispute resolution proceedings. As Subcontractor continues to perform, Contractor shall continue to make payments in accordance with this Agreement.

21.9 Cost of Dispute Resolution; Attorneys' Fees. The cost of any mediation proceeding shall be shared equally by the parties participating.

21.9.1 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 shall be entitled to recover from the other party those reasonable attorneys' fees, costs and expenses (including expert fees and expenses) incurred by the prevailing party in connection with such dispute resolution process after direct discussions and mediation.

21.9.2 In the event the Subcontractor is awarded an amount equal to or less than the last written offer of settlement from Contractor, prior to the commencement of binding dispute resolution, Contractor shall be deemed prevailing party and be entitled to recover those reasonable attorneys' fees, costs and expenses (including expert fees and expenses) incurred by the Contractor.

22. Miscellaneous

22.1 No one, other than the parties hereto, their successors, trustees and assigns, shall be entitled to bring action on this Subcontract or the Performance Bond provided by the Subcontractor, it being the express intent of the parties that this Subcontract shall not be for the benefit of any third party.

22.2 Any term or provision of this Subcontract which is held to be invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Subcontract or affecting the validity or enforceability of any of the terms or provisions of this Subcontract in any other jurisdiction.

22.3 This Subcontract, together with the documents referred to or incorporated herein by reference, constitute the complete agreement between the parties. No agent or employee of either party possesses the authority to make, and the parties shall not be bound by nor liable for, any statement, representation, promise or agreement not set forth herein. Any article, section, paragraph or other headings contained in this Subcontract are for reference purposes and shall not affect in any way the meaning or interpretation of this Subcontract.

22.4 The terms and provisions shall extend to and be binding upon the successors, trustees and assigns of the parties hereto, and shall be governed and controlled, except as expressly provided herein or as required by the Subcontract Documents, by the laws of the State of the Project.

22.5 The Subcontractor agrees to comply with the provisions and any applicable local, state or federal ordinance, regulation, status, or other mandate regarding affirmative action and/or minority/women's business enterprise participation.

22.6 This subcontract has not been altered in any manner from its original form as sent to the Subcontractor except for required signatures and dates, or as clearly marked and initialed by this Subcontractor. Any changes to this subcontract not initialed by the Contractor will not be binding.

23. 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:** Cooper Flintco Policies/Procedures Acknowledgement of Obtaining Form
- Exhibit D:** List of Drawings, Specifications and Addenda
- Exhibit E:** Schedule of Work
- Exhibit F:** Certification of Non-Segregated Facilities
- Exhibit G:** Payment and Performance Bond Forms
- Exhibit H:** Tax Exemption Certificate
- Exhibit I:** Special Terms and Conditions for Federal Government Construction Projects
- Exhibit K:** Addendum for Design Build Subcontracts
- Exhibit X:** Special Provisions

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

XXSubcontractor NameXX

ATTEST: _____

BY: _____

PRINT NAME: _____

PRINT TITLE: _____

Designate type of organization: () Corporation () Partnership () Sole Proprietorship () LLC () Other

Organized in the State of _____

With its principal place of business at _____

License Number (if applicable) _____

Cooper Flintco, LLC

ATTEST: _____

BY: _____

PRINT NAME: _____

PRINT TITLE: **Authorized Representative**

COOPER FLINTCO, LLC

SCOPE OF WORK

<Scope of Work>

COOPER FLINTCO, LLC

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.

Subcontractor shall attach to the signed copies of this Subcontract returned to Contractor Certificates of Insurance ("Certificates") showing 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, and further providing that the insurance will not be canceled without at least thirty (30) days prior written notice.

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 agrees to notify Contractor in writing, at least 30 days in advance, of any reduction by the insurers in required coverages or coverage limits, and in case of non-renewal, at least 30 days prior to expiration of the current policies. Subcontractor agrees to file new, complying Certificates showing proper renewal coverages and limits in force at least 30 days prior to expiration of the current policies.

(a) WORKER'S COMPENSATION and EMPLOYER'S LIABILITY INSURANCE:

- 1) Worker's Compensation and Occupational Disease Coverage in accordance with the laws of the State within whose jurisdiction the work is performed. In the event that the work of this contract falls within the purview of the United States Longshoreman's and Harbor Worker's Compensation Act, the Jones Act or the Federal Employer's Liability Act, the Subcontractor shall extend Worker's 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 Worker's Compensation coverage will be acceptable even in those jurisdictions where permitted.
- 2) Employer's Liability Coverage with a minimum limit of: \$1,000,000.

Where permitted by law the Subcontractor waives subrogation against Cooper Flintco, LLC, and <Owner>.

(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, without restricting endorsements that reduce coverage. Alternatively, the Subcontractor shall identify by 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 Cooper Flintco as a condition of this Subcontract.

The above coverage shall be written for not less than the following minimum limits:

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

Continuation of Coverage Subcontractor shall continue to carry Completed Operations Liability Insurance 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 PER ACCIDENT.

(d) [AS APPLICABLE PER OUTLINED SCOPE] PROFESSIONAL LIABILITY INSURANCE 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. Such insurance shall have a maximum deductible amount of \$25,000 per occurrence. The deductible shall be paid by the Subcontractor on claims for which the Subcontractor is liable.

(e) [AS APPLICABLE PER OUTLINED SCOPE] CONTRACTOR'S POLLUTION LIABILITY INSURANCE shall be written on an occurrence basis for not less than the following minimum limits: \$1,000,000 EACH OCCURRENCE and \$1,000,000 AGGREGATE.

(f) BUILDER'S RISK coverage including the interests of the Subcontractor will be provided by Cooper Flintco as identified in the Subcontract Documents. The Subcontractor is responsible for the deductible of \$25,000.

Cooper Flintco, LLC, <Owner> [, Additional Insured] as well as any other parties listed as additional insureds in the Owner-Contractor Agreement shall be added as additional insureds under the Commercial General Liability insurance listed in (b) above. The coverage afforded the additional insureds must provide coverage at least equal to that of ISO form CG 20 10 for ongoing operations and CG 20 37 for completed operations. It is agreed by the parties that such coverage will be primary and non-contributory and any coverage carried by Contractor and/or Owner will be excess of Subcontractor's coverage. If required by the law of the state where the project is located, Contractor shall also be furnished a copy of the policy and the endorsement issued by the insurer adding Contractor and Owner and other required parties as additional insureds or other documents as necessary to lawfully effectuate such endorsement.

All insurance policies procured, paid for, and maintained by the Subcontractor for the work performed according to this Subcontract Agreement must contain a Waiver of Subrogation rights against that of the Owner, Cooper Flintco, its parent, owners, subsidiaries and affiliate companies, their agents, employees, directors, servants, and insurers. This Waiver of Subrogation is required not only with respect to property, liability, or other insurance required of Subcontractor in this article, but also with respect to any other property, 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 limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability Policy. If the full 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 carried by Contractor and/or Owner will be excess of Subcontractor's coverage.

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.

COOPER FLINTCO POLICIES/PROCEDURES ACKNOWLEDGEMENT OF OBTAINING FORM

The following Policies and Procedures are part of the Agreement by reference. (Obtain documents at www.flintco.com, Select Subcontractors tab and then click on Forms.)

- **Substance Free Workplace:** I acknowledge that I have obtained a copy of the Cooper Flintco, LLC policy statement regarding Substance Free Workplace and have read and understand my obligations under this policy.
- **Firearm, Weapons-Free Workplace Policy:** I acknowledge that I have obtained a copy the Cooper Flintco, LLC policy statement regarding Firearm, Weapons-Free Workplace and have read and understand my obligations under this policy.
- **Smoke-Free Workplace:** I acknowledge that I have obtained a copy of the Cooper Flintco, LLC policy statement regarding a Smoke-Free Workplace and have read and understand my obligations under this policy.
- **Safety Manual:** I acknowledge that I have obtained a copy of the Cooper Flintco, LLC Safety Manual and have read and understand my obligations regarding Job Site safety.
- **Certification of Nonsegregated Facilities:** I acknowledge that I have obtained a copy of the Cooper Flintco, LLC policy statement regarding a Nonsegregated Facility and have read and understand my obligations under this policy.

Subcontractor acknowledges obtaining a copy of and agrees to comply with Contractor policies and procedures related to Subcontractor performance on the jobsite.

XXSubcontractor NameXX

Subcontractor Name

Signature of Subcontractor Representative

Date

Return this signed form with your executed subcontract.

COOPER FLINTCO, LLC
DRAWINGS, SPECIFICATIONS & ADDENDA

Specifications:

Addenda:

Drawings:

COOPER FLINTCO, LLC SCHEDULE OF WORK

Subcontractor agrees that time is of the essence and shall prosecute the work to its fullest extent. The construction schedule will be maintained at the project site. Subcontractor will give input to the schedule at the regular scheduled progress meetings. The subcontractor shall follow that schedule and as modified.

DOCUMENT 006113

PERFORMANCE AND PAYMENT BOND

The successful bidder will be required to furnish and pay for a Bond covering the faithful performance of the Contract, payment obligations arising under the Contract, and defective workmanship or materials which may arise during the one year following completion and acceptance of the project (Refer to Section 002100 – Instructions to Bidders) as an ADD Alternate cost in the Bid Packages (Section 004700). The Bidder shall deliver said Bond with their executed Contract.

Furnish bonds with a surety company acceptable to the Owner and Construction Manager. 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.

The successful bidder shall furnish two (2) original copies of bonds to the Construction Manager.

The following form is required to be used for bonds.



Bond No.: _____

**SUBCONTRACT PERFORMANCE BOND
FLINTCO, LLC OBLIGEE**

KNOW ALL MEN BY THESE PRESENTS: That _____

(here insert the name and address, or legal title of Subcontractor) as Principal, and _____

(here insert the name and address of Surety) as Surety, are held and firmly bound unto FLINTCO, LLC as Obligee, in the amount of _____
DOLLARS (\$_____), for the payment whereof Principal and Surety bind themselves for the performance of the Subcontract set forth 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 has by written agreement dated _____ entered into a Subcontract with Obligee for _____, which Subcontract is by reference made a part hereof, and is hereinafter referred to as the Subcontract.

NOW, THEREFORE, the parties agree as follows:

1. EFFECT OF OBLIGATION. If the Principal performs the Subcontract, each and every, all and singular, the matters stated in the Subcontract, then this bond 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 Obligee.
3. PRINCIPAL DEFAULT. Whenever the Principal shall be, and is declared by the Obligee to be in default under the Subcontract, with the Obligee having performed its obligations in the Subcontract, the Surety after receipt of written notice of the default from the Obligee shall promptly remedy the default, or shall promptly notify the Obligee of its election that the Surety shall immediately proceed in one of the following methods to remedy the default:
 - 3.1 COMPLETE SUBCONTRACT. Complete the Subcontract in accordance with its terms and conditions; or
 - 3.2 OBTAIN NEW SUBCONTRACTOR. Obtain new Subcontractor for completing the Subcontract in accordance with its terms and conditions, and upon acceptance by both the Surety and Obligee, arrange for a Subcontract between such party and the Obligee; or



3.3 PAY OBLIGEE. Pay the total amount for which the Surety is liable to the Obligee for completion of the Subcontract, and pay the Obligee that amount as soon as practicable. This obligation shall not negate or limit the Surety's obligation to make monthly payments to the Obligee as provided below in this Bond prior to paying the total amount.

The Surety shall make available each month as work progresses sufficient funds to pay the cost of completion. The amount of such funds shall be reduced by the balance of the Subcontract Amount received by Obligee and then would be due Principal per the Subcontract had the default not occurred. The cost of completion includes the responsibilities of the Principal for the entire cost as defined in the Subcontract including, but not limited to, those relating to the correction of defective work, the Obligee's legal and design professional costs resulting directly from the Principal's default and liquidated and actual damages. The term "balance of the Subcontract Amount" as used in this paragraph shall mean the total amount payable by the Obligee to the Principal under the Subcontract and any amendments to it, less the amount properly paid by the Obligee to the Principal per the Subcontract.

- 4. 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.
- 5. 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.

Signed and sealed this _____ day of _____,

IN THE PRESENCE OF: _____ (Seal)
 Subcontractor (Principal)

 (Witness or Attest) By: _____

Title: _____

 (Here insert name of Surety)

By: _____ (Seal)

Attorney-in-fact



Bond No.: _____

**SUBCONTRACT LABOR AND MATERIAL PAYMENT BOND
FLINTCO OBLIGEE**

KNOW ALL MEN BY THESE PRESENTS: THAT _____

(here insert the name and address, or legal title, of Subcontractor) as Principal, and _____

(here insert name and address of Surety) as Surety, are held and firmly bound unto FLINTCO as Obligee, for the use and benefit of claimants as herein-below defined in the amount of _____
_____ DOLLARS (\$ _____) for the payment whereof Principal and Surety bind themselves, 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 has by written agreement dated _____ entered into a Subcontract with Obligee for _____ which Subcontract is by reference made a part hereof, and is hereinafter referred to as the Subcontract.

If the Principal shall promptly make payment to all Claimants as defined in this bond, for all labor, material and equipment 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 Obligee that every Claimant who has not been paid in full before the expiration of a valid claim in accordance with the Contract between the Owner and Obligee and/or law governing the location of the Project, may have a right of action on this bond. The Obligee shall not be liable for the payment of any costs or expenses including attorneys' fees which the Obligee may incur in connection with its defense of 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 Obligee 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 or 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. 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.

Signed and sealed this _____ day of _____.

IN THE PRESENCE OF:

_____(Seal)
Subcontractor (Principal)

(Witness or Attest)

By: _____
Title: _____

(Here insert name of Surety)

By: _____
Attorney-in-fact

_____(Seal)

DOCUMENT 006126
DUAL OBLIGEE RIDER

To be attached to and form a part of contract bond number _____

issued by the _____

on behalf of _____

In the amount of _____ Dollars

(\$ _____) and dated _____ in favor of

_____ in consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration receipt of which is hereby acknowledged, the Undersigned hereby agree as follows:

1. The _____ is hereby added to said bond as an additional obligee.
2. The Surety shall not be liable under this bond to the Obligee, or either of them unless the said Obligees, or either of them, shall make payments to the Principal strictly in accordance with the terms of the said contract as to payments, and shall perform all other obligations to be performed under said contract at the time and in the manner therein set forth.
3. No suit, action or proceeding by reason of any default whatever shall be brought on this bond after two (2) years from the day on which the final payment under said construction contract falls due.
4. Aggregate liability of Surety hereunder to Obligees is limited to the penal sum above stated and Surety, upon making payment hereunder, shall be subrogated to, and shall be entitled to an assignment of all rights of the payee with respect to the particular obligation discharged by the payment, either against principal or against any other party liable to the payee on the discharged obligation.

Signed, Sealed and Dated this _____ day of _____, _____.

By _____

By _____

By _____

By _____
Attorney-in-Fact
Surety Phone Number: _____

By _____
Attorney-in-Fact
Surety Phone Number: _____

DOCUMENT 006400

SUBCONTRACTOR APPLICATION AND CERTIFICATION FOR PAYMENT

- 1.) Subcontractor shall submit for each month applying for payment four copies of the payment application containing the following items in order as presented here:
 - A. Completed Cooper Flintco Subcontractor Invoice Form.
 - a. Completion of this form must be typed or hand written and all fields must be completed in full including contractor/supplier name and signature on certification of form. See attached example.
 - B. Completed AIA G703 Continuation Sheet(s) showing detailed schedule of values for contract amount and executed change orders.
 - a. Schedule of values shall be itemized per item of work, labor and material. See attached example.
 - b. Schedule of values must be submitted to Cooper Flintco for review and approval 30 days prior to submitting your first payment application.
 - c. AIA G702 Certified Payment Application Form is NOT required.
 - 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.
- 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 COOPER 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.) Cooper Flintco shall be contacted for inquires of payment status, DO NOT contact the owner for inquires of payment status. All lien waivers must be returned to Cooper Flintco fully executed before the next payment will be issued.
- 5.) Payment shall only be due for the portion of the Work actually completed to the satisfaction of Cooper 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 Cooper Flintco from the Owner. Within ten (10) days after receipt by Cooper Flintco of payment from the Owner, Cooper 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 Cooper Flintco prior to issuance of subsequent payments.

TO: FLINTCO, INC. FROM:
P.O. BOX 490
TULSA, OK 74101-3598

Name of Job: Date:

Contract For:

Table with columns: FLINTCO Contract No., S/C / Purchase Contract No., INVOICE #, Amount of Contract, % Complete to Date, Total Complete to Date. Includes rows for Original Contract Amount and Changes to Contract.

STORED MATERIALS: (Itemize)

TOTAL STORED MATERIALS:

The undersigned, upon receipt of the payment requested hereunder and in consideration of such payment, does hereby waive and release any and all claims or construction liens or any type arising under applicable state or federal law or any payment or performance bond on account of labor or materials or both furnished up to the date of this invoice; provided, however, this waiver and release does not apply to the extent that payment is being retained or is not yet due and payable under the contract. The undersigned also certifies that all bills for materials or labor or other encumbrances related to payments previously paid to us on this contract have been fully paid.

Very truly yours, Vendor Subcontractor: Signature:

Estimate No.: Total Complete & Stored: Less Previous Completed & Stored: Total: Less Owner Paid Invoices: Less Retainage: Total Due This Invoice By Flintco, Inc.:

For FLINTCO, INC. Use Only AN EQUAL OPPORTUNITY EMPLOYER

Checked by: Approved by: Date:

Voucher No.:

Remarks:

WHITE-ORIGINAL YELLOW-VOUCHER PINK-ENGINEER GOLD-SUB/VENDOR

EXAMPLE

CONTINUATION SHEET

AIA DOCUMENT
G703

PAGE 1 OF 1
PAGES

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 2
APPLICATION DATE: 05/15/08
PERIOD TO: 05/10/08
ARCHITECT'S PROJECT NO: 9999-1111

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		E THIS PERIOD	F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G ÷ C)	H BALANCE TO FINISH (C - G)	I RETAINAGE
			FROM PREVIOUS APPLICATION (D + E)							
01	SITE WORK									
1.01	Site Demolition	\$100,000.00	\$100,000.00		\$0.00	\$0.00	\$100,000.00	100.00%	\$0.00	\$0.00
1.02	Rough Grading	\$50,000.00	\$10,000.00		\$20,000.00	\$0.00	\$30,000.00	60.00%	\$20,000.00	\$2,000.00
1.03	Basement Excavation	\$200,000.00	\$70,000.00		\$80,000.00	\$0.00	\$150,000.00	75.00%	\$50,000.00	\$8,000.00
1.04	Shoring	\$250,000.00	\$120,000.00		\$130,000.00	\$0.00	\$250,000.00	100.00%	\$0.00	\$13,000.00
	SITE UTILITIES									
1.05	Sanitary Sewer	\$80,000.00	\$20,000.00		\$15,000.00	\$5,000.00	\$40,000.00	50.00%	\$40,000.00	\$2,000.00
1.06	Water Lines	\$25,000.00	\$2,000.00		\$8,000.00	\$0.00	\$10,000.00	40.00%	\$15,000.00	\$800.00
1.07	Fire Lines	\$30,000.00	\$2,000.00		\$13,000.00	\$0.00	\$15,000.00	50.00%	\$15,000.00	\$1,300.00
1.08	Storm Drainage	\$40,000.00	\$0.00		\$15,000.00	\$0.00	\$15,000.00	37.50%	\$25,000.00	\$1,500.00
	SITE PAVING									
1.09	Asphalt Paving	\$120,000.00	\$0.00		\$0.00	\$0.00	\$0.00	0.00%	\$120,000.00	\$0.00
1.10	Curb and Gutter	\$20,000.00	\$1,000.00		\$4,000.00	\$0.00	\$5,000.00	25.00%	\$15,000.00	\$400.00
1.10	Sidewalks	\$25,000.00	\$3,000.00		\$7,000.00	\$0.00	\$10,000.00	40.00%	\$15,000.00	\$700.00
1.10	Concrete Paving	\$10,000.00	\$0.00		\$0.00	\$0.00	\$0.00	0.00%	\$10,000.00	\$0.00
	GRAND TOTALS	\$950,000.00	\$328,000.00		\$292,000.00	\$5,000.00	\$625,000.00	65.79%	\$325,000.00	\$29,700.00

AIA DOCUMENT G703 · CONTINUATION SHEET FOR G702 · 1992 EDITION · AIA · © 1992
THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W. WASHINGTON, D.C. 20006-5292

G703-1992

EXAMPLE

APPLICATION AND CERTIFICATION FOR PAYMENT

Cherokee Hard Rock Casino Exterior Renovation Phase II & III Guitar Pick Plaza

Catoosa, OK

006400-3

DOCUMENT 006519

SUBCONTRACTOR PARTIAL RELEASE OF LIEN EXAMPLE

PLEASE SIGN AND NOTARIZE ATTACHED
AFFIDAVITS AND RETURN BOTH COPIES
COOPER 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 COOPER 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 COOPER FLINTCO, LLC

FUTHER, 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:

Notary Public

SEAL

DOCUMENT 006520

FINAL WAIVER AND RELEASE BY SUBCONTRACTOR/SUPPLIER EXAMPLE

Whereas, the undersigned has been employed by Cooper 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 **Cooper 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 **Cooper 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 **Cooper 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 **Cooper 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 **Cooper 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 007319

FLINTCO SAFETY MANUAL



CONSTRUCTION SAFETY REQUIREMENTS

Chapter 13

PROJECT: _____

TRADE PARTNER: _____



Trade Partners' Safety Programs and Site Requirements

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

Trade Partners Safety Submittal Package shall be turned into the Area Safety Manager for review PRIOR to the commencement of any construction related activities. The Safety Submittal Package and signature of the trade partner's Project Superintendent, Project Manager and Safety Representative shall be required attesting that they have read, understand, and will abide by these site requirements and any additional safety requirements of this project as may be required.

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. Trade Partner's Superintendent shall be present to provide total supervision for their sub-tier trade partners at all times. In no case will the presence of a Safety Representative relieve the Superintendents of the 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 a part of the Safety Submittal Package.

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.

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 job-site by their employees and the employees of all tiers **of trade partners**.



JHA (Job Hazard Analysis)

Prior to the start of any construction activity, a Job Hazard Analysis shall be turned in with trade partners Safety Submittal Package. The Job Hazard Analysis shall identify at a minimum:

- The work steps involved with each specific construction work activity for the entire scope of work.
- Potential and existing hazards with the work activity.
- Controls to eliminate or effectively control the hazard.

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.

PTP (Pre-task Plan) The pre-task plan is to be a supplement to the JHA (Job Hazard Analysis). This is to be completed, documented and signed by all workers in the pre-work meeting by the trade partner's supervisor and/or SSR (trade partner's sitesafety representative).

Record Keeping and Files

The following required documentation shall be in the trade partner's Safety Files, located in the Flintco, LLC office. Representatives of Flintco, LLC will review the written Safety and Health Loss Prevention Plan which includes a Job Hazard Communication/Employee Right-to-Know Program as well as the following documents:

- SDS(Safety Data Sheets), sitespecific, conforming to the Trade partner's Hazard Communication Program.
- Job-site weekly safety meeting reports, including lesson plans which detail training.
- Accident investigations, including accident reports, witness statements, involved employee statement, and pictures of the accident scene.
- Daily job-site safety inspections, including documented closure of identified deficiencies.
- JHA (Job Hazard Analysis), along with documented training records of each hazard analysis.
- PTP (Pre-task Plan), shall be documented and signed by each worker daily and posted in the work area and in onsite filing.
- Equipment inspection records.
- Employee orientation training

Safety Representatives

Trade partners shall designate a safety representative to oversee the trade partner's health, safety and environmental activities and to perform the duties outlined under safety representative responsibilities. The safety representative will be credentialed as outlined in the section titled (Safety Representative Credentials) of this section. If the safety representative 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 safety representative 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 safety representative in the event the primary safety representative is absent from the project.

Safety Representative Credentials

Each trade partner must have a designated safety representative that meets both of 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.
- Documentation of completion of the “OSHA 30” hour course specific to the construction industry.

A copy of the Safety Representative’s credentials must be provided with the Safety Submittal Package and maintained on file in each trade partner’s safety file.

Safety Representative Responsibilities

Each trade partner’s Safety Representative, 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 Safety Representative shall conduct daily documented site inspections of their assigned on-going activities. This daily responsibility shall be focused on the Safety Representative’s own employee activities.

Each Safety Representative will maintain the required Job Hazard Analysis.

Each trade partner’s “recordkeeping and files” as outlined in the above subsection shall be accurately maintained by each trade partner’s onsite Safety Representative.

Each trade partner’s safety representative will conduct Safety Orientation for their employees prior to the employee’s start of work and access to the jobsite.

Safety Orientation will consist of the review of section 13-006 through 13-0013 and submission of a signed copy of form. (Form – Participant Acknowledgement – attached to policy)

Competent Person Requirements

Each trade partner shall provide a matrix outlining employee(s) designated as a qualified competent person(s). The qualifications for competent persons 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.)

Credentials of each individual(s) identified in this matrix shall be attached (i.e. training certificates, resumes outlining years of experience, competent person cards, etc.) in the Safety Submittal Package.



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

Accident Investigations & Incident “Near Miss” Investigations

All injuries shall be reported by each trade partner’s Safety Representative to Flintco, LLC immediately. The trade partner shall complete and submit a project Trade partner Accident Form for any injury or “near miss”, no matter how minor for their company’s employees and the employees of their trade partners. A WRITTEN ACCIDENT REPORT SHALL BE COMPLETED WITHIN 24 HOURS OF THE ACCIDENT and forwarded to Flintco, LLC. The following information shall be included with the accident report:

- First report of injury (from applicable state). If it is a trade partner injury, a management person(s) from the trade partner needs to sign this form.
- Trade partner Accident Form
- Employee statement explaining accident.
- Witness statement explaining what they saw or their involvement.
- Pictures of the accident scene.
- RCA (Root Cause Analysis form) for all injury accidents. (see exhibit)

Whenever an accident, incident or “near miss” occurs, the trade partner shall review the specific Job Hazard Analysis/Pre-task Plan and update it accordingly.

Accident investigations and incident near miss investigations will be discussed by the Safety Committee to determine if the accidents are considered preventable and who is considered the responsible party. The Safety Representative of the respective company shall explain in person why the accident occurred, before the Safety Committee. This explanation shall take place at the closest meeting after the accident.

Safety Meetings

Each trade partner and all tiers of Trade partners shall conduct weekly safety meetings on the job-site. Attendees and minutes of the weekly safety meetings are to be documented. This document must be kept in the trade partner’s Safety File. Records shall be maintained in such a manner to distinguish each Trade partner and their employees from the Trade partner and other Trade partners. All trade partners and sub tiers will attend the monthly “All Hands” safety meeting conducted by Flintco, LLC.

Job-Site Inspections

Each trade partner and all tiers of trade partners shall conduct and document daily job-site inspections. While these inspections may conform to the requirements of each Trade partner’s Safety Program, they are subject to safety standards established for the job.

- 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 the trade partner’s safety files.



- 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 be worn by all personnel at all times 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.
8. All employees on site shall wear hard hats that meet the requirements of ANSI Z89.1-1997 at all times outside the area designated as Trailer Row. Hard hats shall be worn in such a manner that the hat brim is positioned in front at all times. This policy includes truck drivers and delivery personnel.
 - Exceptions
 - a. Where allowed by manufacturer to reverse the suspension system.
 - b. To accommodate faceshields.
9. Hearing Protection is required by CFR 1926.101 and shall be used when required.
10. 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.
 - When employees are working outside a protective guardrail at height greater than 6', employees must wear a Personal Fall Arrest System (PFAS) that is attached to a designated anchor point.
 - 100% tie off in all aerial and scissor lifts using self-retracting lifelines and/or tethers. 6' shock absorbing lanyards will not be allowed.
 - PFAS shall be worn while working from a suspended scaffold and connected to an independent lifeline.
 - Safety nets shall be provided when work places 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
11. Respiratory Protection shall be provided when the possibility of occupational diseases are 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.
12. 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.
13. All chemical materials used shall have an SDS (Safety Data Sheets) included with the Safety Submittal Package electrically and to be filed at the Flintco, LLC project office in a hard copy indexed, tabbed, in a binder.
14. 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 25ft.
15. 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.
16. First aid cabinets are to be provided by each trade partner in their work area. One employee for each trade partner must have a First Aid/CPR Training Certification (Safety Submittal Package)
17. All vehicles on the construction site including the heavy equipment shall have a fire extinguisher in an accessible location.
18. Only "ABC" fire extinguishers are allowed on the construction site.
19. All equipment inside any building shall have an "ABC" rated fire extinguishers mounted in an accessible location.
20. 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.



21. All "ABC" fire extinguishers shall be fully charged, inspected and tagged for service.
22. Other types of equipment shall have a fire extinguisher as mandated by OSHA/CAL-OSHA
23. Emergency procedures shall be followed. All emergency rally points will be covered in the site specific orientation and Emergency Action Plan.
24. Incident Notification
 - Employees must report all incidents 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.
25. Clean up and housekeeping shall be top priority. This 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.
26. All walkways, ramps, stairways, emergency exits, and access points to ladders shall be kept free of debris.
27. All laydown areas, parking lots, and temporary facilities shall be kept clean at all times.
28. 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.
29. 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 hand written on the tape.
30. Keep all trash clear from electrical panels
31. Remove slip and trip hazards from the floor. Examples are trash, lumber, extension cords, conduit, pipe and pallets.
32. 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.
 - Goal post protective caps must have a 2X4 placed on top for protection.
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.
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 aladder.
40. Job-made ladders may be utilized on the job-site. 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. All scaffolding shall be erected plumb and level under the supervision of a qualified 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
48. Guardrail requirements for scaffolding:
 - No guardrail is required when the work platforms are less than 4' above the ground or floor.
 - When the work platforms are between 4' and 6' a guardrail is not required IF the work platform has a minimum horizontal dimension in each direction of at least 45".
 - ALL work platforms 6' or higher shall have a standard guardrail installed on all open sides and ends.
 - All supported scaffold poles, legs, frames and uprights shall bear on base plates that are positively secure to mud sills.
49. All scaffolding must be erected per the manufactures specifications
50. 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.
51. 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. Tools shall not be altered or used in a manner that it is not intended for.

52. Power operated hand tools shall be of the double insulated type or comply with the grounding requirements in CFR 1926 subpart K.
53. All electrical extension cords and power tool cords shall be inspected before each use.
54. All hand held 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.
55. Damaged or defective equipment shall not be used.
56. All pneumatic power tools and hoses shall be secured by a positive means at each connection.
57. All fuel operated power tools will be stopped and motors will not be running while refueling is in progress.
A 10lb fire extinguisher must be within 5' of all fueling operations.
58. Employees operating Powder Actuated Tools must be trained and have their training certifications in their possession.
59. Saw horses or work benches shall be utilized to secure material prior to using hand held circular saws, grinders, band-saws, drills, and similar tools.
60. 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 & tools will be inspected before use.
61. All portable generators including generator/welders used on the job-site 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.
 - A weekly documented inspection of each generator shall be conducted to ensure the GFCI is functioning.
 - Any generator, in which the GFCI does not function, shall be tagged and removed from service immediately.
 - All generators shall have a unique identification number and the Trade partner name in a visible location.
62. Electrical Panels and associated devices shall not be accessed by anyone with the exception of 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.
63. 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.
64. Posted speed limit shall be adhered to at all times. 10 mph will be the site speed limit unless otherwise posted.



65. Trade Partners on Flintco, LLC projects are responsible for providing drinking water for their personnel.
66. Excavation work shall be performed in accordance with OSHA/CAL-OSHA
67. Prior to any excavation, an excavation plan shall be included in the trade partners Safety Submittal Package for review.
68. All soil shall be treated at 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.
69. 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.
70. Spoil piles shall be put at least two (2) feet back from the edge of the excavation.
71. 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.
72. Excavations with vertical walls 6' or greater will present a fall hazard and workers shall be protected.
73. A qualified competent person shall be present anytime excavation work is performed.
74. 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.
75. All employees shall OBEY all posted safety signs and flagging.
76. 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.
77. 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.
78. 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. Mules, gators or golf type carts shall have ROPS (roll over protection) and seatbelts for operator and all passengers.
79. All vehicles on the construction site including heavy equipment shall have a fire extinguisher in an accessible location.
80. 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.
81. 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.

82. All equipment including: cranes, forklifts, skid steer loaders etc. shall have a reverse signal/back-up alarm audible above surrounding back ground noise.
83. 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 in the trade partners Safety Submittal Package. Only trained employees shall be allowed to operate that piece of equipment. When mounting or dismounting equipment, employees shall maintain three points of contact.
84. 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.
85. All fuel secondary containment will be pumped out after any rain.
86. The following requirements shall be followed for all cranes entering the construction areas, all crane documentation is to be included in the Safety Submittal package: (see safety submittal checklist) 29CFR 1926.1400 – Crane and Derrick Standard
 - All cranes operating on the job-site 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 job-site. When required by law a copy of the operator's license shall be presented to Flintco, LLC Area Safety Manager included in the Safety Submittal Package.
 - An up-to-date resume detailing the operator's qualifications (i.e., years of experience, previous jobs worked, etc.) shall be maintained in the Trade partner's safety files before any operator is allowed to operate a crane on the construction site, the Trade partner shall have
 - the operator perform a functional operation appraisal to ensure the operator is qualified. This shall be documented and on file in the Trade partner's safety files, including annual inspection.
 - Prior to any lift, all trade partners shall provide a lift plan included in the Safety Submittal Package prior to work commencing.
 - Critical lifts, (i.e. blind lift, lift at or exceeding 75% of the cranes capacity or tandem crane lifts or any other non-routine lift), shall have lift plan that is reviewed by the Flintco, LLC Area Safety Manager and the Project Superintendent prior to the execution of the lift.
 - 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.
87. 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 included in the trade partners Safety Submittal Package for review.
 - Documentation shall be provided of worker training and shall be included in the trade partners Safety Submittal Package.
 - Workers shall be connected with PFAS (personal fall arrest system) to the manufacturers



- engineered anchor point.
 - PFAS (personal fall arrest system) 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 fall restraint.
 - Use of a positioning hooks connected to the manufacturers engineered anchor point as fall restraint.
 - Use of a lanyard connected to the manufacturers engineered anchor point as fall arrest.
 - 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 aerial lift basket.
 - Housekeeping shall be done continuously, employees shall not be allowed to work in lifts cluttered and disorganized.
 - All aerial lifts shall have a unique identification number and the Trade partner name posted in a visible location.
 - All aerial lifts 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 aerial lift basket. Only approved manufacturer's attachments shall be used.
- 88.** 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.
- 89.** 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.
- 90.** Lockout and tagging disconnects, circuit breakers and supply valves as well as energy isolating devices shall be used.
- 91.** 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 partners Site Safety Representative or 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 radius of them. In order for a fire watch to cover multiple operations, they shall have a clear line of sight to each operation and an unobstructed pathway to each operation.
- 92.** There will be no smoking/tobacco products, eating or drinking (with the exception of 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.
- 93.** All employees shall conduct themselves in a worker like manner at all times. Any harassment of other personnel, horseplay/fighting or disruptive activities of any kind shall result in immediate dismissal/removal from the job site.
- 94.** 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.



95. 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.
96. New employees shall be given safety orientation education and awareness training by their supervisors and/or the Safety Representatives before they start work. This orientation shall apply to general instructions regarding safety rules of the project. A signed employee acknowledgement of such training will be maintained in the trade partner's safety files. The Trade partner shall conduct all orientations for their lower- tier Trade partners. See Orientation Acknowledgement.
97. 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.
98. Concrete trucks shall have the chute in the raised and locked position while traveling on the job-site.
99. 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 Flintco, LLC.
100. Glass containers of any kind shall not be brought onto the construction site.
101. 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.
102. Project drug and substance abuse policy
 - 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.
 - 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.
 - 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.
103. Stretch and Flex Program – Start each day by warming up the muscles, which improves elasticity and helps to meet the job's physical demands.
104. Flintco 4 LIFE Essentials:
 1. You have the authority to refuse or stop unsafe work
 2. You must attend safety orientation prior to any work
 3. You must complete a pre-task plan for each task



4. You must wear a hard hat
5. You must wear eye protection



6. You must wear high visibility clothing/vest
7. You must wear work boots
8. You must wear hand protection
9. You must use fall protection above 6'
10. You must use lock-out/tag-out procedures on energized systems
11. You must immediately report incidents/accidents
12. You must use continuous clean housekeeping procedures
13. Disabling safety devices or guards is prohibited
14. Drug and alcohol use and/or possession is prohibited
15. Concealed or open carry firearms is prohibited
16. Workplace violence or threat of violence is prohibited

CELL PHONE USAGE

The use of personal cell phones/personal electronic devices while at work presents 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 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.



Construction Safety Requirements (Chapter 13) Acknowledgement

I hereby attest by my signature that I have read and understand these Construction Safety Requirements and Site Policies, and I will abide by them. I also understand that at the discretion of Flintco, LLC, there may be site specific amendments or modifications to the Safety Requirements/Site Policies at anytime.

Name of Company: _____

Date: _____ Signature: _____

Project Superintendent

Project Superintendent (printed name)

Date: _____ Signature: _____

Project Manager

Project Manager (printed name)

Date: _____ Signature: _____

Lead Safety Representative

Lead Safety Representative (printed name)

COMPETENT PERSON IDENTIFICATION

Each trade partner shall designate an employee(s) as a Competent Person(s). The qualifications for competent persons are identified in various Subparts of OSHA.

NOTE: Certain subparts 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.)

_____ is hereby designated as Competent Person for _____
(Name) (Company Name)

on the Flintco, LLC _____
(Project Name)

_____ has proven capable of identifying existing and predictable hazards and
(Name)
has direct authority to take corrective measures in eliminating them.

Sincerely,

Name _____

Title _____

Company _____

Date _____

SAFETY REPRESENTATIVE IDENTIFICATION

Pursuant to the requirements of Chapter 13 of the Flintco Safety Manual, each trade partner shall designate a safety representative to oversee the trade partner's environmental, safety and health activities.

_____ is hereby designated as Safety Representative at the Flintco, LLC
(Name)

(Project Name)

_____ has the education and/or experience to perform the tasks as outlined in
(Name)
the section titled "Safety Representative Credentials" of Chapter 13 of the Flintco, LLC Safety Manual and employs the following credentials.

The safety representative shall be present on site during all trade partner work activities. The trade partner shall identify an alternate safety representative in the event the primary safety representative is absent from the project.

Sincerely,

Name _____

Title _____

Company _____

Date _____

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.