

# Construction Manager's Bid Manual

October 17, 2022

## New Cherokee Nation Hospital

Tahlequah, OK



GWVS DBF  
CHEROKEE NATION®

FOREMAN | MANHATTAN  
Construction Team



## BID PACKAGE 03

### 14.01 - Elevators

**BID PACKAGE 03**  
**Elevators**  
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**Bid Solicitation – Bid Package 03 (Elevators)**

**PROJECT: New Cherokee Nation Hospital**

**BID PACKAGE NO. 03 – Will be bidding at this time:**

SUBCONTRACTOR IS TO COMPLY WITH ALL **CHEROKEE NATION, TRIBAL EMPLOYMENT RIGHTS OFFICE (TERO)** REQUIREMENTS APPLICABLE TO THIS PROJECT.

***NOTE: TERO FEES ARE WAIVED FOR THIS PROJECT.***

**PROJECT INFORMATION:**

New Cherokee Nation Hospital  
19600 East Ross Street  
Tahlequah, OK 74464

**Pre-Bid Meeting (NON-MANDATORY):**

**Location:** Microsoft Teams Meeting  
(Use Link Below – and / or Email for an invite: [mflaherty@manhattanconstruction.com](mailto:mflaherty@manhattanconstruction.com) )

**Date:** Thursday, October 27, 2022  
**Time:** 9:00 am Central

## Microsoft Teams meeting

**Join on your computer, mobile app or room device**

[Click here to join the meeting](#)

Meeting ID: 248 171 224 250

Passcode: hwpkhhb

[Download Teams](#) | [Join on the web](#)

**Or call in (audio only)**

[+1 539-222-3529,,120012079#](#) United States, Tulsa

Phone Conference ID: 120 012 079#

[Find a local number](#) | [Reset PIN](#)

[Learn More](#) | [Meeting options](#)

**Project RFI's:** (All Questions and Interpretations)

**Cut-off Date:** Tuesday, November 08, 2022  
**Time:** 5:00pm Central

**Contact:** **Mike Flaherty**  
  
(918) 237-6995  
[mflaherty@manhattanconstruction.com](mailto:mflaherty@manhattanconstruction.com)

**BID DAY:**

**Date:** Thursday, November 17, 2022  
**Time:** 2:00PM Central

**HOW TO SUBMIT BID:**

All proposals should be sent by express delivery, regular mail or hand delivery to Cherokee Nation Purchasing Department at the following address:

**IF BY EXPRESS DELIVER OR REGULAR MAIL**

Cherokee Nation Purchasing Department  
Attn: Shelly McClain  
PO Box 948  
Tahlequah, OK 74465

**IF BY HAND DELIVERY**

Cherokee Nation Purchasing Department  
FINANCIAL RESOURCES BUILDING  
Attn: Shelly McClain  
17675 Muskogee Ave.  
Tahlequah, OK 74464

(See Map in Instructions to Bidders)

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

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

It is the intention of Foreman Manhattan Construction Team and Cherokee Nation to award this project within 30 days of the proposal date.

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

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

## **Instructions to Bidders**

### **1. Receipt and Opening of Proposals:**

Cherokee Nation ("Owner") on behalf of Foreman Manhattan Construction Team (herein called "Construction Manager", "CM", "Foreman Manhattan Team", "FMC", or "Foreman Manhattan") acting as Construction Manager **is accepting SEALED bids on Thursday, November 17, 2022 at 2:00PM Central.**

All proposals should be sent by express delivery, regular mail, or hand delivery to Cherokee Nation Financial Resources Building at the following address:

#### **IF BY EXPRESS DELIVER OR REGULAR MAIL**

Cherokee Nation Purchasing Department  
Attn: Shelly McClain  
PO Box 948  
Tahlequah, OK 74465

#### **IF BY HAND DELIVERY**

Cherokee Nation Purchasing Department  
FINANCIAL RESOURCES BUILDING  
Attn: Shelly McClain  
17675 Muskogee Ave.  
Tahlequah, OK 74464

**NOTE: THE FINANCIAL RESOURCES BUILDING IS LOCATED BEHIND (SOUTH OF) THE MAIN CHEROKEE NATION COMPLEX, ALONG COTTON WOOD STREET (SEE MAP AT THE END OF THIS DOCUMENT)**

Proposals shall be designated as:

**"NEW CHEROKEE NATION HOSPITAL – BID ID #150183 - Scope Package # \_\_\_\_\_"**  
*(Example: Scope Package #03.01 Building Concrete)*

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

***Email delivery of Proposals shall NOT be accepted.***

### **2. Proposal Due Date:**

Due Date: **Thursday, November 17 2022**

Time: **2:00 P.M. Central**

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

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

- a. Complete Foreman Manhattan Bid Form / Scope Package Document
- b. Completed Non-Collusion Affidavit
- c. Completed Business Relationship Affidavit
- d. Bidder's Proposal / Scope Letter (Optional)
- e. Bonding Company Letter Indicating Single Project and Aggregate P&P Bond Capacity
- f. TERO bidders must supply a copy of TERO Certificate, front and back (TERO Bidders Only)

**4. Bid Bond:**

NOT REQUIRED

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

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

**6. Tribal Employment Rights Office.**

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

11.1.1 - TERO document "An Act" Legislative Act 01-14 dated February 10, 2014.

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

11.1.2 - Subcontractors are to **EXCLUDE** the cost for Section; Title 40, § 1011; T.

To assess an Employee Rights Fee of one-half (1/2) of one percent (1%) on all covered contracts.

**This fee is being waived for this project.**

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

**This fee is being waived for this project.**

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

NOT REQUIRED

**8. Sales Tax**

All bids provided must furnish all labor, quality control, materials, supplies, delivery, installation and supervision to complete the entire project. The Cherokee Nation will **NOT** be utilizing Owner Direct Paid Invoices (ODPI) for this project, so the bidder must plan to make all purchases – those bidder purchases must **INCLUDE** all applicable Sales Tax.

Applications for payment shall be broken down as required by the Owner or Construction Manager.

**9. Davis-Bacon Wage Scale**

**LAWS AND REGULATIONS:**

The responding firm's attention is directed to the fact all applicable State Laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of this project shall apply to the contract throughout, and they will be deemed to be included in any future contract the same as though written out in full.

Wage Rates: The Cherokee Nation requests the wages for any future contract/project follow the Davis Bacon Wage Scale. Awarded parties will be required to maintain wage rates paid to employees for any future awarded project and have reports available upon request. And, 40 U.S.C.A. §3702 & §3704 per Department of Labor regulations regarding work hours and conditions. Cherokee Nation TERO law is applicable to any future agreement

**10. Schedule**

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

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

**11. Examination of bid documents:**

Bid Documents can be obtained electronically from Foreman Manhattan's Building Connected website ( <https://www.buildingconnected.com> ), and the Cherokee Nation Commerce website ( <http://www.cherokeebids.org> ).

**12. Examination of Site**

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

**13. All Questions and Interpretations of the Bid documents:**

**Project Contact:** **Michael Flaherty**  
(918) 237-6995  
mflaherty@manhattanconstruction.com

**14. Acceptance and/or Rejection of Bid Proposals:**

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

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

**15. Bid Alternates:**

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

**16. Bid Opening:**

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

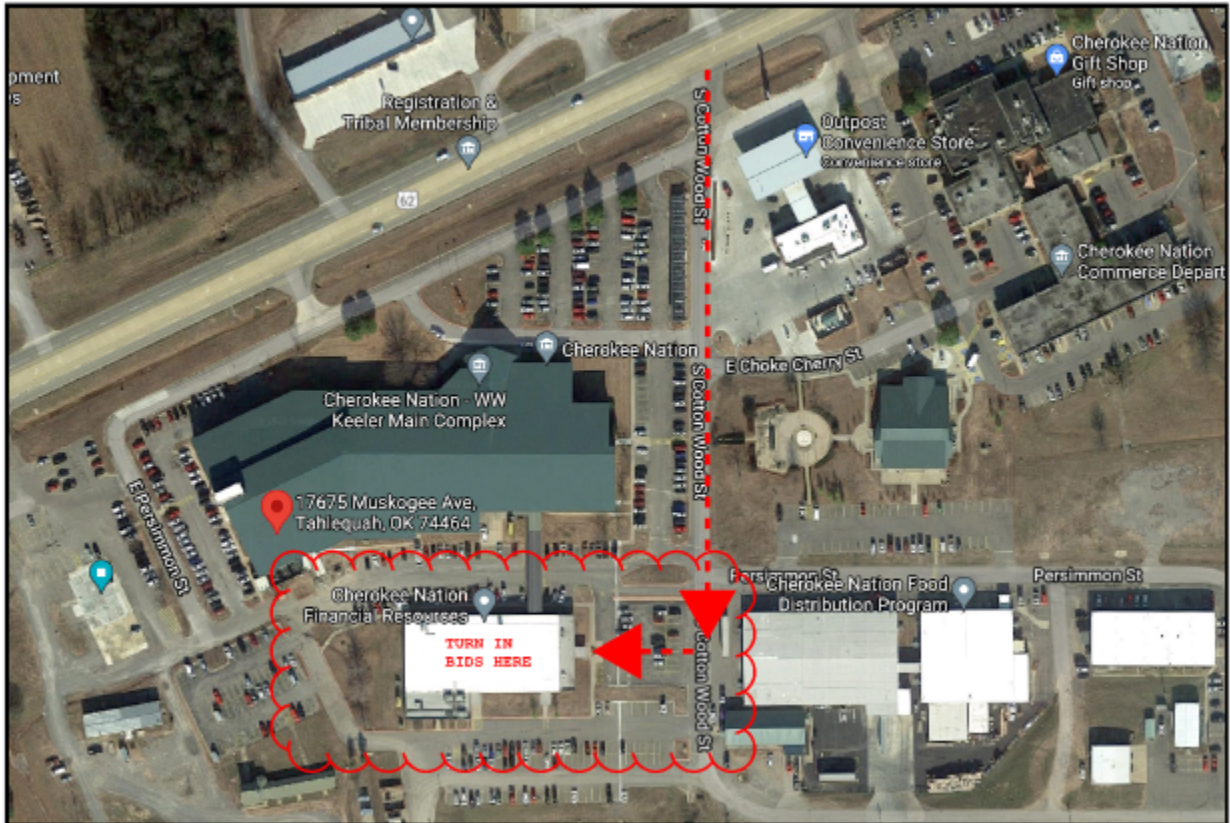
***The bidder must plan for a post bid meeting/interview to review bidder's proposal and scope of work associated with the project. This post bid de-scope meeting/interview will be scheduled at the close of business day a minimum of 48-hours after the initial Bid Day.***

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

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

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

SEALED BID DROP OFF LOCATION MAP:

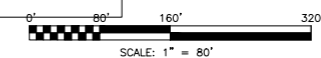


End of Instructions to Bidders

**NEW  
HOSPITAL**

PATH TO  
JOBSITE  
FROM  
ROSS  
STREET

LOGISTICS PLAN  
BID PACKAGE 03  
PAGE 1 OF 2





**James R. Childers**  
**Architect, Inc.**  
45 South 4th Street  
Fort Smith, AR 72901  
479-783-2480  
[www.childersarchitect.com](http://www.childersarchitect.com)



CONSULTANT LOGO:

**Parkhill**  
14101 Wireless Way, Suite 350  
Oklahoma City, OK 73134  
405-832-9900  
[www.parkhill.com](http://www.parkhill.com)  
Oklahoma CA #4935, Expires 6/30/2023



CHEROKEE NATION  
W.W. HASTINGS REPLACEMENT HOSPITAL  
TAHEQUAH, OKLAHOMA

## KEY PLAN:

**BID PACKAGE 01**  
(NORTH PARKING AND ACCESS)

REVISIONS	

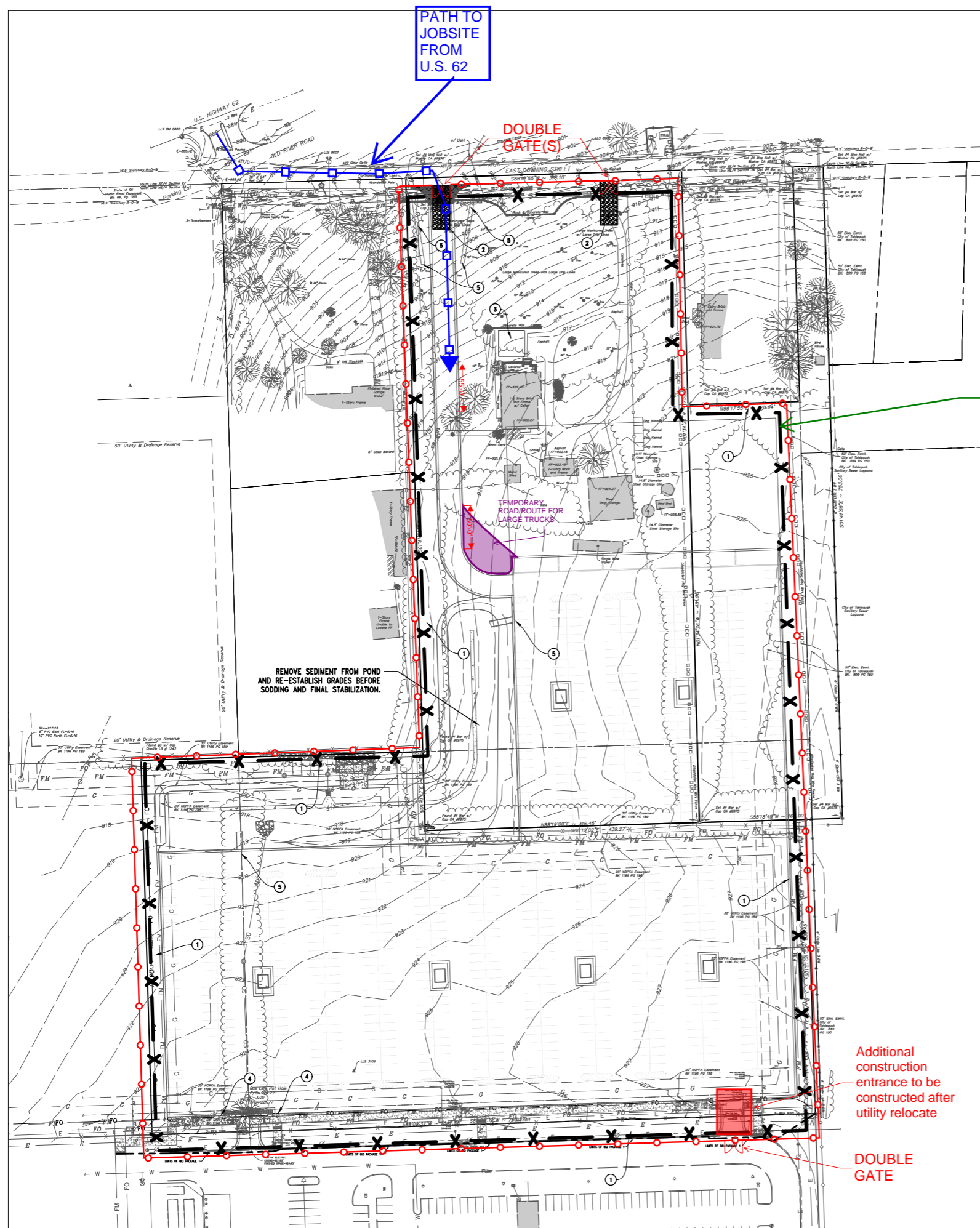
DATE: 21-08.21

07-29-22

**C2-702**

PROJECT TITLE:

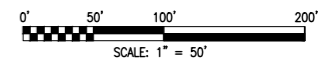
NP EROSION CONTROL  
PLAN



KEYNOTES	
1	INSTALL SILT FENCE. SEE SHEET C2-750, DETAIL 01
2	INSTALL TEMPORARY CONSTRUCTION ENTRANCE. SEE SHEET C2-750, DETAIL 02
3	CONCRETE WASHOUT, SEE SHEET C2-750, DETAIL 05
4	INSTALL CURB INLET FILTER MAT SEDIMENT BARRIER. SEE DTL 3, SHEET C2-750.
5	INSTALL ROCK BAG CHECK DAMS. SEE DTL 4, SHEET C2-750.

SILT FENCE, TYP. -  
FOLLOW DETAILS  
AND VERIFY WITH  
NOI FOR  
COMPLIANCE

LOGISTICS PLAN  
BID PACKAGE 03  
PAGE 2 OF 2



**UTILITY WARNING:** THE UNDERGROUND UTILITIES SHOWN HAVE BEEN LOCATED FROM RECORD DOCUMENTS OR FIELD LOCATIONS BY THE OPERATOR. THE SURVEYOR MAKES NO GUARANTEE THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA EITHER IN SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED ALTHOUGH THE SURVEYOR DOES CERTIFY THAT THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM THE INFORMATION AVAILABLE. THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES.

UTILITY ELEVATIONS AND SIZES MAY HAVE BEEN MEASURED UNDER ADVERSE FIELD CONDITIONS. UPON EXPOSING THE UTILITY, ELEVATIONS AND LINE SIZES SHOULD BE VERIFIED BY THE CONTRACTOR PRIOR TO CONSTRUCTION. CONTRACTOR SHOULD VERIFY CRITICAL ELEVATIONS USING THE BENCHMARK PROVIDED BY THE SURVEYOR OR ENGINEER. ANY DISCREPANCIES SHOULD BE IMMEDIATELY BROUGHT TO THE ENGINEER'S AND SURVEYOR'S ATTENTION.



# FOREMAN | MANHATTAN

## Construction Team

# **Bid Documents Representations & Certifications**

## BID AFFIDAVITS

### NON-COLLUSION AFFIDAVIT

The following affidavit is to accompany the bid:

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

1. (s)he is the fully authorized agent of \_\_\_\_\_, the bidder submitting the competitive bid which is attached to this statement, for the purpose of certifying the facts pertaining to the existence of collusion among bidders and between bidders and state officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract pursuant to the bid to which this statement is attached;
2. (s)he is fully aware of the fact and circumstances surrounding the making of the bid to which this statement is attached and has been personally and directly involved in the proceedings leading to the submission of such bid; and
3. neither the bidder nor anyone subject to the bidder's direction or control has been party:
  - a. to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding,
  - b. to any collusion with any state official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract, nor
  - c. in any discussions between bidders and any state official concerning exchange of money or other thing of value for special consideration in the letting of a contract.

\_\_\_\_\_  
Name of Bidder

by \_\_\_\_\_

\_\_\_\_\_  
Title

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public (or Court Clerk or Judge)

My Commission Expires:

\_\_\_\_\_  
Commission No.: \_\_\_\_\_

BUSINESS RELATIONSHIPS AFFIDAVIT

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.

I, \_\_\_\_\_, 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 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 the Architect, Engineer, or other party to the project 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 the bidding company and any officer or director of the architectural or engineering firm 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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(If none of the business relationships hereinabove mentioned exist, affiant should so state.)

\_\_\_\_\_  
Name of Bidder

by \_\_\_\_\_

\_\_\_\_\_  
Title

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public (or Court Clerk or Judge)

My Commission Expires:

\_\_\_\_\_

Commission No.: \_\_\_\_\_

## 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.
- IH.** 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 tribes 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 degrade or supersede Indian Preference.
4. Any contract awarded to a general contractor may be subcontracted, provided that the Indian Preference requirements herein apply unless applicable federal or state law prevents the Indian Preference application, regardless of the level of subcontracting activity. Failure to apply Indian preference to subcontracts shall be deemed by TERO a violation of this act, unless applicable federal or state law prevents the application of an Indian Preference. The contractor/employer have the burden of proving to TERO that federal or state law applies to that contractor/employer and prevents the Indian Preference application.

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

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

**Indian preference in contracting and subcontracting**

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

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

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

**Preference in promotions**

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

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

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

**Preference in employment of students**

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

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

**Reserved for Future Use**

**Establishment and review of numerical goals for Indian employment generally**

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

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

**Participation in training programs by employers**

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

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

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

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

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

**Use of job qualification criteria and personnel requirements by employers**

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

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

**Implementation of layoffs and reductions in force by employers**

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

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

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

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

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

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

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

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

**Prohibition on brokering and fronting services**

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

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

**Duties of unions generally**

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

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

**Contents of union agreements**

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

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

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

**Model union agreement**

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

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

**Recognition of unions or endorsement of union activities**

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

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

**Filing of complaints by TERO and proceedings thereon generally**

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

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

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

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

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

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

**Conduct of Hearings**

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

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

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

#### **Notice of Hearings**

- A. The Employees Appeals Board, as established pursuant to Title 51 Section 1001 et seq. of the Cherokee nation Code Annotated shall have the power and duty to hear employer appeals of TERO decisions denying certification of the employer as an Indian owned economic enterprise. The Employee appeals Board shall have the power to either affirm or reverse the TERO Certification decision, but will not have the power to award any other form of remedy in the cases brought to this title.
- B. The Employee Appeals Board shall have the power to create rules as may be necessary to perform the duties and functions delegated to the Employee Appeals Board herein.
  - 1. If a hearing is requested by ~~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 ~~to~~ **to** the record, except that ~~ineases~~ **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**

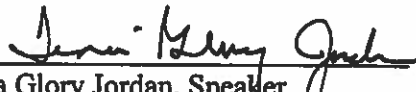
The provisions of this act shall become effective thirty (30) days from and after the date of its passage and approval.

**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 10<sup>th</sup> 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>		



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**CHEROKEE NATION®**

P.O. Box 948 • Tahlequah, OK 74465-0948  
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Office of the Chief

**Chuck Hoskin Jr.**  
*Principal Chief*

**Bryan Warner**  
*Deputy Principal Chief*

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

**DURATION**

This agreement shall be in effect from \_\_\_\_\_ to \_\_\_\_\_ 20\_\_\_\_

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

**PURPOSE AND SCOPE**

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

**TRIBAL SOVEREIGNTY**

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

**TERO RECOGNITION**

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

primary commitment to the employment of Indian tribal members and the hiring of Indian preference employees.

## INDIAN PREFERENCE WORKERS

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

## WORK PERMITS

**No person who is not a member of a federally recognized tribe shall be employed by a covered employer until he or she has obtained a work permit from the TERO at a cost of twenty-five dollars (\$25) per day, per permit.** Work permits issued under this agreement are valid only for this covered project. If any non-Indian individual employed on this project is found not to possess a work permit issued by the TERO, he/she may be summarily removed from the project and the employer shall be subject to additional sanctions.

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

## TERO FEES

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

## OTHER SPECIFIC REQUIREMENTS

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

## ENFORCEMENT AND REMEDIES

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

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

For the Contractor:

For TERO:

---

Signature

---

Signature

---

Title

---

Title

---

Date

---

Date

---

Address

---

E-mail

---

Phone #

---

Jobsite Contact



**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		
<b>Project Crew</b>				

Contractor Signature \_\_\_\_\_

TERO Staff Signature \_\_\_\_\_

Estimated start date: \_\_\_\_\_

## **Requirements for Cherokee Nation for Contractors/Sub Contractors**

All contracting pursuant to this Agreement shall comply with procedures for selection of contractors and sub-contractors set forth within § 5307 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 5301 et seq.), as well as the Cherokee Nation Acquisition Management Policies and Procedures. To that end, the parties to this Agreement shall, to the greatest extent feasible, give preference and opportunities for training and employment to Indian and Alaska Natives, and preference in the award of contracts to Indian organizations and Indian-owned economic enterprises. This clause shall be included in every subcontract in connection with the Project, and Contractor shall, at the direction of Cherokee Nation, take appropriate corrective action in the event of a finding by Cherokee Nation of a violation hereof by a contractor or subcontractor.

### **Laws and Regulations**

The responding firm's attention is directed to the fact all applicable State Laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of this project shall apply to the contract throughout, and they will be deemed to be included in any future contract the same as though written out in full.

**Wage Rates:** The Cherokee Nation requests the wages for any future contract/project follow the Davis Bacon Wage Scale. Awarded parties will be required to maintain wage rates paid to employees for any future awarded project and have reports available upon request. And, 40 U.S.C.A. §3702 & §3704 per Department of Labor regulations regarding work hours and conditions. Cherokee Nation TERO law and fees are applicable to any future agreement

### **Method of Award**

After consideration of price and other factors, the contract will be awarded to the bidder whose bid is determined to be the lowest most responsive/reasonable offer and in the best interest of the NATION and Construction Management Company to accept. TERO Preference will be given in accordance with Cherokee Nation Acquisition Management's Policy and Procedures and only to bidders who provide proof of current TERO certification from the Cherokee Nation Tribal Employments Office (TERO). Proof of TERO certification must accompany and be included in sealed bid submittal.

### **Safety Standards and Accident Prevention**

The Cherokee Nation Risk Management Department, in conjunction with the Construction Management Company will monitor the jobsite for safety violations.

With respect to all work performed under the contract, the contractor shall:

- Comply with the safety standards provision of applicable laws, building and construction codes and the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, the requirements of the Occupational Safety and Health Act of 1970 (Public Law 91-596) and the requirements of Title 29 of the Code of Federal Regulations, Section 1518 as published in the

"Federal Register", Volume 36, No. 75, Saturday, April 17, 1971.

- Exercise every precaution at all times for the prevention of accidents and the protection of persons (including employees) and property.
- Maintain at his office or other well known place at the job site, all articles necessary for giving first aid to the injured, and shall make standing arrangements for the immediate removal to a hospital or a doctor's care for persons (including employees) who may be injured on the job site.
- Employees shall not be permitted to work at a job site before the employer has made a standing arrangement for removal of injured persons to a hospital or doctor.

#### **Drug Free Workplace and Tobacco Free Workplace**

- Any Contractor performing work for the Cherokee Nation agrees to publish a statement notifying all employees, subcontractors, and other workers that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against violators of such prohibition.
- NATION will consider lack of enforcement or lax enforcement of the statement by Contractor a default of the contract.
- The Contractor further agrees to provide all persons engaged in performance of the contract with a copy of the statement.
- A copy of bidder's Drug Free Workplace statement shall be included with the bid or else the successful bidder will be deemed to accept and agree to use the statement provided by NATION.
- The Contractor understands and recognizes that all Cherokee Nation buildings, whether leased or owned, and the grounds surrounding those facilities are considered by the Nation to be a tobacco free workplace. The Contractor will ensure all employees, subcontractors, and other workers will abide by this policy.

#### **Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters**

The Contractor shall certify, to the best of its knowledge and belief, that the Contractor or any of its Principals:

- Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency or Indian tribe;
- Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, local or tribal) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsifications or destruction of records, making false statements, or receiving stolen property and are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in this provision.

The Contractor certifies they have not, within a three-year period preceding this offer, had

one or more contracts terminated for default by a Federal, state, local or tribal agency.

The Contractor shall provide immediate written notice to the NATION and the Construction Management Company if, at any time prior to contract award, the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making award. If it is later determined the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the NATION and the Construction Management Company, the contract may be terminated.

### **Environmental Protection**

- If extraordinary or exceptional circumstances involving the National Environmental Policy Act (NEPA) and related environmental considerations are encountered in the project, or if there is any change in the project, which could change the project environmental determination, the Contractor agrees to stop construction in affected areas and to notify the NATION'S Project Inspector.
- The work covered by this section consists of furnishing all labor, materials, and equipment, and performing all work required for the prevention of environmental pollution during, and as a result of, construction operations under this contract except for those measures set forth in other technical provisions of these specifications. For the purpose of these specifications, environmental pollution is defined as the presence of chemical, physical, or biological elements or agents which adversely affect human health or welfare; unfavorably alter ecological balances of importance of human life; affect other species of importance to man; or degrade the utility of the environmental pollution requiring consideration of air, water, and land, and involves noise and solid waste-management, as well as other pollutants. This section applies to work at all sites.
- In order to prevent, and to provide for abatement and control of, any environmental pollution arising from construction activities of the Contractor and subcontractors in the performance of this contract, they shall comply with all applicable Federal, State, Local, Tribal laws, and regulations concerning environmental pollution control and abatement.
- The NATION will notify the Contractor of any observed non-compliance with the foregoing provisions. The Contractor shall, after receipt of such notice, immediately take corrective action. Such notice when delivered to the Contractor or his authorized representative at the site of the work shall be deemed sufficient for the purpose.
- If the Contractor fails or refuses to promptly take corrective action, the NATION may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of a claim for extension of time, for excess costs or damages by the Contractor unless it was later determined the Contractor was in compliance.
- Compliance with the provisions of this section by subcontractors will be the responsibility of the Contractor.
- Prior to commencement of the work, the Contractor will discuss environmental protection

with the NATION's Project Inspector to develop a mutual understanding relative to compliance with these provisions and administration of the environmental pollution control program.

**Protection of Land Resources:**

- The resources within the scope of work under this contract shall be preserved in their present condition or be restored to a condition after completion of construction that will appear to be natural and not detract from the appearance of the project. Insofar as possible, the Contractor shall confine his construction activities to areas defined by the plans or specifications. At the onset of ditch grading, topsoil shall be saved for use in restoring the ditch areas. Waste and borrow areas shall be leveled or trimmed to regular lines and shaped to provide a neat appearance. In all instances the restored area shall be well drained, so as to prevent the accumulation of stagnant water.
- Except in areas shown on the plans or specified to be cleared, the Contractor shall not deface, injure, or destroy trees or shrubs, nor remove or cut them without special authority from the NATION.
- Any trees or other landscape features scarred or damaged by the Contractor's equipment or operations shall be restored as nearly as possible to original condition at the Contractor's expense.
- The Contractor shall obliterate all signs of temporary construction facilities such as haul roads, work areas, structures, foundations of temporary structures, stockpiles of excess or waste materials, or any other vestiges of construction, as directed by the Project Engineer or his representative. The disturbed areas shall be graded and filled as required sufficient topsoil shall be spread to provide minimum depth of four (4) inches of suitable soil for the growth of grass, and the entire area seeded.

**Protection of Water Resources:**

- The Contractor shall not pollute streams, lakes or reservoirs with fuel, oils, bitumens, calcium chloride, acids, construction wastes or other environmentally harmful materials. It is the responsibility of the Contractor to investigate and comply with all applicable Federal, State, County, Local and Tribe water laws concerning pollution of rivers and streams.
- Special measures shall be taken to prevent chemicals, fuels, oils, bituminous materials, waste washings, and cement from entering drainage ditches.
- The Contractor shall at all times perform all work and take such steps required to prevent any interference or disturbance to fish and wildlife. Fouling or polluting of water will not be permitted. Wash waters and wastes shall be processed, filtered, ponded, or otherwise treated pursuant to all applicable rules prior to their release into a river or other body of water.
- No material shall be burned at the project site unless otherwise specified in the contract or authorized by the NATION and any other appropriate regulatory body.
- The Contractor will be required to maintain all work areas within the project boundaries free from dust or debris that would cause a hazard or nuisance to others. Dust control shall be performed as the work proceeds and whenever a dust nuisance or hazard occurs.

## Statement on Providing Indian Preference In the Award of Subcontracts

The Cherokee Nation has determined that all bidders under this solicitation shall to the greatest extent feasible comply with Indian Preference in the awarding of all subcontracts under the contract.

All bidders must follow this procedure in determining Indian Preference for subcontracts. Awards of subcontract shall be made to the qualified Indian enterprise or organization with the lowest responsive bid if that bid is no more than "X" higher than the total bid price of the lowest responsive bid from any qualified bidder. "X" is determined as follows:

X = lesser of

When the lowest responsive Proposal is less than \$150,000.00	.5% of that price
When the lowest responsive Proposal is: At least \$150,000.00 but Less than \$200,000.00	4.5% of that price
When the lowest responsive Proposal is: At least \$200,000.00 but Less than \$300,000.00	4% of that price
When the lowest responsive Proposal is: At least \$300,000.00 but Less than \$400,000.00	3.5% of that price
When the lowest responsive Proposal is: At least \$400,000.00 but Less than \$500,000.00	3% of that price
When the lowest responsive Proposal is: At least \$500,000.00 but Less than \$1,000,000.00	2.5% of that price
When the lowest responsive Proposal is: At least \$1,000,000.00 but Less than \$2,000,000.00	2% of that price

When the lowest responsive  
Proposal is:  
At least \$2,000,000.00 but  
Less than \$4,000,000.00

1.5% of that price

When the lowest responsive  
Proposal is:  
At least \$4,000,000.00 but  
Less than \$7,000,000.00

1% of that price

\$7,000,000.00 or more

.75% of that price

If no responsive proposal by a qualified Indian-Owned economic enterprise or organization is within the stated range of the total price of the lowest responsive proposal from any qualified enterprise, award shall be made to the bidder with the lowest price.

**All bidders must submit with their proposal, documentation of the bids or quotations received in subcontracts awarded to a non-Indian enterprise or a non-Indian organization. Failure by the bidder to provide such information shall render the proposal non responsive and the bidder ineligible for award.**

NAME OF CONTRACTOR		OR SUBCONTRACTOR		ADDRESS		OMB No.: 1215-0149 Expires: 12/31/2011	
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PAYROLL NO.		FOR WEEK ENDING		PROJECT AND LOCATION		PROJECT OR CONTRACT NO.	
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(1)  NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2)  NO. OF WITHHOLDING EXEMPTIONS	(3)  WORK CLASSIFICATION	OT. OR ST.	(4) DAY AND DATE							(5)  TOTAL HOURS	(6)  RATE OF PAY	(7)  GROSS AMOUNT EARNED	(8)  DEDUCTIONS					(9)  NET WAGES PAID FOR WEEK		
				HOURS WORKED EACH DAY										FICA	WITH- HOLDING TAX			OTHER		TOTAL DEDUCTIONS	
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Date \_\_\_\_\_

I, \_\_\_\_\_  
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by \_\_\_\_\_ on the \_\_\_\_\_  
(Contractor or Subcontractor)  
\_\_\_\_\_ ; that during the payroll period commencing on the \_\_\_\_\_  
(Building or Work)  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and ending the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,  
all persons employed on said project have been paid the full weekly wages earned, that no rebates have  
been or will be made either directly or indirectly to or on behalf of said  
\_\_\_\_\_ from the full  
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly  
from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part  
3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948,  
63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) That any payrolls otherwise under this contract required to be submitted for the above period are  
correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the  
applicable wage rates contained in any wage determination incorporated into the contract; that the  
classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide  
apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of  
Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a  
State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:  
(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

- in addition to the basic hourly wage rates paid to each laborer or mechanic listed in  
the above referenced payroll, payments of fringe benefits as listed in the contract  
have been or will be made to appropriate programs for the benefit of such  
employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

- Each laborer or mechanic listed in the above referenced payroll has been paid,  
as indicated on the payroll, an amount not less than the sum of the applicable  
basic hourly wage rate plus the amount of the required fringe benefits as listed  
in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE	SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR  
SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE  
31 OF THE UNITED STATES CODE.

# FOREMAN | MANHATTAN Construction Team

## **Bid Packages**

Proposal Bid Form:

14.01Elevators

8078 - New Cherokee Nation Hospital - BP03 Elevators

Tahlequah, OK

SUBMITTED BY (Company Name Per W-9 Form):

CONTACT NAME:

ADDRESS:

PHONE NUMBER:

EMAIL:

SIGNATURE:

LINE ITEMS

Description	
PROJECT BREAK-OUT (Including Sales Tax)	
1. Patient Transfer Elevators PT 1 and PT2: Electric Traction Elevators	\$
2. Public Elevators P1, P2, and P3: Machine Room-Less Electric Traction Elevators	\$
3. Staff Elevators S1 and S2: Machine Room-Less Electric Traction Elevators	\$
4. Loading Dock Elevator LD1: Machine Room-Less Electric Traction Elevator	\$
BASE BID (TOTAL OF ABOVE ITEMS):	\$

**Proposal Bid Form:**

**14.01**

**Elevators**

**8078 - New Cherokee Nation Hospital - BP03 Elevators**

Tahlequah, OK

**ALTERNATES:**

ALT 1 - ADD - Provide Hoistway Entrance Screen Protection as required by OSHA. Protection shall be installed from floor to deck of the structure. This shall be per hoistway.

\$

ALT 2 - ADD - Provide temporary service of Patient Transfer Elevator PT1 for eight (8ea) months. The eight months would occur between elevator completion and building turn over. Provide install and removal of temporary protection of the elevator cab, doors (inside and out), and finishes. This temporary service shall include an additional inspection fee, extended warranty, and required clean up.

\$

ALT 3 - ADD - Provide one additional stop for Staff Elevators S1 and S2 at the high roof level. This alternate assumes there is a penthouse constructed at the roof level to facilitate this additional stop.

\$

ALT 4 - DEDUCT - The Owner and Foreman Manhattan are evaluating the potential use of a CIP Insurance program whereby General Liability, Workers Comp, and Umbrella coverage would be provided by the Owner and Foreman Manhattan for subcontractors working on the project site. Please provide a DEDUCT ALTERNATE PRICE to NOT provide the required insurance for GL, Work Comp, and Umbrella coverage if a CIP program is utilized. Please keep in mind that coverage for Auto and offsite work activities are the responsibility of each subcontractor regardless of the use of a CIP program. If Pollution and / or Professional Liability insurance are required for an individual scope of work, then that coverage also the responsibility of each subcontractor regardless of the use of a CIP program. Auto, offsite work activities, Professional, and Pollution are not included in the CIP program.

\$

**UNIT PRICES:**

UP-1 RE-INSPECTION COST: Cost of reinspection due to other trades or not caused by the elevator contractor. (\$ Per Inspection)

\$ Per Inspection

UP-2 RE-MOBILIZATION COST: Cost of remobilization due to other trades or at the request of Foreman Manhattan. (\$ Per Mobilization)

\$ Per Mobilization

UP-3 REGULAR TIME: Provide regular time hourly rate for work as directed by CM.

\$ Per Hour

UP-4 OVER TIME: Provide over time hourly rate for work as directed by CM.

\$ Per Hour

Proposal Bid Form:

14.01

Elevators

8078 - New Cherokee Nation Hospital - BP03 Elevators  
Tahlequah, OK

MULTI-PACKAGE DISCOUNT:

If multiple bid packages are awarded to your company, apply the following discount. Discounts will be taken into account during the review and award process.

(\$	)
-----	---

Bid Package Number: Description (Write Above)

Discount

INCLUSIONS:

APPLICABLE SPECIFICATION SECTIONS:

- DIVISION 00 - FOREMAN MANHATTAN'S CONSTRUCTION MANAGER'S BID MANUAL (COMPLETE)
- DIVISION 00 - PROCUREMENT AND CONTRACTING REQUIREMENTS (Pertinent portions applicable to the WORK)
- DIVISION 01 - GENERAL REQUIREMENTS (Pertinent portions applicable to the WORK)
- 14 21 00 - ELECTRIC TRACTION ELEVATORS (COMPLETE)
- 14 21 23 - MACHINE-ROOM-LESS ELECTRIC TRACTION ELEVATORS (COMPLETE)

Mark "Yes" or "No" To All:

- |                              |                             |
|------------------------------|-----------------------------|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No |

SCOPE OF WORK:

Includes, but is not limited to, providing all the necessary labor, materials, tools, supplies, supervision, insurance, equipment, scaffolding, hoisting, fees, etc. necessary to provide the Elevators for the Cherokee Nation New Hospital site, Tahlequah, Oklahoma in accordance with the Contract Documents. It is further understood and agreed that this Subcontract also includes the furnishing and installation of the below listed items regardless of whether or not they are in the listed specification section(s) or any other specification section(s) or shown on the plans. This scope listing is to be used as a guideline and should not be considered as an all-inclusive list of items required to provide a complete scope of work under this proposal.

Mark "Yes" or "No" To All:

- |                              |                             |
|------------------------------|-----------------------------|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No |
|------------------------------|-----------------------------|

Drawing and detail references are provided for reference only and are not to be considered as all-inclusive of Contract Documents for the particular items referenced. (Please note: The word "provide" when used herein shall mean furnish and install completely, including all costs for labor, materials, equipment, hoisting, layout, scaffolding, ladders, staging, tools, rigging and any other appurtenances necessary to complete the Work".) Subcontractor has familiarized himself with the documents and has included those items of work shown and noted on the documents and all other equipment, devices and components that are not shown or noted, but required to provide a complete, functional and working system that is in compliance with all Federal, State and Local codes.

- |                              |                             |
|------------------------------|-----------------------------|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No |
|------------------------------|-----------------------------|

1. Provide a complete and fully functional code compliant elevator system as indicated and required by the contract documents

- |                              |                             |
|------------------------------|-----------------------------|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No |
|------------------------------|-----------------------------|

2. Provide all submittals, product data, shop drawings, manufacturer certificates, samples, manufacturer's special warranty sample, continuing maintenance proposal as specified within two (2) weeks receipt of contract or letter of intent. Provide detailed shop drawing showing pit layout along with approved locations for all electrical devices (sleeves, receptacle, switch and light locations) and dimensioned sump pit and ladder locations including pump piping and conduit routing by Divisions 21, 22, 23, 26, 27, and 28 subcontractors. Coordinate with Division 26 subcontractor for all required electrical sleeves, conduit, power connections and telephone requirements.

- |                              |                             |
|------------------------------|-----------------------------|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No |
|------------------------------|-----------------------------|

3. All submittals are to be job specific and not generic catalog cut sheets.

- |                              |                             |
|------------------------------|-----------------------------|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No |
|------------------------------|-----------------------------|

**Proposal Bid Form:**

**14.01**

**Elevators**

**8078 - New Cherokee Nation Hospital - BP03 Elevators**

Tahlequah, OK

- |   |                            |
|---|----------------------------|
| <p>4. Contractor shall not include in Base Proposal amount, any required stipulations, payment terms, prorated discounts, down payments or payment schedules. Contractor may provide as a voluntary alternate any of these items as suggested means for reduction of cost to Base Bid. Additionally these items are subject to review and approval by Foreman Manhattan and the Owner.</p>  | <p>___ Yes      ___ No</p> |
| <p>5. Prior to commencement of work, this Subcontractor shall inspect hoist-ways, hoist-way openings, and pits to verify all critical dimensions and supporting structure. Subcontractor shall notify the Construction Manager of any discrepancies in writing. Failure to notify the Construction Manager shall constitute acceptance of existing conditions and corrective measures will be the responsibility of this Subcontractor. Field measure and verify existing conditions prior to fabrications or ordering of materials if measurements are critical.</p> | <p>___ Yes      ___ No</p> |
| <p>6. Contractor shall inspect all shafts for plumb and square, prior to commencement of work. Include a separate mobilization for this work. Subcontractor shall notify the Construction Manager of any discrepancies in writing. Failure to notify the Construction Manager shall constitute acceptance of existing conditions and corrective measures will be the responsibility of this Subcontractor.</p>  | <p>___ Yes      ___ No</p> |
| <p>7. This Subcontractor shall inspect the structural drawings upon being awarded a subcontract and notify the Construction Manager if the structural members shown will not work, in any way, with the elevator system. Furthermore, this subcontractor shall provide any other miscellaneous support steel not shown in the structural drawings that will be required for the elevator system</p>   | <p>___ Yes      ___ No</p> |
| <p>8. Any structural modifications required for the equipment furnished hereunder is to be paid for by this subcontractor. Includes any design or re-design fees.</p>   | <p>___ Yes      ___ No</p> |
| <p>9. Elevator contractor shall verify pit size, depth and hoist way overrun as indicated that will work with the equipment. ANY EXCEPTIONS MUST BE NOTED WITH YOUR PROPOSAL.</p>   | <p>___ Yes      ___ No</p> |
| <p>10. Confirm that specified tolerances within Contract Documents for other trades meet requirements for installation of work by this Trade Contract. Alert Foreman Manhattan's designated representative of any discrepancies or potential problems with tolerances immediately.</p>  | <p>___ Yes      ___ No</p> |
| <p>11. This Subcontractor to include multiple mobilizations as required to main project schedule.</p>   | <p>___ Yes      ___ No</p> |
| <p>12. Provide all field engineering and layout from benchmarks and base building control that is required to complete the work as applicable (Benchmarks and baseline control to be furnished by others). This contractor is responsible for replacement of any damaged benchmarks, base line control or layout work of other trades / packages damaged or destroyed by the work of this subcontractor.</p>  | <p>___ Yes      ___ No</p> |
| <p>13. Provide and comply with all OSHA and CM required overhead and fall protection for work of this subcontract. Review lay-out and design with Foreman Manhattan safety and Site Management prior to installation. Control, maintain and correct all systems required by Subcontractor while on project.</p>   | <p>___ Yes      ___ No</p> |
| <p>14. Provide and install full-cover hoist-way entrance protection, including nylon mesh or reinforced plastic overhead protection at all hoist-way openings to prevent materials or tools from falling into the elevator shaft during installation per OSHA.</p>  | <p>___ Yes      ___ No</p> |
| <p>15. All deliveries for this subcontractor shall be received, unloaded, hoisted, and located to storage location and signed for by this contractor.</p>   | <p>___ Yes      ___ No</p> |

**Proposal Bid Form:**

**14.01**

**Elevators**

**8078 - New Cherokee Nation Hospital - BP03 Elevators**  
Tahlequah, OK

- |   |                              |                             |
|---|------------------------------|-----------------------------|
| 16. Storage of materials onsite must be coordinated with the Construction Manager before delivery of materials. Any stored materials not coordinated will be the sole responsibility of this contractor to relocate at their expense. Additionally, contractor shall not include any restriction of distance, exclusion of weather protection, or exclusion of levelness or roll-able access for equipment unloading to storage area(s); or for logistics of equipment from storage area to shaft / hoist-ways for installation. A mutually agreeable Contractor / CM determined storage area will be determined during construction prior to shipment. | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 17. Provide all elevator components knocked down as necessary to accommodate transport through the building, material hoist, and upon availability, stairs and elevators.   | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 18. Legally dispose offsite all system components when determined by Elevator Subcontractor and upon approval of CM when not required or needed.  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 19. Furnish all embeds, sleeves, and inserts necessary for the installation of the elevator work that is imbedded in the work of Others to meet project schedule requirements. This contractor shall confirm installed locations and advise of any potential issues. Embeds sleeves and inserts to be installed by others.  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 20. Divider beams, columns, hoisting beams, pit ladders elevator sump metal frames and grates shall be furnished and installed by others. This Subcontractor shall provide the size of the hoisting beam to the Construction Manager. All other steel members required for a complete installation shall be by this Subcontractor.  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 21. Provide all elevator cab finishes per the finish schedule on A4.23. Floor finishes by others.   | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 22. Provide all elevator accessories as specified including hooks and protective pads as specified for each elevator.   | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 23. Provide all anchorage devices for installing guide rails for hoist way sizes indicated.   | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 24. Provide elevator sills as required for entrance type used.  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 25. Provide sill support angles required at door openings. Grouting by others.  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 26. Coordinate and provide elevator frames for wall thicknesses as indicated per the Contract Documents.  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 27. Provide fire rated hoistway door and frame entrance assembly as specified.  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 28. Supply all vibration isolation mounts for all rotating or vibrating equipment as specified.   | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 29. Provide all required cut and patching, core drilling, penetration seals, escutcheons, plate covers, fire stops, fire-safing, fire caulking, sealing and grouting of all floors, wall and ceiling penetrations as required by this scope of work. Contractor to document (with photos) all fire stopping work prior to wall or ceiling closure.  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 30. Provide all labels, stencils, tags, warning tape and similar pipe identification relative to the work of this subcontract.  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 31. Provide all required access panels or architectural cover plates as required for the execution of this work. All access panels will be installed by others).  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 32. Provide all equipment, scaffolding, temporary work decks / platforms (at shaft top and intermediate locations as required) including all rigging required to complete installation for all elevators.   | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 33. Provide Firefighters' Two-Way Telephone Communication Service in each car and traveling cable as specified.   | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 34. Subcontractor is to coordinate and verify with the division 26 subcontractor to ensure entire arrangement of sleeves, conduit, devices and equipment in control room and hoist ways will meet code requirements.  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

**Proposal Bid Form:**

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**Elevators**

**8078 - New Cherokee Nation Hospital - BP03 Elevators**

Tahlequah, OK

- |  |                     |
|--|---------------------|
| 35. Subcontractor shall be responsible for all required wiring and connections between and within the elevator, elevator controllers, elevator security and elevator equipment and machinery to a designed point inside the elevator machine room. Coordinate all work with the Electrical Subcontractor.  | ___ Yes      ___ No |
| 36. Temporary power will be provided by others for this Subcontractor's use. Electrical tie-in shall be by this Subcontractor.   | ___ Yes      ___ No |
| 37. Conduit and associated sleeves will be brought to the elevator pit by others. Conduit for fire control and emergency power to be by others. This contractor to provide the wiring and respective panel for their systems.  | ___ Yes      ___ No |
| 38. Subcontractor to coordinate Emergency Power Operations with others. Electrical Subcontractor to provide conduit and wiring to automatic transfer switch from elevator machine room or hoist-way.   | ___ Yes      ___ No |
| 39. Fire sprinklers in machine room and pit if applicable shall be by others. Elevator cab shall provide tie-in points for connection of any fire sprinkler and fire alarm devices required by code. This Subcontractor shall work with Architect and Foreman Manhattan's designated representative to ensure that life safety systems as designed comply with current elevator codes.   | ___ Yes      ___ No |
| 40. Subcontractor shall be responsible for obtaining and paying for the necessary licenses, permits, testing and inspections required by local jurisdiction and/or governing authorities to complete this work and put the elevators in service. Include any required factory and field testing. Advise in advance of dates and times tests are to be performed on the elevators to Foreman Manhattan's designated representative, Owner, Architect and State Inspection Department. | ___ Yes      ___ No |
| 41. Furnish, install and remove any temporary protection required for protecting existing improvements, work of other trades, and floors or building finishes from damage from material deliveries or work activities of this contractor. Protect all elevators and elevator components from damage. This also includes protection and proper storage of materials for this scope of work.   | ___ Yes      ___ No |
| 42. Provide all necessary signage required to obtain final inspection approval for the elevators. Provide pre-installation checklists for equipment covered under this contract for use by the Foreman Manhattan within one (1) week of contract award. Provide the Construction Manager with copies of all inspection/acceptance certificates and operating permits as required by Governing authorities to allow normal, unrestricted use of the elevators.                        | ___ Yes      ___ No |
| 43. Contractor shall provide 64 OT Man Hours of operated elevators during construction / prior to inspections for use of the Construction Manager.   | ___ Yes      ___ No |
| 44. At substantial completion, remove all plastic and protection of elevator components. Contractor to provide typical protection of entrances and doors (i.e., film of plastic).  | ___ Yes      ___ No |
| 45. Make a final check of each elevator operation with Foreman Manhattan designated representative and owner's personnel present prior to substantial completion to verify that control systems and operating devices are functioning properly. Perform a final cleaning prior to inspection.  | ___ Yes      ___ No |
| 46. This contractor shall be responsible for additional testing and inspections for out of compliance work.  | ___ Yes      ___ No |
| 47. Elevator contractor will be required to have on site a technician present during Fire Marshal and/or Final Occupancy walk through.   | ___ Yes      ___ No |
| 48. Provide Initial Maintenance Service for 12 months after date of substantial completion as specified.   | ___ Yes      ___ No |
| 49. Contractor shall include one (1ea) onsite technician for two (2ea) days for the facility's Grand Opening day. The day of the Grand Opening and for the following day.  | ___ Yes      ___ No |
| 50. Contractor shall include collaboration with the Architect and design team to coordinate the requirements of their elevator systems with the design documents as needed after bid.  | ___ Yes      ___ No |

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**SCOPE-SPECIFIC CLARIFICATIONS / EXCLUSIONS**

- 1) Exclude elevator cab floor finishes - by Flooring contractor.
- 2) Exclude installation of access panels.
- 3) Divider beams, columns, hoisting beams, pit ladders, elevator sump metal frames and grates.
- 3) Grouting of sill support angles.

**GENERAL ACKNOWLEDGEMENTS**

Mark "Yes" or "No" To All:

- |   |                              |                             |
|---|------------------------------|-----------------------------|
| 1. Sales Tax - This subcontract shall include all applicable sales tax.   | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Include separate mobilizations / demobilizations as required by the Project Schedule and Phasing Plans.  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 3. Provide all mock-ups as indicated or required by the contract documents. Removal of the mock-up if required by the contract documents.   | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 4. Provide all Warranties, Special Warranties, Inspections or Special Project Warranties as required by contract documents or manufacturer's written requirements.  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 5. Provide all shop drawings, product data, sample and other pertinent submittals for the work of this Subcontract. Provide engineering and printing costs for all shop drawings, coordination drawings, and product submittals for architect approval as required to properly coordinate the work included in this Subcontract with other trades. Include costs for revising and resubmitting shop/ coordination drawings as needed. | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 6. Subcontractor shall warehouse or store, separate and clearly identify all materials or equipment purchased as stored material under this Subcontract in order for Foreman Manhattan and The Owner's representatives to inspect and verify offsite storage at any time during the execution of this Subcontract. All materials stored offsite must be located in an insured and bonded warehouse facility.                          | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 7. Provide all required pedestrian protection, traffic control and protection including flagman, barricades, signage, etc. as required for the work, and as may be required for protection for equipment access, deliveries and loading.  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 8. Subcontractor is required to comply with requirements to control Dust and Airborne Contaminants. No waste materials or debris shall be allowed to accumulate.  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 9. Keep surrounding streets, drives, and parking areas free of dirt caused or created by the work of this bid package.  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 10. Provide all cleanup and haul-off of excess debris resulting from work of this Subcontract. Large or heavy items are not to be placed in the dumpster without specific approval from the Construction Manager.   | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 11. It is mutually understood and agreed that this subcontractor will coordinate all of the scheduled deliveries of these items being furnished by others with the Foreman Manhattan designated representative. This includes the on or off site storage, staging, inventory control, and shipping to the site. All damages or shortages are to be reported within 24 hours of delivery.  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 12. Subcontractor will assist Foreman Manhattan with providing material quantities and cost breakdowns as required for the Owner's and Foreman Manhattan's budget requirements. All breakouts specified in this subcontract will be used for accounting purposes and tracking only.   | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 13. Subcontractor agrees to be bound by the Welcome Package issued by the Foreman Manhattan Field staff.  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 14. Authorized Subcontractor supervision must be onsite while work is being performed.  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

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15. The terms and conditions contained in the following documents shall be executed UNCONDITIONALLY including General Provisions, Article 2.5, "Indemnification" as included within the contract documents are incorporated herein by reference as if fully written out; \_\_\_ Yes \_\_\_ No
- Manhattan General Provisions 2012 \_\_\_ Yes \_\_\_ No
  - Exhibit A - (Scope of Work) \_\_\_ Yes \_\_\_ No
  - Exhibit B - (Bond Forms) \_\_\_ Yes \_\_\_ No
  - Exhibit C - (Insurance Requirements / Sample) \_\_\_ Yes \_\_\_ No
  - Exhibit D - (Construction Documents) \_\_\_ Yes \_\_\_ No
  - Exhibit E - (Special Conditions) \_\_\_ Yes \_\_\_ No
  - Exhibit F - (Project Schedule) \_\_\_ Yes \_\_\_ No
  - Exhibit G - (Not Used) \_\_\_ Yes \_\_\_ No
  - Exhibit H - (Manhattan Additional Safety Requirements) \_\_\_ Yes \_\_\_ No
  - Exhibit I - (Specific Inclusions) \_\_\_ Yes \_\_\_ No
16. Contractor will hold pricing for 60 Calendar Days from the date of submission of this proposal. \_\_\_ Yes \_\_\_ No
17. Each subcontractor will also be responsible for contributing personnel to a composite clean-up crew while on-site completing this scope of work. These composite member are anticipated for a 40 hour work week. During the extent of your contract provide laborer(s) in accordance with the following matrix for the composite clean-up - On-site work force 1-15 requires 1 laborer, 16-25 requires 2 laborers, 26-50 requires 3 laborers, 51-100 requires 4 laborers and 100+ requires 6 laborers. Enter the amount INCLUDED in your base bid for the composite clean-up. \_\_\_ Yes \_\_\_ No
18. Contractor shall provide a complete installation that complies with all applicable codes, ordinances and satisfying all Authorities Having Jurisdiction. \_\_\_ Yes \_\_\_ No
19. Contractor is responsible for all related pumping, bailing, discharge and maintenance thereof including temporary drainage requirements for control of run-off and the prevention of ponding and repair to resulting damaged sub-grades. \_\_\_ Yes \_\_\_ No
20. Provide coordination, assistance, and necessary access for the Owner's furnished Testing Laboratory, including notification, obtaining samples and data gathering as required for scope of work. Costs for retesting due to failed tests and/or for Subcontractor's unpreparedness, will be paid by this Subcontractor. \_\_\_ Yes \_\_\_ No
21. Revise Paragraph 1.2.3 of section 00 60 02A Manhattan General Provisions as contained in the Construction Manager's Bid Manual as follows: \_\_\_ Yes \_\_\_ No
- Until Subcontractor's obligations under this Subcontract are completely fulfilled, Subcontractor agrees not to perform any changes to the work directly for Owner or any of its tenants, or deal directly with Owner's representatives with respect to the work and / or changes to the work, in connection with the Project, unless approved in writing by Foreman Manhattan. Foreman Manhattan understands that the Owner and specifically TERO shall communicate directly with the subcontractor to maintain a spirit of cooperation and also to utilize the TERO Job Bank to the fullest extent giving first hire priority rights to Cherokee Citizens.
22. The Owner requirements for funding for work in progress is to provide payment less retainage of the percent (10%), which shall be withheld and paid, without interest, upon final completion of the entire project. \_\_\_ Yes \_\_\_ No
23. Contractor has visited the Project Site Location. \_\_\_ Yes \_\_\_ No
24. Contractor has an executed "MGP" or Manhattan General Provisions signed after FY2012. \_\_\_ Yes \_\_\_ No
25. Contractor acknowledges and agrees to Foreman Manhattan Target Schedule. Contractor has verified suppliers are able to meet the required dates. \_\_\_ Yes \_\_\_ No
26. Contractor is able to provide minimum insurance requirements, including but not limited to pollution insurance referenced in Exhibit C. \_\_\_ Yes \_\_\_ No

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27. Bidder is a registered TERO Contractor, and has attached front and back of TERO Certificate.

\_\_\_ Yes \_\_\_ No

28. Bidder has properly EXCLUDED the TERO Work Permit Fee of \$25 per Day per Non-Native Worker? (Fee is waived for this project).

\_\_\_ Yes \_\_\_ No

29. Bidder has properly EXCLUDED the TERO Employment Rights Fee of 1/2 of 1% of the total project cost on this contract? (Fee is waived for this project).

\_\_\_ Yes \_\_\_ No

30. Bidder has included wage rates which follow the Davis Bacon Wage Scale. Contractors will be required to maintain wage rates paid to employees and have reports available upon request.

\_\_\_ Yes \_\_\_ No

31. Contractor acknowledges all addenda.

Addendum #'s: \_\_\_\_\_

\_\_\_ Yes \_\_\_ No

32. Contractor acknowledges all Foreman Manhattan CM Clarifications.

CM Clarification #'s: \_\_\_\_\_

\_\_\_ Yes \_\_\_ No

**BOND INFORMATION:**

Provide Bond Rate (Bids are to **INCLUDE** cost of Payment and Performance Bond)

%

**OTHER COMMENTS / VALUE ANALYSIS SUGGESTIONS:**

Please write in the box below any suggestions for cost savings / value analysis which were discovered during the course of bidding this project, along with a dollar value for each item. VA Suggestions may be included in the criteria considered for successful subcontractor selection. Attach additional sheet(s) if necessary.

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**ON-SITE PERSONNEL LABOR RATES (Inclusive of Labor Burden):**

Provide a list of ALL on-site labor classifications with both their straight time hourly rates and overtime hourly rates. All potential on-site labor classifications are required to be provided with this scope package. (ie Journeyman straight time \$XX.XX and overtime \$XX.XX, Superintendent straight time \$XX.XX and overtime \$XX.XX, etc.) These are the rates which will be expected to be used on change proposals during construction. This may be provided in the box below, or on an attached document.

LABOR RATES:	STRAIGHT TIME	OVERTIME
Position / Title #1:	\$ / Hr	\$ / Hr
Position / Title #2:	\$ / Hr	\$ / Hr
Position / Title #3:	\$ / Hr	\$ / Hr
Position / Title #4:	\$ / Hr	\$ / Hr
Position / Title #5:	\$ / Hr	\$ / Hr
Position / Title #6:	\$ / Hr	\$ / Hr

**Bid Envelope Contents Checklist:**

- a. Completed Foreman Manhattan Bid Form / Scope Package Document (this document) \_\_\_\_\_
- b. Completed Non-Collusion Affidavit \_\_\_\_\_
- c. Completed Business Relationship Affidavit \_\_\_\_\_
- d. Bidder's Proposal / Scope Letter (Optional) \_\_\_\_\_
- e. Bonding Letter Indicating Single Project and Aggregate P&P Bonding Capacity \_\_\_\_\_
- f. Copy of Front and Back of TERO Certificate (TERO Bidders Only) \_\_\_\_\_

~ END OF BID PACKAGE ~

FOREMAN | MANHATTAN  
Construction Team

**SUBCONTRACT  
AGREEMENT  
FORMS**

SUBCONTRACT  
PROJECT NUMBER: XXXX

Date: \_\_\_\_\_  
Project Name: \_\_\_\_\_  
\_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Cost Code: \_\_\_\_\_

Subcontractor: \_\_\_\_\_  
Attn: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone No: \_\_\_\_\_ Fax No: \_\_\_\_\_  
Email: \_\_\_\_\_

1. Subcontractor shall perform all work and furnish and pay for all supervision, labor, materials, plans, scaffolding, tools, equipment, supplies, and anything else necessary for the construction and completion of all work described in Exhibit A, and all work incidental thereto or reasonably inferable therefrom, in strict accordance and in full compliance with the terms of the Contract Documents, as defined and described in Exhibit A (all of which is hereinafter referred to as the "Work").
2. Foreman Manhattan Construction Team shall pay Contractor, for the performance of the Work, subject to additions and deductions by change order or other Subcontract provisions, the total sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), Including sales tax.
3. Applications for payment shall be submitted monthly on a date to be determined by Foreman Manhattan. Payments shall be made to Contractor within five (5) working days of receipt of payment from Owner subject to the terms and conditions contained in the Manhattan General Provisions.
4. Payment and performance bonds are required in a form attached as Exhibit B.  
If paid by Foreman Manhattan, bond amount shall not exceed \$0.00.
5. Retainage shall be withheld from each pay application in the amount of \_\_\_\_\_ %.
6. Subcontractor must furnish a certificate of insurance in accordance with Foreman Manhattan's Subcontractor's Minimum Insurance Requirements attached as Exhibit C and obtain all required insurance prior to commencing its work.
7. The terms and conditions contained in the following documents, including General Provisions - Article 2.5, Indemnification, which are attached hereto, are incorporated herein by reference as if fully written out:

Manhattan General Provisions

Pages 1 through 18 with  
5-page Insurance Rider (Signed XX.XX.XXXX)  
1-page Oklahoma Rider (Signed XX.XX.XXXX)  
Pages 1 through 4  
Page 1  
Pages 1 and 2  
Pages 1 through 2  
Pages 1 through 2  
Pages 1 through 3  
Page 1

Exhibit A (Scope of Work)  
Exhibit B (Payment and Performance Bond Form)  
Exhibit C (Insurance Requirements/Sample)  
Exhibit D (Contract Documents)  
Exhibit E (Special Conditions of Subcontract)  
Exhibit F (Project Schedule)  
Exhibit G (FMC Additional Safety Requirements)

"Subcontractor"  
SUBCONTRACTOR COMPANY NAME

"Foreman Manhattan"  
FOREMAN MANHATTAN CONSTRUCTION TEAM

Signature \_\_\_\_\_  
\_\_\_\_\_  
Printed Name \_\_\_\_\_  
\_\_\_\_\_  
Title \_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_

Signature \_\_\_\_\_  
\_\_\_\_\_  
Printed Name \_\_\_\_\_  
\_\_\_\_\_  
Title \_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_

**Subcontractor**  
**5601 S. 122<sup>nd</sup> E. Ave, Tulsa, OK 74146**  
**Phone: 918.583.6900      Fax: 918.592-4334**  
**MANHATTAN GENERAL PROVISIONS**  
Dated: Insert Date.

**ARTICLE 1**  
**CONTRACT DOCUMENTS**

**1.1      DEFINITION**

- 1.1.1      The Contract Documents consist of the Subcontract, the Agreement between Manhattan and Owner ("Agreement"), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of the Agreement, the Manhattan General Provisions, other documents listed in the Subcontract and the Manhattan General Provisions (including Exhibits and Riders) and all modifications issued after execution of the Agreement.
- 1.1.2      Subcontractor acknowledges and agrees that its Subcontract and the Contract Documents are adequate and sufficient to provide for the performance and completion of the Work, and include all work, whether or not shown or specified, which reasonably may be inferred to be required for the completion of the Work in accordance with all applicable laws, codes and professional standards.
- 1.1.3      The Contract Documents (except for proprietary and financial terms) shall be made available for inspection by Subcontractor at a reasonable time and upon reasonable notice in order to ascertain all the obligations which Manhattan has assumed toward Owner and which Subcontractor assumes to Manhattan, as provided below.

**1.2      THE SUBCONTRACT**

- 1.2.1      The Subcontract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral.
- 1.2.2      The Subcontract may not be construed to create any contractual relationship of any kind between Subcontractor and Owner, between Subcontractor and Architect or between any persons or entities other than Manhattan and Subcontractor. Notwithstanding the above, Manhattan's surety (or sureties) is an intended beneficiary of the Subcontract.
- 1.2.3      Until Subcontractor's obligations under this Subcontract are completely fulfilled, Subcontractor agrees not to perform any work directly for Owner or any of its tenants, or deal directly with Owner's representatives, in connection with the Project, unless approved in writing by Manhattan.
- 1.2.4      With respect to the work covered by this Subcontract, Subcontractor shall assume all obligations, risks and responsibilities to Manhattan which Manhattan has assumed toward Owner and Manhattan shall have all rights and remedies with respect to Subcontractor as Owner has with respect to Manhattan, in the Contract Documents, except to the extent the Subcontract requires more of the Subcontractor or gives Manhattan greater rights.

**1.3      THE WORK**

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

#### 1.4 PARTICULARIZED TERMS

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

- (a) The term "days" shall mean calendar days.
- (b) The term "contractor" appearing in any of the Specification Sections or Divisions applicable to the Subcontract shall mean Subcontractor unless specifically stated otherwise herein.
- (c) The term "subcontractor" shall mean any subcontractor, vendor or materialman, of any tier to Subcontractor, which is supplying material or performing work in connection with the Work required in the Subcontract.
- (d) The term "subcontract" when referencing contractual arrangements between subcontractors and Subcontractor shall mean purchase orders and contracts for construction, materials and/or services relating to the Work.
- (e) References to "Owner" shall include the Owner, its Architects and other representatives acting on their behalf.

#### 1.5 INTERPRETATION OF CONTRACT DOCUMENTS

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

### **ARTICLE 2 SUBCONTRACTOR**

#### 2.1 SUBCONTRACTOR'S INVESTIGATIONS AND REPRESENTATIONS

- 2.1.1 Subcontractor represents that it has studied and compared the Contract Documents with each other, and will continue to study and compare any revisions to the Contract Documents, for the purpose of discovering errors, inconsistencies or omissions in the Contract Documents as it concerns the scope of Subcontractor's Work. This review by Subcontractor is in Subcontractor's capacity as a contractor, and not as a designer, unless the scope of Subcontractor's Work includes design responsibilities. Subcontractor shall be liable for any damage resulting from such errors, inconsistencies or omissions if Subcontractor discovered, or should have discovered, such errors, inconsistencies or omissions. With respect to errors, inconsistencies or omissions that Subcontractor did not discover and which it could not, with reasonable diligence, have discovered, Subcontractor shall notify Manhattan as provided in Paragraph 3.2 herein following the discovery of such errors, inconsistencies or omissions or any claims based upon errors, inconsistencies or omissions shall be deemed waived. Nothing herein shall bar Subcontractor's right, if any, to seek additional compensation if allowed under the Subcontract assuming timely notice is received.
- 2.1.2 Subcontractor represents that it is fully qualified to perform this Subcontract, and acknowledges that prior to the execution of this Subcontract it has (a) by its own independent investigation ascertained and evaluated (i) the Work required by this Subcontract, (ii) the conditions and difficulties involved in performing the Work, (iii) the obligations of this Subcontract and the Contract Documents, (iv) the nature, locality and site of the Work, (v) climatic conditions, and (vi) the availability and costs of labor and materials, tools and equipment and (b) verified all information furnished by Manhattan or others, satisfying itself as to the correctness and accuracy of that information. Any failure by Subcontractor to investigate independently and become fully informed will not relieve Subcontractor from its responsibilities hereunder. Subcontractor assumes the risk of any increases in its labor, materials, fuel or any other thing necessary for the construction and completion of the Project, whether foreseen or unforeseen. Subcontractor shall be entitled to additional compensation for price escalations to the extent Manhattan is entitled to recover and actually recovers such additional compensation from Owner.

## 2.2 TIME OF PERFORMANCE

- 2.2.1 Subcontractor will proceed with the Work in a prompt and diligent manner, in accordance with Manhattan's schedules, as reasonably amended from time to time. Subcontractor shall be liable to Manhattan for failure to adhere to Manhattan's schedule, including amendments, even if such schedules differ from schedules set forth in the Contract Documents or the time of completion called for by the Contract Documents. TIME IS OF THE ESSENCE. In agreeing to perform the Work in accordance herewith, Subcontractor has taken into account and made allowance for delays which should be reasonably anticipated or foreseeable.
- 2.2.2 Subcontractor shall notify Manhattan in writing of any objection to any schedule or amendment thereof, within forty-eight (48) hours after receipt of such schedule or amendment. The failure by Subcontractor to object to any schedule or amendment shall constitute acceptance and waiver of any claim of Subcontractor based on any schedule or amendment to the schedule.
- 2.2.3 If requested by Manhattan, Subcontractor shall submit detailed schedules for performance of the Subcontract, in a form acceptable to Manhattan, which shall comply with all scheduling requirements of the Contract Documents and of Paragraph 2.2.1 above. Manhattan may from time to time, at its sole discretion, direct Subcontractor to make reasonable modifications and revisions in such schedules.
- 2.2.4 Subcontractor agrees to accelerate its work and work overtime, if necessary, to bring its work back on schedule. Subcontractor shall not be entitled to additional compensation for this acceleration if Subcontractor is late in the performance of the work or is not otherwise entitled to an extension of time. Subcontractor agrees to coordinate its Work with the work of Manhattan, Manhattan's other subcontractors, and Owner's other contractors, if any, so no delays or interference will occur in completion of any part and/or all of the Project. All float in Manhattan's schedule shall belong to Manhattan.
- 2.2.5 Provided that Manhattan has not actively interfered with Subcontractor's performance, causing a delay on the critical path of the project schedule, Subcontractor expressly agrees not to make, and hereby waives any claim for damages (including but not limited to those resulting from increased labor or material costs, acceleration, disruption, inefficiency, loss of productivity, impacts, or extended general conditions costs) (hereinafter "Disruption Damage") on account of any delay, obstruction or hindrance from any cause whatsoever, whether or not foreseeable and whether or not anticipated, and agrees that the sole right and remedy for any such delays and impacts of any kind shall be an extension of time as provided below. Notwithstanding the above, Subcontractor shall be entitled to additional compensation for Disruption Damage to the extent, but only to the extent, that Manhattan actually recovers damages from Owner which includes damages incurred by Subcontractor. Subcontractor agrees that Manhattan shall not be deemed to have actively interfered with Subcontractor's work based on the exercise of legal remedies available in the subcontract to Manhattan or by the number or amount of any changes to this Subcontract.
- 2.2.6 Subcontractor shall be entitled to an extension of time only to the extent Manhattan obtains an extension of time from Owner, as it pertains to Subcontractor's work and only if Subcontractor has properly notified Manhattan of its claim for an extension of time as required by the Contract Documents and this Subcontract.

## 2.3 WARRANTY

- 2.3.1 Subcontractor warrants to Manhattan, Owner and Architect that all materials and equipment furnished under the Subcontract will be new unless otherwise specified, and that all Work will be of the quality required by the drawings and specifications, free from faults and defects and in conformance with the Contract Documents. Subcontractor warrants that it and its subcontractors will perform their work and will manufacture and furnish material and equipment in a good and workmanlike manner.
- 2.3.2 Subcontractor further warrants its Work, materials and equipment hereunder to Manhattan on the same terms, and for the same period, as Manhattan warrants the Work to Owner under the Contract Documents.
- 2.3.3 Subcontractor additionally agrees to repair or replace all Work that may prove defective in workmanship or materials commencing on the date of substantial completion and ending one year from the date of completion and acceptance of the Work by Owner in addition to any requirements in the Contract Documents to repair or replace defective Work. Such guarantees and warranties shall include the removal and replacement of other work affected thereby and payment for resulting damage to other property.

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

## 2.4 SUBCONTRACTOR'S LIABILITY

- 2.4.1 Subcontractor shall have responsibility and liability for all Work, supervision, labor and materials provided hereunder, whether or not erected in place, and for all plant, scaffolding, tools, equipment, supplies and other things provided by Subcontractor until final acceptance of the Work by Owner, and shall at all times prosecute the Work in a good and workmanlike manner, with diligence and continuity. In the event of any loss, damage or destruction thereof from any cause, Subcontractor shall be liable therefore, and shall repair, rebuild and make good said loss, damage or destruction at Subcontractor's cost. Nothing herein shall prejudice any rights Subcontractor may have to recover its costs from any applicable Builder's Risk policy which may provide coverage for said loss.
- 2.4.2 Subcontractor shall be liable to Manhattan for all costs Manhattan incurs or becomes responsible for as a result of Subcontractor's failure to perform this Subcontract, or any other subcontract between Manhattan and Subcontractor, in accordance with their terms. The breach of any provision of any other subcontract between Subcontractor and Manhattan shall, at Manhattan's election, constitute a breach of this Subcontract and a breach of this Subcontract shall constitute a breach of any other subcontract between Manhattan and Subcontractor on any other project. Manhattan shall be entitled to offset, against any amounts due Subcontractor, any amounts due Manhattan from Subcontractor on any other project. Subcontractor's failure to perform shall include the failure of its subcontractors to perform. Subcontractor's liability shall include but not be limited to (a) damages and other delay costs payable by Manhattan to Owner (including liquidated damages); (b) Manhattan's or its agent's or its other subcontractor's, and supplier's increased costs of performance, such as extended overhead and increased performance costs resulting from delays or improper Work; (c) warranty and rework costs; (d) liability to third parties; (e) excess procurement costs; (f) consultants' fees; and (g) attorneys' fees and related costs.
- 2.4.3. Without limiting the foregoing, if Subcontractor is only furnishing labor for the finishing, installation or erection of materials furnished by Manhattan, the following costs, without restriction thereto, are to be fully recovered by Manhattan from Subcontractor: (a) the full cost of materials required to replace those spoiled by Subcontractor through faulty workmanship or negligence or damaged by any other cause not the fault of Manhattan; (b) the full cost of materials wasted by Subcontractor; (c) the full cost of removing rejected materials when not properly and promptly removed by Subcontractor, together with cost of removing, patching or replacing the work of others necessitated by such rejection; (d) the full cost of reworking, refinishing or altering any work of Subcontractor not accepted by Owner or the Owner's authorized agents; and (e) cost resulting from damage by Subcontractor to materials or work of Manhattan or others.
- 2.4.4 In the event that Subcontractor or any of its agents, employees, suppliers, or subcontractors utilize any machinery, equipment, tools, scaffolding, hoists, lifts or similar items belonging to or under the control of Manhattan, Subcontractor shall be liable to and shall defend and indemnify Manhattan for any loss or damage (including bodily injury, personal injury, death or property damage) which may arise or result from such use, except when such loss or damage is due solely to the negligence of Manhattan employees operating Manhattan-owned or Manhattan-leased equipment. **SUBCONTRACTOR EXPRESSLY ASSUMES LIABILITY FOR THE CONCURRENT NEGLIGENCE OF MANHATTAN; HOWEVER, THIS LIABILITY SHALL BE LIMITED AS PROVIDED IN PARAGRAPH 2.5.2 BELOW.**
- 2.4.5 Subcontractor agrees to assume entire responsibility and liability for any claim or action based on or arising out of injuries, including death, to persons or damages to or destruction of property (real, personal, tangible or intangible) sustained in connection with the performance of this contract by Subcontractor, its subcontractors, agents and employees. **THIS RESPONSIBILITY AND LIABILITY OF SUBCONTRACTOR APPLIES EVEN THOUGH THE CLAIM OR ACTION IS THE RESULT OF THE CONCURRENT NEGLIGENCE OF MANHATTAN, OWNER, ARCHITECT, THEIR REPRESENTATIVES OR THEIR EMPLOYEES, AGENTS, INVITEES OR LICENSEES THEREOF TO THE EXTENT LIABILITY FOR CONCURRENT NEGLIGENCE OF THE ABOVE-REFERENCED PARTIES IS ALLOWED BY APPLICABLE LAW.**

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

## 2.5 INDEMNIFICATION

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

- (a) all claims arising out of any breach of this Subcontract by the Subcontractor, or a breach of any agreement relating to the Work or any Work done by any of its subcontractors, or any negligent act, gross negligence, error or omission by Subcontractor or any of its subcontractors, or any patent or copyright infringement arising out of the performance of this Subcontract by Subcontractor or any of its subcontractors;
- (b) all liabilities, claims and demands for personal or bodily injury (including death) or property damage (real, personal, tangible or intangible) to any of the Work of Subcontractor or any other work or property of any other party, including injury or death to Subcontractor's employees, together with any resulting costs, legal fees and consulting fees, arising out of or caused by any act or omission of the Subcontractor or any of its subcontractors, their agents or employees;
- (c) all liens, or claims of rights to enforce liens, against the Project, Project Site and all claims against Manhattan or its surety arising out of any work performed or to be performed or labor, services or materials furnished or to be furnished under this Subcontract by any of its subcontractors to Subcontractor;
- (d) all costs, damage, expenses and liabilities Indemnitees may sustain by reason of the failure of Subcontractor to indemnify any of the Indemnitees as required herein and elsewhere in the Subcontract; and
- (e) all other costs, damage, expenses and liabilities (including all resulting costs, legal fees and consultant fees) for which Manhattan is liable to Owner under its Agreement, or to any third party under agreements with those third parties who may be affected by construction of the Project on account of or in any way related to Subcontractor's Work.

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

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

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

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

- 2.5.6 Nothing contained herein shall limit any claim of Manhattan against Subcontractor based on breach of contract or breach of warranty.
- 2.5.7 The above-referenced defense and indemnification obligations shall not require Subcontractor to defend and indemnify Architect or other design professionals (or their representatives, employees, agents, invitees and licensees) against claims arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, unless required by the agreement between Owner and Manhattan.
- 2.6 **PATENTS AND ROYALTIES**  
Except as otherwise provided by the Contract Documents, Subcontractor shall pay all royalties and license fees which may be due with respect to the Work. Subcontractor shall defend all suits or claims for infringement of any patent rights that may be brought against Manhattan or Owner arising out of its Work, and shall be liable to Manhattan and Owner for all loss, including all costs and expenses, on account thereof.
- 2.7 **TAXES AND PERMITS**
- 2.7.1 Except as otherwise provided by the Contract Documents, Subcontractor agrees to pay, comply with and hold Manhattan harmless from and against the payment of all Federal, state and local contributions, taxes, duties or premiums arising out of the performance of this Subcontract, and all Sales, Use or other duties or taxes of whatever nature levied or assessed against Owner, Manhattan or Subcontractor arising out of this Subcontract, including any interest or penalties. Subcontractor waives any and all claims for additional compensation because of any new contributions, duties, taxes or premiums, or any increases therein, unless payment therefor is specifically provided for in the Contract Documents.
- 2.7.2 Subcontractor shall obtain and pay for all permits, licenses, fees and certificates of inspection necessary for the prosecution and completion of the Work. Subcontractor shall arrange for all necessary inspections and approvals by public officials.
- 2.8 **SUPERVISION**  
Subcontractor and its subcontractors (a) shall not employ anyone to perform Work whose employment is objected to by Manhattan or Owner and (b) shall employ skilled and competent supervisory and subordinate personnel at the jobsite at all times who are familiar with their obligations under this Subcontract, the Contract Documents and Manhattan's schedule, are capable of communicating effectively with Manhattan's Project staff and who shall perform the Work with the highest degree of skill.
- 2.9 **CLEANUP**  
Subcontractor shall, on a daily basis, clean its Work and remove, sort as required, and deposit all debris resulting from or associated with its Work in a manner that will not impede either the progress of the Project or of other trades. Should Subcontractor fail to clean its Work within twenty-four (24) hours after receipt of written notice from Manhattan, Manhattan shall have the right to perform cleanup itself and charge Subcontractor the reasonable cost thereof, including an allocation of the cost of cleanup not identifiable to any source. Manhattan may request composite crew clean-up activities in which this Subcontractor will participate, if performing Work during the period of such request.

2.10 **LABOR HARMONY**

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

2.11 **ASSIGNMENT AND SUBCONTRACTING**

- 2.11.1 Subcontractor shall not assign or transfer this Subcontract, or funds due hereunder, without the prior written consent of Subcontractor's surety and Manhattan. To the extent any applicable law does not require Subcontractor to obtain written consent of Manhattan to the assignment of funds, Subcontractor nevertheless agrees to notify Manhattan, in writing, prior to any such assignment. Failure of Subcontractor to notify Manhattan shall constitute a material breach of this Subcontract. Subcontractor's subcontractors are subject to the provisions of this Subcontract, and Subcontractor shall insert in Subcontractor's subcontracts all provisions required by the Contract Documents or necessary to enable Subcontractor to comply with the terms hereof. Subcontracting by Subcontractor shall not abrogate any obligation of Subcontractor under this Subcontract.
- 2.11.2 Subcontractor shall, within thirty (30) days after award of this Subcontract and monthly thereafter, provide a detailed, itemized list of materials and equipment to be provided under this Subcontract along with the ultimate supplier of each material item and equipment, the supplier's representative and phone number, and the current proposed delivery date of the material and equipment. Manhattan reserves the right to review and/or approve Subcontractor's subcontractor. Such approval will not be unreasonably withheld.
- 2.11.3 Subcontractor, by execution of this Subcontract, contingently assigns to Manhattan all of Subcontractor's subcontracts. The assignment of each of Subcontractor's subcontracts shall take effect only upon both Subcontractor's termination under either Article 9 or 10 and Manhattan's affirmative acceptance of the assignment of the specific subcontract by written notice to Subcontractor and Subcontractor's subcontractor. Manhattan shall have no liability to any of Subcontractor's subcontractors unless and until Manhattan affirmatively accepts the assignment as provided above.
- 2.11.4 Subcontractor further agrees, if requested by Manhattan, to conditionally assign this Subcontract to Owner or Owner's lender.

2.12 **APPROVALS, REVIEWS AND SUBSTITUTIONS**

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

- 2.12.2 Subcontractor shall deliver to Manhattan copies (or electronic files in the format needed) of shop drawings, cuts, samples, material lists, and other submissions, including mock-ups and temporary structures, required by Manhattan or the Contract Documents within sufficient time so as not to delay performance of the Project and within sufficient time for Manhattan to submit the same within the time stated in the Contract Documents, whichever is earlier. Review or approval of a submittal does not constitute specific written approval. No general approval granted by Manhattan or Owner shall relieve Subcontractor from complying with the Contract Documents. Submissions shall be in strict accordance with the Contract Documents provided, however, that if Subcontractor wishes to propose a deviation from the Contract Documents, such deviation shall be clearly identified on the submission and accompanied by a letter describing in detail such deviation and the effect, if any, on Subcontractor's Work and on the Work of Manhattan or any of its other subcontractors on the Project, and the impact on the time of performance. Requested deviations will be allowed only in accordance with the Contract Documents and when specific separate written approval referencing the deviation is given to Subcontractor by both Manhattan and Owner or its representatives. In making or seeking to make any substitution, Subcontractor hereby agrees to pay or reimburse Manhattan for any increase whatsoever in the cost of the work undertaken by Manhattan or by any of its other subcontractors as a result of any substitution made upon initiation of Subcontractor. Subcontractor agrees and represents, at the time of entering this Subcontract, that no substitution was contemplated in arriving at the amount of the Subcontract.
- 2.12.3 Manhattan's review or approval of any shop drawings, cuts, samples, material lists and other submissions, including mock-ups or temporary structures, shall not to any extent, under any circumstances, (a) alter the requirements of the Contract Documents for quality, quantity, finish, dimension, design or configuration; (b) constitute acceptance by Manhattan of any method, material or equipment not ultimately acceptable to Owner; or (c) relieve Subcontractor from its responsibilities and requirements in the Subcontract or for errors of any sort therein or from the necessity of furnishing any Work required by the Contract Documents which may have been omitted therefrom.
- 2.13 **INSPECTION AND ACCEPTANCE**
- 2.13.1 Subcontractor shall provide appropriate facilities at all reasonable times for inspection, by Manhattan or Owner, of the Work and materials provided under this Subcontract, whether at the Project site or any place where such Work or materials may be in preparation, manufacture, storage or installation. Subcontractor shall promptly replace or correct any Work or materials which Manhattan or the Owner shall reject as failing to conform to the requirements of this Subcontract. If Subcontractor does not do so within the time required by the Contract Documents, or, in the absence thereof, within a reasonable time, Manhattan shall have the right to do so and Subcontractor shall be liable to Manhattan for the cost thereof. If, in the opinion of Manhattan, it is not expedient to correct or replace all or any part of rejected Work or materials, then Manhattan, at its option, may deduct from the payments due, or to become due, to Subcontractor such amount as in Manhattan's reasonable judgment will represent (a) the difference between the fair value of the rejected Work and materials and the value thereof if it complied with this Subcontract, or (b) the cost of correction, whichever Manhattan determines is more appropriate.
- 2.13.2 Notwithstanding the above, if rejection of work is by Owner, or by Manhattan at the request of Owner, Subcontractor's remedy for wrongful rejection of work pursuant to Paragraph 2.13.1 shall be limited to Manhattan's remedy under the Contract Documents. Manhattan shall be liable for any increased direct cost caused by its wrongful rejection of Work only if Owner was not involved in any such rejection.
- 2.13.3 The Work shall be accepted according to the terms of the Contract Documents. Unless otherwise agreed in writing, however, entrance, occupancy and/or use by Owner or Manhattan of any part of the Project, or any equipment installed on the Project, shall not constitute acceptance of the Work, shall not establish the commencement date of any warranty, or be construed as an achievement of substantial completion of the Work.
- 2.13.4 Any quality control, quality assurance or inspection (or the failure to perform quality control, quality assurance or inspection) by Manhattan which involves Subcontractor's Work shall not relieve Subcontractor from its obligations in this Subcontract nor limit any liability which Subcontractor may have to Manhattan.
- 2.14 **HOISTING AND SPECIAL RIGGING**
- 2.14.1 Subcontractor shall perform all hoisting, rigging, and final placement of material and/or equipment as required for the Work.
- 2.14.2 Subcontractor is responsible for any and all special rigging, flagmen, spotters or other assistance necessary in connection with hoisting, as well as personnel required for offloading materials.

**ARTICLE 3**  
**CLAIMS AND DISPUTES**

**3.1 DEFINITION**

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

**3.2 LIMITATION ON CLAIMS**

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

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

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

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

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

**3.3 CONTINUING CONTRACT PERFORMANCE**

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

**3.4 ACCEPTANCE OF FINAL PAYMENT**

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

### 3.5 SETTLEMENT OF DISPUTES

- 3.5.1 In case of any dispute between Manhattan and Subcontractor in any way relating to or arising from any act or omission of Owner, the Architect, or involving the Contract Documents, Subcontractor agrees to be bound to Manhattan to the same extent that Manhattan is bound to Owner by the terms of the Contract Documents, and by any and all preliminary and final decisions or determinations made thereunder by any party, board or court so authorized in the Contract Documents or by law, whether or not Subcontractor is a party to such proceedings. In case of such dispute, Subcontractor will comply with all provisions of the Contract Documents and allow a reasonable time for Manhattan to analyze and forward to Owner any required communications or documentation sufficiently in advance of any time limits set forth in the Contract Documents. Manhattan may, at its option, (a) present to Owner, in Manhattan's name, (b) authorize Subcontractor to present to Owner, in Manhattan's name, all of Subcontractor's claims and answer Owner's claims involving Subcontractor's Work or (c) file a third party or separate action against Owner with respect to any liability Manhattan may have to Subcontractor. Manhattan may further invoke on behalf of Subcontractor, or allow Subcontractor to invoke, those provisions in the Contract Documents for determining disputes. Nothing herein shall require Manhattan to exercise any of the above options or to forward any claim to Owner or certify a claim under a contract. If certification is required by Owner, and if Manhattan elects to certify Subcontractor's claim, Subcontractor shall also certify its claim to both Manhattan and Owner and shall defend and indemnify Manhattan for any liability Manhattan may have as a result of said certifications. If such dispute is prosecuted by Manhattan, Subcontractor at its own expense agrees to furnish all documents, statements, witnesses, and other information required by Manhattan and to pay or reimburse Manhattan for all costs incurred by Manhattan in connection with the dispute, including attorneys' fees. In the event Manhattan elects and Subcontractor accepts the option of presenting its claims to Owner, in Manhattan's name, Subcontractor shall not perform any act, or fail to perform any act, which results in any liability to Manhattan. Manhattan shall have the right to have its legal counsel associate with Subcontractor's counsel in the prosecution of any such claim at Manhattan's expense.
- 3.5.2 All disputes between the parties shall be resolved by litigation, in a court of competent jurisdiction, except that Manhattan may, at its sole option, require that any dispute be submitted to arbitration pursuant to the Construction Industry Rules of the American Arbitration Association except that for disputes equal or less than \$500,000, a single arbitrator shall be appointed who will be an attorney with at least (10) years of experience in construction law, and for disputes involving \$500,000 or more, there shall be three (3) arbitrators with each being an attorney and having at least ten (10) years of experience in construction law. Manhattan shall not be deemed to have waived any right it may have to arbitrate its dispute with Subcontractor by the filing of litigation against Subcontractor and its surety. At Manhattan's request, Subcontractor agrees to join in any motion Manhattan may file seeking stay of any suit pending resolution of any arbitration between Subcontractor and Manhattan. In any arbitration between Subcontractor and Manhattan, pretrial discovery shall be allowed to the full extent as permitted by the local rules of civil procedure in the state in which the project is located.
- 3.5.3 If Manhattan elects to arbitrate any such dispute with Subcontractor, Subcontractor consents to the joint arbitration of any dispute it might have with Manhattan with the arbitration of any dispute Manhattan might have with any other subcontractor of Manhattan or with Owner or Architect, if Manhattan should so elect. If Manhattan should so elect to arbitrate any such dispute, and if the arbitration rules of any other arbitration Manhattan might have with any other subcontractor or with Owner or Architect are different than the arbitration rules above, the rules of arbitration, as set forth in this Subcontract, shall be modified to conform with the rules of such other arbitration proceeding.
- 3.5.4 In the event of litigation or arbitration of any dispute between Subcontractor and Manhattan, the prevailing party shall be awarded attorneys' fees, costs of court and such other damages as may be permitted by the Subcontract and applicable law. A party shall not be deemed to be a prevailing party for the recovery of attorneys' fees unless it has either (a) been awarded or obtained a judgment for a substantial amount of its claim or (b) successfully defended against the majority of a claim being asserted by the other party. Notwithstanding the foregoing, if a party, against whom a claim is being made, makes a written offer of compromise to the claiming party, and if the written offer is not accepted by the claiming party within ten (10) days after receipt, the offering party shall be deemed to be the prevailing party if the claiming party does not obtain a more favorable judgment or arbitration award than the written offer of compromise. The above-referenced provision with respect to the tendering of a settlement offer shall not be applicable to any offer of compromise made within fifteen (15) days of the initial arbitration hearing date or trial date, as may be applicable.

- 3.5.5 Subcontractor agrees that the limitations period for the filing of any litigation or arbitration by Subcontractor against Manhattan shall be two years and one day following the date of substantial completion of Subcontractor's work. In the event the above-referenced provision shall be held to be unenforceable, the limitations period for the filing of any litigation or arbitration against Manhattan shall be two years and one day following the accrual of any cause of action; provided further, however, that if the applicable law does not permit the shortening of the limitations period as provided above, this clause shall be modified so as to require Subcontractor to file any such litigation or arbitration within the minimum period of time as may be allowed by law.
- 3.5.6 IN THE EVENT OF ANY LITIGATION SOLELY BETWEEN MANHATTAN AND SUBCONTRACTOR, SUBCONTRACTOR AND MANHATTAN AGREE TO WAIVE TRIAL BY JURY TO THE EXTENT SUCH WAIVER IS ENFORCEABLE PURSUANT TO THE LAWS OF THE PLACE OF THE PROJECT.

#### **ARTICLE 4** **CHANGES IN THE WORK**

- 4.1 Manhattan may, at any time, unilaterally or by agreement with Subcontractor, without notice to any surety, make changes in the Work covered by this Subcontract. Any unilateral order or agreement under this Article 4 shall be in writing. Subcontractor shall perform the Work as changed without delay.
- 4.2 Subcontractor shall submit to Manhattan any requests or claims for adjustment in the price, schedule or other provisions of the Subcontract for changes directed by Owner. Subcontractor shall only obtain an adjustment to its Subcontract amount to the extent that Manhattan is entitled to relief from Owner. Further, each Subcontract adjustment shall be equal only to Subcontractor's allocable share of any adjustment in Manhattan's contract with Owner. Subcontractor's allocable share shall be determined by Manhattan, after allowance of Manhattan's normal overhead and profit on any recovery and Manhattan's expense of recovery, by making a reasonable apportionment, if applicable, between Subcontractor, Manhattan and other subcontractors or persons with interests in the adjustment. This paragraph shall also cover other equitable adjustments or other relief allowed by the Contract Documents.
- 4.3 Payment on account of pending changes made by Owner shall be made only if and when Manhattan receives such payment from Owner for Subcontractor's changed Work. Each payment to Subcontractor on account of pending change orders shall be equal to Subcontractor's allocable share of Manhattan's payment from Owner for the pending change as determined by Manhattan. Amounts paid on account of pending changes are provisional and not an admission of liability and shall be repaid to Manhattan on demand whenever Manhattan determines there has been an overpayment.
- 4.4 For changes ordered by Manhattan independent of Owner or the Contract Documents, Subcontractor shall be entitled to an equitable adjustment in the Subcontract price except to the extent in conflict with other terms of this Subcontract. If Subcontractor considers any action or inaction by Manhattan other than a formal change order to be a change, it shall so notify Manhattan in writing, within forty-eight (48) hours of said action or inaction and seek a confirmation from Manhattan. Failure to comply with said confirmation procedure shall constitute a waiver of the right to compensation for the action or inaction. Change orders or charges of any kind, occurring between Manhattan and Subcontractor independent of Owner or the Contract Documents shall be performed and paid for on the basis of direct cost only, without any jobsite or home office overhead, indirect expense or profit. The limitations in Paragraph 3.2 above shall apply to any such claim.
- 4.5 Subcontractor shall submit a reasonable price quotation for any additive or deductive change requested by Manhattan or Owner. Subcontractor's quotation shall be furnished to Manhattan by the earlier of (a) seven (7) days following Manhattan's request or (b) in sufficient time to allow Manhattan to comply with the applicable provisions of the Contract Documents with respect to changes in the work. If Subcontractor does not do so and Manhattan elects or is required to submit a price quotation to Owner which includes a proposed additive or deductive change to Subcontractor's Work, Subcontractor waives any right of recovery with respect to any such additive change and any right to challenge any deductive change except for any amount for which payment is made by Owner for Subcontractor's portion of a proposed additive change.
- 4.6 The payment of any incremental increase in the cost of bonds arising as a result of changes in the Work shall be the responsibility of Subcontractor and will be included as a part of Subcontractor's price for proposed changes.

## **ARTICLE 5**

### **PAYMENTS**

#### **5.1 SCHEDULE OF VALUES**

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

#### **5.2 APPLICATIONS FOR PAYMENT**

- 5.2.1 Subcontractor must submit to Manhattan an itemized application for payment, notarized, if required by applicable law or requested by Owner, supported by such data substantiating the Subcontractor's right to payment as Manhattan, Owner or the Architect may require, including requisitions from subcontractors.
- 5.2.2 Subcontractor shall, as part of each request for partial payment, furnish conditional releases and lien waivers with respect to all Work performed and materials supplied in the current request for partial payment and, to the extent Subcontractor has received payment for previous pay applications, Subcontractor shall furnish a final lien waiver with respect to all Work performed and materials supplied to the extent Subcontractor has received payment. Subcontractor shall also furnish such documents as may be required by the Contract Documents and as allowed by law. Unless prohibited by law, and prior to final payment, Subcontractor shall provide to Manhattan a release of its liens and claims and satisfactory evidence that there are no other liens or claims whatsoever outstanding against the Work relating to this Subcontract and such other documents as may be required by the Contract Documents. To the extent applicable state law does not allow Manhattan to require an unconditional lien and claim release prior to final payment, Subcontractor shall provide a conditional release of its liens and claims and furnish a final unconditional lien and claim release once payment is received. Subcontractor shall insure that its subcontractors furnish all lien and claim releases which are required of Subcontractor.
- 5.2.3 If the Contract Documents allow partial payment for materials stored either off-site or on-site, such payments shall be made to Subcontractor in the amounts and under the standards set forth in the Contract Documents for off-site or on-site stored materials once such payments have been approved by Manhattan and Owner, but only after Manhattan's receipt of payment therefore from Owner.
- 5.2.4 No partial payment shall be due Subcontractor unless and until Manhattan receives payment from Owner and provided that the Work has been approved by Manhattan and Owner and provided that Subcontractor is in compliance with the terms of its Subcontract. Final payment shall not be due until Subcontractor's Work has been completed and approved by Owner, the entire Project is complete, all final payment prerequisites under the Contract Documents have been satisfied, satisfactory proof of payment of all amounts owed by Subcontractor in connection with this Subcontract has been provided and Manhattan has been paid in full for the entire Project. Notwithstanding the above, Manhattan may withhold from any partial or final payment to Subcontractor such amounts as may be allowed by the Subcontract in Paragraph 5.3. No certification of a progress payment and no partial or final payment made to Subcontractor pursuant to this Subcontract shall constitute or imply acceptance of Work or materials or any waiver of any claim Manhattan may presently have or may in the future have against Subcontractor based on its duties and obligations under this Subcontract including, but not limited to, claims based on the failure of Subcontractor to have performed its Work in a good and workmanlike manner and in accordance with the Contract Documents.

- 5.2.5 If at any time any monies earned by or due to Manhattan from Owner are not paid in full, Manhattan shall in its sole discretion apportion the nonpayment equitably and reduce payments otherwise due Subcontractor accordingly. Such reductions shall continue until Manhattan is paid all monies due to it provided, however, if the withholdings do not relate to Subcontractor's Work, and if the reasons for non-payment are due to Manhattan's failure to meet its contractual obligations to Owner, Subcontractor shall be paid in full when Manhattan's right to recover from Owner is finally determined or expires. Subcontractor acknowledges that this paragraph establishes a reasonable time for payment.
- 5.2.6 Subcontractor shall pay all of its subcontractors all sums properly due its subcontractors for their work on the Project. Manhattan, after giving notice to Subcontractor, may pay all subcontractors which have not been paid the monies due them in connection with the Subcontract, whether or not a lien has been filed, unless Subcontractor, within three days of receipt of said notice, or such shorter period of time as Manhattan finds necessary to meet its obligations to Owner (a) demonstrates that such sums are not due and (b) provides Manhattan adequate security. Manhattan, without prejudice to any other right it may have, may issue a check to any subcontractor of Subcontractor, or may issue a joint check to Subcontractor and its subcontractor, and delivery of said check to either subcontractor or Subcontractor shall constitute payment to Subcontractor. Nothing contained herein shall create any duty on the part of Manhattan to make any payment to any such subcontractor of Subcontractor nor shall any contractual relationship be created by such payment.
- 5.2.7 Subcontractor agrees that Manhattan may, at any time, contact any of its subcontractors to verify amounts paid, amounts invoiced, scheduled time for performance and/or delivery of materials or for any other purpose reasonably related to the performance of the work of any such subcontractor on or for the Project and/or Subcontractor.
- 5.2.8 All material and Work incorporated into the Project or for which partial payment has been made shall become the property of Manhattan, or if the Contract Documents so provide, the property of Owner; however, this provision shall not relieve Subcontractor from the sole responsibility and liability for all Work and materials for which payments have been made until final acceptance thereof by Owner.

### 5.3 PAYMENTS WITHHELD

- 5.3.1 Notwithstanding any provision of the Subcontract to the contrary, Manhattan is not obligated to make any payment to Subcontractor under the Subcontract if any one or more of the following conditions exists:
- (a) Subcontractor has failed to perform its obligations under the Subcontract or otherwise is in default under the Subcontract or the Contract Documents;
  - (b) If any part of such payment is attributable to Work which is not performed in accordance with the Contract Documents; provided, however, payment will be made for the portions of the Work which have been performed in accordance with the Contract Documents;
  - (c) Subcontractor or any subcontractor has failed to make payments promptly to any of their subcontractors, as applicable, or to pay for material or labor used in the Work for which Subcontractor has received payment;
  - (d) Subcontractor has failed to provide the revised Schedule of Values with the Application for Payment;
  - (e) Reasonable evidence that the Work of Subcontractor cannot be completed for the unpaid balance of the Subcontract amount;
  - (f) Reasonable evidence that the Work of the Subcontractor will not be completed within its scheduled time for completion and that the unpaid balance would not be adequate to cover any actual or liquidated damages for the anticipated delay;
  - (g) Subcontractor has suspended the Work other than as authorized by Owner or the Contract; or

- (h) Subcontractor has filed a voluntary petition for protection or relief under applicable Bankruptcy laws of the United States or a petition has been filed placing Subcontractor under the protection of the Bankruptcy laws of the United States and Subcontractor has not (1) notified Manhattan that Subcontractor has the necessary capacity and resources to finish the Work and honor the Subcontract and will dismiss such petition and removed itself from bankruptcy protection within 90 days of the filing or (2) affirmed and had the bankruptcy court approve its obligations under this Subcontract to Manhattan and evidence Subcontractor's ability to perform this Subcontract to Manhattan's reasonable satisfaction; or
  - (i) Subcontractor has failed to provide or maintain required insurance or bonds.
- 5.3.2 In the event any of the conditions as outlined in Paragraph 5.3.1 exists, Manhattan may withhold such funds as may be reasonably necessary to protect it from liability or compensate it for its damages; provided, however, that the exercising of the right of withholding by Manhattan shall not be conclusive with respect to any liability of Subcontractor to Manhattan.
- 5.3.3 Manhattan may withhold funds from Subcontractor in an amount which represents Manhattan's good faith estimate of the attorneys' fees Manhattan may incur in any pending or threatened claim or dispute with Subcontractor.
- 5.4 **CONDITION PRECEDENT**  
SUBCONTRACTOR EXPRESSLY ASSUMES THE RISK OF NON-PAYMENT BY OWNER. SUBCONTRACTOR AGREES THAT RECEIPT OF PAYMENT BY MANHATTAN FROM OWNER SHALL BE AN EXPRESS CONDITION PRECEDENT TO ANY PAYMENT OBLIGATION OF MANHATTAN OR ITS SURETY TO SUBCONTRACTOR.

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

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

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

## **ARTICLE 6**

### **PROTECTION OF PERSONS AND PROPERTY**

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

- 6.2 Subcontractor must give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.
- 6.3 In addition to safety requirements imposed by law, Subcontractor shall comply with all safety requirements and policies imposed by Manhattan or Owner and will conduct operations in a safe manner. Subcontractor shall designate an employee to be responsible for compliance with all federal, state, and local safety and health regulations and all safety policies and requirements imposed by Manhattan or Owner. Unless the Subcontractor designates otherwise, the responsible employee shall be the Subcontractor's job site supervisor. Subcontractor shall be liable to Manhattan for any additional costs including fines, which Manhattan incurs as a result of Subcontractor's failure to operate safely. Manhattan may conduct safety inspections from time to time. Such inspections shall not relieve Subcontractor from its obligations to adhere to safety requirements nor shall such inspections create any liability to Manhattan.
- 6.4 Any incident arising out of Subcontractor's work shall be discussed at the next Contractor's Safety Committee meeting to determine if the accident was preventable and to determine the responsible party. If the incident involved lost time, significant loss or involved a significant risk of loss, an officer or owner of Subcontractor shall attend the meeting and explain, in person, the cause of the accident and the action Subcontractor shall take to prevent similar accidents in the future. In the event Subcontractor has repeated safety issues on the Project, Manhattan may, at its sole discretion, require Subcontractor to furnish a full-time safety engineer for the Project at no additional cost. This safety engineer shall be responsible for full and complete understanding of the safety laws, rules and regulations, applicable to Subcontractor's work on the Project.
- 6.5 Subcontractor shall comply with all hazardous material requirements imposed by Manhattan or Owner. Subcontractor agrees to provide to Manhattan a copy of its Hazardous Communication Program for the project. Subcontractor agrees that in performing its work, it will not create, use or dispose of any hazardous chemicals or substances in an unlawful or hazardous manner and shall be solely responsible for the lawful, proper and safe handling, storage and removal of all hazardous wastes, chemicals, and substances which are introduced to the project site, or removed from the project site, by Subcontractor's operations. The term "hazardous wastes, chemicals or substances" shall mean those materials and substances prohibited, proscribed, or the use of which is controlled by any agent of the federal government or the applicable state or local agency having jurisdiction of such matters. Subcontractor shall comply with all federal, state and local regulations dealing with the use, storage or disposal of all hazardous wastes, chemicals and substances. SUBCONTRACTOR SHALL BE RESPONSIBLE FOR ANY AND ALL CLAIMS AND DAMAGES RESULTING FROM ITS USE, HANDLING, STORAGE, REMOVAL AND DISPOSAL OF SUCH HAZARDOUS WASTES, CHEMICALS OR SUBSTANCES FROM THE PROJECT, AND SHALL DEFEND AND HOLD MANHATTAN HARMLESS FROM ANY AND ALL LIABILITY ASSOCIATED WITH SUCH USE, HANDLING, STORAGE, REMOVAL AND DISPOSAL INCLUDING ALL ASSOCIATED ATTORNEY'S FEES AND COSTS AND COSTS OF ALL CLEANUP OPERATIONS WHEREVER AND WHENEVER REQUIRED BY ANY GOVERNMENTAL AUTHORITY OR BY MANHATTAN.
- 6.6 Subcontractor and its subcontractors, and all employees, servants and agents of any of them, shall comply strictly with the applicable requirements of the Occupational Safety and Health Act (OSHA) of 1970, as amended, and all other applicable health and safety laws and regulations.

## **ARTICLE 7**

### **INSURANCE**

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

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

- 8.1 If required by the Subcontract, Subcontractor must furnish to Manhattan and keep in force the required bonds, being both a performance bond (for the Work) and labor and material payment bond (covering the cost of the Work) guaranteeing that Subcontractor will perform its obligations under the Subcontract and will pay for all labor and materials furnished for the Work and will be responsible for damages resulting from any defective or non-conforming work (including the replacement thereof) performed by Subcontractor. Subcontractor's surety shall be liable to the same extent as Subcontractor is liable under the terms of this Subcontract which liability includes, but is not limited to, defects in Subcontractor's work which are discovered following the date of the completion of the work required by this Subcontract. Each bond must be issued in a form (refer to Exhibit "B") and by a surety acceptable to Manhattan, must be submitted to Manhattan for approval as to form, must name Manhattan as obligee and each must be in an amount equal to at least 100% of the Subcontract amount (as the same may be adjusted from time to time pursuant to the Contract), unless a greater amount is required by applicable law, in which case such greater amount will control. The Subcontractor must deliver the approved and executed bonds to Manhattan upon execution of this Subcontract. In the event the surety which provided bonding becomes insolvent or fails, Subcontractor shall immediately replace, at its expense, the bonds with valid bonds from a new surety meeting the above requirements. Failure of Subcontractor to replace bonds shall constitute a failure to comply with this Subcontract which, at Manhattan's election, shall allow withholding of funds, termination and other relief as set forth in Paragraph 5.3.1 and Article 9 herein.
- 8.2 The payment bond must be issued in a form consistent with and as may be required by all applicable laws for the state in which the Project is located, such that, to the fullest extent possible at law, no liens can attach to the Project and all mechanics or materialmen's liens filed in connection with the Work or the Project will attach only to the bonds.
- 8.3 Notwithstanding the above, and in the event that liens are filed by anyone in relation to the labor performed and/or material furnished pursuant to this Subcontract, Subcontractor agrees to have the same discharge by posting a bond with the appropriate authorities, or otherwise, within three days of notice. In the event such lien is not so discharged, Manhattan may discharge the lien itself and hold Subcontractor responsible for all costs and obligations incurred.
- 8.4 If Subcontractor is not required to furnish bonds, or if Manhattan desires Subcontractor to provide additional bond coverage, Manhattan may, at any time, and upon written request, instruct Subcontractor to provide, and Subcontractor shall so provide within ten (10) days, performance and payment bonds as provided in this Article 8. In this event, Manhattan will reimburse Subcontractor for reasonable bond premiums.

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

- 9.1 If, in the opinion of Manhattan, Subcontractor shall at any time (a) refuse or fail to provide sufficient properly skilled workers, adequate supervision or materials of the proper quality, (b) fail in any material respect to prosecute the Work according to Manhattan's current schedule, (c) cause, by any action or omission, the stoppage or delay of or interference with the Work of Manhattan or of any other contractor or subcontractor, (d) fail to comply with any provision of this Subcontract or the Contract Documents, (e) make a general assignment for the benefit of its creditors, (f) have a receiver appointed, or (g) become insolvent, then, after serving forty-eight (48) hour written notice (unless a shorter period is required in the Subcontract or by the Contract Documents), unless the condition specified in such notice shall have been eliminated within such forty-eight (48) hours, Manhattan, at its option, without voiding the other provisions of this Subcontract and without notice to the sureties, and without prejudice to any other rights of Manhattan under the law, may (i) take such steps as are necessary to overcome or correct the condition (including supplementing the work of Subcontractor), in which case the Subcontractor shall be liable to Manhattan for the cost thereof (ii) terminate for default Subcontractor's performance of all or a part of the Subcontract Work, or (iii) obtain specific performance or interlocutory mandatory injunctive relief requiring performance of Subcontractor's obligations hereunder (it being agreed by Subcontractor that such relief may be necessary to avoid irreparable harm to Manhattan and/or the Owner).
- 9.2 In the event that Manhattan exercises its options under Paragraph 9.1 (i) or (ii), Manhattan may, at its option, (a) enter on the premises and take possession, for the purpose of completing the Work, of some or all of the materials and equipment of Subcontractor, (b) take assignment of any or all of Subcontractor's subcontracts, and/or (c) either itself or through others complete the Work by whatever method Manhattan may deem expedient. Subcontractor shall not be entitled to receive any further payment until the Work is fully completed and accepted by the Owner and payment is received from the Owner. At such time, if the unpaid balance of the price to be paid shall exceed the expense incurred by Manhattan, including overhead and profit, such excess shall be paid by Manhattan to Subcontractor. If such amount shall exceed such unpaid balance, the Subcontractor shall pay Manhattan the difference on demand.
- 9.3 If Manhattan wrongfully exercises its option under Paragraph 9.1(i) that action shall be treated as a deductive change. If Manhattan wrongfully exercises its option under Paragraph 9.1(ii), that termination for default shall be considered a termination for Manhattan's convenience and Subcontractor shall be entitled to the applicable compensation provided in Article 10. Subcontractor's remedies under this Paragraph 9.3 shall be exclusive. Nothing herein shall bar withholdings by Manhattan permitted by other provisions of this Subcontract.

**ARTICLE 10**  
**TERMINATION FOR CONVENIENCE**

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

**ARTICLE 11**  
**LAWS, REGULATIONS AND ORDINANCES**

- 11.1 Subcontractor shall be bound by, and at its own cost shall comply with, all Federal, state and local laws, codes, ordinances and regulations applicable to this Subcontract and the performance of the Work whether by reason of general law or by reason of provisions in the Contract Documents. Subcontractor and all of its subcontractors shall be duly licensed to operate under the laws of all applicable jurisdictions.
- 11.2 Subcontractor shall be liable to Manhattan and Owner for all loss, damage, cost and expense attributable to any acts of commission or omission by Subcontractor, or any of its subcontractors, and all employees, servants or agents of any of them, resulting from failure to comply with any Federal, state or local laws, codes, ordinances or regulations including, but not limited to, any fines, penalties or corrective measures.

**ARTICLE 12**  
**EQUAL OPPORTUNITY**

- 12.1 In connection with the performance of the work, Subcontractor agrees to support Equal Employment Opportunity for all persons, regardless of race, color, religion, sex, national origin, marital status, physical disability, medical condition, age, genetic information, status as a Disabled Veteran, Recently Separated Veteran, Other Protected Veteran and Armed Forces Service Medal Veteran with respect to recruitment, hiring, training, promotion, and other terms and conditions of employment, provided the individual is qualified to perform the work available. Further, Subcontractor shall comply with the concepts and practices of affirmative action. Accordingly, all employment decisions shall be consistent with the principle of Equal Employment Opportunity (EEO). All promotion decisions shall be consistent with the principle of EEO and only valid qualifications will be required for promotion. All other personnel actions or programs such as compensation, benefits, transfers, layoffs, recalls, company sponsored training, social and recreational programs will be administered in a non-discriminatory manner with respect to minorities and women, provided the individual is qualified to perform the work available.
- 12.2 Subcontractor agrees to post in conspicuous places, available for employees and applicants for employment, notices prepared by Subcontractor and approved by the Government, when required, setting forth the provisions of this Paragraph. Subcontractor shall permit access to its books, records and accounts by representatives of Manhattan or Owner for purposes of investigation to ascertain compliance with the provisions of this Paragraph.
- 12.3 Subcontractor shall include the provisions of this Paragraph in Subcontractor's subcontracts. The requirements of this Article 12 shall be in addition to any Equal Opportunity provisions of the Contract Documents and other laws, regulations and ordinances as set forth in Article 11 above.

**ARTICLE 13**  
**ADDITIONAL TERMS AND CONDITIONS**

**13.1 LAYOUT AND ENGINEERING**

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

**13.2 USE OF TEMPORARY FACILITIES**

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

### 13.3 **INTERFACE AND COORDINATION**

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

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

### 13.4 **PROTECTION OF MATERIALS/TOOLS/EQUIPMENT**

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

### 13.5 **TESTS AND INSPECTIONS**

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

### 13.6 **CONSTRUCTION REPORTS**

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

### 13.7 **RECORD DOCUMENTS**

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

### 13.8 **ELECTRONIC SOFTWARE**

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

### 13.9 **DRUG-FREE AND TOBACCO-FREE WORKPLACE PROGRAM**

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

#### 13.10 **ADVERTISING - SIGNS**

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

### **ARTICLE 14** **MISCELLANEOUS**

#### 14.1 **NOTICES**

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

#### 14.2 **SEVERABILITY AND WAIVER**

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

#### 14.3 **INDEPENDENT CONTRACTOR**

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

#### 14.4 **EXECUTION OF ADDITIONAL DOCUMENTS**

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

#### 14.5 **ACKNOWLEDGMENT OF RECEIPT**

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

#### 14.6 **DEFENSES OF MANHATTAN'S SURETY**

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

14.7 **OTHER PROVISIONS**

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

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

"Subcontractor"  
SUBCONTRACTOR

"Manhattan"  
MANHATTAN CONSTRUCTION COMPANY

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**“OKLAHOMA RIDER”**

CLARIFICATIONS/ MODIFICATION TO THE  
MANHATTAN GENERAL PROVISIONS  
FOR THE STATE OF OKLAHOMA

The following clarifications/modifications are hereby incorporated into the Manhattan General Provisions executed by Manhattan Construction Company and Subcontractor dated \_\_\_\_\_ for all work in the State of Oklahoma on Subcontracts executed after \_\_\_\_\_.

1. Add the following after section 2.5.2

THIS INDEMNIFICATION APPLIES EVEN THOUGH THE MATTER TO BE INDEMNIFIED IS THE RESULT OF THE CONCURRENT NEGLIGENCE OF MANHATTAN, OWNER AND ARCHITECT, AND THEIR EMPLOYEES, SERVANTS, AGENTS OR OTHER SUBCONTRACTORS, PROVIDED, HOWEVER, THAT WITH RESPECT TO LIABILITY FOR DAMAGE ARISING OUT OF DEATH OR BODILY INJURY TO PERSONS, OR DAMAGE TO PROPERTY, THE INDEMNIFICATION REQUIRED OF SUBCONTRACTOR SHALL NOT EXCEED ANY AMOUNTS THAT ARE GREATER THAN THAT REPRESENTED BY THE DEGREE OR PERCENTAGE OF NEGLIGENCE OR FAULT ATTRIBUTABLE TO THE SUBCONTRACTOR, ITS AGENTS, REPRESENTATIVES, SUBCONTRACTORS OR SUPPLIERS."

“Subcontractor”  
SUBCONTRACTOR COMPANY NAME

“Manhattan”  
MANHATTAN CONSTRUCTION COMPANY

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Date: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT “A”  
SCOPE OF SUBCONTRACTOR’S WORK  
FOR SUBCONTRACT AGREEMENT BETWEEN  
FOREMAN MANHATTAN CONSTRUCTION TEAM AND  
SUBCONTRACTOR NAME  
for  
NEW CHEROKEE NATION HOSPITAL  
TAHLEQUAH, OK

**APPLICABLE SPECIFICATIONS:**  
Series 0 – DOCUMENTS, complete except as hereinafter specifically excluded;  
Division 1 - GENERAL REQUIREMENTS, complete except as hereinafter specifically excluded;

**ADDENDUMS INCLUDED:**

**ALTERNATE # ACCEPTED:**

**GENERAL SCOPE OF WORK:** **See Specification Section 01100 – Summary of Work**

Includes, but is not limited to, providing all the necessary labor, materials, tools, supplies, supervision, insurance, equipment, scaffolding, hoisting, fees, etc. necessary to provide the **SCOPE ITEMS at the PROJECT NAME & LOCATION**, in accordance with the Contract Documents. It is further understood and agreed that this Subcontract also includes the furnishing and installation of the below listed items regardless of whether or not they are in the listed specification section(s) or any other specification section(s), or shown on the plans. Drawing and detail references are provided for reference only and are not to be considered as all inclusive of Contract Documents for the particular items referenced. (Please note: The word “provide” when used herein shall mean furnish and install completely, including all costs for labor, materials, equipment, hoisting, layout, scaffolding, ladders, staging, tools, rigging and any other facilities necessary to complete the work”.)

- 1. XX
- 2. XXX
- 3. XXX
- 4. XXX
- 5. XXX

**SCOPE OF WORK EXCLUSIONS:**  
The following items are excluded from this Subcontract:  
1. XXX  
2. XXXX

**SUBCONTRACT BREAKDOWN:**

Subcontract Breakdown:	
Base Bid .....	\$ 0.00
Subcontract Total Amount .....	\$ 0.00

**CONTRACTOR’S OPTIONS:**

EXHIBIT "A"  
SCOPE OF SUBCONTRACTORS WORK  
NEW CHEROKEE NATION HOSPITAL  
SUBCONTRACTOR NAME  
PAGE 2 OF 2

At the option of Foreman Manhattan Construction Team, Subcontractor will add (or delete) the following items of work:

1. XXX
2. XXX

**SPECIAL TERMS AND CONDITIONS:**

1. XXXX
2. XXXX

# FOREMAN | MANHATTAN

## Construction Team

Bond No.   
Premium

### EXHIBIT "B" SUBCONTRACT PERFORMANCE BOND

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

THE CONDITION OF THE OBLIGATION IS SUCH, That whereas, the Principal entered into a Subcontract with the Obligees dated , which is incorporated herein and made a part hereof, For  being part of the work covered by a contract dated on or about  05.06.2022 Between  Cherokee Nation. hereinafter called Owner, and the said Obligees for  New Cherokee Nation Hospital which contract and the plans, specifications and general conditions thereof are hereby incorporated herein and shall be deemed a part hereof as fully as if set out herein.

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

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

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

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

ATTEST:

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

(Signature)

WITNESS:

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

(Signature)

# FOREMAN | MANHATTAN

## Construction Team

Bond No.   
Premium

### EXHIBIT "B" SUBCONTRACT PAYMENT BOND

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

THE CONDITION OF THE OBLIGATION IS SUCH, That whereas, the Principal entered into a Subcontract with the Obligees dated , which is incorporated herein and made a part hereof, For  being part of the work covered by a contract dated on or about  05.06.2022 Between  Cherokee Nation hereinafter called Owner, and the said Obligees for  New Cherokee Nation Hospital which contract and the plans, specifications and general conditions thereof are hereby incorporated herein and shall be deemed a part hereof as fully as if set out herein.

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

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

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

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

ATTEST:

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

(Signature)

WITNESS:

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

(Signature)

# FOREMAN | MANHATTAN

## Construction Team

Exhibit C

### FOREMAN - MANHATTAN CONSTRUCTION TEAM SUBCONTRACTOR'S MINIMUM INSURANCE REQUIREMENTS

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

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

PROJECT: CHEROKEE NATONAL HOSPITAL  
PROJECT NUMBER: 8078  
PROJECT OWNER: CHEROKEE NATION

#### **COMMERCIAL GENERAL LIABILITY (OCCURRENCE BASIS)**

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

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

Foreman - Manhattan Construction Team, Manhattan Construction Company, Foreman Construction Management & Consulting, Cherokee Nation Group and others are included as Additional

Insureds (CG2010 & CG2037 Forms **or Equivalent type**).

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

Insurance shall be Primary and Non-contributory.

Waiver of Subrogation in favor of Foreman - Manhattan Construction Team, Manhattan Construction Company, Foreman Construction Management & Consulting, Cherokee Nation Group and others.

#### **BUSINESS AUTO LIABILITY**

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

Foreman - Manhattan Construction Team, Manhattan Construction Company, Foreman Construction Management & Consulting, Cherokee Nation Group and others to be included as Additional Insureds

#### **WORKERS COMPENSATION/EMPLOYER'S LIABILITY**

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

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

Waiver of Subrogation in favor of Foreman - Manhattan Construction Team, Manhattan Construction Company, Foreman Construction Management & Consulting, Cherokee Nation Group and others

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

Combined Single Limit	\$ 3,000,000
-----------------------	--------------

(Over/above General, Auto and Employer's Liability Limits)

Foreman - Manhattan Construction Team, Manhattan Construction Company, Foreman Construction Management & Consulting, Cherokee Nation Group and others to be included as Additional Insureds.

Waiver of Subrogation in favor of Foreman - Manhattan Construction Team, Manhattan Construction Company, Foreman Construction Management, Cherokee Nation Group and Others

Insurance is Primary and Non-Contributory to any other available insurance to the Additional Insureds.

#### **PROFESSIONAL LIABILITY AND POLLUTION LIABILITY– (if applicable)**

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

Foreman - Manhattan Construction Team, Manhattan Construction Company, Foreman Construction Management, Cherokee Nation Group and Others on Pollution Policy.



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

Date

Additional Insured in favor of Foreman - Manhattan Construction Team, Manhattan Construction Company, Foreman Construction Management & Consulting, Cherokee Nation Group and others as required by written contract on GL, Auto & Umbrella Policies.

Additional Insured Endorsements for Ongoing and Completed Operations are attached.

Excess and/or Umbrella follows form.

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

Waiver of Subrogation in favor of Foreman - Manhattan Construction Team, Manhattan Construction Company, Foreman Construction Management & Consulting, Cherokee Nation Group and others as required by written contract on GL, WC and Pollution Policies.

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

1. The Subcontract Agreement (including all attached and referenced Exhibits).
2. Manhattan General Provisions.
3. The Agreement between Manhattan and the Owner ("Agreement").
4. General Conditions of the Contract.
5. Supplementary and other Conditions.
6. Exhibits and Riders enumerated and attached to the Agreement.
7. All Addenda issued prior to, and all modifications issued after execution of the Agreement.
8. Alternates as selected and incorporated herein.
9. Unit Prices.
10. Plans and Specifications as follows:

**BIDDING & CONTRACTING REQUIREMENTS:**

Bid and Contracting Manual, as prepared by Manhattan Construction

**GEOTECHNICAL ENGINEERING REPORT:**

Prepared by Palmerton & Parrish, Inc. (PPI) dated July 12, 2022 (See Specification 003100)

**ADDENDA/AMENDMENTS:**

**Addendum 01 - Dated 8/17/2022**

**CM CLARIFICATIONS:**

CM Clarification 01 (Bid Package 01) – Dated 8/19/2022

CM Clarification 02 (Bid Package 01) – Dated 8/25/2022

CM Clarification 03 (Bid Package 01) – Dated 8/29/2022

CM Clarification 04 (Bid Package 01) – Dated 8/30/2022

CM Clarification 05 POST BID (Bid Package 01) – Dated 9/13/2022

**DRAWINGS AND SPECIFICATIONS, As Prepared by Childers Architect:**

Bid Package 01: North Parking and Access – Dated 7/29/2022

Bid Package 03: Elevators – Dated 10/7/2022

**\*SEE ATTACHED:**

- EXHIBIT D - "CURRENT DRAWINGS" LOG, and

- EXHIBIT D - "CURRENT SPECIFICATIONS" LOG

\*Logs are current through all document issues listed above

**EXHIBIT D**

**00-Construction Documents - Current Drawings**

Drawing No.	Drawing Title	Revision	Drawing Date	Received Date	Set
<b>Civil</b>					
VOL 01	COVER SHEET	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
VOL 01-G0.01	DRAWING INDEX (CIVIL)	1	08/17/2022	08/17/2022	Addendum 01 (08/17/22)
C0-102	GENERAL CIVIL NOTES - BP1	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C1-103	EXISTING CONDITIONS	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C1-104	EXISTING CONDITIONS	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C1-105	EXISTING CONDITIONS	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C2-108	NP DEMOLITION OVERVIEW	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C2-109	NP1 DEMOLITION PLAN	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C2-110	NP2 DEMOLITION PLAN	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C2-111	NP3 DEMOLITION PLAN	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C2-112	NP4 DEMOLITION PLAN	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C2-113	NP5 DEMOLITION PLAN	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C2-702	NP EROSION CONTROL PLAN	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C2-750	EROSION CONTROL DETAILS	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C3-108	NP SITE PLAN OVERVIEW	1	08/17/2022	08/17/2022	Addendum 01 (08/17/22)
C3-109	NP1 SITE PLAN	1	08/17/2022	08/17/2022	Addendum 01 (08/17/22)
C3-110	NP2 SITE PLAN	1	08/17/2022	08/17/2022	Addendum 01 (08/17/22)
C3-111	NP3 SITE PLAN	1	08/17/2022	08/17/2022	Addendum 01 (08/17/22)
C3-112	NP4 SITE PLAN	1	08/17/2022	08/17/2022	Addendum 01 (08/17/22)
C3-113	NP5 SITE PLAN	1	08/17/2022	08/17/2022	Addendum 01 (08/17/22)
C3-501	SITE DETAILS	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C3-502	SITE DETAILS	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C3-503	CONCRETE PAVING JOINT DETAILS	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND

Drawing No.	Drawing Title	Revision	Drawing Date	Received Date	Set
					ACCESS (07/29/22)
C5-113	NP GRADING OVERVIEW	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C5-114	NP1 GRADING PLAN	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C5-115	NP2 GRADING PLAN	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C5-116	NP3 GRADING PLAN	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C5-117	NP4 GRADING PLAN	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C5-118	NP5 GRADING PLAN	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C5-210	NP COORDINATES AND ELEVATIONS TABLE	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C6-201	NP STORM PLAN & PROFILE	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C6-202	NP STORM PLAN & PROFILE	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C6-501	STORM DRAIN DETAILS	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C6-502	STORM DRAIN DETAILS	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C6-503	STORM DRAIN DETAILS	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C6-504	STORM DRAIN DETAILS	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C6-505	STORM DRAIN DETAILS	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C6-802	NP EXISTING HYDROLOGY	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C6-803	NP DEVELOPMENT HYDROLOGY	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C8-201	FORCE MAIN PLAN & PROFILE	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C8-501	FORCE MAIN DETAILS	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
C9-201	DOWNING DRIVEWAY PLAN & PROFILE	1	08/17/2022	08/17/2022	Addendum 01 (08/17/22)
C9-501	DOWNING DRIVEWAY DETAILS	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
<b>Architectural</b>					
VOL 03	COVER SHEET	0	10/07/2022	10/07/2022	BID PACKAGE 03 - ELEVATORS (10/07/22)
VOL 03-G0.01	DRAWING INDEX (ARCHITECTURAL)	0	10/07/2022	10/07/2022	BID PACKAGE 03 - ELEVATORS (10/07/22)

Drawing No.	Drawing Title	Revision	Drawing Date	Received Date	Set
					07/22)
A1.10A	FLOOR PLAN - LEVEL 01 - OVERALL	0	10/07/2022	10/07/2022	BID PACKAGE 03 - ELEVATORS (10/07/22)
A1.20A	FLOOR PLAN - LEVEL 02 - OVERALL	0	10/07/2022	10/07/2022	BID PACKAGE 03 - ELEVATORS (10/07/22)
A1.30A	FLOOR PLAN - LEVEL 03 - OVERALL	0	10/07/2022	10/07/2022	BID PACKAGE 03 - ELEVATORS (10/07/22)
A1.40A	FLOOR PLAN - LEVEL 04 - OVERALL	0	10/07/2022	10/07/2022	BID PACKAGE 03 - ELEVATORS (10/07/22)
A1.50A	FLOOR PLAN - LEVEL 05 - OVERALL	0	10/07/2022	10/07/2022	BID PACKAGE 03 - ELEVATORS (10/07/22)
A1.60A	FLOOR PLAN - LEVEL 06 - OVERALL	0	10/07/2022	10/07/2022	BID PACKAGE 03 - ELEVATORS (10/07/22)
A1.70	FLOOR PLAN - HIGH ROOF	0	10/07/2022	10/07/2022	BID PACKAGE 03 - ELEVATORS (10/07/22)
A1.71	FLOOR PLAN - HELIPAD	0	10/07/2022	10/07/2022	BID PACKAGE 03 - ELEVATORS (10/07/22)
A4.20	PUBLIC ELEVATOR PLANS AND SECTIONS	0	10/07/2022	10/07/2022	BID PACKAGE 03 - ELEVATORS (10/07/22)
A4.21	PATIENT TRANSFER ELEVATOR PLANS AND SECTIONS	0	10/07/2022	10/07/2022	BID PACKAGE 03 - ELEVATORS (10/07/22)
A4.22	STAFF / LOADING DOCK ELEVATOR PLANS AND SECTIONS	0	10/07/2022	10/07/2022	BID PACKAGE 03 - ELEVATORS (10/07/22)
A4.23	ELEVATOR DETAILS	0	10/07/2022	10/07/2022	BID PACKAGE 03 - ELEVATORS (10/07/22)
<b>Electrical</b>					
VOL 07	COVER SHEET	1	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
VOL 07-G0.01	DRAWING INDEX (ELECTRICAL)	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
ENL.00	ELECTRICAL LEGEND	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
ENL.01	ELECTRICAL SITE PLAN - NORTH LOT	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
<b>Communications</b>					
VOL 09	COVER SHEET	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
VOL 09-G0.01	DRAWING INDEX (LOW VOLTAGE)	0	07/29/2022	07/29/2022	BID PACKAGE 01 - N PARKING AND ACCESS (07/29/22)
TNS1.02	NETWORK SITE PLAN - NORTH PARKING & ACCESS	1	08/17/2022	08/17/2022	Addendum 01 (08/17/22)

**EXHIBIT D**

**Current Specifications**

Number	Description	Revision	Issued Date	Received Date	Set
<b>00 - Procurement and Contracting Requirements</b>					
00 00 00	Cover Sheet	1	10/07/22	10/07/22	BID PACKAGE 03 - ELEVATORS
00 00 01	Addendum 01 - Narrative	0	08/17/22	08/17/22	Addendum 01
00 01 05	Certifications Page	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
00 01 10	Table of Contents	2	10/07/22	10/07/22	BID PACKAGE 03 - ELEVATORS
00 31 00	Available Project Information	1	08/17/22	08/17/22	Addendum 01
00 31 00a	Geotechnical Engineering Report	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
00 31 00b	CN Environmental Assessment	0	08/17/22	08/17/22	Addendum 01
00 72 00	General Conditions	1	08/17/22	08/17/22	Addendum 01
<b>01 - General Requirements</b>					
01 25 00	Substitution Procedures	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
01 26 00	Contract Modification Procedures	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
01 29 00	Payment Procedures	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
01 31 00	Project Management and Coordination	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
01 32 00	Construction Progress Documentation	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
01 32 33	Photographic Documentation	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
01 33 00	Submittal Procedures	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
01 40 00	Quality Requirements	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
01 42 00	References	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
01 50 00	Temporary Facilities and Controls	1	08/17/22	08/17/22	Addendum 01
01 60 00	Product Requirements	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
01 73 00	Execution	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
01 74 19	Construction Waste Management and Disposal	1	08/17/22	08/17/22	Addendum 01
01 81 13	Sustainable Design Requirements	0	08/17/22	08/17/22	Addendum 01
<b>02 - Existing Conditions</b>					
02 41 13	Selective Site Demolition	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
<b>07 - Thermal and Moisture Protection</b>					
07 84 23	Penetration Fire Stopping	0	08/17/22	08/17/22	Addendum 01
<b>14 - Conveying Equipment</b>					
14 21 00	Electric Traction Elevators	0	10/07/22	10/07/22	BID PACKAGE 03 - ELEVATORS
14 21 23	Machine-Room-Less Electric Traction Elevators	0	10/07/22	10/07/22	BID PACKAGE 03 - ELEVATORS
<b>26 - Electrical</b>					
26 00 00	General Electrical Requirements	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS

Number	Description	Revision	Issued Date	Received Date	Set
26 05 19	Low-Voltage Electrical Power Conductors and Cables	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
26 05 26	Grounding and Bonding for Electrical Systems	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
26 05 33	Raceway and Boxes for Electrical Systems	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
26 05 44	Sleeves and Sleeve Seals for Electrical Raceways and Cabling	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
26 05 53	Identification for Electrical Systems	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
26 22 13	Low-Voltage Distribution Transformers	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
26 28 16	Enclosed Switches and Circuit Breakers	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
<b>27 - Communications</b>					
27 05 28	Pathways for Communications Systems	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
<b>31 - Earthwork</b>					
31 10 00	Site Clearing	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
31 22 00	Grading	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
31 23 00	Excavation and Fill	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
31 25 00	Erosion and Sedimentation Controls	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
31 37 00	Riprap	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
<b>32 - Exterior Improvements</b>					
32 11 00	Base Courses	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
32 12 00	Flexible Paving	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
32 13 00	Rigid Paving	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
32 13 73	Concrete Paving Joint Sealants	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
32 16 13	Curbs and Gutters	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
32 17 00	Paving Specialties	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
32 92 19	Seeding (Native Drill)	1	08/17/22	08/17/22	Addendum 01
32 92 23	Sodding	1	08/17/22	08/17/22	Addendum 01
<b>33 - Utilities</b>					
33 31 23	Sanitary Sewerage Force Main Piping	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS
33 40 00	Storm Drainage Utilities	0	07/29/22	07/29/22	BID PACKAGE 01 - N PARKING AND ACCESS

**EXHIBIT E**  
**SPECIAL CONDITIONS**  
**NEW CHEROKEE NATION HOSPITAL**

**Article 1: CONTRACT DOCUMENTS**

**1.1 THE CONTRACT DOCUMENTS**

1.1.2 – The contract between the Owner and Manhattan, **as well as other contract documents applicable and not included herein**, are available for review at Manhattan's main office at **5601 South 122<sup>nd</sup> East Ave., Tulsa, Oklahoma 74146**.

**Article 2: SUBCONTRACTOR**

**2.1 TIME OF PERFORMANCE**

2.2.7 – Subcontractor includes all return (comeback) work as well as remobilization efforts relating to this subcontract which are required or should be anticipated in order to carry out the work of this subcontract as intended.

2.2.7.1 – To assist in developing the Project Schedule, each Subcontractor will submit a schedule that illustrates the key components of their work and how it supports the Project Schedule within 30 days of award. Manhattan shall develop the Project schedule and durations may be altered to meet the overall completion for all trades.

2.2.7.2 – Subcontractor shall confirm approved dates of delivery to Manhattan 30 days prior to delivery. Subcontractor shall accept delivery on the established dates or be responsible for any damage resulting from his failure to take delivery of the shipment on the established dates. Promptly upon delivery, the Subcontractor, shall inspect the materials or equipment for possible shortage or damage. If shortage or Damage has been identified, subcontractor shall notify Manhattan of its plan to replace or supplement any items deemed unusable.

2.2.7.3 – Each Subcontractor as appropriate, will meet with Manhattan and the Project Scheduler throughout the duration of the project to coordinate and develop their portion of the Detailed Overall Project Schedule.

2.2.7.4 – Subcontractor shall anticipate that both overtime and weekend work as well as the normally anticipated weather impacts are to be expected. Subcontractor agrees to provide man power and equipment as required by the project schedule, including interim milestone dates, along with any overtime work required to meet the schedule should Subcontractor fall behind due to their own lack of performance and/ or as a result of inclement weather.

2.2.7.5 – Subcontractor agrees to complete any punch-list items for the work with-in **thirty (30) days** after the Substantial Completion Date.

2.2.7.6 - **Normal project working hours are from 7:00am to 5:00pm Monday through Friday and as required to maintain project schedule**. Whenever a Subcontractor desires to work at other than normal work hours he shall notify Manhattan in writing at least forty-eight (48) hours in advance. It is only with Manhattan prior approval that work may be conducted at other than normal work hours.

Failure of the Subcontractor to give such timely notice may be cause for Manhattan to require the removal or uncovering of the work performed during such time without the knowledge of Manhattan and the replacement thereof. Special arrangements can be made for emergency work or shutdowns as may be required.

## **2.4 SUBCONTRACTOR'S LIABILITY**

2.4.7 – LIQUIDATED DAMAGES - Subcontractor acknowledges and agrees that delays in completing this project could result in the assessment of Liquidated Damages or Other Damages against Manhattan in accordance with the Agreement between Manhattan and the Owner. If said damages are enacted upon Manhattan due to subcontractor failure, a proportionate share shall be enacted upon subcontractor, of which, proportionate value shall be at the sole discretion of Manhattan.

The following is an excerpt from the Agreement between Manhattan and the Owner pertaining to Liquidated Damages:

**(None)**

## **2.9 CLEANUP**

2.9.1 – Manhattan will provide dumpsters located on the project site for the disposing of construction debris. Each Subcontractor shall agree to comply with the Project Policy and Procedure for daily job clean up.

2.9.2 – Each Subcontractor shall adhere to the requirements and procedures for compliance with the (Manhattan standard policy for clean up), which may include waste separation and recycling. Dumpsters, appropriate for each type of debris, will be provided by Manhattan. Each Subcontractor will be responsible for properly sorting and disposing of all their debris into the appropriate dumpsters. Failure to comply will result in costs to the Subcontractor.

2.9.3 – All large or bulky waste items shall be broken down as to limit the filling of waste containers prematurely. Subcontractor shall provide all labor or equipment to crush, dismantle or otherwise breakdown such waste prior to depositing into dumpsters.

2.9.4 – Specific types and classifications of construction debris are not allowed to be deposited in the job site dumpsters and therefore are the Subcontractor's responsibility to remove from the job site and dispose of legally. These items include but are not limited to: 1) materials unsuitable for disposal by standard commercial procedures; 2) materials classified as environmentally hazardous or environmental contaminants; 3) highly volatile or explosive substances; 4) waste concrete; 5) residential garbage or trash from outside the project; 6) any material traditionally not accepted by landfills in the metropolitan area or being recycled through the jobsite recycling program.

2.9.5 – Each Subcontractor is responsible to leave his Work in a clean condition. This includes, but is not limited to, removal of all grease, dust, dirt, stains, labels, fingerprints, mud and other foreign matter. All Subcontractors will be responsible for control of dust generated by their operation.

2.9.6 – GENERAL CLEAN UP COMPOSITE CREW – If determined solely by Manhattan, the site is not cleanly and well kept, in addition to its responsibility for specific clean-up of its debris, each

Subcontractor, while on-site, is required to participate in a composite Project clean-up crew, for the purpose of general clean up and removal of "indefinable" debris. Each Subcontractor agrees to provide capable laborer(s), equipped with a broom, shovel, and a 1 cubic yard capacity trash buggy to participate in the composite clean-up crew as scheduled and directed by Manhattan. Each Subcontractor shall contribute labor to the composite crew at the following ratio:

A. Twelve (12) man hours per week for five (5) to fifteen (15) on-site employees.

B. Twenty-Four (24) man hours per week for sixteen (16) to thirty (30) on-site employees.

For example: 5-15 employees require a total of 12 composite crew laborer hours per week; 16-30 employees require a total of 24 composite crew laborer hours per week. Trash and debris from the composite cleaning operation will be deposited in the jobsite dumpsters provided by Manhattan. The composite clean-up crew will meet each scheduled day during the course of the project at a time and place as determined by a Manhattan designated representative.

2.9.7 – Manhattan may, at its discretion, limit the areas where employees can eat/drink inside the building. Tobacco products are strictly forbidden inside the building and/or project.

2.9.8 – The Owner's facilities and property are not to be used by any Subcontractor for the disposal of their trash or debris. Owner facilities will not be used for eating or use of any tobacco products.

2.9.9 – Trash chutes may not be installed without the prior approval of Manhattan.

2.9.10 – In accordance with **the project requirements**, airborne particulates must be kept to a minimum. Therefore, after conditioned air is provided inside the building, HEPPA filters (or an approved equal) shall be used with any vacuums. Sweeping of dirt and debris will not be allowed without use of "Clean Sweep" or product used to limit airborne dust particles.

## **2.12 APPROVALS**

2.12.2.1 – Subcontractors must expedite and follow up on all submittals and re-submittals to insure earliest possible review or approval. Field use drawings shall be issued promptly and in sufficient quantity by the Subcontractor immediately after the return of accepted documents. Time extensions will not be allowed for submissions that do not allow enough time for reasonable review, comment, and return. Time extensions will not be allowed for re-submittals that did not meet the original Contract Document requirements. Any substitutions are to be processed in the first 90 days of the project.

2.12.2.2 – DESIGN DRAWINGS - If, as a part of this Contract, Subcontractor is required to produce design drawings, such drawings shall bear the signature and seal of an engineer, licensed to practice in the State of Oklahoma. Any subsequent review of such design by Manhattan, Owner or Architect shall be for purposes of compliance with the Project Requirements only and shall not relieve the Subcontractor and its engineer from total responsibility for its design.

## **Article 3: CLAIMS AND DISPUTES**

### **3.5 SETTLEMENT OF DISPUTES**

3.5.7 – AUDITS - For all work authorized by Manhattan or Owner to be performed by Subcontractor, or its Sub-subcontractors; Subcontractor's and Sub-subcontractor's records relating to such work shall be open to audit, review, and copying by Manhattan.

3.5.8 – If Subcontractor, or any of its Sub- Subcontractor, submits or disputes an action or non-action by Manhattan or Owner, all records relating to such a claim or dispute shall be open to audit, review, and copying by Manhattan and Owner. If, subcontractor fails to substantiate their claim, all cost of Audit shall be borne by the Subcontractor.

#### **Article 4: CHANGES IN THE WORK**

##### **4.1 CHANGES IN THE WORK**

4.7 - Overhead and Fee percentages shall not exceed the rates as defined below and shall include, but not be limited to, **insurances, bonds, use of small tools, incidental safety equipment, incidentals and/or office expenses, office equipment and off site personnel:**

For Work performed by Subcontractor's own forces:

Overhead & Profit – **10%** on the first \$25,000  
- **10%** on the balance over \$25,000

For subcontracted Work:

Overhead & Profit – **5%** on the first 25,000  
- **5%** on the balance over \$25,000

##### **NOTES:**

On changes involving both additions and deletions, percentages for overhead and profit will be allowed on the net difference between the adds/deducts.

4.7.1 Subcontractor, if performing work on an approved time and material basis, shall submit time and material records for signature of hour verification to Manhattan no later than 10:00 AM the day following work being performed. All records must be signed and dated by a proper Manhattan representative. Records must be complete with proper description of work and must reference any RFI's associated with the changes. If work is not submitted and approved by proper Manhattan personnel, that portion of any T&M request may be deleted and not approved for any reimbursement.

4.7.2 Subcontractor, if performing work per Manhattan work authorization(s), shall submit all pricing recaps within a reasonable time but no more than 15 days following completion of authorized work.

#### **Article 5: PAYMENT**

##### **5.1 SCHEDULE OF VALUES**

5.1.3 – The Schedule of Values will be submitted in a format as prescribed by, and to the level of detail specified by, Manhattan, Owner, and Architect. The Schedule of Values may be modified from time to time if required by Manhattan Company, Owner, or Architect.

5.1.4 – The Schedule of Values shall include value/s for submittals, punch-list, warranty, attic stock, closeout documents & products and required mock-ups as independent line items for this scope of work. All warranties, O&M Manuals, Attic Stock and other Close-Out related items shall be submitted for review no later than Subcontractors billings achieving 75%.

## **5.2 APPLICATION FOR PAYMENT**

5.2.9 - Subcontractor shall sign project specific lien waiver forms as required by Manhattan and/or Owner in order to receive both interim and final payment.

5.2.10 – APPLICATION FOR PAYMENT - Subcontractor shall submit an Application for Payment by the **20<sup>th</sup>** of each month including all applicable backup for materials stored offsite (if allowed). and project cost to the end of the month. Unconditional progress payment releases for all Sub-Subcontractors, vendors, and service providers for the prior month shall be included.

5.2.11 – If Owner, Architect, and Manhattan agree, the Subcontractor may bill for stored materials, the following conditions must be met:

5.2.11.1 – Bill of Sale issued identifying the material as the property of the Owner.

5.2.11.2 – Evidence submitted that all materials are insured and bonded for loss of any kind either at the stored location, in transit, or on-site.

5.2.11.3 – A certificate of insurance with a loss damage clause naming Manhattan and Owner as additional insured.

5.2.11.4 – Subcontractor shall arrange and pay travel expenses for **Owner, Architect, and Foreman** Manhattan to inspect material, if requested.

5.2.11.5 – Submit photographic evidence of the stored materials.

## **Article 6: PROTECTION OF PERSON AND PROPERTY**

### **6.1 SAFETY OF PERSONS AND PROPERTY**

6.1.1 – Any Subcontractor with 25 or more employees (including Sub-subcontractors) on-site performing work shall be required to employ a full time, on-site, sole duty safety manager who shall be responsible for the overall safety compliance of the subcontractors (and Sub-subcontractors) employees.

6.1.2 – if required by Manhattan or the Owner, all employees working on the project must pass a background check inclusive of proper drug screening. All cost of background check and drug screening shall be borne by the Subcontractor.

6.1.3 - Subcontractor shall provide Manhattan with safety data including but not limited to man hours worked, LTIs, and citations for the project on a quarterly basis or more often as Manhattan may request. Near miss incidents shall be reported within 24 hours of occurrence.

6.1.4 – Manhattan may use an online system (HammerTech or similar) for training of the general safety orientation. Each Subcontractor is required to complete Manhattan's general safety orientation and pass related test utilizing the online system prior to coming onsite to perform work. The site-specific safety orientation may be presented separately at the jobsite prior to commencing onsite Work.

## **Article 11: LAWS, REGULATIONS AND ORDINANCES**

- 11.1 In regard to Article 11 of Manhattan's General Provisions:**  
**SUBCONTRACTOR IS TO COMPLY WITH ALL TRIBE NAME, TRIBAL EMPLOYMENT RIGHTS OFFICE (TERO), NATIONAL INDIAN GAMING ASSOCIATION (NIGA), AND ALL BUREAU OF INDIAN AFFAIR'S (BIA) RULES, REGULATIONS, AND LICENSING REQUIREMENTS INCLUDING ALL FEES AND ASSESSMENTS, APPLICABLE TO THIS PROJECT. TERO FEES ARE WAIVED ON THIS PROJECT.**

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

**11.1.2 – Subcontractors are to EXCLUDE the cost for Section; Title 40, § 1011; T. To assess an Employee Rights Fee of one-half (1/2) of one percent (1%) on all covered contracts. This fee is waived on this project.**

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

### **Article 13: ADDITIONAL TERMS AND CONDITIONS**

#### **13.1 LAYOUT AND ENGINEERING**

**13.1.1 – LAYOUT OF WORK -** Each Subcontractor shall lay out his own work. Each Subcontractor shall make provisions to preserve any control points established by others, such as monuments, stakes, bench marks or other datum points and shall replace at his cost any of these which might be lost or destroyed through his neglect.

**13.1.1.2 –** Each Subcontractor shall be responsible for the correct location, dimensions and elevations of his work. As the work progresses, the Subcontractor shall lay out the exact locations of work under his contract. Subcontractors shall coordinate the locations and layout of their work with the other Subcontractors.

**13.1.1.3 –** All Work shall be neatly and carefully laid out to provide the most useful space utilization and the most orderly appearance. Before proceeding with any work where exposed to view or where conflict might occur, Subcontractor shall carefully plan the layout and review any questionable installations with Manhattan.

**13.1.1.4 – Limits of Construction:** are generally delineated in the Contract Documents. These limits shall not be construed as preventing the Subcontractor from performing work outside the Limits should the contracted scope of work require such performance.

**13.1.3 -** Subcontractor is responsible for all block-outs, coring and sleeves as required to install Work in floor slabs ceilings and walls for accommodating their materials, piping or equipment.

13.1.4 - Manhattan may, at its discretion, choose to validate certain measurements throughout the project. This validation does not relieve the Subcontractor of the responsibility for its own layout.

13.1.5 – Terms and conditions on delivery tickets, backcharge or extra work tickets, purchase orders, proposals, and similar shall not be binding on Manhattan if not incorporated by change order to the Subcontract.

## **13.2 USE OF TEMPORARY FACILITES**

13.2.1 – Designated Subcontractors will be allowed to have limited on-site construction trailers. Manhattan shall determine placement and scheduled duration based on site requirements. Each Subcontractor is responsible to provide his own field offices. Each Subcontractor shall arrange and pay for installation, use, and removal of all required utilities including but not limited to, temporary water, sewer, office telephone, internet, telephone for his sub-subcontractors and workers, and electrical hookup for his and his sub-subcontractors offices.

13.2.2 – Subcontractors shall maintain the designated area for offices and sheds in a clean and orderly manner. This includes removal of weeds, debris, trash and clean-up of the area until removal of their temporary structures. The area will then be restored to the same condition prior to the temporary structures.

*13.2.3 – A limited number of on-site parking may be made available to workers and visitors in locations designated by Manhattan. A limited number of parking spaces may also be made available at the construction trailer compound for designated company vehicles properly identified. Any damages occurring to employee automobiles or vehicles shall be borne by the employee. The Owner, Engineer, and Manhattan shall not be liable for any theft or damages.*

13.2.4 – TEMPORARY FENCING - The Subcontractor shall maintain, repair or replace fencing damaged as a result of their operation. Subcontractors shall remove and replace fencing and gates required to provide access for oversized items.

13.2.5 – TEMPORARY CONSTRUCTION ACCESS - Manhattan will provide at least one site construction access point.

13.2.5.1 – Each Subcontractor shall be responsible to repair any damage done to the site construction access resulting from his operations.

**13.2.6 – TEMPORARY ELECTRICAL POWER AND LIGHTING – Manhattan, or designated others, will provide and maintain temporary power distribution, lighting, and service for the Project as follows:**

**13.2.6.1 – Eight (8) 120 volt GFI receptacles on 200 foot centers throughout the building.**

13.2.6.2 –Temporary lighting required for general construction that is consistent with OSHA standards. All other special lighting or power required for detailed and finish work shall be furnished by each Subcontractor.

13.2.6.3 – Subcontractors will provide their own special power as follows.

Each Subcontractor requiring service of capacity or characteristics other than that provided by Manhattan must make arrangements with the Electrical Subcontractor and pay for their own installation, removal, and service.

Each Subcontractor requiring service before temporary power is established will be responsible for providing power generators or supply service for the period of time needed before service is established.

Grounded Power Extension cords 12 gauge or heavier gauge, lamps, light stands, and fuses from the distribution outlets to points of use shall be provided by each Subcontractor to meet their own requirements.

All Temporary equipment and wiring for power, lighting, and distribution requirements shall be in accordance with applicable provisions of governing laws, codes and ordinances. Construction power at the source shall be 120/208 volt single phase. Protection shall be provided for the power supply source companies with disconnect switch and other required devices.

All temporary wiring and distribution equipment shall be maintained so as not to constitute a hazard to persons or property.

Each Subcontractor is responsible to provide an assured grounding program in accordance with OSHA regulations for their electrical power requirements.

All Temporary electrical installations shall be in compliance with the contract and latest N.E.C. or OSHA requirements, whichever is more stringent.

13.2.7 – SCAFFOLDING - Each Subcontractor is responsible for providing and maintaining any and all scaffolds and other staging as required to complete its work or as specified in Bid Package Scope of Work. All said scaffolds and staging equipment shall be maintained by each subcontractor in accordance with all applicable safety regulations. Scaffolding shall be a solid deck platform within ladder distance of lowest elevation point on the ceiling. All equipment/lifts required to provide access to ceiling area above scaffold deck shall be included within each Subcontractors quote. Prior to scaffold erection, all subcontractors shall include all hoisting and/or lifts required to perform their scope of work. All subcontractors shall coordinate all scaffold usage with Manhattan's field personnel.

13.2.8 – TEMPORARY STAIRS, LADDERS, RAMPS, RUNWAYS AND BARRICADES - Subcontractors shall provide all ladders, stairs, ramps, etc. required to perform their work.

13.2.8.1 – Prior to construction of the permanent exterior building perimeter wall, temporary perimeter safety railings shall be installed. Subcontractors shall coordinate the sequence of access of materials and all other operations involving the temporary removal and replacement of these safety railings with Manhattan and shall exercise due care to protect all safety railings and shall carry out all work in a manner to minimize the number of openings in safety railings. Each Subcontractor is responsible to protect any other openings installed by them or for their work. Each Subcontractor will provide any other barricades required as a consequence of its work in accordance with all local, state and federal regulations.

13.2.8.2 – DEWATERING - All pumping, bailing or well point equipment necessary to keep excavations, trenches, site utility lines, sewers, manholes, meter pits, pull boxes, etc. free from the accumulation of water during the entire excavating and backfilling progress of this work shall be the responsibility of the Subcontractor performing said excavations and trenches.

13.2.8.2.1 -MOLD PREVENTION - Subcontractor shall comply with all rules, regulations and procedures to ensure final construction is free from “Mold” or any residue which can cause future mold growth. Further and as applicable to the Work, continuous clean-up shall be required with no accumulation of waste materials or debris. The following additional cleaning procedures shall be performed. This is not “final cleanup”, but rather continual cleaning as the work is completed in order to ensure the work is clean at completion

13.2.8.3 – Each Subcontractor shall dispose of water in such a manner as will not endanger public health or cause damage or expense to public or private property and abide by the requirements of any public agencies having jurisdiction including the provision to supply a settling tank before depositing into storm sewer. Each Subcontractor shall provide for temporary metering and payment of disposal fees if required.

13.2.10 – TEMPORARY CONSTRUCTION WATER SYSTEM – A source of potable water at the Project Site will be provided. Location shall be as determined by Manhattan. All equipment, hoses and devices required to transport water away from that designated location shall be the provided by the Subcontractor

13.2.10.1 – Each Subcontractor, for its employees, will provide ice, cups, coolers and trash receptacles for its employees and labor to distribute drinking water.

### **13.3 INTERFACE AND COORDINATION**

13.3.1 – Each Subcontractor shall be subject to such Project Rules and Regulations for the conduct of the work as Manhattan or Owner may establish including but not limited to working hours, shifts, weekend work, holidays, make-up days, vehicles allowed onsite, hoisting, parking, field offices, site utilization, employee conduct, security badges and other such requirements identified by Manhattan. All employees shall be properly and completely clothed while working. Bare torsos, legs and feet will not be allowed. Possession or consumption of alcoholic beverages or non-prescription drugs or firearms or noxious behavior on the site is strictly prohibited. Violators shall be promptly removed from the site per the Safety Program and Prohibitive Articles Policy. Subcontractors will adhere to Manhattan Safety Program for this Project.

13.3.2 – Before starting work, each Subcontractor shall ascertain from Manhattan which entrances, routes or roadways shall be used for access to the work, and use only those designated for movement of personnel, materials, and vehicles to and from the work. Close coordination will be required of each Subcontractor with Manhattan, other Subcontractors, the city and others having

an interest in the Project to assure that work on the site, access to and from the site and the general conduct of operations is maintained in a safe and efficient manner, and that disruption and inconvenience to existing streets and property is minimized. Each Subcontractor is responsible to review the site and be familiar with all existing conditions within and around the Owner's property including local conditions and requirements.

13.3.4 – PROJECT MEETINGS - Manhattan shall schedule, chair, and administer regularly scheduled meetings throughout the progress of the work for the purpose of coordinating and expediting the work. Such meetings shall be held at the job site bringing together responsible representatives of Subcontractor for the purpose of planning, assessing progress, and discussing problems of mutual concern. Each Subcontractor will designate a representative who is required to attend the meetings and shall be qualified and authorized to make company decisions and follow-thru with actions required from the meetings. The representative shall also have authority to commit manpower and financial resources for their respective companies. Manhattan, at its sole discretion, may require Subcontractor to replace its representative.

13.3.5 - Subcontractor shall provide an onsite supervisor who will be responsible for compliance with laws, codes and ordinances, and work coordination for schedule, quality and compliance with the schedule and other trades as well as with Manhattan.

#### **13.4 PROTECTION OF MATERIALS, TOOLS, EQUIPMENT**

13.4.1 – All cutting and/or coring is to be submitted to Manhattan and EOR for review and approval prior to work commencing. Subcontractor shall coordinate this work with other subcontractors so as not to impact the work of others.

13.4.2 – Each Subcontractor is responsible for patching of all holes and openings made for accommodating their materials, piping or equipment. Patching is to match adjacent surfaces in materials and finish. Where patches are in fire rated construction, patches must comply with all project requirements (fire ratings, sound ratings, thermal ratings, etc.). Each Subcontractor is to utilize only tradesmen skilled in the specific finish and material involved in making the patches. All patching is to be done in a neat and workmanlike manner to the satisfaction of Manhattan and Architect. Defective work shall be corrected at no cost to Owner and Manhattan.

13.4.3 – Although Manhattan, at its own discretion, may provide on-site security services or devices, Subcontractors are responsible for protecting their own on-site office, tools, materials, supplies, and completed work from damage or theft until acceptance by the Owner.

13.4.4 – Subcontractors or any employees under their jurisdiction, shall be responsible for damages to the roofing, sheet metal, and/or roof structures while performing work on or above any roof structure. The Roofing Subcontractor shall perform all repair work at the expense of the Subcontractor responsible for the damage

#### **13.5 TESTS AND INSPECTIONS**

13.5.1 – **Owner** shall obtain and pay for an independent testing laboratory to provide Testing Services as defined in Specifications. Each Subcontractor will fully cooperate with Manhattan and the Owner's testing laboratory, and shall provide all certifications, test reports, mock-ups, samples and incidental labor, equipment and facilities required for the proper execution of this work.

13.5.2 – The Subcontractor shall be responsible for, and pay all costs associated with testing for approval of submittals, processing of substitution requests, or for the convenience of the Subcontractor.

13.5.3 – The Subcontractor shall be responsible for, and pay all costs associated with additional inspections, sampling, testing and re-testing as required when initial tests indicate work does not comply with the requirements of the Contract Documents.

13.5.4 – All other testing required by the Contract Documents, which is not provide by the Project testing laboratory, shall be borne by the Subcontractor if required to complete the work of this Subcontractor.

### **13.8 ELECTRONIC SYSTEMS AND COMMUNICATIONS**

13.8.1 - Each Subcontractor is required to provide the resources necessary to access and work in Manhattan's Project Management Collaboration System (PMIS - Procore and/or similar) in order to communicate and work electronically with Manhattan and other members of the project. This includes but is not limited to maintaining an e-mail address, providing the software and hardware necessary for such communications (for both office and field personnel), and providing personnel familiar with electronic operations to maintain such communications. Subcontractor's supervisory field personnel shall be equipped with mobile devices (tablets, iPads, etc), in order to collaborate through the PMIS system with Manhattan and other members of the project. The types of electronic documents and processes that may be utilized on the project include Bidding, Drawings, Specifications, RFI's, Submittals, Daily Reports, Scheduling, Inspections, Punchlist, Observations, RFP's, Change Event Pricing, Change Orders, Subcontract Agreement, Meeting Minutes, Letters, Notices, Bulletins, Requisitions, Pay Applications, etc.

## **ARTICLE 14: MISCELLANEOUS**

### **14.8 HOISTING AND SPECIAL RIGGING**

14.8.1 – With reference to Article 2.14 of MGP, and unless specifically stated otherwise, each Subcontractor is responsible to provide its own hoisting of personnel and materials. Subcontractor must submit a plan indicating its proposed equipment locations, including pick weight, safety factor, swing arcs, heights, staging areas, etc. and the proposed duration for use of the equipment. No such equipment may be structurally tied to the building without prior approval from proper project personnel or designers. All such equipment will be operated and maintained by trained operators in accordance with applicable safety regulations including OSHA, FAA and Manhattan. Any required access roads for hoisting equipment are to be provided and maintained by Subcontractor. Each subcontractor is responsible for its own rigging equipment, spreaders, lifting device(es) as well as any dunnage. Each subcontractor is responsible for the rigging, flagmen, radiomen, and other personnel needed for all hoisting.

14.8.2 – Subcontractor shall develop all erection and hoisting plans, schedules for joint utilization of hoisting equipment, pouring sequences and start times, etc.

14.8.3 – Material storage and material loading onto the slab-on-grade and elevated structural slabs will be coordinated with Manhattan's superintendent. No materials are to be moved on site or into the building without prior direct coordination with Manhattan's superintendent.

14.8.4 – If Subcontractor elects to utilize Manhattan’s hoisting facilities on an overtime or after-hours basis, Subcontractor will pay all wages and benefits of the crane or hoist operator, as determined by Manhattan

14.8.5 - To assist in the construction process, Manhattan will provide (1) material/man hoist at a location determined by Manhattan’s field personnel. No subcontractor will have exclusive use of this hoist. Subcontractor usage and length of use will be coordinated and established by Manhattan’s field personnel based upon priority as determined by Manhattan. In the event this hoist is not available or capable to lift Subcontractor’s material, Subcontractor will be responsible for the hoisting of those materials.

14.8.6 – To assist in the construction process, Manhattan will provide (1) crane at a location determined by Manhattan’s field personnel, until cast-in-place concrete work has been completed, at which time they will be removed from the project. No subcontractor will have exclusive use of these cranes. Subcontractor usage and length of use will be coordinated and established by Manhattan’s field personnel based upon priority as determined by Manhattan. In the event these cranes are not erected or have been removed from the jobsite, Subcontractor will be responsible for the hoisting of its materials.

#### **14.9 DELIVERIES**

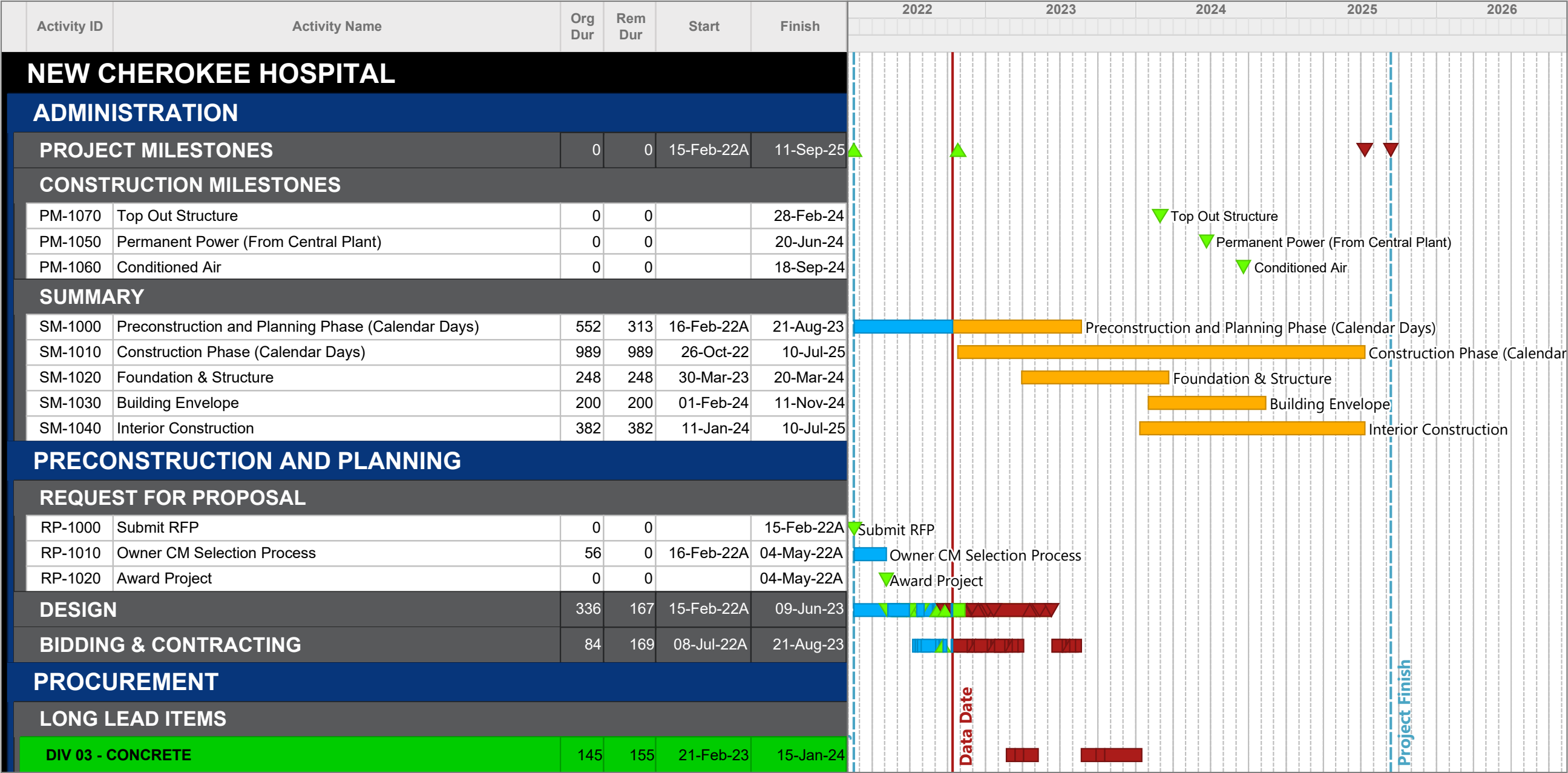
14.9.1 - All deliveries are to be coordinated through Manhattan’s Field personnel or designated representative, a minimum of seventy-two (72) hours in advance. If required by Manhattan, deliveries will be scheduled at designated hours that may be other than normal working hours, at no additional expense to Manhattan or Owner. No material shall be stored on site without prior approval of Manhattan field personnel.

#### **14.10 PRINTING**

14.10 – All documents required by Subcontractor shall be ordered by Subcontractor at Subcontractor’s expense.

#### **14.12 QUALITY CONTROL**

14.12.1 - Subcontractor will cooperate and comply with Manhattan’s Quality Control Program. This program is solely for the benefit of Manhattan and shall not be construed to replace any Subcontractors Quality and Commissioning plan or obligations.



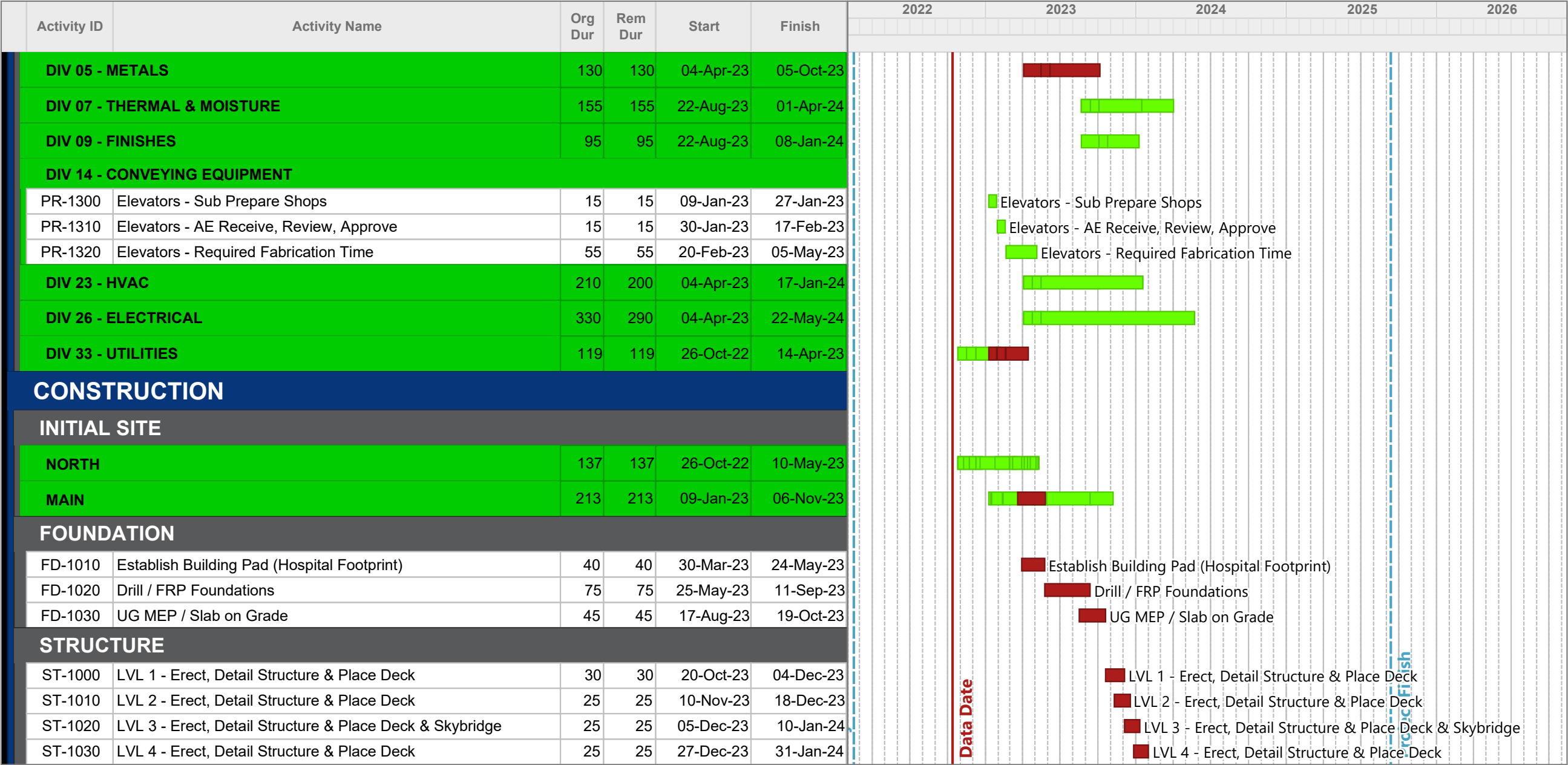
Start Date: 15-Feb-22  
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EXHIBIT F

Cherokee Nation Hospital  
Tahlequah, OK  
FM | MCC Project Number: 8078



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Activity ID	Activity Name	Org Dur	Rem Dur	Start	Finish	2022	2023	2024	2025	2026
ST-1040	LVL 5 - Erect, Detail Structure & Place Deck	20	20	18-Jan-24	14-Feb-24					
ST-1050	LVL 6 - Erect, Detail Structure & Place Deck	20	20	01-Feb-24	28-Feb-24					
ST-1070	Helipad & Penthouse - Erect, Deck & Detail	15	15	29-Feb-24	20-Mar-24					
ENVELOPE										
EN-1040	Install Precast, Stone & Panel Siding	105	105	01-Feb-24	27-Jun-24					
EN-1060	Apply Roofing System Level 1	30	30	26-Mar-24	06-May-24					
EN-1000	Frame, Sheath & Waterproof Exterior Walls & Soffits	95	95	04-Apr-24	16-Aug-24					
EN-1070	Apply Roofing System Level 4	20	20	07-May-24	04-Jun-24					
EN-1080	Apply Roofing System Level 6 & Penthouse	40	40	25-Jun-24	20-Aug-24					
EN-1010	Install Curtainwalls, Glazing & Storefronts	95	95	28-Jun-24	11-Nov-24					
EN-1090	Install Awnings, Canopies & Decorative Elements	45	45	12-Aug-24	14-Oct-24					
ROOF TOP EQUIP										
EN-1087	Set & Connect AHU 5 & AHU 5 DOAS Level 4 Roof	10	10	28-Jun-24	12-Jul-24					
EN-1085	Set & Connect AHUS 1-4 Level 1 Roof	15	15	28-Jun-24	19-Jul-24					
EN-1088	Set & Connect AHU 6-7 Level 6 Roof	10	10	21-Aug-24	04-Sep-24					
EN-1089	Set & Tie In Lab Exhaust Level 6 Roof	15	15	21-Aug-24	11-Sep-24					
EN-1100	Equipment Testing & Start Up	10	10	05-Sep-24	18-Sep-24					
INTERIOR FINISHES										
LEVEL 1										
IF-1000	Layout, Install Hangers & Frame Priority Walls	15	15	11-Jan-24	31-Jan-24					
IF-1002	Frame Walls, Soffits & Ceilings	40	40	01-Feb-24	27-Mar-24					
IF-1005	Rough-In MEPF Systems	100	100	01-Feb-24	20-Jun-24					
IF-1003	Hang, Tape & Finish Drywall	50	50	21-Aug-24	30-Oct-24					
IF-1006	Prime Paint	25	25	17-Oct-24	20-Nov-24					
IF-1007	Install Millwork, Fixtures & Accessories	30	30	31-Oct-24	13-Dec-24					
IF-1004	Install Floor Finishes, Ceiling Systems & Wall Covering	50	50	21-Nov-24	04-Feb-25					
IF-1008	MEPF Trim Out	25	25	16-Dec-24	21-Jan-25					

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Cherokee Nation Hospital  
Tahlequah, OK  
FM | MCC Project Number: 8078



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Activity ID	Activity Name	Org Dur	Rem Dur	Start	Finish	2022	2023	2024	2025	2026
IF-1010	Final Paint	15	15	05-Feb-25	25-Feb-25				■ Final Paint	
IF-1015	Final Clean and Punch	20	20	26-Feb-25	25-Mar-25				■ Final Clean and Punch	
LEVEL 2										
IF-1020	Layout, Install Hangers & Frame Priority Walls	15	15	01-Feb-24	21-Feb-24			■ Layout, Install Hangers & Frame Priority Walls		
IF-1030	Frame Walls, Soffits & Ceilings	40	40	22-Feb-24	17-Apr-24			■ Frame Walls, Soffits & Ceilings		
IF-1040	Rough-In MEPF Systems	90	90	22-Feb-24	27-Jun-24			■ Rough-In MEPF Systems		
IF-1050	Hang, Tape & Finish Drywall	45	45	19-Sep-24	20-Nov-24				■ Hang, Tape & Finish Drywall	
IF-1060	Prime Paint	25	25	07-Nov-24	13-Dec-24				■ Prime Paint	
IF-1070	Install Millwork, Fixtures & Accessories	30	30	21-Nov-24	07-Jan-25				■ Install Millwork, Fixtures & Accessories	
IF-1080	Install Floor Finishes, Ceiling Systems & Wall Covering	50	50	16-Dec-24	25-Feb-25				■ Install Floor Finishes, Ceiling Systems	
IF-1090	MEPF Trim Out	25	25	08-Jan-25	11-Feb-25				■ MEPF Trim Out	
IF-1100	Final Paint	15	15	26-Feb-25	18-Mar-25				■ Final Paint	
IF-1560	Final Clean and Punch	20	20	19-Mar-25	15-Apr-25				■ Final Clean and Punch	
LEVEL 3										
IF-1110	Layout, Install Hangers & Frame Priority Walls	15	15	15-Feb-24	06-Mar-24			■ Layout, Install Hangers & Frame Priority Walls		
IF-1120	Frame Walls, Soffits & Ceilings	40	40	07-Mar-24	01-May-24			■ Frame Walls, Soffits & Ceilings		
IF-1130	Rough-In MEPF Systems	85	85	07-Mar-24	05-Jul-24			■ Rough-In MEPF Systems		
IF-1140	Hang, Tape & Finish Drywall	45	45	17-Oct-24	20-Dec-24				■ Hang, Tape & Finish Drywall	
IF-1150	Prime Paint	25	25	09-Dec-24	14-Jan-25				■ Prime Paint	
IF-1160	Install Millwork, Fixtures & Accessories	30	30	23-Dec-24	04-Feb-25				■ Install Millwork, Fixtures & Accessories	
IF-1170	Install Floor Finishes, Ceiling Systems & Wall Covering	50	50	15-Jan-25	25-Mar-25				■ Install Floor Finishes, Ceiling System	
IF-1180	MEPF Trim Out	25	25	05-Feb-25	11-Mar-25				■ MEPF Trim Out	
IF-1190	Final Paint	15	15	26-Mar-25	15-Apr-25				■ Final Paint	
IF-1570	Final Clean and Punch	20	20	16-Apr-25	13-May-25				■ Final Clean and Punch	
LEVEL 4										
IF-1200	Layout, Install Hangers & Frame Priority Walls	15	15	29-Feb-24	20-Mar-24			■ Layout, Install Hangers & Frame Priority Walls		
IF-1210	Frame Walls, Soffits & Ceilings	40	40	21-Mar-24	15-May-24			■ Frame Walls, Soffits & Ceilings		
IF-1220	Rough-In MEPF Systems	75	75	21-Mar-24	05-Jul-24			■ Rough-In MEPF Systems		

Data Date

Project Finish

Start Date: 15-Feb-22  
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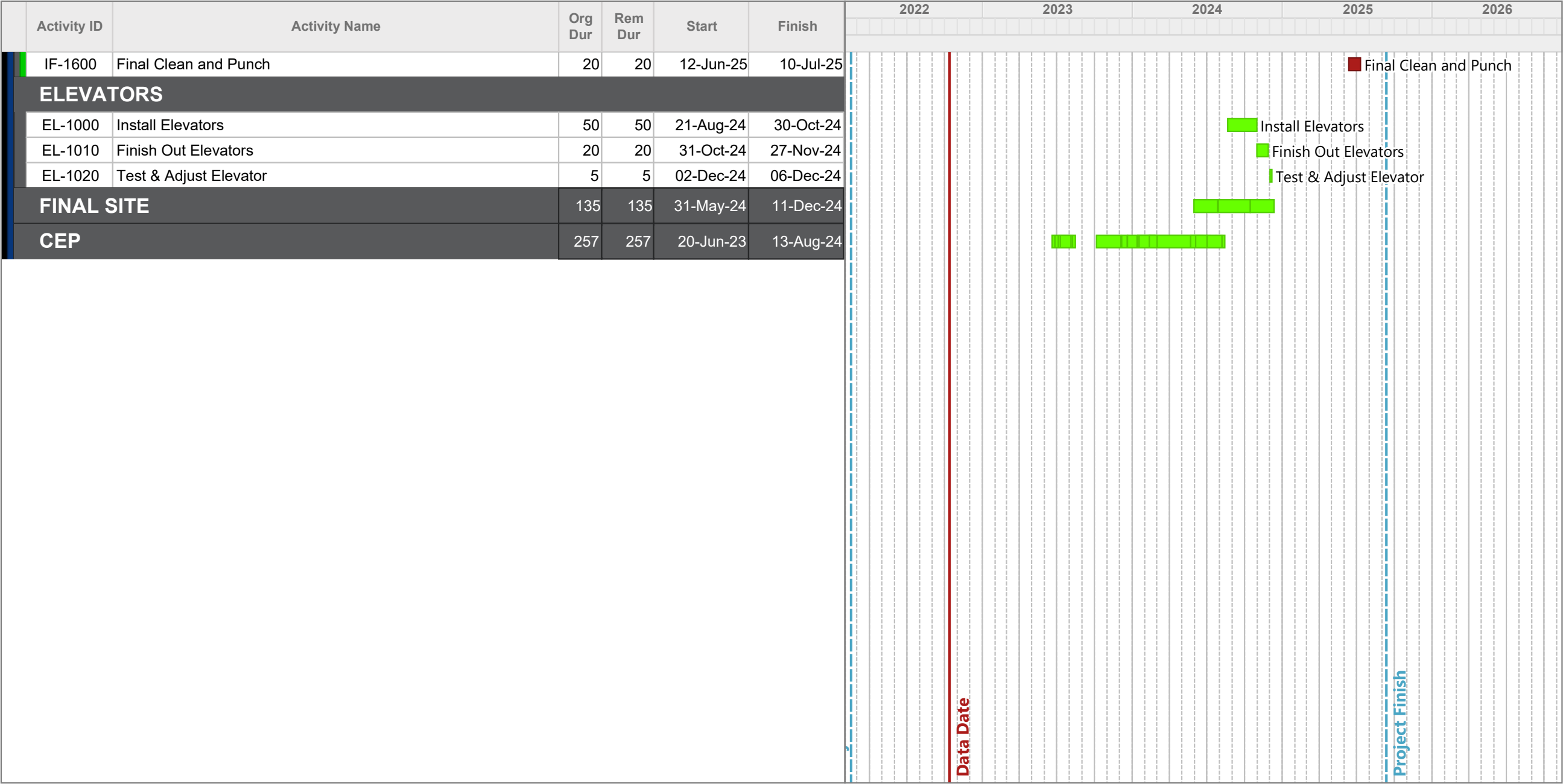
Activity ID	Activity Name	Org Dur	Rem Dur	Start	Finish	2022	2023	2024	2025	2026
IF-1230	Hang, Tape & Finish Drywall	45	45	14-Nov-24	21-Jan-25				■	Hang, Tape & Finish Drywall
IF-1240	Prime Paint	25	25	08-Jan-25	11-Feb-25				■	Prime Paint
IF-1250	Install Millwork, Fixtures & Accessories	30	30	22-Jan-25	04-Mar-25				■	Install Millwork, Fixtures & Accessories
IF-1260	Install Floor Finishes, Ceiling Systems & Wall Covering	50	50	12-Feb-25	22-Apr-25				■	Install Floor Finishes, Ceiling Systems & Wall Covering
IF-1270	MEPF Trim Out	25	25	05-Mar-25	08-Apr-25				■	MEPF Trim Out
IF-1280	Final Paint	15	15	23-Apr-25	13-May-25				■	Final Paint
IF-1580	Final Clean and Punch	20	20	14-May-25	11-Jun-25				■	Final Clean and Punch
LEVEL 5										
IF-1290	Layout, Install Hangers & Frame Priority Walls	15	15	21-Mar-24	10-Apr-24			■		Layout, Install Hangers & Frame Priority Walls
IF-1310	Rough-In MEPF Systems	30	30	11-Apr-24	22-May-24			■		Rough-In MEPF Systems
IF-1300	Frame Walls, Soffits & Ceilings	60	60	11-Apr-24	05-Jul-24			■		Frame Walls, Soffits & Ceilings
IF-1320	Hang, Tape & Finish Drywall	40	40	16-Dec-24	11-Feb-25				■	Hang, Tape & Finish Drywall
IF-1330	Prime Paint	15	15	29-Jan-25	18-Feb-25				■	Prime Paint
IF-1350	Install Floor Finishes, Ceiling Systems & Wall Covering	40	40	19-Feb-25	15-Apr-25				■	Install Floor Finishes, Ceiling Systems & Wall Covering
IF-1340	Install Millwork, Fixtures & Accessories	25	25	05-Mar-25	08-Apr-25				■	Install Millwork, Fixtures & Accessories
IF-1360	MEPF Trim Out	20	20	09-Apr-25	06-May-25				■	MEPF Trim Out
IF-1370	Final Paint	10	10	14-May-25	28-May-25				■	Final Paint
IF-1590	Final Clean and Punch	20	20	29-May-25	25-Jun-25				■	Final Clean and Punch
LEVEL 6										
IF-1380	Layout, Install Hangers & Frame Priority Walls	15	15	11-Apr-24	01-May-24			■		Layout, Install Hangers & Frame Priority Walls
IF-1390	Frame Walls, Soffits & Ceilings	35	35	02-May-24	20-Jun-24			■		Frame Walls, Soffits & Ceilings
IF-1400	Rough-In MEPF Systems	60	60	02-May-24	26-Jul-24			■		Rough-In MEPF Systems
IF-1410	Hang, Tape & Finish Drywall	40	40	15-Jan-25	11-Mar-25				■	Hang, Tape & Finish Drywall
IF-1420	Prime Paint	15	15	26-Feb-25	18-Mar-25				■	Prime Paint
IF-1440	Install Floor Finishes, Ceiling Systems & Wall Covering	40	40	19-Mar-25	13-May-25				■	Install Floor Finishes, Ceiling Systems & Wall Covering
IF-1430	Install Millwork, Fixtures & Accessories	25	25	09-Apr-25	13-May-25				■	Install Millwork, Fixtures & Accessories
IF-1450	MEPF Trim Out	20	20	14-May-25	11-Jun-25				■	MEPF Trim Out
IF-1460	Final Paint	10	10	29-May-25	11-Jun-25				■	Final Paint

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## Exhibit H – Manhattan Additional Safety Requirements

All Subcontractors, their employees, tiered subcontractors and suppliers when on site, shall adhere and comply with all OSHA, Owner's, and Manhattan's Project Safety requirements. This includes but is not limited to compliance with the following Safety Rules that may exceed OSHA requirements:

### Personal Protective Equipment

- OSHA approved eye protection (meeting ANSI Z87.1 standards) including side shields on eyeglasses are required to be worn while on the project site, except for personnel enclosed within a motor vehicle or within a temporary office.
- Hardhats shall be worn at all times.
- Each employer shall determine and provide to each of its employees appropriate gloves for work tasks and job conditions to provide a level of protection from sharp objects, abrasive surfaces, temperature extremes, hazardous chemicals, blisters, electrical and other hazards. **GLOVES MUST BE WORN AT ALL TIMES WHILE ON THE PROJECT SITE**, except for personnel enclosed within a motor vehicle or within a temporary office.
- Radios for entertainment including personal headphones or earbuds are not allowed on the jobsite.
- The use of mobile devices and cell phones is restricted to only work related activities and the use of these items is prohibited while operating any equipment.

### Fall Protection

- All workers shall be protected by 100% fall protection above six (6) feet.
- When working on all ladders, employees shall be tied-off 100% of the time when working closer than one and one-half (1-1/2) times the ladder height to an opening or the edge of the building.
- Employees shall be tied off 100% of the time when working on straight ladders or when building scaffolds above six (6) feet.

### Scaffolds

- Upon completion, scaffolds shall have and maintain a scaffold permit attached to the scaffold in full visibility of all employees at the access to the scaffold.
- Mobile scaffolds are not to be moved while a person is on the scaffold and cannot be scooted (surfed) by the person on the scaffold.

### Crane Policy

- Load Moment Indicators must stop crane operations in the event of an impending overload and are required on all cranes as specified in OSHA 1926.1400.
- Anti-two-block devices must stop crane operations in the event of an impending two-block and are required on all cranes as specified in OSHA 1926.1400. Scales, load cells, and audible warning devices are not acceptable anti-two-block alternatives.
- Tower cranes, derricks, and lattice boom cranes shall be certified annually and prior to being put into service when they are initially erected and delivered to the jobsite, reconfigured, altered, climbed, or extensively repaired. Certifications are to be completed by a third party competent person, government, or private agency recognized by the U. S. Department of Labor to perform such inspections.

### Safety Vests / Highly Visible Clothing

- As an addition to and in no way diminishing any government requirement, visibility safety vests or other equal shirts or jackets of MUTCD Class II, shall be worn at all times on Manhattan projects when the other basic PPE items of hard hats and safety glasses are required. Uniform highly visible shirts without reflective bands may be allowed when not required by regulations and meeting the minimum standards for the job set by the Manhattan superintendent.

### Safety Training

- Subcontractor agrees to conduct a weekly safety training session for upcoming work activities or job conditions with his entire crew, and submit minutes with attendance noted of said meeting to Manhattan on a weekly basis.

## Exhibit I – Specific Inclusions

**As a further clarification to, but not in any way a limitation of, the Subcontractor's assumption of obligations and responsibilities of the Agreement between Manhattan (or MCF or JV name, etc.) and the Owner, the following clauses are specifically noted and copied herein. Subcontractor shall enter similar agreements with its lower tier contracts.**

- Manhattan and Subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, and for inquiring about, discussing or disclosing compensation. Moreover, these regulations require that Manhattan and Subcontractor take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or veteran status.

FOREMAN | MANHATTAN  
Construction Team

**Construction Manager  
Contract Requirements**

## PROJECT SAFETY PLAN

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# New Cherokee Nation Hospital

Tahlequah, OK



FOREMAN | MANHATTAN  
Construction Team

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August 2022

# **PROJECT SAFETY PROGRAM**

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- Mobil Crane Inspection form
- Lift Calculation Form
- Accident Investigation Report

### **IV Crisis Management Plan**

# **Section 1**

## **Project Safety Plan**

1. **Project Safety Plan**

A. Purpose

1. Prevention of accidental injury, occupational illness and property damage and to establish methods whereby all Project employees will be actively involved in the safe construction of the Project.
2. Assure that all participating Subcontractors comply with the requirements of the Authority Having Jurisdiction at the point of operations within the construction zone.
3. Outline the safety duties and responsibilities of all parties on this Project.
4. Establish and implement a plan for safety education, training and monitoring to promote identification and elimination of hazards and unsafe acts.

B. Basic Principles of the Project Safety Plan

1. All Subcontractors shall ensure that their employees, subcontractors and suppliers, regardless of tier, understand and agree to comply with their Company Safety Program, the Project Safety Plan, the Project Documents, OSHA Standards and all other federal, state and local codes and regulations.
2. Prior to beginning work, each Subcontractor shall prepare a Hazard Analysis that defines the activity to be performed and identify the sequence of work, the specific hazards, and methods to be used to eliminate or minimize each hazard. The Hazard Analysis shall be reviewed by the Site Safety Manager and/or the Project Superintendent or their designated representatives.
3. All major subcontractors, such as Excavating, Pier Drilling, Structural Steel, Form Work, Mechanical, Electrical, Elevator, Plasterer/Drywall, Painting, Glazing, Roofing, Brick Mason/Masonry and Fire Protection must submit a Site Specific Safety Program to the FMC site management prior to the start of their work. All second and third tier subs shall adhere to their contract requirements; specific safety plan may be required for specific situations.
4. All Subcontractors shall provide their employees with the necessary safety and personal protective equipment and weather protective gear required for the performance of their work and enforce the use of same as a condition of employment. Hard hats and Hi-Vis garments are required to be worn at all times where construction activities are taking place. The wearing of eye protection with side-shields is required at all times. Required special equipment such as Personal Fall Protection or Respiratory Protection shall have specific plans that are administered by the subcontractor.
5. Each Subcontractor shall have at least one employee qualified in First Aid/CPR treatment whenever the Subcontractor has employees working on this project. Subcontractor is required to provide basic First Aid supplies for the number of employees he has on the job.
6. For emergency purposes, each Subcontractor shall submit a list to the Project Manager of key personnel with home addresses and telephone numbers.

C. Responsibility

1. Project Manager shall:

- a. Be responsible for the administration of the Project Safety Program.
- b. Assist the Project Superintendent and the Project Site safety coordinator with all matters pertaining to safety when deemed necessary and as required.

2. Project Superintendent shall:

- a. Enforce compliance with the Project Safety and HAZCOM Programs, the Project Documents, OSHA Standards and all other federal, state and local safety codes and regulations.
- b. Distribute an Emergency Response Plan for this project to all Subcontractor Safety Representatives and post copies in all trailers and offices. These Procedures shall be discussed at the Project Safety Meetings and shall be a required subject for a Toolbox Talk for all Project employees.
- c. Identify facilities for immediate first aid and/or medical/hospital treatment for all work related injuries and illnesses of employees.
- d. Regularly inspect the Project for safety compliance.
- e. Schedule weekly Project Safety Meetings.
- f. Receive all safety related correspondence and accident reports.

3. Site Safety Coordinator shall:

- a. Make daily safety inspections, ensuring coverage of the entire project each week, with a weekly written report.
- b. Notify responsible persons regarding noncompliance with the Project Safety and HAZCOM Programs, the Project Documents, OSHA Standards and all other federal, state and local safety codes and regulations.
- c. Implement and enforce the Safety Enforcement Policy.
- d. Check with Sub Safety Rep. on disposition of safety related matters.
- e. Render assistance at FMC and Subcontractor Toolbox Talks.
- f. Investigate all accidents as directed by the Project Superintendent.
- g. Issue weekly Safety Bulletins regarding pertinent safety issues.
- h. Maintain records of all FMC and Sub Safety and Toolbox Meetings.
- i. Assist the Project Superintendent with all safety related matters.
- j. Shall keep a Log of First Aid Treatment.

4. Subcontractor Safety Representative(s) shall:

- a. Ensure that their employees are trained to perform their work in a safe manner and have the ability to recognize and correct potential and actual hazards.
- b. Be responsible for the Sub Accident Reporting Requirements.
- c. Attend each weekly Project Safety Meeting.
- d. Chair their weekly Toolbox Talks or mandate that all their personnel attend the hosted weekly tool-Box Talk at 7am every Tuesday. Arrange for written minutes to be taken and copy these minutes to the Project Site safety coordinator.
- e. Work with the Project Superintendent to participate in safety audits as required.
- f. Report all safety related matters to the Project Site Safety Coordinator or Superintendent.

5. All Project Employees shall:

- a. Perform their work in a safe manner for prevention of accidents to themselves, fellow workers, the general public and property of all concerned.
- b. Attend their weekly Company Toolbox Talks.
- c. Alert their Foremen of hazards, unsafe acts and near misses.
- d. Notify their Foremen immediately of any accident.
- e. Comply with their Company Safety and HAZCOM Programs, the Project Documents, OSHA Standards and all other federal, state and local codes and regulations.
- f. All Project Employees shall be subject to fair, consistent and constructive disciplinary action for safety noncompliance. The severity of a violation shall determine the level of disciplinary action administered. See the Guide to Disciplinary Action on the next page.

The typical disciplinary action pattern is as follows:

- (1) Verbal Reprimand: The employee shall be informed verbally of the safety violation committed which, if repeated, could result in further disciplinary action.
- (2) Written Reprimand: The employee shall be notified by formal written notice of the safety violation committed and informed that future violations may result in suspension or discharge from work.
- (3) Suspension: The employee shall be suspended from working on the site for a specified period of time for the safety violation committed and informed that future violations may result in permanent removal from the project.

- (4) Termination: The employee shall be barred from the project as a result of a major safety violation or a pattern of safety violations.

GUIDE TO DISCIPLINARY ACTION				
	MINOR	SIGNIFICANT	SERIOUS	FLAGRANT
SEVERITY OF INFRACTION EXAMPLES	<ul style="list-style-type: none"> <li>- Not wearing safety glasses</li> <li>- Not wearing hard hat</li> <li>- Not wearing hearing protection</li> </ul>	<ul style="list-style-type: none"> <li>- Horseplay</li> <li>- Crossing a red barricade</li> </ul>	<ul style="list-style-type: none"> <li>- Not tying off</li> <li>- Using incomplete scaffold</li> <li>- Endangering another employee</li> </ul>	<ul style="list-style-type: none"> <li>- Knowingly endangering another employee</li> <li>- Fighting</li> </ul>
SEVERITY OF INFRACTION DEFINITIONS	A safety violation that does not immediately expose an employee to serious injury or death.	A safety violation in which the employee exposed self or others in a significant risk of injury.	A safety violation in which an employee exposed self or others to risk serious injury or death.	A safety violation in which an employee has committed an inexcusable unsafe act.
FIRST OFFENSE	VERBAL REPRIMAND	WRITTEN REPRIMAND	SUSPENSION	TERMINATION
SECOND OFFENSE	WRITTEN REPRIMAND	SUSPENSION	TERMINATION	
THIRD OFFENSE	SUSPENSION	TERMINATION		
FOURTH OFFENSE	TERMINATION			

#### E. Safety Meetings

##### 1. Weekly Project Safety Meeting

- The Project Superintendent shall schedule a weekly Safety Meeting to review accidents, injuries, and near misses, review safety related problems and plan for upcoming work activities. This will be combined with the weekly subcontractor meeting at 9am every Monday.
- The Project Safety Meeting should be attended by supervisory personnel.
- Activity Hazard analysis shall be collected from subcontractors at the meeting and any conflicts discussed.

##### 2. Weekly Toolbox Talks

- FMC will conduct a weekly Tool-Box Talk at 7am on Tuesday, Subcontractors are welcome to attend or they may hold weekly Toolbox Talks of their own. The topics of these talks shall be relevant to the work being performed by the supervisor's crew.

- b. Documentation of the weekly Toolbox Talk shall be submitted to the Project Superintendent before 3:00 P.M. each Friday.
- c. The weekly Toolbox Talk Minutes shall contain the following:
  - (1) Name of Employer and date.
  - (2) Name of the FMC Foreman or Subcontractor Safety Rep.
  - (3) Name of all employees in attendance.
  - (4) Subjects discussed.
  - (5) Safety comments and suggestions from employees.
- d. The weekly Toolbox Talk Agenda shall include, as a minimum, the following:
  - (1) Instruction in the safe planning and performance of their work.
  - (2) Review of Project accidents, near misses, hazards and unsafe acts.
  - (3) Employee suggestions and comments relating to safety.

F. Accident Reporting Requirements

1. Project Employee Injury:

- a. All on-site accidents, regardless of how incidental, including those sustained by Subcontractors, shall be reported to the Superintendent Immediately. Subcontractors shall include proper FMC site personnel as part of their First Call List for notification any time emergency response (Fire, Ambulance, police) are required.
- b. Non-incidental injuries and near misses shall be reported within 24 hours to FMC in writing as an accident/incident report that contains the following:
  - Names and addresses of victims and witnesses.
  - Description of events leading up to the accident/incident.
  - Factors that may have contributed to the accident/incident.
  - Action taken to prevent this accident/ incident in the future.
- c. The Site Safety Coordinator or Project Superintendent shall notify the Owner's Designated Rep. of all recordable injuries to any person. The notification shall describe the circumstances of the accident and any corrective action taken. The written notification shall be within 24 hours of any injury.
- d. Subcontractors shall be responsible for notifying OSHA within eight (8) hours in the event of a fatality or a single accident in which three (3) or more employees are hospitalized.

G. Subcontractor Safety Compliance Program

- 1. All Subcontractors shall, prior to their start of work, submit the names of their authorized and qualified Project Safety Representatives to the FMC Project Superintendent. All Project Safety Representatives shall be held accountable by their Companies for the immediate correction of hazards and unsafe acts and compliance with their Company Safety and HAZCOM Programs, the Project Documents, OSHA Regulations and all other federal, state and local codes and regulations by their employees and their subcontractors and suppliers, regardless of tier.
- 2. All subcontractor employees working on the project shall receive FMC Safety Orientation training prior to their first full day of work. Completion of the orientation

shall be marked with a hard-hat sticker. This sticker is site specific and not transferable to other FMC sites. Refer to item "c" in the following *Critical Work Plan*

3. Consistent with the Employee Compliance program, written warnings for subcontractor employee safety violations will be documented using the safety warning form, referenced at the back of this document.
4. To address recurring subcontractor safety violations, corrective action may include but is not limited to any of the following:
  - a. A stop work order for the specific operation or area of construction until the hazard or unsafe act is corrected.
  - b. Correction made by FMC or others and backcharged to the Subcontractor.
  - c. Written notice to the Subcontractor's Project Manager and Company President.
  - d. Replacement of the Subcontractor's Project Safety Representative, Foremen and/or crew.

#### H. Visitors

1. Persons not directly involved with the on-site construction of this Project shall not enter the site unless they are escorted by properly designated employee and obtain and wear a hard hat, vest and any other personal protective equipment required.

#### I. Conclusion

1. All employers are responsible for instructing their employees in the recognition and elimination of hazards and unsafe acts and the regulations applicable to their work.
2. Safety training, good safety practices and appropriate immediate corrective action are the keys to the prevention of accidents, loss of life and property damage. No matter how many rules and regulations are set forth, a good Safety Program depends mainly on a positive and intelligent attitude by the Management and Labor involved in the construction of this Project.

## **Section 2**

### **Critical Work Plan**

## II Critical Work Plan

The elements of this plan address some of the potential hazards associated with the scope of work and provide guidelines to eliminate or minimize those hazards.

### A. Applicable Safety Standards

1. All work shall be performed in accordance with the safety and health requirements set forth in the Code of Federal Regulations (CFR) Title 29, Part 1926, "Safety and Health Standards for the Construction Industry", and Title 29, Part 1910, "General Industry Safety and Health Standards", as well as the applicable state and local regulations.
2. Copies of the applicable OSHA standards will be made available at the site.
3. Additional requirements above the minimum standard of OSHA are described in the subcontract.

### B. Scope of Coverage

1. This plan shall apply to all contractors, subcontractors, suppliers, and lower tier subcontractors and their employees while performing work activities on this project.

### C. Employee Orientation

1. Each employer is responsible for ensuring that their employees are properly oriented:
  - Orientations shall be given to each employee on the project prior to that employee performing work.
  - Orientations shall be documented and copies shall be submitted to FMC following their completion.
  - Orientations must address specific jobsite conditions and cover all applicable FMC safety policies, local, state and federal regulations as well as authority having jurisdiction.
2. Each employee shall be provided an initial orientation that will address training and other information that will allow them to perform their work in a safe manner. The orientation shall be based on elements of this *Plan*.
3. Below is a list of the minimum topics of training. This list is not all-inclusive and shall not be considered to identify all hazards associated with construction.
  - a. Employees responsibility to work safely.
  - b. Elements of the Project Safety Plan that apply to their work.
  - c. FMC Disciplinary Action Policy
  - d. Mandatory personal protective equipment (hard hats, Vest, safety glasses, safety harnesses, etc.)
  - e. Procedure for reporting accidents/injuries.
  - f. Hazard Communication Program.
  - g. Rules and regulations for operating motor vehicles inside fence.
  - h. No Gas, CNG or Propane powered equipment.
  - i. Mandatory attendance at Safety Meetings.
  - j. How and when to use Fire Protection Equipment (fire extinguishers).
  - k. No Radios (For personal Music)

#### D. Hazard Communications Programs

##### 1. Foreman - Manhattan Construction Team (FMC)

- a. By reference of the FMC Hazard Communication Program, it is hereby incorporated in its entirety in the *Project Safety Plan*.
- b. A copy of the OSHA Hazard Communication Standard 1926.59, the Hazard Communication Program, Hazardous Chemical Inventory List and all Material Safety Data Sheets (MSDS) shall be located in the Project Field Office.

##### 2. Subcontractors

- a. Each Subcontractor/Purchase Contractor and lower tier subcontractors must submit to FMC a written Hazard Communication Program as outlined in the Occupational Safety And Health (OSHA) Code of Federal Regulations 1926.59. All Hazard Communication Programs submitted to FMC
- b. must have the following elements and be divided accordingly:
  - (1) A written HazCom program.
  - (2) Provisions for employee training. Employers need to be able to certify that their employees have been trained in all aspects of HazCom.
  - (3) An alphabetical listing of the hazardous materials that the Subcontractor will be bringing onto this Project.
  - (4) Copies of Material Safety Data Sheets for the hazardous materials that the Subcontractor will be bringing onto this Project.

***Whenever new products are brought on site by the Subcontractor, the Subcontractor's HazCom Coordinator will be responsible for bringing the Subcontractor's program up to date.***

***The information requested above must be submitted in book format with the company name, the name of a contact person (HazCom Coordinator) familiar with the HazCom program, and applicable telephone numbers, listed on the front cover.***

#### E. Working in Confined Spaces

1. When it becomes necessary to enter and conduct work activities in a confined space, a Confined Space Entry Program shall be enforced.

#### F. Temporary Electric Power

1. Temporary power shall be in compliance with the NEC and CFR 29, 1926, Subpart K. and NFPA 70E.
2. All branch circuits supplying 120 volts single phase to 15 and 20 amp receptacles shall be protected with GFC Interrupters.

3. Employees shall inspect the cords to electric power tools and extension cords prior to each use and shall remove from service any cords found to be defective.

#### G. Fall Protection

1. Employees shall be protected from the hazards of falling in accordance with OSHA regulations and FMC Safety requirements. Standard guardrails, lifelines, floor covers and personal protective equipment shall be used to meet this requirement at any elevated work over 6'.
2. Personal fall protective equipment such as safety belts, safety harnesses, lanyards, and life lines shall be inspected by the wearer before each use. Employer shall be responsible for training and documentation of all employees who use the equipment. This will include; proper fit and adjustment, sizing, anchorage, lanyard usage.
3. To further fall protection measures, FMC has implemented the following requirements to be applied to all project employees:
  - All employees, subcontractors, vendors, suppliers, and owners on a working/walking surface 6-feet or more above a lower level shall be protected by the 100% fall protection policy.
  - This 100% fall protection policy extends beyond OSHA regulations to include structural steel ironworkers and scaffold builders.
  - Acceptable fall-protection methods include personal fall-arrest systems (2 lanyards required), properly- built scaffolds, guardrail systems, safety nets, warning line systems, controlled access zones. The Project Superintendent shall review Subcontractor fall protection plans in the context of job hazard analysis discussions.
  - All overhead work shall be confined to an area clearly marked by red barricade tape at the closest working surface below the overhead work activity.

#### H. Excavations

1. Each Subcontractor requiring employees to work in excavations shall provide a Competent Person as defined by OSHA in 29 CFR, Part 1926 Subpart P, "Excavations". The Competent Person must be familiar with the requirements of Subpart P and shall determine the type of protective system to be utilized and shall perform periodic inspections of the excavation.
2. Written daily excavation inspection reports shall be signed by the Competent Person and submitted to the FMC Project Superintendent or his designated representative.
3. FMC site personnel shall also complete "Daily Excavation Inspection Report" for each excavation at the site.

#### I. Fire Protection

1. FMC will maintain temporary portable fire extinguishing equipment for building protection. Fire extinguishers of the ABC type will be provided in the quantity and size required by CFR 29 1926.150. Subcontractors shall be responsible for providing fire protection for specific tasks as necessary including but not limited to cutting, welding, soldering, and roofing operations as well as flammable/combustible material storage areas.

2. All employees shall be instructed by their employer in the proper use of fire protection equipment. Documentation of such training shall be maintained by each employer.

J. Flammable and Combustible Liquids

1. All flammable/combustible liquids shall be stored and handled in accordance with CFR 29, 1926.152.
2. Gasoline shall be stored in approved metal safety cans that are equipped with a flash arresting screen and spring-closing lid. Cans stored on site shall remain locked in flammable's cabinet when not in use.
3. No Fuel shall be stored inside the building.
4. Fire Extinguishing equipment shall be available where flammable/combustible liquids are stored.

K. First Aid

1. Each employer shall have at least one (1) Certified First Aid/CPR trained employee on site when working on this project. Each employer shall maintain a suitable first aid kit for use by its employees.
2. FMC will maintain at least one (1) First Aid cabinet in the Project Field Office. All use of FMC First Aid supplies shall be reported to the FMC superintendent and recorded on the First Aid Log located with the cabinet.

L. Medical Emergency

1. Employees suffering non life-threatening injuries shall be transported to medical facilities by their employer.
2. For all life-threatening injuries or illnesses, the employer shall immediately call for medical assistance by notifying 911 and FMC site management.
3. Other emergency telephone contact numbers shall be posted. Any call to Dispatch shall be immediately reported to FMC personnel at site.
4. As soon as possible FMC site personnel shall complete "Accident Investigation Report".

M. Hand and Power Tools

1. Each employer is responsible for the condition of the tools their employees use. Employees must be instructed in the hazards and limitations associated with the tools they use. Hand and power tools must be inspected prior to each use and removed from service when found to be defective.
2. Hand and Power tools shall be used, inspected, and maintained in accordance with the manufacturer's instructions and shall be used only for the purpose for which they were designed.
3. Power tools designed to accommodate guards shall be equipped with the guards when in use. These guards may not be field modified or shortened.

N. Scaffolds

1. Scaffolds shall be erected, modified, and dismantled ONLY under the direction of a Competent Person and shall follow the OSHA regulations outlined in CFR 29 1926.451.
2. Employees erecting, dismantling, or working from scaffolding must maintain FMC's 100% fall protection policy.
3. Upon completion, scaffolds shall have and maintain a Green Tag scaffold permit attached to the scaffold in full visibility of all employees at the access to the scaffold.
4. It is the responsibility of the designated Competent Person to tag the scaffold as Red or Green and conduct all inspections.
5. Scaffolds that are incomplete, being modified, dismantled or that are damaged shall be barricaded off with red barricade tape and red tagged incomplete.
6. Scaffolds without tags shall be considered red tagged and not for use.
7. Standard guardrail systems including top rail, mid-rail, and toe-board shall be installed on all scaffolds in accordance with OSHA regulations. Scaffold platforms that employees are working from shall be completely decked over for the entire width of the scaffold.
8. In the event that scaffold configurations or physical obstructions make it impossible to install standard guardrail system, employers shall supply a personal fall arrest system or other means of fall protection.
9. Employees shall not be allowed to pass beneath scaffolds where work is being performed overhead unless appropriate measures have been taken to protect employees from falling material.
10. All overhead work shall be confined to an area clearly marked by red barricade tape at the closest working surface below the overhead work activity.
11. Manually propelled mobile scaffolds shall only be used on a hard, level surface that is free from debris and other obstructions that could pose a hazard. Employees shall not be allowed to ride on mobile scaffolds that are being moved.

O. Ladders

1. Ladders shall be used in accordance with the requirements of CFR 29, Part 1926.1053.
2. Employees required to use ladders shall be trained in accordance with CFR 29, Part 1926.1060.
3. Ladders used to access elevated work areas shall extend at least 36" above the landing and shall be secured to prevent displacement. Guard rail opening shall be properly designed at landing to prevent worker accidentally falling through opening.

4. Employees using ladders for access to elevated work areas shall not carry tools/materials when climbing up or down a ladder.
5. Employees shall be instructed not to stand above the top two rungs of step ladders.
6. Employees shall be tied-off 100% of the time when working closer than one and one-half (1-1/2) times the ladder height to an opening or the edge of the building. (e.g. an employee using a ten (10) foot stepladder must tie-off when fifteen (15) or less from the edge of a opening or the building).
7. Employees shall be tied off 100% of the time when **working** on straight (vertical) ladders. Extension ladders used at the proper 4/1 ratio where the user is positioned between the side rails are acceptable.

P. Lockout/Tagout

1. No employee shall work on any electrical, hydraulic, steam, or other pressurized system/equipment until the system/equipment is secured from operating and all stored energy has been released as described in Lock-Out Tag-Out procedure.
2. Electrical equipment or circuits that are de-energized shall be rendered inoperative and shall have tags attached at all points where such equipment or circuits can be energized. Tags shall be placed to identify the equipment or circuits being worked on.
3. Refer to OSHA 1910.147 for specific Lock-Out procedures.

Q. Accident Reporting Requirements

1. Project Employee Injury:
  - a. All on-site accidents, regardless of how incidental, including those sustained by Subcontractors, shall be reported to the FMC Project Superintendent or his designated representative.
  - b. Subcontractors shall be individually responsible for notifying OSHA within eight (8) hours in the event of a fatality or a single accident in which three (3) or more employees are hospitalized.

R. Respirator Program

1. Employers who allow or require their employees to wear respirators shall have a written respirator program in accordance with CFR Title 29, Part 1910.134.
2. Employees allowed or required to use respirators shall be trained in the proper selection, maintenance, and limitations of respirators. Each employee shall be fit tested before using a negative pressure respirator.
3. Voluntary users of respirators (including N95 dust masks) shall complete Respiratory standard Appendix D and file paperwork with employer.
4. Licensed Asbestos workers shall comply with Repertory Protection requirements of Abatement Project Design.

5. At no Times, are unauthorized workers permitted in the Asbestos Abatement areas.

#### S. Sanitation

##### 1. Potable Water

- a. Employees shall be provided with an adequate supply of potable water. Where single use cups are provided, a trash container for used cups shall also be provided.
- b. Containers for potable water shall be conspicuously marked as containing potable water.

##### 2. Toilet Facilities

- a. Toilet facilities shall be provided and maintained in accordance with OSHA regulations. Existing site toilets may not be accessible to all zones.

#### T. Cranes and Rigging

1. Each Subcontractor using a crane shall identify, in writing, their Competent Person who will be responsible for the proper set-up and operation of the crane. A copy of this document shall be kept in the crane at all times.
2. Rigging inspections shall be performed in accordance with CFR Title 29, Part 1926.251.
3. Rigging equipment shall be inspected before each days use by the Competent Person before each lift by the employee rigging the load.
4. Load Moment Indicators will be required on all cranes.
5. Lift calculations will be required for all lifts that are over 85% of the crane's capacity according to the crane manufacturer's load charts. This shall also be documented with the FMC "Lift Calculation Form."
6. Anti-2-bloc devices will be required on all cranes.
7. Flaggers for the crane shall be trained in universal crane signals and shall have constant communication with the operator.
8. FMC "Mobil Crane Inspection Form" shall be used as a checklist by FMC site personnel prior to first lift of each new crane location.

#### U. Floor and Wall Openings

1. All floor and wall openings, 2 inches or greater in size, shall be guarded or covered. Guardrails shall be of standard construction as outlined in CFR Title 29, Part 1926.502.
2. When floor covers are used they shall be capable of withstanding the maximum intended load. Covers will be secured against displacement and marked to indicate "HOLE" or "COVER", or they shall be color coded.

3. Hole covers shall be constructed so that normal construction activities will not displace the cover from its location (wired, shot, nailed or bolted down).

V. Masonry Walls

1. Subcontractors erecting masonry walls shall do so in accordance with CFR Title 29, Part 1926.706.
2. Prior to erecting any masonry wall, a Limited Access Zone shall be established and maintained throughout construction of the wall.
3. All overhead work shall be confined to an area clearly marked by red barricade tape at the closest working surface below the overhead work activity.

W. Housekeeping

1. Job-site cleanliness is an item of major significance on this project and will be closely monitored.
2. Housekeeping shall be performed on a continuous basis. Waste materials such as wood, concrete, rebar, cardboard, plastic wrap, and other types of trash must not be allowed to accumulate and become a hazard.
3. Work areas must be kept clean AT ALL TIMES within the premises.

## **Operation Zero**

### **Statement for Subcontracts**

Operation Zero is a strategy to heighten the awareness of safety by each worker for all others, but in no way shall compromise any Regulatory Agencies' requirements and Foreman Manhattan Safety Policies and Over OSHA requirements. We understand all subcontractors and their respective workers share this same corporate mission, therefore we look forward to your support.

Foreman Manhattan and each subcontractor's corporate leadership will be asked to participate in a project specific effort to develop a site specific safety management plan, including a safety mission statement. Further, each Subcontractor should appoint a project site representation on the project safety team. Each key team member (subcontractors & Foreman Manhattan) will sign the mission statement which each project team develops, pledging to utilize the Operation Zero strategy to accomplish the project specific SMART goals.

Foreman Manhattan and subcontractors will use additional signage, posters, hardhat decals and other promotional items to let every worker know that safety is a personal and professional commitment everyone needs to make.

Operation Zero is a commitment for each worker to work hand in hand with Foreman Manhattan and subcontractors to accomplish these goals. The safety of workers on our sites is very important and we want every worker to return home to their family uninjured at the end of each day.

## **PAYMENT PROCEDURES**

### **A. Description of Work**

1. Submit Applications for Payment to Construction Manager in accord with the schedule established in the Agreement for Construction between the Construction Manager and the Contractor.
2. Related requirements in other parts of the project manual:
  - a) Lump Sum and Unit Prices: Agreement between Construction Manager and Contractor.
  - b) Progress Payment, Retainage and Final Payment: Conditions of the Contract.

### **B. Related Work Specified Elsewhere**

#### **1. Values**

Prior to submitting the first application for payment, the Contractor shall submit to the Construction Manager a schedule of values in accordance with the general conditions and supplementary conditions. The schedule shall be supported by a detailed breakdown of costs for each value, which shall be in a form with blanks to show total value, previous estimated value of work completed, and value of work completed on this estimate. The breakdown shall include percentages of completion or units completed as appropriate. The Construction Manager shall examine the schedule and breakdown and make objections, if any. Prior to submitting the first application for payment, the Contractor shall resolve all objections of the Construction Manager to the schedule of values and breakdown.

#### **2. Form of Application**

The application for payment shall be submitted typewritten on AIA Document G702 and G703. Attachments to the application for payment shall be the following:

- a) Stored Materials Invoice Tabulation Sheet.
- b) Invoices for Stored Materials.
- c) Contractor's Affidavit.

### **C. Preparation of Application for Each Progress Payment**

#### **1. Application Form (AIA G702):**

- a) Fill in required information, including that for change orders executed prior to the date of submittal of application.
- b) Fill in summary of dollar values to agree with the respective totals indicated on the continuation sheets.
- c) Execute certification with the signature of a responsible officer of the contract firm.

#### **2. Continuation Sheets (AIA G703):**

- a) Fill in total list of all scheduled component items of work, with item number and the scheduled dollar value for each item.
- b) Fill in the dollar value in each column for each scheduled line item when work has been performed. Round off values to nearest dollar.
- c) List each change order executed prior to the date of submission, at the end of the continuation sheets. List by change order number, and description, as for an original component item of work.

3. Invoices for materials stored at or near the site (in accordance with the Agreement and Supplemental Conditions) must be presented with the application for payment for materials. Invoices shall be accompanied by an attached itemized statement (tabulation) giving the following information:
  - a) Invoice number and date, name of invoice, description, and corresponding item in schedule of values.
  - b) Pay application on which first entered.
  - c) Total amount of invoice.
  - d) Value of the materials invoiced which were placed in the work as reflected on previous pay application.
  - e) Value of the materials invoiced which were placed in the work as reflected on this pay application.

D. PREPARATION OF APPLICATION FOR FINAL PAYMENT

1. Fill in application form as specified for progress payments.
2. Use continuation sheet for presenting the final statement of accounting as specified in Section 01770 - Contract Closeout.

E. SUBMITTAL PROCEDURE

1. Submit Applications for Payment to Construction Manager no later than the 20<sup>th</sup> of each month. Work performed from the 20<sup>th</sup> of the previous month and the 20<sup>th</sup> of the current month shall be included in each month's billings.
2. Number: One (1) copy of each application, affidavit, and invoices, invoice tabulation.
3. When Construction Manager finds the application properly completed and correct, he will transmit a certificate for payment to Owner.

## **SHOP DRAWINGS, PRODUCT DATA and SAMPLES**

### PART I – GENERAL

#### A. Description of Work

1. Submit shop drawings, product data and samples required by the Contract Documents.
2. Designate in the construction schedule, or in a separate coordinated schedule, the dates for submission and the dates that reviewed shop drawings, product data and samples will be needed.

#### B. Related Requirements

1. Agreement for Construction: Definitions, and Additional Responsibilities of Parties.
2. Division 1: Schedules, Submittals, Tests and Approvals.
3. Division 1: Project Record Documents.
4. Designate in the construction schedule, or in a separate coordinated schedule, the dates for submission and the dates that reviewed shop drawings, product data and samples will be needed.

#### C. Shop Drawings

1. Drawings shall be presented in a clear and thorough manner.
2. Details shall be identified by reference to sheet and detail, schedule or room numbers shown on Contract Drawings.

#### D. Product Data

1. Preparation:
  - a. Clearly mark each copy to identify pertinent products or models.
  - b. Show performance characteristics and capacities.
  - c. Show dimensions and clearances required.
  - d. Show wiring or piping diagrams and controls.
2. Manufacturer's standard schematic drawings and diagrams:
  - a. Modify drawings and diagrams to delete information which is not applicable to the Work.
  - b. Supplement standard information to provide information specifically applicable to the Work.

#### E. Samples

1. Office samples shall be of sufficient size and quantity to clearly illustrate:
  - Functional characteristics of the product, with integrally related parts and attachment devices.
  - Full range of color, texture and pattern.
2. Field samples and mock-ups:
  - Contractor shall erect, at the project site, at a location acceptable to the Construction Manager.
  - Size or area: That specified in the respective specification section.
  - Fabricate each sample and mock-up complete and finished.
  - Remove mock-ups at conclusion of Work or when acceptable to Construction Manager and Owner's Representative.

F. Contractor / Subcontractor Responsibilities

1. Review shop drawings, product data and samples prior to submission.
2. Determine and verify:
  - Field measurements.
  - Field construction criteria.
  - Catalog numbers and similar data.
  - Conformance with specifications.
3. Coordinate each submittal with requirements of the Work and of the Contract Documents.
4. Notify the Architect/Engineer and Construction Manager in writing, at time of submission, of any deviations in the submittals from requirements of the Contract Documents.
5. Begin no fabrication or work which requires submittals until return of submittals with Architect/Engineer approval.
6. Contractor's Certification:

The Contractor shall affix to each submittal drawing sheet, product booklet, and sample transmittal sheet, a stamp certifying that he has carried out in full his responsibilities regarding submittals. The stamp shall be signed and dated by the Contractor's authorized personnel. The Architect/Engineer will not review or accept submittals which do not conform to this requirement. The stamp shall contain the following information and certification:

**Name of Project & Contract Number**

Contractor's Project Number

Architect/Engineer's Project Number

Submittal Number

Drawing Reference \_\_\_\_\_

Specification Section Reference \_\_\_\_\_

CONTRACTOR'S CERTIFICATION:

Contractor has determined or verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data, and has coordinated the information within the submittal with the requirements of the Contract Documents, and assumes full responsibility for so doing.

Name of Contractor

By \_\_\_\_\_ Date \_\_\_\_\_

G. Submittal Requirements and Procedures

1. All shop drawings and submittals will be submitted by the Subcontractor / Material Supplier directly to Foreman Manhattan in accordance with Contract General and Supplementary conditions, specification sections 01 3300 Submittals, 01 6000 Product Requirements and others as they apply.
2. The Subcontractor/Supplier has the responsibility of insuring timely submissions and must indicate those on which prompt approvals are critically needed. Allow a minimum of four (4) full weeks, after receipt by Foreman Manhattan, for the submittal review process. This time frame, plus the time required for the fabrication and delivery compared to the start date on the project schedule, will give you the latest submittal requirement date.
3. As a member of the project team, you are responsible to assist Foreman Manhattan in coordinating your work with other trades. It is imperative you identify, on each shop drawing, exactly what information must be received or work completed by others in order to maintain the project schedule.
4. All Subcontractors/Suppliers will be required to maintain scheduled delivery of materials on submittals which must be revised and resubmitted, or which were rejected due to non-compliance with Contract Documents.

G. Submittal Requirements and Procedures Cont'd

5. Each submittal, drawing, certificate of compliance, equipment list, etc. shall be identified with the following information as applicable:
  - A complete index of shop drawings and product data sheets contained in the submittal packet.
  - An 8 in. x 8 in. blank space for Contractor, Architect/Engineer, and Owner stamps.
  - Date and revision dates
  - Project Title
  - Name of :
    - Owner
    - Architect
    - Contractor – Foreman Manhattan Construction Team
    - Subcontractor
    - Suppliers
    - Manufacturer
  - Identification of product or material specifically indicated
  - Identification of deviations from Contract Documents.
  - Identification of revisions on resubmittals.
  - Relation to adjacent structure or materials
  - Field dimensions, clearly identified as such
  - Reference specification section or applicable paragraphs
  - Applicable standards, such as ASTM No., etc.
6. Make submittals promptly in accordance with approved schedule, and in such sequence as to cause no delay in the work or in the work of any other contractor.
7. All submittals must be uploaded via the Foreman Manhattan Planroom Drop Box as complete packages and labeled appropriately (i.e. 03 3000 Cast-In-Place Concrete). Piecemealed submittals will be rejected. The submittal register will be made available as for reference. However, it is incumbent upon the Subcontractor/Supplier to review the contract documents for all submittal requirements. All Subcontractors/Suppliers will be required to submit submittal packages within thirty (30) days of a signed subcontract.
8. Shop drawings, product data, certificates of compliance, certified test results, samples, equipment lists and mechanical layout drawings, spare parts lists, operation and maintenance manuals, electrical diagrams, welder certifications, engineering calculations etc. must be submitted in accordance with Contract Specifications and the following procedures:
9. All submittals must be made in a timely and sequential manner consistent with good construction practice to allow time for review, action and dissemination of submittal information prior to purchase and/or installation of material or equipment. The submittal time will be in accordance with the requirements of the Project Schedule.
10. Transmittal or Cover letter - Identify on the transmittal letter the project name, subcontractor or supplier, pertinent drawing sheets, detail numbers and appropriate specification sections. List all submittal register items in the submittal package. Identify all deviations in the submittals from required in the Contract Documents.

G. Submittal Requirements and Procedures Cont'd

11. The Subcontractor/Supplier is not relieved of responsibility for any deviation from the requirements of the Contract Documents by the Architect's approval of the shop drawings, product data, or samples unless the Subcontractor has specifically informed the Architect in writing of such deviation at the time of submission and the Architect has given written approval to the specific deviation. The Subcontractor is not relieved from responsibility for errors or omissions in the shop drawings, product data, or samples by the Architect's approval. The checking for the accuracy of the shop drawings is the Subcontractor's responsibility. By reviewing and submitting shop drawings, product data, and samples, the Subcontractor represents that they have determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so and that the Subcontractor has checked and coordinated the information contained within such submittals with the requirements of the work and of the Contract Documents.
12. No Product Substitutions allowed. All product changes need to be submitted as formal design changes.
13. All deviations from the Contract Documents must be identified in writing noting the reason for deviations and shall be indicated and clouded for attention on your transmittal and submittal respectively. Only those deviations so noted will be considered for approval.
14. The approval and/or acceptance of items presented as "equal," that are later identified as of lesser value or inferior quality, will not preclude rejection of said item upon discovery by Foreman Manhattan, the Architect/Engineer or Owner.

H. Resubmission Requirements

1. Make corrections or changes in the submittals required by the Architect/Engineer and Owner and resubmit until approved.
2. Shop Drawings and Product Data:
  - Revise initial drawings or data, and resubmit as specified for the initial submittal.
  - Indicate changes which have been made other than those requested by the Architect/Engineer and Owner.
  - Provide index showing which drawings contain revisions or have been replaced with new drawings and which are resubmitted without revisions.
3. Samples: Submit new samples as required for initial submittal

I. Distribution

1. Distribute reproductions or shop drawings and copies of product data which carry the Architect/Engineer and Owner stamp to:
  - Job site file.
  - Record documents file.
  - Other affected contractors.
  - Subcontractors.
  - Supplier or fabricator.

J. Architect/Engineer Duties

1. Affix stamp and initials or signature, and indicate status.
2. Transmit approved submittals to Owner for review and approval and receive from Owner for return to Contractor.
3. Return submittals to Construction Manager for distribution, or for resubmission.

K. Owner Duties

1. Affix stamp and initials or signature, and indicate status.
2. Return submittals to Architect/Engineer for transmittal to Contractor.