

AGREEMENT FOR CONSTRUCTION MANAGEMENT AT RISK SERVICES

This Agreement made and entered into this 27th day of February, 2025 for Construction Management Services ("Agreement") is made and entered into by and between the City of Broken Arrow, Oklahoma a municipal corporation, 220 S. 1st Street, Broken Arrow, Oklahoma 74103 ("Owner") and Myers-Cherry Construction, LLC, an Oklahoma corporation whose principal office and place of business is at 824 W Jasper, Broken Arrow, OK 74011 ("Construction Manager").

WHEREAS, the Owner desires to construct the Broken Arrow Jail Renovation and Expansion ("Project") located in Broken Arrow, Oklahoma; and

WHEREAS, the Broken Arrow Justice Center is located at 2304 South 1st Place, Broken Arrow, OK 74012. It was constructed in 2003 as part of the 2000 GO Bond. In 2018 the voters of Broken Arrow approved additional funds for renovation and expansion of the existing jail facilities inside the Justice Center. Renovations to the facility could include improvements to the kitchen, the electronic security and HVAC units as well as expansion of the housing units.

WHEREAS, the Owner has engaged Narrate (Selser Shaffer) ("Architect") as Architect for the Project and has entered into an Agreement for Architectural Services with the Architect ("Owner/Architect Contract"); and

WHEREAS, the Owner has determined that the Project can be accomplished most effectively by retaining the services of a construction manager to work with the Owner, its Architect, and the various subcontractors for the Project, so that Project may be completed and ready for use at the earliest practicable date; and

WHEREAS, the Construction Manager will provide the Owner and the Architect with information and recommendations on construction technology and market conditions to insure that the building design stays within the budget, control the scheduling of construction, manage the procurement effort, superintend and inspect the construction of the building, and provide a wide range of other related services as set forth by this Agreement; and

WHEREAS, the Construction Manager is ready, willing, and able to perform such services; and

WHEREAS, the Owner has been allocated funding not to exceed \$2,900,000 for construction of the Project in the form of a Guaranteed Maximum Price ("GMP"), which amount will include the Cost of the Work as established by the Construction Manager and as set forth in Exhibit B attached to this Agreement; a sum established by the Construction Manager to cover costs of Direct Project Management support as set forth in this Agreement; the Construction Manager's Fee; and the Contingency. All savings are 100% returned to the Owner by reduction in GMP; and

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the sufficiency of which is acknowledged in this Agreement, the Owner and Construction Manager agree as follows:

ARTICLE 1 **REPRESENTATIONS AND AFFIRMATIONS**

By executing this Agreement, the Construction Manager makes the following express representations and affirmations to the Owner:

(a) The Construction Manager is professionally qualified to act as the construction manager for the Project. It is understood that the Construction Manager is required to provide for the completion, correction, and timely execution of any work that may be required, implied, or inferred by the construction documents, as necessary, to produce the intended result (the "Work");

(b) The Construction Manager will maintain all necessary licenses, or other authorizations necessary to act as Construction Manager for the Project until the Construction Manager's duties hereunder have been fully satisfied;

(c) The Construction Manager has become familiar with the Project site and the local conditions under which the Project is to be designed, constructed, and operated; and

(d) The Construction Manager assumes full responsibility to the Owner for the improper acts and omissions of its employees, subcontractors, or others employed or retained by the Construction Manager in connection with the Project. Any contract by and between the Construction Manager and any employees, subcontractors, or others employed by the Construction Manager will bind such employees, subcontractors, or others to the Construction Manager to the same extent and degree, and under the same terms and conditions, as the Construction Manager is bound to the Owner.

NOTHING CONTAINED ABOVE WILL IN ANY MANNER WHATSOEVER SUPERSEDE, LIMIT, OR RESTRICT ANY OTHER REPRESENTATION OR AFFIRMATION SET FORTH ELSEWHERE IN THIS AGREEMENT.

ARTICLE 2
PRECONSTRUCTION PHASE
DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

(a) The following terms, when used in this Agreement, will have the meanings set forth below:

- (1) "Guaranteed Maximum Price" or "GMP" means the sum of the estimated Cost of the Work, the Construction Manager's Fee, the cost of Direct Project Management services, and the Contingency.
- (2) "Substantial Completion" means that stage in the progression of the Work, as certified in writing by the Owner, when the Project is sufficiently complete in accordance with this Agreement that the Owner can enjoy beneficial use or occupancy of the Project, can utilize it for its intended purpose, and all required Occupancy permits have been received. Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion. This is the date when the product and system warranty periods start.

(b) The following preconstruction phase services are to be performed by Construction Manager:

- (1) The Construction Manager shall provide a preliminary evaluation of the Owner's program and approved budget requirements;
- (2) The Construction Manager, with the Architect, shall jointly schedule and attend regular meetings with the Owner. The Construction Manager shall consult with the Owner and Architect regarding site use and improvements, and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction technology and feasibility; the availability of materials and labor; other market conditions necessary to insure that the building's design stays within budget; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies;
- (3) When Project requirements have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project Schedule (**Exhibit A**) for the Architect's review and the Owner's approval. The Construction Manager shall assist the Owner and the Architect in creating a critical path schedule setting forth all dates related to the Project, including, without limitation, each phase of the Project's design and construction. The Construction Manager shall obtain the Architect's approval of the

portion of the preliminary Project Schedule relating to the performance of the Architect's services. The Construction Manager shall coordinate and integrate the preliminary Project Schedule with the services and activities of the Owner, Architect and Construction Manager. As design proceeds, the preliminary Project Schedule will be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and date of Substantial Completion.

- (4) When the Owner has sufficiently identified the Project requirements and the Architect has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a preliminary cost estimate utilizing area, volume, or similar conceptual estimating techniques;
- (5) When schematic design/design development documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare a detailed cost estimate with supporting data for review by the Architect and approval by the Owner. During the preparation of the construction documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager;

If any cost estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall provide an explanation and make appropriate recommendations to the Owner and Architect;

- (6) The Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design. Plans and specifications will be made available to any parties interested in obtaining them at various stages of the design process. Meetings will be held to discuss documents with prospective vendors and subcontractors. The Construction Manager, Owner and Architect will determine any prequalification criteria to be used to develop lists of acceptable bidders;
- (7) The Construction Manager shall recommend to the Owner and Architect a schedule for procurement of items anticipated as requiring long lead times; this schedule will constitute part of the Project Schedule. Upon the Owner's acceptance of the Construction Manager's recommendation(s), the Construction Manager shall enter into all contracts for such items, and Owner shall reimburse actual costs as Cost of the Work. To the extent possible, the Construction Manager shall expedite the delivery of items expected to require long lead times;
- (8) The recommendations and advice of the Construction Manager concerning design alternatives will be subject to the review and approval of the Owner and the Owner's professional consultants;
- (9) When Architect has prepared Construction Documents that are approximately ninety percent (90%) complete, the Construction Manager shall propose a Guaranteed Maximum Price ("GMP"), which shall be the sum of the estimated Cost of the Work, the Construction Manager's Fee, the cost Direct Project Management services, and the Contingency, for review by the Architect and approval by the Owner.
 - a. As the drawings and specifications may not be finished at the time the GMP proposal is prepared, the Construction Manager shall provide in the GMP for further development of the drawings and specifications by the Architect that is consistent with the construction documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope,

systems, kinds and quality of materials, finishes or equipment, all of which, if required, will be incorporated by written amendment;

- b. The Construction Manager shall include with the GMP proposal a written statement of its basis, which will include:
 - a. A list of the drawings and specifications, including all addenda thereto and the conditions of the contract, which were used in preparation of the GMP proposal;
 - b. A list of allowances and a statement of their basis;
 - c. A list of the clarifications and assumptions made by the Construction Manager in the preparation of the GMP proposal to supplement the information contained in the drawings and specifications;
 - d. The proposed GMP, including a statement of the cost organized by trade categories, allowances, contingency, and other items and the fee that comprise the GMP; and
 - e. The proposed date of commencement of construction, and the date of Substantial Completion upon which the proposed GMP is based.

- (10) The GMP will include the Contingency, a sum established by the Owner for the Owner's exclusive use to cover architect/engineering clarifications and/or for added scope of work. The Owner will review and approve, at its discretion, the Construction Manager's proposed use of the Contingency to satisfy itself that the costs are reasonable and proper for the work before the work is initiated;
- (11) The Construction Manager shall meet with the Owner and Architect to review the GMP proposal and the written statement of its basis. In the event that the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they will promptly notify the Construction Manager, who shall make appropriate adjustments to the GMP proposal, its basis or both;
- (12) The GMP proposal, including the proposed dates of commencement of construction and Substantial Completion, shall become effective upon-written acceptance by the Owner;
- (13) Prior to the Owner's acceptance of the Construction Manager's GMP proposal and issuance of a notice to proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing;
- (14) The GMP and its basis will be set forth as **Exhibit B**. The GMP will be subject to additions and deductions by a change in the Work and the date of Substantial Completion will be subject to adjustment, with the written approval of the Owner;
- (15) The Owner shall authorize and cause the Architect to revise the drawings and specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in **Exhibit B**. Such revised drawings and specifications will be furnished to the Construction Manager in accordance with the schedules agreed to by the Owner, Architect and Construction Manager. The Construction Manager shall promptly notify the Architect and Owner if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications; and
- (16) The Construction Manager shall obtain all necessary building permits and other permits required for the construction of the Project.

ARTICLE 3
CONSTRUCTION PHASE
DUTIES, OBLIGATIONS AND RESPONSIBILITIES

The following Construction phase duties, obligations and responsibilities are to be performed by the Construction Manager:

(a) The Construction Phase will commence upon: The Owner's acceptance of the Construction Manager's GMP proposal and Project Schedule, and issuance of a notice to proceed;

(b) Promptly after the Owner's acceptance of the GMP proposal, the Construction Manager shall prepare and submit for the Owner's and Architect's information a detailed schedule for the Construction Phase Work which will conform to the overall Project Schedule set forth in **Article 2 (b)(3)**, and such detailed Project Schedule will be set forth as **Exhibit A**. The schedule may be revised as necessary at appropriate intervals as required by the conditions of the Work and Project;

(c) Those portions of the Work that the Construction Manager does not customarily perform with its own personnel as part of its construction management services as set forth in this Agreement shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. Subject to the requirements of the Public Facilities Act, 61 O.S. §201 et seq., if the Construction Manager decides to bid a Work package, it must declare this intent during the pre-bid meeting. The Construction Manager shall obtain bids from subcontractors and from suppliers of materials or equipment. After analyzing the bids, the Construction Manager shall deliver such bids to the Owner and Architect along with a recommendation for award. The Owner shall then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect, which bids will be accepted by the Construction Manager. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection;

(d) Subcontracts and agreements with suppliers furnishing materials or equipment will be advertised and awarded by the Construction Manager in accordance with the State of Oklahoma and City of Broken Arrow public bidding laws;

(e) Immediately following the determination of portions of the Work that will be accomplished by the Construction Manager's own work forces, and the acceptance of subcontracts and agreements with suppliers furnishing materials or equipment, the Construction Manager shall submit a proposal to convert the GMP to a lump sum price based on the accepted bids, which will be the sum of the Cost of the Work, the Construction Manager's Fee, and the Cost of Direct Project Management services. Upon acceptance by the Owner of the lump sum proposal, the Lump Sum Price and its basis will be set forth as **Exhibit C** and incorporated herein by reference. The Lump Sum Price and the date of Substantial Completion will be subject to additions and reductions by agreed-upon, written Change Order. As used in this Agreement "Change Order" means changes or modifications to this Agreement that includes but are not limited to labor and material suppliers and is prepared and presented in accordance with Title 61, Section 121, Oklahoma Statutes, and any amendments thereto ;

(f) The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager and appropriate subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes to the Owner, Architect and subcontractors;

(g) The Construction Manager shall provide monthly written reports to the Owner and Architect on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, number of workers and/or subcontractors working on the site, Work accomplished, problems encountered and other similar relevant data as the Owner or the Architect may require. A copy of the log will be provided to the Owner and Architect;

(h) The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and

proposed changes. The Construction Manager shall identify variances between actual and estimated costs including usages of the Contingency and report the variances to the Owner and Architect at no less than monthly intervals;

(i) The Construction Manager shall ascertain that the Work is accomplished in accordance with the construction documents, applicable laws including but not limited to the Public Facilities Act, 61 O.S. §201 et seq. and the Public Competitive Bidding Act, 61 O.S. §101 et seq., statutes, City of Broken Arrow ordinances, building codes, rules and regulations and if the Construction Manager recognizes that portions of the Work are at variance therewith, the Construction Manager shall promptly notify the Architect and Owner in writing;

(j) The Construction Manager shall be responsible for review and coordination of the Work of its forces and all subcontractors to insure full compliance with all laws, regulations, ordinances, and governmental mandates relating to safety, including, but not limited to, all such laws, regulations, ordinances, and governmental mandates pertaining to fire protection, blasting, and excavation. The Construction Manager shall continuously inspect all operations, Work, materials, and equipment and shall be solely responsible for the discovery, determination, correction, and prevention of any and all conditions, which constitute a risk of bodily injury or property damage;

(k) The Construction Manager shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with performance of the Agreement. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons, or property damage, including, but not limited to bodily injury or death to persons, resulting from a material or substance encountered but not created on the site by the Construction Manager, the Construction Manager shall, upon recognizing the condition, immediately stop Work in the affected area and orally report the condition to the Owner and Architect immediately, promptly followed by a report in writing;

(l) The Construction Manager shall create and submit to the Architect detailed and comprehensive construction record drawings depicting all as-built construction. Said drawings will be submitted to the Architect upon Final Completion of the Project and receipt of same by the Architect shall be a condition precedent to final payment to the Construction Manager. As used in this Agreement "Final Completion" means the stage in the progression of the Work, as determined in writing by Owner, after Substantial Completion and the punch list of items has been satisfactorily approved by the Owner, Architect and Construction Manager;

(m) The Construction Manager shall procure the services of an independent testing laboratory to perform required material testing and will pay for the costs of such tests;

(n) The Construction Manager shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the shop drawings and the product data and shall give written notice to the Owner and the Architect of any inconsistency, ambiguity, error or omission which the Construction Manager may discover with respect to these documents proceeding with the affected Work. The issuance, or the express or implied approval by the Owner or the Architect of the Contract Documents, shop drawings or product data shall not relieve the Construction Manager of the continuing duties imposed hereby, nor shall any such approval be evidence of the Construction Manager's compliance with this Agreement. The owner has requested the Architect to prepare documents for the Project, including the Drawings, Plans and Specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. HOWEVER, THE OWNER MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONSTRUCTION MANAGER OR ANY SUBCONTRACTORS CONCERNING SUCH DOCUMENTS. By the execution hereof, the Construction Manager warrants and represents that it will review and carefully examine such documents, for completeness, accuracy, adequacy, consistency, coordination and sufficiency for construction, and that the Construction Manager has not, does not, and will not rely upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties by the Owner concerning such documents have been or are hereby made.

(o) The following terms and conditions are applicable to uncovering Work and the correction of defective and deficient Work:

- (1) If any of the Work is covered contrary to the request of the Owner or the Architect, or contrary to any provision of this Agreement, said Work shall, if required by the Owner or the Architect, be uncovered for inspection and shall be properly replaced at the Construction Manager's expense without change in the Contract Time.
- (2) If any of the Work is covered in a manner not inconsistent with **Article 3 (p)(1)** above, it shall, if required by the Owner or the Architect, be uncovered for inspection. If such Work conforms strictly with this Agreement, the cost of uncovering and proper replacement shall by Change Order be charged to the Owner. If such Work does not strictly conform with this Agreement, the Construction Manager shall pay the cost of uncovering and proper replacement.
- (3) The Construction Manager shall immediately proceed to correct Work rejected by the Owner or by the Architect as defective of failing to conform to this Agreement. The Construction Manager shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursements to the Owner for any fees and expenses of the Architect made necessary thereby;
- (4) If the Owner chooses to accept defective or nonconforming Work, the Owner may do so. In such event, the Lump Sum Price (or GMP if Lump Sum Price not yet determined) shall be reduced by the greater of (i) the reasonable costs of removing and correcting the defective or nonconforming work, or (ii) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining unpaid sum, if any, is insufficient to compensate the Owner for the acceptance of defective or nonconforming Work, the Construction Manager shall, upon written demand from the owner, pay the Owner such remaining compensation for accepting defective or nonconforming Work.
- (5) If within one (1) year after Substantial Completion of the Work, any of the Work is found to be defective or not in accordance with this Agreement, the Construction Manager shall correct it promptly upon receipt of written notice from the Owner. This obligation shall survive final payment by the Owner and termination of this Agreement;
- (6) Nothing contained in **Article 3 (p)(5)** shall establish any period of limitation with respect to other obligations which the Construction Manager has under this Agreement. Establishment of the one-year time period in **Article 3 (p)(5)** above relates only to the duty to the Construction Manager to specifically correct the work.

(p) Prior to the expiration of one (1) year after the date of Substantial Completion of the Work, the Construction Manager shall participate in the Architect's inspection of the Work with the purpose of discovering and identifying any defective, deficient or incomplete Work.

ARTICLE 4 **CONTRACT TIME**

With respect to performance of this Agreement and the Work, the Owner and the Construction Manager agree as follows:

- (a) The Contract Time will be established as approved by the Owner under **Article 2 (b)(12)** of this Agreement;
- (b) Partial use or occupancy of the Project will not result in the Project being deemed substantially complete, and such partial use or occupancy will not be evidence of Substantial Completion; and
- (c) Liquidated damages shall be payable in accordance with **Article 15(I)** below.
- (d) All limitations of time are of the essence of this Agreement.

ARTICLE 5
SERVICE SCHEDULE

At the conclusion of the preconstruction phase services, the Construction Manager shall submit for the Owner's approval a separate schedule for the performance of the Construction Manager's services within the Contract Time set forth in **Article 4**, which will include allowance for time required for the Owner's review of submissions and for approvals of authorities having jurisdiction over the Project. This schedule, when approved by the Owner, shall not, except upon written consent of the Owner, be exceeded by the Construction Manager.

ARTICLE 6
CONSTRUCTION MANAGER'S PERSONNEL

The Construction Manager shall assign only qualified personnel to perform services required under the Agreement. At the time of execution of the Agreement, the parties anticipate that the following named individuals will perform those functions indicated:

<u>NAME</u>	<u>FUNCTION</u>
David Myers	Managing Member in Charge
David Myers	Preconstruction Manager
Brian Cherry	Senior Project Manager
Trent Brown	Director of Field Operations
Vicki Lowe	Project Administrator/Project Engineer
<u>TBD</u>	Project Manager
<u>TBD</u>	Superintendent

So long as the individuals named above remain actively employed or retained by the Construction Manager, they shall perform the functions indicated next to their names. Construction Manager shall comply promptly with any request by Owner to replace any personnel performing any service on the Project. The Construction Manager reserves the right to substitute these individuals upon approval of the Owner.

ARTICLE 7
OPTIONAL DUTIES, OBLIGATIONS AND RESPONSIBILITIES
OF THE CONSTRUCTION MANAGER

During the preconstruction and construction phases of the Project, and at all times relevant thereto, the Construction Manager shall have and perform the following duties, obligations and responsibilities if authorized in writing by the Owner, and same will be paid for by the Owner as provided hereinafter:

- (a) Providing services that are required as a result of significant changes in the scope of the Project made after execution of this Agreement;
- (b) Providing services related to damaged work, provided that such services are required by causes not the responsibility of the Construction Manager or the Construction Manager's subcontractors, whether in whole or in part; and

- (c) Providing services made necessary solely by the default of the Owner or Architect.

ARTICLE 8
PROJECT RECORDS

All records relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the Construction Manager shall be made available to the Owner for inspection and copying upon written request of the Owner. Furthermore, said records will be made available, upon request by the Owner, to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, photographs, videos, or other writings of things which document the Project, its design, and its construction. Said records expressly include those documents reflecting the time expended by the Construction Manager and its personnel in performing the obligations of this Agreement and the records of performance of said Agreement. The Construction Manager shall maintain and protect these records for no less than four (4) years after final completion of the Project, or for any longer period of time as may be required by law or by good construction management practice.

ARTICLE 9
DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE OWNER

The Owner shall have and perform the following duties, obligations and responsibilities to the Construction Manager:

(a) The Owner shall provide the Construction Manager with adequate information regarding the Owner's requirements for the Project including any desired or required design or construction schedule, or both, and any budgetary requirements;

(b) The Owner shall review any documents submitted by the Construction Manager requiring the Owner's decision, and shall render any required decisions pertaining thereto in a timely manner;

(c) As may be required by law or this Agreement, the Owner may furnish any pre-existing structural, mechanical, laboratory tests, asbestos surveys, building inspections or reports;

(d) In the event the Owner becomes aware of any fault or defect of the Project, nonconformance with any agreement for construction, or of any errors, omissions or inconsistencies in the drawings or specifications, and in the further event that the Owner becomes aware the Construction Manager, through no negligence of the Construction Manager, its subcontractors, consultants, agents or employees, does not have notice of same, prompt notice thereof will be given by the Owner to the Construction Manager;

(e) The Owner shall provide the Construction Manager access to the site and to the Work as necessary for the Construction Manager to perform this Agreement;

(f) The Owner shall perform those duties set forth in this Article as expeditiously as may be reasonably necessary for the orderly progress of the Construction Manager's services and of the Work;

(g) The Owner's review of any documents prepared by the Construction Manager or submitted by the Construction Manager shall be solely for the purpose of determining whether such documents are generally consistent with the Owner's construction program and requirements. No review of such documents will relieve the Construction Manager of its responsibility for the accuracy, adequacy, fitness, suitability or coordination of its work product;

(h) The Owner has appointed and hereby confirms its appointment of the Project Engineer and Construction Administrator to act as Owner's representative(s) in connection with the Project. The

Construction Manager is authorized to deal exclusively with the Project Engineer and Construction Administrator for purposes of securing all approvals in connection with the Project; and

ARTICLE 10
THE PROJECT ARCHITECT

The Owner has retained Narrate as the Architect to perform those duties, obligations and responsibilities as may be set forth by agreement between the Owner and the Architect. With respect to said Architect retained by the Owner, the Construction Manager acknowledges and agrees as follows:

(a) The Construction Manager shall cooperate with the Architect with respect to any duties, obligations, and responsibilities of the Architect including those set forth in the Owner/Architect Contract executed by and between the Owner and the Architect. The Construction Manager acknowledges that it has received, reviewed and studied a true and correct copy of the Owner/Architect Contract. The Construction Manager's duty of cooperation will include, but will not be limited to, the duty of providing information to the Architect concerning the Project; the duty of providing requested contract documents to the Architect including those documents identified in this Agreement; the duty of meeting and consulting with the Architect concerning any matter relating to the Project; and the duty of working with the Architect with respect to any inspection, testing, or analysis of any work performed on the Project;

(b) The Construction Manager shall review and study any and all analyses, reports, and other similar documents prepared by the Architect and furnished to the Construction Manager, and the Construction Manager shall incorporate and comply with any recommendations or proposals contained therein if necessary to protect the interest of the Owner and if authorized by the Owner in writing; and

(c) The duties, obligations and responsibilities of the Construction Manager under this Agreement shall in no manner whatsoever be changed, altered, discharged, released, or satisfied by any duty, obligation or responsibility of the Architect. It is expressly acknowledged and agreed that the duties of the Construction Manager to the Owner are independent of, and are not diminished by, any duties of the Architect to the Owner.

ARTICLE 11
ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement; the accounting and control systems will be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project. The Construction Manager shall preserve these for a period of three (3) years after final payment, or for such longer period as may be required by law.

ARTICLE 12
COMPENSATION FOR PRECONSTRUCTION PHASE SERVICES

For its assumption and performance of the preconstruction duties, obligations and responsibilities set forth in this Agreement, the Construction Manager shall be paid as follows:

(a) For Work associated with the preconstruction duties, obligations and responsibilities for the Project, the Construction Manager will be paid \$ 15,000 as detailed in Exhibit B;

(b) Unless otherwise agreed in writing by the Owner, on or before the twenty-fifth (25th) day of each month after commencement of the Work, the Construction Manager shall submit an invoice to the Owner requesting fee payment for services properly rendered;

(c) In the event that the Owner becomes credibly informed that any representations of the Construction Manager as set forth in Paragraph (b) of this Article are wholly or partially inaccurate, the Owner may withhold payment of sums then or in the future otherwise due to the Construction Manager until the inaccuracy, and the cause thereof, is corrected to the Owner's reasonable satisfaction; and

(d) The Owner shall make payment to the Construction Manager of all sums properly invoiced within thirty (30) days of the Owner's receipt of said invoice.

ARTICLE 13 **CONVERSION OF GMP TO LUMP SUM PRICE**

Once bids have been received and determination has been made regarding the portions of the Work to be accomplished by Construction Manager's own forces and those to be accomplished by subcontractors, the GMP will be converted to a Lump Sum Price based on the bids accepted as set forth in **Article 3. (e)**. The Lump Sum Price is guaranteed by the Construction Manager and will not exceed the GMP. Costs and fees which would cause the Lump Sum Price to be exceeded will be paid by the Construction Manager without reimbursement by the Owner except in the event of a change in the scope of Work.

ARTICLE 14 **COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

For its assumption and performance of the construction duties, obligations and responsibilities set forth in this Agreement, the Construction Manager shall be paid as follows:

(a) Cost of the Work: Cost of the Work will include costs necessarily incurred by the Construction Manager in the proper performance of the Work.

1. The Cost of the Work will only include the following:

- a. Wages of construction workers directly employed by the Construction Manager to perform Project construction at the site or at off-site workshops, with the Owner's prior written agreement; not to include construction management personnel; and associated personnel costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions;
- b. Payments made by the Construction Manager to subcontractors in accordance with the requirements of the subcontracts;
- c. Costs for transportation of materials and equipment incorporated or to be incorporated into the completed Project, including costs of materials in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage;
- d. Costs for transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost (less salvage value) on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager will mean fair market value;

- h. Notwithstanding anything to the contrary contained elsewhere herein, costs which would cause the Lump Sum Price (or GMP if Lump Sum Price not yet determined) to be exceeded.

(b) **Construction Manager's Fee:** For its assumption and performance of the Construction Phase duties, obligations and responsibilities set forth in this Agreement and the completion of the Project by the date of Substantial Completion, the Construction Manager shall be paid a Construction Manager's Fee of 4.6 Percent (4.6%) of the Cost of the Work and the cost of Direct Project Management Services, as identified within **Exhibit B**. The Construction Manager's Fee will be billed and paid in equal monthly installments commencing with the calendar month following commencement of the Construction Phase and concluding upon the agreed date of Final Completion of the Work. The Construction Manager's Fee will specifically include the following:

1. Office overhead and profit.

(c) **Cost of Direct Project Management support:** For its assumption and performance of the construction phase duties, obligations and responsibilities set forth in this Agreement and the completion of the Project by the date of Substantial Completion, including installation of FF&E (as used in this Agreement "FF&E" means Furniture, Fixtures and Equipment), the Construction Manager will be paid the cost for Direct Project support in a lump sum amount as listed within **Exhibit B**. The Cost of Direct Project support will be billed and paid on an as occurs basis commencing with the calendar month following commencement of the construction phase and concluding upon the agreed date of Final Completion of the work. The Cost of Direct Project support will include the following:

1. Wages and salaries of the Construction Manager's supervisory and administrative personnel engaged at the Project site;
2. Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, in workshops or on the road in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work;
3. On-site facilities, including job site mobilization and set up, office trailer and furniture rental, office equipment, and office security and janitorial services;
4. On-site reproduction costs, costs of telegrams, facsimile transmissions and cellular phones, postage and express delivery charges, job office utility costs, and reasonable petty cash expenses of the site office;
5. That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work out-of-state, with the prior written approval of the Owner; and

(d) Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if: (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefore from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts will accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment will accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured. All discounts which accrue to the Owner will be credited to the Owner as a deduction from the Cost of the Work. As used in this Agreement, "Application for Payment" means an application for payment in the form of the American Institute of Architects Document G702, Application and Certificate for Payment, and American Institute of Architects Document G703, Continuation Sheets, showing by trade the Cost of the Work on the Project and the cost of materials incorporated into the Project or stored on the land, all to be stated in the Application and Certificate of Payment, which Application and Certificate of Payment will be signed by the Construction Manager, the applicable subcontractor to the Construction Manager, and the Architect and will show the percentage of completion of each construction line item on the approved budget.

ARTICLE 15 **PAYMENTS TO CONSTRUCTION MANAGER**

With respect to payments to the Construction Manager, the Owner and the Construction Manager agree as follows:

(a) As a condition precedent for any payment due under this Agreement, the Construction Manager shall submit on or before the twenty-fifth (25th) day of each month, unless otherwise agreed to in writing by the Owner, Application for Payment to the Architect and the Owner requesting progress payment due hereunder and obtain written approval for payment from the Architect. Said Application for Payment will be in such form and manner, and with such supporting data and content, as the Architect or Owner may require;

(b) In its Application for Payment, the Construction Manager may request payment for ninety-five percent (95%) of the portion of the Lump Sum Price (or GMP if Lump Sum Price not yet determined) properly allocable to Work satisfactorily completed in accordance with this Agreement, including but not limited to materials or equipment necessary for the Work and properly stored at the Project site (or elsewhere if approved in advance in writing by the Owner), less the total amount of previous payments received from the Owner, except that no retainage shall be withheld for Direct Project Management, identified in Exhibit B, or reimbursement of insurance or bond rates. The remaining five percent (5%) will be held by the Owner and neither this nor any other retainage under the Project will be subject to withdrawal by Construction Manager, in whole or in part, at any time except as provided by **Article 15 (j)**. Payment for stored materials and equipment will be conditioned upon the Construction Manager's proof, satisfactory to the Owner, that the Owner has title to such materials and equipment and will include proof of required insurance. Each such Application for Payment will be signed by the Construction Manager and will constitute the Construction Manager's representation that the Work has progressed to the level for which payment is requested, that the Work has been properly installed or performed in full accordance with this Agreement, and that the Construction Manager knows of no reason why payment should not be made as requested;

(c) Each Application for Payment will bear the signature of the Construction Manager, which signature will constitute the Construction Manager's warranty and representation to the Architect and the Owner that the services indicated in the Application for Payment have progressed to the level indicated, have been properly and timely performed as required herein, that the expenses included in the invoice have been reasonably incurred, that all obligations of the Construction Manager covered by prior invoices have been paid in full, and that, to the best of the Construction Manager's knowledge, information and informed belief, the amount requested is currently due and owing, there being no reason known to the Construction Manager that payment of any portion thereof should be withheld. Submission of the Construction Manager's Application for Payment will further constitute the Construction Manager's affirmative representation to the Owner that, upon receipt of the amount invoiced, all obligations of the Construction Manager to others, including its subcontractors, incurred in connection with the Project, to the level indicated, will be paid in full. The Construction Manager shall also furnish to the Owner properly executed

waivers of lien, in a form acceptable to the Owner, from all subcontractors, materialmen, and suppliers wherein said subcontractors, materialmen, and suppliers shall acknowledge receipt of all sums due pursuant to all prior requests for payment and waive and relinquish any liens or lien rights relating thereto. Furthermore, the Construction Manager warrants and represents that upon payment of the Application for Payment submitted, title to all Work covered thereby will immediately pass to the Owner;

(d) Thereafter, the Architect shall review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Agreement. The Application for Payment, and the Work relating thereto, may also be reviewed by the Owner for the same purposes. The Architect shall determine and approve in writing the amount, in the opinion of the Architect, properly owing to the Construction Manager. The Architect's approval of the Construction Manager's Application for Payment will not preclude the Owner from the exercise of any rights as set forth in this Agreement;

(e) The Owner shall make payments to the Construction Manager within thirty (30) days following receipt of the Architect's written approval of each Application for Payment. The amount of each payment will be the amount approved for payment by the Architect less such amounts, if any, otherwise owing by the Construction Manager to the Owner for which the Owner shall have the right to withhold as authorized by this Agreement;

(f) Upon receipt of any payment, or partial payment, from the Owner, the Construction Manager shall promptly pay all subcontractors, materialmen, laborers, and suppliers such amounts as they are entitled for the Work covered by such payment or partial payment. In the event the Owner becomes informed that the Construction Manager has not paid a subcontractor, materialmen, laborer, or supplier as provided in this Agreement, in addition to any other remedies it may have, the Owner shall have the right, but not the duty, to issue future checks and payment to the Construction Manager of amounts otherwise due hereunder naming the Construction Manager and any such subcontractor, materialmen, laborer, or supplier as joint payees. Such joint check procedure, if employed by the Owner, will create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and will not be deemed to commit the Owner to repeat the procedure in the future;

(g) No progress payment, or other payment, to the Construction Manager, nor any use or occupancy of the Project by the Owner, will be interpreted to constitute acceptance of any Work not in strict accordance with this Agreement;

(h) The Owner may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amount previously paid to the Construction Manager, to protect the Owner from loss because of:

1. Defective work not timely remedied by the Construction Manager or, in the opinion of the Owner, not likely to be remedied by the Construction Manager;
2. Claims, or potential claims of third-parties, against the Owner or the Owner's property arising out of acts or omissions of the Construction Manager;
3. Failure by the Construction Manager to pay subcontractors or others in a prompt and proper fashion;
4. Evidence that the Work will not be completed in the time required for Substantial Completion or final completion;
5. Failure or refusal by the Construction Manager to perform the Work in accordance with this Agreement; or
6. Damage to the Owner or to a third-party to whom the Owner is, or may be, liable, arising out of acts or omissions of the Construction Manager. In the event that the Owner makes written demand upon the Construction Manager for amounts previously paid by the Owner as contemplated in this subparagraph, the Construction Manager shall promptly comply with such demand;

(i) If within thirty (30) days after the date established herein for payment to the Construction Manager by the Owner, the Owner, without cause or basis hereunder, fails to pay the Construction Manager any amounts then due and payable to the Construction Manager, the Construction Manager may stop the Work until payment after first providing ten (10) days written notice to the Owner and the Architect. No interest will be due the Construction Manager for any late payment by the Owner;

(j) When the Construction Manager believes that the Work is substantially complete, the Construction Manager shall submit to the Owner and Architect a list of items to be completed or corrected. When the Owner, on the basis of an inspection, determines that the Work is in fact substantially complete, it will prepare a Certificate of Substantial Completion which will establish the date of Substantial Completion, will state the responsibilities of the Owner and the Construction Manager for Project security, maintenance, heat, utilities, damage to the Work, and insurance and will fix the time within which the Construction Manager shall complete the items listed therein. Guarantees and equipment warranties required by this Agreement will commence on the date of Substantial Completion of the Work. The Certificate of Substantial Completion will be submitted to the Construction Manager for its written acceptance of the responsibilities assigned to it in such Certificate. Upon Substantial Completion of the Work, and upon execution by the Construction Manager of the Certificate of Substantial Completion, the Owner shall pay the Construction Manager an amount sufficient to increase total payments to the Construction Manager to one hundred percent (100%) of the Lump Sum Price less one hundred fifty percent (150%) of the reasonable costs, as determined by the Owner, for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling all unsettled claims;

(k) When all of the work is timely complete and the Construction Manager is ready for a final inspection, it shall notify the Owner and the Architect thereof in writing. Thereupon, the Owner and Architect will make final inspection of the Work and, if the Work is complete in full accordance with this Agreement and this Agreement has been fully performed, the Architect will issue a final certification that the Project is complete and the Construction Manager is entitled to the remainder of the unpaid Lump Sum Price, less any amount withheld pursuant to this Agreement. If the Architect is unable to issue its final approval for payment and is required to repeat its final inspection of the Work, the Construction Manager shall bear the cost of such repeat final inspection(s), which costs may be deducted by the Owner from the Construction Manager's final payment;

(l) If the Construction Manager fails to achieve final completion within the time fixed therefor in the GMP proposal, the Construction Manager shall pay the Owner the sum of \$1000 per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set for final completion of the Work. Any sums due and payable hereunder by the Construction Manager shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Agreement. When the Owner reasonably believes that final completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Construction Manager an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Construction Manager overcomes the delay in achieving final completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Construction Manager those funds withheld, less accrued liquidated damages;

(m) As a condition precedent for final payment, the Construction Manager shall submit to the Owner and the Architect an affidavit that all sums due for labor, material, equipment, supplies, and other liabilities connected with the Work or this Agreement for which the Owner, or the Owner's property, might be responsible have been paid in full and satisfied. As a further condition precedent for payment, the Construction Manager shall furnish to the Owner releases and waivers of lien from all subcontractors of the Construction Manager and from any and all other parties required by the Owner or the Architect, along with consent of surety, if any, to final payment. If any third-party fails or refuses to provide a release of claim or waiver of lien, or lacking consent of surety, as required by the Owner or the Architect, the Construction Manager shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability. Furthermore, as a condition precedent for final payment, the Construction Manager shall furnish to the Owner all warranties, operating manuals, instruction manuals, and other similar documents required by this Agreement;

(n) The Owner shall make final payment of all sums due the Construction Manager within thirty (30) days of the Architect's execution of a final approval for payment; and

(o) Acceptance of final payment will constitute a waiver of all claims against the Owner by the Construction Manager except for those claims previously made in writing against the Owner by the Construction Manager, pending at the time of final payment, and identified in writing by the Construction Manager as unsettled at the time of its request for final payment.

ARTICLE 16 **INDEMNITY**

Construction Manager agrees to indemnify, defend and hold Owner, its employees and agents harmless from and against liability for any and all claims, demands, costs, penalties, fees (including without limitation, expert witness and attorneys' fees), damages, and liabilities whatsoever for, among other things, bodily injury, death, property damage, personal injury, economic loss and/or products liability asserted by any person or entity, resulting directly or indirectly, in whole or in part, from the acts and/or omissions of Construction Manager and/or its employees, directors, agents, subcontractors and/or consultants arising from or connected with Construction Manager's and/or its employees', directors', agents', subcontractors' and/or consultants' performance under this Agreement. Construction Manager shall defend such allegations through counsel chosen by the Construction Manager with the advice and approval of the Owner, such approval not to be unreasonably withheld. Construction Manager's obligations under this paragraph will survive the expiration or termination of this Agreement for any reason.

ARTICLE 17 **APPLICABLE LAW**

This Agreement will be governed by the laws of the State of Oklahoma, without giving force and effect to its choice of law provisions, and the United States of America. Any legal action in connection with this Agreement will be filed in District Court of Tulsa County, Oklahoma or the United States District Court for the Northern District of Oklahoma, as appropriate, to which jurisdiction and venue Construction Manager expressly agrees.

ARTICLE 18 **OWNERSHIP OF DESIGN AND CONTRACT DOCUMENTS**

The contract documents, which include but are not limited to, the schematic design/design phase documents and reports, design development phase documents, and the drawings, plans and specifications, project records, and any and all other documents or work product prepared by the Architect or the Construction Manager for the Project, will become and be the sole property of the Owner. It is specifically understood and agreed that Owner, without reservation or time limitation, may use, reproduce, modify, distribute and display all such contract documents produced by the Construction Manager for purposes relating to the Project such as renovation, repair, modification or addition thereto. Owner's right of ownership of such documents will not be construed as a representation that they are suitable for use on any other project. The Construction Manager shall be permitted to retain copies thereof for its records and for its future professional endeavors. In the event the services of the Construction Manager are, for any reason, terminated prior to completion of the Project, all drawings, sketches, Project notes, computations and such are to be delivered to the Owner in their original form and in such other form as reasonably may be required by the Owner. Owner shall not be required to pay any additional compensation to use said documents to complete the Project. If the Owner subsequently reproduces Project-related documents or creates a derivative work based upon Project-related documents, the Owner shall remove or obliterate the original professional seals, logos, and other indications on the documents of the identity of the Construction Manager, unless required by law to remain. The Construction Manager may reproduce at its cost for its records all or any part of this material.

ARTICLE 19
SUCCESSORS AND ASSIGNS

The Construction Manager shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the prior written consent of the Owner. Subject to the preceding, the Owner and the Construction Manager respectively bind themselves, their successors, legal representatives and assigns to the other party to this Agreement and to the successors, assigns and legal representatives of such other party with respect to all terms, conditions and covenants of this Agreement.

ARTICLE 20
NO THIRD PARTY BENEFICIARIES

Nothing contained in this Agreement will create a contractual relationship with, or any rights in favor of, any third party.

ARTICLE 21
INSURANCE

The Construction Manager shall purchase and maintain the following insurance in companies properly licensed and satisfactory to the Owner. Such insurance will be written for not less than the following limits:

- (a) Construction Manager's Liability Insurance
1. Workers Compensation and Employer's Liability

(a) Workers Compensation	Statutory
(b) Employer's Liability:	
(i) Each Accident	\$ 1,000,000.00
(ii) Diseases - Policy Limit	\$ 1,000,000.00
(iii) Diseases - Each Employee	\$ 1,000,000.00

 2. Commercial General Liability (policy coverage will be on an occurrence basis, and will include coverage for collapse and underground hazards)

(a) General Aggregate	\$ 2,000,000.00
(b) Products and Completed Operations Aggregate	\$ 2,000,000.00
(c) Personal and Advertising Injury	\$ 1,000,000.00
(d) Each Occurrence	\$ 1,000,000.00
(e) Fire Damage (any one fire)	\$ 500,000.00
(f) Medical Expense (any one person)	\$ 10,000.00
(g) The Construction Manager shall name the Owner and the Architect as additional insured under Public Liability Insurance. The insurance will protect the Owner and the Architect from claims arising from operations under this Agreement.	

 3. Automobile Liability (policy coverage will include any auto, hired autos, and non-owned autos)

(a) Combined Single Limit	\$ 1,000,000.00
(b) The Construction Manager shall name the Owner and Architect as additional insured under the Automobile Liability insurance policy.	

 4. Excess Liability (Umbrella Form)

(a) Occurrence	\$10,000,000.00
(b) Aggregate	\$10,000,000.00
(c) The Construction Manager shall name the Owner and Architect as additional insured under the Excess Liability insurance policy.	

5. Owner's Protective Policy with the Owner and the Architect as the named insured in the same amounts, issued by the same insurance company as the Commercial General Liability policy (subcontractors not required to obtain).

(b) Property Insurance: Until the Work is completed and accepted by the Owner, the Construction Manager shall purchase and maintain property insurance in the All-Risk form (or installation floater) on the full insurable value of the Work included under this Agreement plus \$ 9,283,503 to insure Owner furnished material and equipment installed or placed in the building prior to Substantial Completion. The Construction Manager shall name the Owner and Architect as additional insured under the Property Insurance policy.

(c) Prior to the commencement of the Work, Construction Manager shall submit to the Owner valid certificates of insurance, policies of insurance and amendatory riders or endorsements to Construction Manager's insurance policies, all in form and substance satisfactory to the Owner. Failure of Owner to demand certificates of insurance and/or policies will not constitute a waiver of the Construction Manager's responsibility to procure insurance. Nor will review and/or approval by the Owner in any way relieve Construction Manager of its responsibility for furnishing sufficient amounts and coverage of insurance. Said endorsements or amendatory riders will indicate that with respect to said additional insureds, there will be severability of interests under said insurance policies. The certificates and amendatory riders or endorsements will clearly indicate the specific coverage and will contain a provision requiring the giving of written notice to Owner at least thirty (30) days prior to the cancellation, non-renewal of any such policies, as evidenced by return receipt of United States Certified Mail.

(d) If requested by the Owner after the date hereof, the Construction Manager shall promptly procure, at the Owner's expense, liability insurance in such amounts as the Owner may request insuring against perils not listed above.

(e) If the Construction Manager fails to purchase and maintain the liability insurance required hereunder, the Owner may, but will not be obligated to, purchase such insurance on the Construction Manager's behalf and the Owner shall be entitled to be reimbursed by the Construction Manager.

(f) When any insurance required hereunder, due to the attainment of a normal expiration date or renewal date, will expire, the Construction Manager shall, not less than thirty (30) days prior to such expiration or renewal date, supply the Owner with updated replacement Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of coverage in the same manner, limits of protection, and scope of coverage, as was provided by the certificates and amendatory riders or endorsements originally supplied.

ARTICLE 22

PERFORMANCE, PAYMENT AND DEFECT BONDS

The Construction Manager shall furnish a Performance Bond, a Statutory Bond, and a Maintenance Bond in forms acceptable to the Owner. The surety on each such bond will be a duly authorized surety company satisfactory to the Owner and licensed to do business in the State of Oklahoma. The amount of each bond will be equal to 100% of the Lump Sum Price (or GMP if Lump Sum Price not yet determined). The Construction Manager shall deliver the required bonds to the Owner at least three days before the commencement of any Work at the Project site.

ARTICLE 23

CLAIMS BY THE CONSTRUCTION MANAGER

Claims by the Construction Manager are subject to the following terms and conditions:

(a) All Construction Manager claims will be initiated by written notice of claim submitted to the Owner and the Architect. Such written notice must be furnished within seven (7) days after the occurrence of the event, or the first appearance of the condition giving rise to the claim, and same must set forth all facts

and circumstances supporting the claim as are known by Construction Manager at the time of said notice. Failure by the Construction Manager to give such notice as required herein shall constitute an irrevocable waiver of any claim for additional compensation and/or extension of contract performance time arising out of or related to the claim;

(b) Pending final resolution of any claim of the Construction Manager, the Construction Manager shall diligently proceed with performance of this Agreement and the Owner shall continue to make payments to the Construction Manager in accordance with this Agreement. The resolution of any claim under this Article will be reflected by a written amendment executed by the Owner, the Architect and the Construction Manager;

(c) Should concealed and unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided for in this Agreement, be encountered below the surface of the ground or in an existing structure, the Lump Sum Price (or GMP if Lump Sum Price not yet determined) will be equitably adjusted by Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the Owner having any liability to the Construction Manager for concealed or unknown conditions, the Construction Manager must give the Owner and the Architect written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Construction Manager to make the written notice and claim as provided by this subparagraph will constitute a waiver by the Construction Manager of any claim arising out of or relating to such concealed or unknown condition;

(d) If the Construction Manager wishes to make a claim for an increase in the Lump Sum Price (or GMP if Lump Sum Price not yet determined), as a condition precedent to any liability of the Owner therefore, the Construction Manager shall give the Owner and the Architect written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Construction Manager before proceeding to execute any additional or changed Work. The failure by the Construction Manager to give such notice or to give such notice prior to executing the Work will constitute a waiver of any claim for additional compensation;

(e) In connection with any claim, as set forth in Paragraph (a) of this Article 23, by the Construction Manager against the Owner for reimbursement and/or compensation in excess of the Lump Sum Price (or GMP if Lump Sum Price not yet determined), any liability of the Owner for the Construction Manager's cost will be strictly limited to direct cost incurred by the Construction Manager and will in no event include indirect cost or consequential damages of the Construction Manager, nor will same include home office overhead, loss of bonding capacity, loss of capital, loss of efficiency, loss of productivity, or loss of profits. The Owner shall not be liable to the Construction Manager for claims of third-parties, including subcontractors, unless and until liability of the Construction Manager has been established therefore in a court of competent jurisdiction; and

(f) If the Construction Manager is delayed in prosecuting any task which at the time of the delay is then critical, or which during the delay becomes critical, as the sole result of any act or neglect to act by the Owner or someone acting in the Owner's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or other causes not reasonably anticipated and beyond the Construction Manager's control, then the date for achieving Substantial Completion of the Work will be extended upon the written notice and claim of the Construction Manager to the Owner and the Architect, for such reasonable time as the Owner may determine. A task is critical within the meaning of this subparagraph if, and only if, said task is on the critical path of the Project Schedule so that a delay in performing such task will delay the ultimate completion of the Project. Any notice and claim for an extension of time by the Construction Manager will be made not more than seven (7) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and will set forth in detail the Construction Manager's basis for requiring additional time in which to complete the Project. In the event the delay to the Construction Manager is a continuing one, only one notice and claim for additional time will be necessary. If the Construction Manager fails to make such claim as required in this subparagraph any claim for an extension of time will be waived. **FURTHERMORE, IT IS EXPRESSLY AGREED THAT AN EXTENSION OF THE CONTRACT TIME IS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO THE CONSTRUCTION MANAGER IN THE EVENT OF DELAY, EXCEPT IN THE EVENT OF A CHANGE IN THE SCOPE OF WORK, IN WHICH CASE THE CONSTRUCTION MANAGER SHALL BE**

ENTITLED TO AN EXTENSION OF TIME AND ADDITIONAL DIRECT PROJECT MANAGEMENT SUPPORT COSTS. IN NO EVENT, AND UNDER NO CIRCUMSTANCES, WILL THE FEE AGREED UPON IN THIS AGREEMENT BE INCREASED FOR, NOR WILL THE CONSTRUCTION MANAGER CLAIM, RECOVER, OR RECEIVE PAYMENT FOR, ANY COST, LOSS, EXPENSE, DAMAGES, OR COMPENSATION OF ANY KIND OR NATURE BY REASON OF ANY DELAY TO THE PROJECT, WHETHER CRITICAL OR NON-CRITICAL, AND WHETHER CAUSED IN WHOLE OR IN PART BY THE OWNER OR ANYONE ACTING ON THE OWNER'S BEHALF, EXCEPT FOR SUCH DELAYS AS ARE CAUSED SOLELY BY THE DIRECT, ACTIVE AND WILLFUL INTERFERENCE OF THE OWNER IN THE WORK OF THE CONSTRUCTION MANAGER OR SOLELY BY OWNER'S BAD FAITH. EXCEPTING ONLY DIRECT DAMAGES ARISING BECAUSE OF DELAY CAUSED SOLELY BY THE DIRECT, ACTIVE AND WILLFUL INTERFERENCE OF THE OWNER IN THE WORK OF THE CONSTRUCTION MANAGER, OR A CHANGE TO THE SCOPE OF THE WORK OR SOLELY BY OWNER'S BAD FAITH, THE CONSTRUCTION MANAGER SHALL NOT BE ENTITLED TO ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, IMPACT, OR OTHER COSTS, LOSSES, EXPENSES, OR DAMAGES, INCLUDING BUT NOT LIMITED TO THE COST OF ACCELERATION OR INEFFICIENCY, ARISING BECAUSE OF DELAY FROM ANY CAUSE WHATSOEVER, WHETHER SUCH DELAY BE REASONABLE OR UNREASONABLE, FORESEEABLE OR UNFORESEEABLE, OR AVOIDABLE OR UNAVOIDABLE.

ARTICLE 24
EQUAL EMPLOYMENT OPPORTUNITY

The Construction Manager shall fully comply with the Equal Opportunities Act, 42 U.S.C. sec. 2000e, et seq., the Equal Opportunity for Individuals with Disabilities Act, 42 U.S.C. sec. 12101 et seq., and all other federal, state, local and other governmental laws and regulations pertaining to equal employment opportunity. The Construction Manager will not discriminate against any employee or applicant for employment because of race, color, religion, gender, disability, or national origin.

The Construction Manager agrees to post in conspicuous places, available to employees and applicants for employment, all notices required by law with respect to the aforesaid policy of nondiscrimination.

ARTICLE 25
TERMINATION

This Agreement may be terminated for cause by either party upon seven (7) days written notice to the other should such other party fail to perform in accordance with its material terms through no fault of the party initiating the termination. Furthermore, this Agreement may be terminated by the Owner without cause for Owner's convenience upon seven (7) days written notice to the Construction Manager. In the event of such a termination for Owner's convenience, the Construction Manager shall be compensated for all services performed prior to the termination. In such event, the Construction Manager shall promptly submit to the Owner its invoice for final payment and reimbursement which invoice will comply with the provisions in this Agreement.

ARTICLE 26
RELATIONSHIP OF PARTIES

The relationship of the Owner and Construction Manager is one of Owner and independent contractor and not master and servant or joint ventures. Except as specifically provided in this Agreement, the Construction Manager does not have the authority to act for and on behalf of the Owner.

ARTICLE 27
INTENT AND INTERPRETATION

With respect to the intent and interpretation of this Agreement, the Owner and the Construction Manager agree as follows:

(a) Nothing contained in this Agreement will create, or be interpreted to create, privity or any other contractual agreement between the Owner and any person or entity other than the Construction Manager;

(b) When a word, term, or phrase is used in this Agreement, it will be interpreted or construed first, as defined in this Agreement; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage;

(c) The words "include," "includes," or "including," as used in this Agreement, will be deemed to be followed by the phrase, "without limitation";

(d) The specification in this Agreement of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Agreement will not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition will be deemed not to constitute a material breach of this Agreement;

(e) Words or terms used as nouns in this Agreement will be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning;

(f) In the event that any term, condition, or provision of this Agreement is determined to be invalid or unenforceable, all other terms, conditions and provisions will remain in full force and effect. Furthermore, to the extent that any term, condition or provision of this Agreement is contrary to, or conflicts with, any law of the State of Oklahoma, this Agreement will be deemed amended to comply and conform with said law;

(g) This Agreement specifically incorporates by reference the terms, conditions and provisions of 61 Okla. Stat. §§ 3 and 4, and relevant provisions of §§ 101 et. seq. and §§ 201 et. seq. as if stated verbatim in this Agreement; and

(h) Reference in this Agreement to a specific law or statute will be deemed to include and incorporate any subsequent modifications or amendments thereto.

ARTICLE 28 **COMPLIANCE WITH LAWS**

Throughout the term of this Agreement, Construction Manager shall fully comply with all applicable federal, state, and local laws, ordinances, rules, and regulations.

The Construction Manager and all subcontractors employed upon the Work shall conform to the labor laws of the State of Oklahoma and the various acts amendatory and supplementary thereto; and to all other laws, ordinances and legal requirements applicable thereto.

ARTICLE 29 **NOTICES**

Notices, invoices, communications and payments will be submitted to the offices identified below. Contractual notices and communications hereunder will be deemed to have been made three (3) business days after being deposited in the United States mail if given by registered or certified mail, return receipt requested, postage prepaid and addressed to the party to receive such notice or communication at the address given below, or such other address as may hereafter be designated by notice in writing.

OWNER:
City of Broken Arrow

CONSTRUCTION MANAGER:
Myers-Cherry Construction, LLC

220 S. 1st Street
Broken Arrow, OK 74103

824 W Jasper
Broken Arrow, OK 74011

Attn: City Clerk

Attn: David Myers

with copies to:
City of Broken Arrow
485 N. Poplar Avenue
Broken Arrow, OK 74012
Attn: Director, Engineering Services

ARTICLE 30
WAIVER

No waiver of any breach or covenant contained in this Agreement will be construed as a waiver of the covenant itself or of any subsequent breach thereof.

ARTICLE 31
ENTIRE AGREEMENT

This Agreement represents the entire agreement between the Owner and the Construction Manager and supersedes all prior communications, negotiations, representations, or agreements, either written or oral. This Agreement for Construction Management At-Risk Services may be amended only by written instrument signed by both the Owner and the Construction Manager.

EXECUTED AND DELIVERED as of the date first written above.

OWNER:

CONSTRUCTION MANAGER:

City of Broken Arrow

Myers-Cherry Construction, LLC

220 S. 1st Street
Broken Arrow, OK 74103

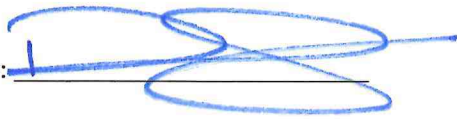
824 W Jasper
Broken Arrow, OK 74011

By: _____

Name: _____

Title: _____

Date: _____

By: 

Name: David Myers

Title: Managing Member

Date: February 27, 2025

ATTEST:

City Clerk

Approved:

City Engineer

Approved as to form:

D. Graham Parker
City Attorney

ATTEST:



Secretary

AFFIDAVIT OF CLAIMANT

STATE OF Oklahoma)
)SS
COUNTY OF Tulsa)

Contract # _____

The undersigned person, of lawful age being duly sworn on oath, says that all invoices to be submitted pursuant to this agreement with the City of Broken Arrow will be true and correct. Affiant further states that the work, services or material furnished will be completed or supplied in accordance with the plans, specifications, orders, requests or contract furnished or executed by affiant. Affiant further states that (s)he has made no payment directly or indirectly to any elected official, officer or employee of the City of Broken Arrow or any public trust where the City of Broken Arrow is a beneficiary, of money or any other thing of value to obtain payment of the invoice or procure the contract or purchase order pursuant to which an invoice is submitted. Affiant further certifies that (s)he has complied with all applicable laws regarding equal employment opportunity.

Company: Myers-Cherry Construction, LLC
TIN#: 83-3857883
Title: Managing Member
Address: 824 W Jasper
City, State, Broken Arrow, OK
Zip: 74011

Phone: 918-615-2225

Signature: [Handwritten Signature]

Subscribed and sworn to before me this 27th day of February, 20 25.

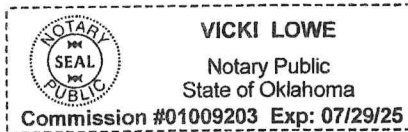
[Handwritten Signature: Vicki Lowe]
Notary Public

My commission expires:

07/29/25

Commission Number:

01009203



THIS SIGNED AFFIDAVIT MUST BE RETURNED WITH THE AGREEMENT

EXHIBIT SCHEDULE

EXHIBIT A	PROJECT SCHEDULE
EXHIBIT B	COST OF WORK
	SUMMARY OF THE GUARANTEED MAXIMUM PRICE (ACCEPTED BY OWNER)
	SUMMARY OF THE PRECONSTRUCTION AND BASE BID COSTS (ACCEPTED BY OWNER)
EXHIBIT C	LUMP SUM PRICE – (at a later date)
EXHIBIT D	PRE-CONSTRUCTION SERVICES STAFFING MATRIX

EXHIBIT A
TO THE AGREEMENT FOR AT RISK CONSTRUCTION MANAGEMENT SERVICES
PROJECT SCHEDULE

Project schedule will be provided with the Guaranteed Maximum Price amendment.

EXHIBIT B
TO THE AGREEMENT FOR AT RISK CONSTRUCTION MANAGEMENT SERVICES
SUMMARY OF THE GUARANTEED MAXIMUM PRICE
(ACCEPTED BY OWNER)

Summary of GMP

Preconstruction Services

Program and Conceptual Design	\$NA
Preconstruction	\$15,000
Sub-total	\$15,000

Base Bid

Cost of Direct Project Management	\$TBD
Cost of the Work	\$TBD
Sub-total	\$TBD
Fee (4.6 %)	\$TBD
Contingency (X%)	\$TBD
Sub-total	\$TBD
Total of Base Bid	\$TBD

Alternates

List any accepted alternates. If not alternates note "NONE".

Alternates Sub-total	\$TBD
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Total Guaranteed Maximum Price	\$TBD
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EXHIBIT B

TO THE AGREEMENT FOR AT RISK CONSTRUCTION MANAGEMENT SERVICES
SUMMARY OF THE PRECONSTRUCTION AND BASE BID COSTS
(ACCEPTED BY OWNER)

Insert summary of base bid costs from contractor.

EXHIBIT B

TO THE AGREEMENT FOR AT RISK CONSTRUCTION MANAGEMENT SERVICES
PRECONSTRUCTION SERVICES FOR DESIGN PHASE
GUARANTEED MAXIMUM PRICE
(ACCEPTED BY OWNER)

Preconstruction Services for Design Phase - Lump Sum of \$15,000.00

Preconstruction Services include, but are not limited to:

- A. Construction Manager to provide a preliminary evaluation of the Project budget requirements.
- B. Attend regular meetings with the City and Architect(s) regarding Project site use, material selection, Project systems and equipment and make recommendations based on cost, feasibility and availability.
- C. Construction Manager shall prepare and periodically update a preliminary Project schedule including critical path scheduling as the Project design proceeds. Long lead items, activity sequences, milestone dates and other pertinent information will be included in the Project schedule preparation.
- D. Construction Manager to prepare cost estimates / construction bid estimates for review at the following times:
 - a. 100% Design Development documents
 - b. 50% Construction Documents
- E. Construction Manager to recommend to the City and Architect appropriate means and methods, material selection, etc., to accommodate Project budget.
- F. Construction Manager will provide a sub-contract plan which will include promoting subcontractor interest, bid package solicitation, pre-qualification criteria, recruitment and education.
- G. Upon completion of the 90% contract documents, a Guaranteed Maximum Price (GMP) will be provided for Project construction.
- H. Upon approval of final bid tabulation, the Guaranteed Maximum Price (GMP) would then be awarded to a Lump Sum Price.
- I. Construction Manager staffing for preconstruction services to be provided include:
 - a. Managing Member in Charge
 - b. Preconstruction Manager
 - c. Senior Project Manager
 - d. Project Administrator / Project Engineer

EXHIBIT B

TO THE AGREEMENT FOR AT RISK CONSTRUCTION MANAGEMENT SERVICES
CONSTRUCTION PHASE
GUARANTEED MAXIMUM PRICE
(ACCEPTED BY OWNER)

Cost of Direct Project Support – Lump Amount \$TBD

Includes but is not limited to:

1. Managing Member in Charge
2. Senior Project Manager
3. Director of Field Operations/Assistant Project Manager
4. Project Superintendent
5. Project Administrator/Project Engineer
6. Jobsite Office Trailer Rental
7. Jobsite computers/printers
8. Jobsite office furniture
9. Ice, cups and water coolers
10. Miscellaneous office supplies
11. Phone service
12. Cellular Phone service
13. Office equipment
14. Postage/courier expense
15. Electrical Consumption-Job Site Trailer
16. Record document reproduction costs
17. Miscellaneous printing
18. Data Processing Costs

Cost of the Work – Not to Exceed Amount \$TBD

Includes but is not limited to:

1. Subcontractor bids
2. Building Permits
3. Electric Consumption during Project
4. Temporary storage
5. Temporary toilets
6. Temporary Barricades
7. Temporary fencing
8. First-aid equipment
9. Temporary fire protection
10. Fire extinguishers
11. Project sign
12. OSHA/jobsite Retainage
13. Temporary water service
14. Temporary Heat/Cooling/Ventilation
15. Temporary and Final HVAC Filters
16. Temporary Weather Protection
19. Small tools
20. Insurance
21. Bonds
22. Builders Risk
23. Daily/Weekly Project clean-up

EXHIBIT B

TO THE AGREEMENT FOR AT RISK CONSTRUCTION MANAGEMENT SERVICES
CONSTRUCTION PHASE
GUARANTEED MAXIMUM PRICE
(ACCEPTED BY OWNER)

22. Final Cleaning	
23. Waste containers (dumpsters)	
24. Truck leases	
25. Mileage and Material Transportation Cost	
26. Temporary Electric Service to Building	
27. Construction Software	
28. Materials Testing & Special Inspections Cost	
Subtotal:	\$TBD
Fee (4.6%)	\$TBD
Contingency (X.X)	\$TBD
Preconstruction Services and Base Bid Total:	\$TBD
Alternates:	
[List any accepted alternates]	
Total for accepted Alternates	\$TBD
TOTAL GMP	\$TBD

EXHIBIT C

TO THE AGREEMENT FOR AT RISK CONSTRUCTION MANAGEMENT SERVICES
LUMP SUM PRICE
(ACCEPTED BY OWNER)

To be updated at a later date.