



City of Lawton

Lawton City Hall
212 SW 9th Street
Lawton, Oklahoma
73501-3944

Lawton Economic Development Authority

Agenda

Thursday, December 18, 2025

2:00 PM

Lawton City Hall
3rd Floor Conference Room

Meeting Called to Order and Roll Call

"Official action can be taken only on items which appear on the agenda. The Authority may adopt, approve, ratify, deny, defer, recommend, or continue any agenda item. The Authority may also propose and enact floor amendments to any matter presented before them. When more information is needed to act on an item, the Authority may refer the matter to City Staff. Under certain circumstances, items are deferred to a specific later date or stricken from the agenda entirely."

Statement of Compliance with Oklahoma Open Meeting Act, 25 O.S. 301-314

Business Items

1. Consider electing a Chairman, and if necessary, a Vice Chairman and/or Secretary, per Article VII (2) of the Trust Indenture.
2. Consider approving the minutes of the November 20, 2025, meeting.
3. Consider approving the October 2025 Financial Report from Hatch, Croke and Associates.
4. Consider approving a joint resolution of the City of Lawton, the Lawton Economic Development Authority, and the Comanche County Industrial Development Authority acknowledging Westwin Elements, Inc.'s Written Notice of its Election Not to Proceed with the large-scale commercial refinery in Lawton, Oklahoma; approving a Notice of Termination of All Obligations under Part II of the Amended and Restated Redevelopment Agreement between the City, LEDA, CCIDA, and Westwin; and authorizing the Mayor or Vice-Mayor and Chairman or Vice-Chairman of LEDA and CCIDA to execute and deliver such notice.
5. Consider approving an agreement with Ryan Herring Construction to provide Construction Manager at Risk services for LEDA's portion of the construction of the Firehawk Aerospace development, for preconstruction fee of \$110,000.00 and a construction fee of 5.5% of the actual construction cost.
6. Consider approving a Term Sheet for an agreement with CCIDA regarding acquisition of the 320 acre property that is planned as the future site of the Firehawk Aerospace development.

7. Consider approving a resolution approving the commencement of payments under the Economic Development Agreement with Republic Paperboard Company, LLC, dated December 1, 2019, making a determination regarding Republic's compliance with the Economic Development Agreement, and the amount of assistance to be provided to Republic in accordance therewith.
8. Consider approving an amendment to the STEM Funding Agreement and budget between the Lawton Economic Development Authority and the Friends of the Library.

Reports

1. Receive a report from the LEDA Executive Director.
 - State Matching Funds

Executive Session

1. Pursuant to Section 307(C)(11), Title 25, Oklahoma Statutes, consider convening in executive session for the purpose of conferring on matters pertaining to economic development, including the transfer of property, financing, and the creation of a proposal to entice a business to locate within their jurisdiction if the public disclosure of which would violate the confidentiality of prospective business entities, and in open session, take action as necessary.

Adjournment

The City of Lawton encourages participation from all of its citizens. If participation at any public meeting is not possible due to a disability, notification to the City Clerk at (580) 581-3305 at least 48 hours prior to the scheduled meeting is encouraged to make the necessary accommodations. The City may waive the 48 hour rule if interpreters for the deaf (signing) is not the necessary accommodation."

Item Title:

Consider electing a Chairman, and if necessary, a Vice Chairman and/or Secretary, per Article VII (2) of the Trust Indenture.

Initiator: Richard Rogalski - LEDA Executive Director

Information Source: Richard Rogalski - LEDA Executive Director

Background:

In accordance with the Trust Indenture governing the Lawton Economic Development Authority, the Trustees are required to elect one of their members to serve as Chairman by majority vote. Currently, the position of Chairman is vacant, and as such, there is a need to elect a new Chairperson to preside over upcoming meetings.

Should the Authority select the current Vice-Chairperson or Secretary to fill the Chairman position, there will be a subsequent need to elect a new Vice-Chairperson and/or Secretary to maintain the leadership structure.

Correlation to the True North Statement:

Transparency and Trust

Exhibit:

LEDA Trust Indenture

Key Issues:

N/A

Funding Source:

N/A

Recommended Action:

Elect a Chairman, and if necessary, a Vice Chairman and/or Secretary, per Article VII (2) of the Trust Indenture.

ATTACHMENTS:

1. LEDA Trust Indenture (2)

I, the undersigned, City Clerk of the City of Lawton, in the County and State aforesaid, do hereby certify that the above and foregoing is a true and correct copy of Lawton

Economic Development Trust Indenture

**TRUST INDENTURE
CREATING THE**

as the same appears of record in my office. In testimony whereof, I have hereunto subscribed my name and affixed the corporate seal of the City of Lawton, this 4th day of August, 2025

[Signature]
CITY CLERK

LAWTON ECONOMIC DEVELOPMENT AUTHORITY

STATE OF OKLAHOMA
COMANCHE COUNTY
FILED ON
JAN 13 AM 10:56
AND DULY RECORDED
BOOK 212 PAGE 63
C. MAGUIRE CNTY CLK
BY [Signature] DEPUTY

KNOW ALL MEN BY THESE PRESENTS:

This Trust Indenture dated as of the 15th day of December, 1992, by Ted Marley, hereinafter referred to as the Grantor, and Fred L. Fitch, Jere L. Barnthouse, Larry G. Patton, Janice K. Meese, David B. Means, Leonce H. Thierry, Guy A. Rogers, Alvis D. Kennedy, and Richard H. Zarle, and their respective successors as provided herein, to be known as the Trustees of the Lawton Economic Development Authority, a public trust, who shall be and are hereinafter referred to as Trustees of the said Authority, hereinafter referred to as "Authority" or "Trust".

W I T N E S S E T H:

WHEREAS, the Legislature of the State of Oklahoma has heretofore enacted legislation specifically encouraging the economic growth and development of counties and municipalities within the State, such legislation empowering such political subdivisions to provide for their respective future economic growth and development and specifically authorizing them to prepare and finance comprehensive growth and development studies and plans and to inventory their respective services, resources and facilities and to promote and stimulate the growth and development of their agricultural, commercial and industrial resources as a whole, all in order that they may achieve the maximum utilization of their respective human, economic and natural resources and tourist attractions and to foster and promote their respective industrial climate and payroll and to otherwise generally promote their economic welfare and prosperity; and

WHEREAS, in order to further the general economic development of the Beneficiary (hereinafter defined) in conformity with the afore-cited legislatively annunciated general public purposes and goals, the parties hereto do by these presents establish this public trust authority for the sole benefit of the Beneficiary, according to the terms and conditions and for the specific purposes hereinafter set forth.

NOW, THEREFORE, in consideration of the payment by the Grantor to the Trustees of the sum of Ten Dollars (\$10.00), receipt of which is hereby acknowledged, the mutual covenants herein set forth, and other valuable considerations, the said Trustees agree to hold, manage, invest, assign, convey and direct, as herein provided, authorized and directed, such property, or

STATE OF OKLAHOMA
COMANCHE COUNTY
County Clerk, do hereby certify that this
is a true and correct copy of a document
as appears of record in this office on this

BURGESS LAW FIRM
Attorneys at Law
601 SW 'C' Avenue, Suite 201
P. O. Box 1045
Lawton, OK 73502
(405) 355-8920

JAN 13 1993

52986.95001

CHARLEY MAGUIRE, County Clerk
By [Signature] Deputy

others may from time to time assign, transfer, lease, convey, give, bequeath, devise or deliver unto this Trust or the Trustees hereof.

TO HAVE AND HOLD such property and the proceeds, rents, profits and increases thereon unto said Trustees and said Trustees' successors and assigns, but nevertheless in trust, for the use and benefit of the City of Lawton, State of Oklahoma, such City being hereby designated and hereinafter referred to as "Beneficiary" and upon the trusts, terms and conditions hereinafter stated.

Article I

Creation of Trust

The undersigned Grantor creates and establishes a Trust for the use and benefit of the Beneficiary for the public purposes hereinafter set forth, under the provisions of Title 60, Oklahoma Statutes 1991, Sections 176 to 180.4, inclusive, as amended and supplemented, the Oklahoma Trust Act and other applicable statutes and laws of the State of Oklahoma.

Article II

Name and Effective Date of Trust

The Trustees of this Trust shall conduct all business and execute or authorize the execution of all instruments in the name of this Trust, which shall be the "Lawton Economic Development Authority", a public trust, and otherwise perform the duties and functions required in the execution of this Trust, and hereby authorize the Chairman or Vice Chairman, Secretary or Assistant Secretary of the Trust to execute instruments on behalf of the Trust as directed by duly enacted resolutions of the Trust. This Trust Indenture shall be in full force and effect from and after the date of acceptance of the beneficial interest herein by the Beneficiary.

Article III

Definitions

(a) "Act" shall mean the Oklahoma Public Trust Act, being Title 60, Oklahoma Statutes 1991, Sections 176 to 180.4, as amended and supplemented.

(b) "Authority" shall mean the Lawton Economic Development Authority created pursuant to this Indenture, and the Trustees thereof, acting on behalf of and in the name of said Authority.

(c) "Trustees" shall mean the Trustees of the Authority.

(d) "Bonds or Notes" shall mean respectively the bonds and notes of the Authority authorized to be issued under this Indenture.

(e) "Beneficiary" shall mean the City of Lawton, State of Oklahoma, acting by and through its City Council.

(f) "Governmental Agency" shall mean the United States of America and the State or any department, division, public corporation, public agency, political subdivision or other public instrumentality of either.

(g) "Lending Institution" shall mean any bank or trust company, Federal National Mortgage Association, mortgage banker, mortgage company, national banking association, savings bank, savings and loan association and any other financial institution or Governmental Agency or person.

(h) "Indenture" shall mean this Trust Indenture establishing the Authority, as amended and supplemented from time to time.

(i) "Mortgage" shall mean a mortgage, mortgage deed, deed of trust, security agreement or other instrument creating a lien on a fee interest in real and/or personal property located with the Beneficiary or a leasehold on such fee interest.

(j) "Mortgage Loan" means an interest bearing obligation secured by a Mortgage.

(k) "State" shall mean the State of Oklahoma.

(l) "By-Laws shall mean the By-Laws duly adopted by the Authority as the same may be amended from time to time.

Article IV

Purpose of Trust

The purposes of this Trust are:

(1) To assist the Beneficiary, the State of Oklahoma, its Governmental Agencies, municipalities and private entities, agencies and citizens in making the most efficient use of all of their economic resources and powers in accord with the needs and benefit of the State of Oklahoma and the Beneficiary in order to lessen the burdens on government and to stimulate economic growth and development, specifically including, but not limited to, the power to conduct studies and prepare comprehensive plans relating to the future economic growth and development of the Beneficiary; to inventory the services, facilities and resources of the Beneficiary; to promote, stimulate, encourage and finance the growth and development of the agriculture, commercial, and industrial resources of the Beneficiary, all in order to achieve maximum utilization of the Beneficiary's human, economic and natural resources and tourist attractions; to foster and promote an improved industrial climate within the Beneficiary and to otherwise promote its general economic welfare and prosperity and to finance any and all programs, facilities or resources promoting or intending to promote any of the foregoing and, without restriction,

in furtherance of the foregoing general objectives, the following specific powers or purposes, to-wit:

- (a) To promote and develop any and all public works projects or facilities of any type or description including but not limited to those for water, sewer, solid waste, garbage, trash disposal, natural gas or other public utilities of any type or description.
- (b) To promote, develop and finance projects or facilities relating to agriculture, farming, ranching and agribusiness of any sort or description, including, but not limited to, any land or personal property related thereto, or projects relating to cattle, poultry, irrigation equipment and systems, or other agri-projects of any other sort or description.
- (c) To promote, finance and develop commercial and industrial projects or facilities and to exercise all of the powers, privileges and prerogatives of industrial trusts within this State.
- (d) To promote, finance and develop hospitals and other health care facilities and any other medically related facilities, including, but not limited to, medical and/or dental, optometric, osteopathic or chiropractic clinics, offices, laboratories, nursing homes, research facilities, geriatric facilities, retirement facilities, central service facilities and training facilities, extended care facilities, facilities for aged and/or disabled persons, day-care facilities for children and all other types of facilities for serving the medical and physical needs of people.
- (e) To promote, finance and develop projects or facilities relating to the development of energy of any sort or description, including but not limited to those relating to the development of oil, gas, coal, gravel, lead, zinc or other minerals or hydro-carbons, the financing of oil and gas equipment, refineries, drilling and pumping rigs and equipment, or other energy development of any sort of description and synthetic fuel facilities.
- (f) To promote, finance and develop projects, facilities, services and industries pertaining to the development or improvement of: individual, commuting and mass transportation; transportation generally; trucking; handling and shipping of goods; railroads, railroad rights-of-way; railroad equipment or rolling stock construction, repair or maintenance facilities; air transportation; public or mass transportation systems, facilities and equipment, and the financing of

automobiles, trucks and vehicles of every sort and description; and other methods and modes of transporting people, goods and equipment of whatsoever kind or character, within the boundaries of the Beneficiary and to provide additional employment or increase transportation efficiency which will benefit and strengthen the economy of the Beneficiary.

(g) To promote, finance and develop recreational, sports, cultural, tourism, entertainment and communication media projects or facilities including but not limited to mass-media broadcasting facilities such as radio, television, and cable television equipment and facilities.

(h) To plan, establish, develop, construct, finance, enlarge, remodel, acquire, improve, alter, extend, maintain, equip, operate, lease, furnish and regulate any facilities related to any of the foregoing, and, if desired, to lease such facilities and to operate the same in connection therewith, and to do, perform, own, acquire, construct or engage in or finance any other enterprise or activity, project or facility to such extent and in such manner as now is or may be considered a proper and lawful function of public trust entities with the State of Oklahoma.

(2) To promote the development of adequate housing within the territorial limits of the Beneficiary whether single family dwellings or multi-family dwellings:

(a) By making or committing to make or participating in the making of loans to non-profit sponsors of housing;

(b) By making or committing to make or participating in the making of loans to persons upon terms and conditions requiring such owners to use the proceeds of such loans to construct, acquire, rehabilitate or improve housing and such additional terms and conditions as may be set by the Authority;

(c) By participating in all Government Agency programs relating to housing and housing projects;

(3) To provide funds and assistance for the purposes set out in this Indenture which include, among others:

(a) the expansion of the supply of funds in the Beneficiary available for new Mortgage Loans on housing; and

(b) the provision of the additional housing needed to remedy the shortage of such housing within the boundaries of the Beneficiary and to upgrade substandard housing within the

boundaries of the Beneficiary so as to eliminate the existence of sub-standard dwellings.

(4) To hold, maintain and administer any leasehold rights in and to physical properties demised to the Beneficiary and to comply with the terms and conditions of any such lease.

(5) To acquire by lease, purchase, production, reduction to possession or otherwise, and to plan, establish, develop, construct, enlarge, improve, extend, maintain, equip, operate, furnish, provide, supply, regulate, hold, store and administer any and all physical properties (real, personal or mixed), rights, privileges, immunities, benefits and any other thing of value, designated or needful for utilization in furnishing, providing or supplying the aforementioned services, utilities, buildings and facilities; to finance and refinance and to enter into contracts of purchase, lease-purchase or other interest in or operation and maintenance of said properties, and revenues thereof, and to comply with the terms and conditions of any such contracts, leases or other contracts entered into in connection with the acquisition, equipping, maintenance and disposal of any of said property; and to relinquish, dispose of, rent or otherwise make provisions for properties owned or controlled by the Trust but no longer needful for Trust purposes.

(6) To acquire, construct, reconstruct, extend, lease, purchase, install, equip, maintain, repair, enlarge, remodel and operate any property, improvements, buildings and other facilities of every nature for use by the State of Oklahoma, the United States of America, or the Beneficiary, or for use by authorities or agencies of the State of Oklahoma, the United States of America or the Beneficiary or for the use of corporations, individuals, partnerships, associations or proprietary companies for industrial development; to plan, establish, develop construct and enlarge railroad and railway facilities, trucking, air transportation, public or mass transportation, and all phases of transportation relating to commerce; improve, extend, replace, reconstruct, repair, replace, operate, and maintain railroad rights-of-way, truckage, air transportation, public or mass transportation projects, and related facilities, maintain, equip, operate, lease, furnish, provide, supply, regulate, hold, store and administer property, buildings, improvements and facilities of every nature, within the territorial boundaries of the Beneficiary which may be useful in securing, developing and maintaining such facilities, functions or activities.

(7) To perform on behalf of the Beneficiary all functions, activities and powers authorized by industrial and economic development statutes as they from time to time exist.

(8) To provide funds for the cost of financing, refinancing, acquiring, constructing, purchasing, equipping, maintaining,

leasing, repairing, improving, extending, enlarging, remodeling, holding, storing, operating and administering any or all aforesaid property, improvements, building, facilities and all properties (real, personal or mixed) necessary or desirable for executing and fulfilling the Trust purposes, as set forth in this instrument, and all other charges, costs and expenses necessarily incurred in connection therewith and in so doing, to incur indebtedness, either unsecured or secured by all or any part of the Trust Estate and its revenues.

(9) To expend all funds coming into the hands of the Trustees as revenue or otherwise for the payment of any indebtedness incurred by the Trustees for the purposes specified herein, and in the payment of the aforesaid costs and expenses, and in payment of any other obligation properly chargeable against the Trust Estate, and to distribute the residue and remainder of such funds to the Beneficiary.

Article V

Duration of Trust

This Trust shall have duration for the term of duration of the Beneficiary and until such time as its purposes shall have been fully fulfilled, or until it shall be terminated as hereinafter provided.

Article VI

The Trust Estate

The Trust Estate shall consist of:

(1) The funds and property presently in the hands of the Trustees or to be hereafter acquired or constructed by the Trustees and dedicated by the Grantor, the Beneficiary and others to be used for trust purposes.

(2) Any and all leasehold rights remised to the Trustees by the Beneficiary, and others as authorized and empowered by law.

(3) Any and all money, property (real, personal or mixed), rights, choses in action, contracts, leases, privileges, immunities, licenses, franchises, benefits, Mortgages, Mortgage Loans, collateral and all other things of value coming into the hands of the Trustees under the Trust Indenture.

(4) Cash in the sum of \$10.00 paid by the Grantor to the Trustees, receipt of which is hereby specifically acknowledged by the Trustees.

Article VII

The Trustees

(1) The Trustees of this Trust shall be citizens and residents of the Beneficiary appointed by the Mayor and confirmed by City Council of the City of Lawton. The number of Trustees shall be nine (9) and each of whom must reside within the Beneficiary City. The terms of office of the original Trustees shall be staggered and each Trustee and officer of this Trust shall serve until their successor is approved and qualified. Original Trustee Fred L. Fitch, Jere L. Barnthouse, Larry G. Patton and Janice K. Meese, shall each serve for seven (7) years. Successor Trustees for these four (4) positions shall serve a seven (7) year term and shall be appointed in the manner hereinafter set out. Original Trustee David B. Means, Leonce H. Thierry and Guy A. Rogers, shall each serve for five (5) years. Successor Trustees for these three (3) positions shall serve a seven (7) year term and shall be appointed in the manner hereinafter set out. Original Trustee Alvis D. Kennedy and Richard H. Zarle, each of whom are councilmembers of the Beneficiary, shall each serve a term coterminous with their position on the City Council of said Beneficiary. Successor Trustees for these two (2) positions shall serve a term coterminous with their position on the City Council of said Beneficiary, and shall be appointed in the manner hereinafter set out. Upon the occurrence of a vacancy in the office of Trustee, a successor Trustee to serve for the remainder of the unexpired term of office shall be appointed in the manner hereinafter set out. All appointments of successor Trustees shall be made by the Mayor with confirmation of a majority vote by the members of the City Council of the City of Lawton, Oklahoma, the Beneficiary. Each such successor in office shall upon taking the oath of office, but without any further act, deed or conveyance, automatically becomes a Trustee of this Trust and becomes fully vested with all the estate, properties, rights, powers, duties and obligations of his predecessor hereunder with like effect as if originally named as a Trustee herein. Nothing herein shall be construed as preventing a member of the City Council for the City of Lawton, Oklahoma, from being appointed or serving as a Trustee in the manner herein provided.

(2) The Trustees shall elect by majority vote one of their members to serve as Chairman. The Chairman of the Trustees shall preside at all meetings and perform other duties designated by the Trustees. The Trustees shall designate the time and place of all regular meetings. All actions by the Trustees pursuant to the provisions of this Trust Indenture shall be approved by the affirmative vote of at least a majority of the Trustees qualified

to act as such under the provision of this Trust Indenture. As required by the Act, the waiving of competitive bidding on the issuance of any indebtedness of the Authority shall require a three-fourths (3/4) vote of the Trustees. The Trustees shall select one of their members to be Vice Chairman who shall act in the place of the Chairman during the latter's absence or incapacity to act.

(3) The Trustees shall elect a Secretary of the Trustees and such Assistant Secretaries of Trustees as may be necessary or required, all of whom may or may not be a Trustee. The Secretary (and in his absence an Assistant Secretary) shall keep minutes of all meetings of the Trustees and shall maintain complete and accurate records of all their financial transactions, all such minutes, books and records to be on file in the office of the Trust. All meetings of the Trustees shall be open to the public, and conducted in conformity with the provisions of Oklahoma law related to open meetings, and the books, records and minutes of the Trustees shall be considered as public records and available for inspection at all times by any interested party.

(4) The Trustees may elect a Treasurer of the Trustees and such Assistant Treasurers of Trustees as may be necessary or required, all of whom may or may not be a Trustee.

(5) The Trustees may appoint a General Manager and/or Executive Director for the Trust Estate, and the Trustees may employ such other clerical, professional, legal and technical assistance as may be deemed necessary in the discretion of the Trustees to properly operate the business of the Trust, and may fix their duties, terms of employment and compensation from the Trust Estate. All Trustees shall serve without compensation but shall be reimbursed for actual expenses incurred in the performance of their duties hereunder. In the event a General Manager and/or Executive Director for the Trust Estate is appointed by the Trustees, the said General Manager and/or Executive Director shall administer the business of the Trust Estate as directed from time to time by the Trustees.

(6) The Trustees are authorized to contract, in connection with the incurrence of any funded indebtedness secured by the Trust Estate and/or its revenues, or any part of either or both, that in the event of a default in the fulfillment of any contractual obligation undertaken on behalf of the Trust Estate or in the payment of any indebtedness incurred on behalf of the Trust Estate or in the payment of any indebtedness incurred on behalf of the Trust Estate, that a Temporary Trustee or Trustees or Receiver shall be appointed to succeed to the rights powers and duties of the Trustees then in office. Any such contract, if made, shall set forth the terms and conditions under which such Temporary Trustee or Trustees or Receiver shall be appointed, and operate the Trust Estate and shall provide for compensation to be paid, and

appointment to be vacated and permanent Trustees to be automatically reinstated upon termination of all defaults by which their appointment was authorized.

(7) Bonds or other evidences of indebtedness to be issued by the Trustee shall not constitute an indebtedness or obligation of the State or the Beneficiary nor personal obligations of the Trustees, but shall constitute obligations of the Trust only, payable solely from the Trust Estate.

(8) The Trustees, the State, and the Beneficiary shall not be charged personally with any liability whatsoever by reason of any act or omission committed or suffered in good faith or in the exercise of their honest discretion in the performance of such Trust or in the operation of the Trust Estate; but any act or liability for any omission or obligation of the Trustees in the execution of such Trust, or in the operation of the Trust Estate, shall extend to the whole of the Trust Estate or so much thereof as may be necessary to discharge such liability or obligation.

(9) Notwithstanding any other provision of this Indenture which shall appear to provide otherwise, no Trustee or Trustees shall have the power or authority to bind or obligate any other Trustee, or the Beneficiary, in his or its capacity, nor can the Beneficiary bind or obligate the Trust or any individual Trustee.

(10) The Trust shall cause to be prepared annually at the close of each fiscal year of the Trust, an audit of the funds, financial affairs and transactions of the Trust, including but not limited to all fees, salaries and expenditures in exact amounts and specifying to whom such expenditures were paid. Such audit is to be certified with an unqualified opinion of an independent, certified public accountant. A copy of the annual audit of the Trust shall be filed within the time period and in conformity with the provisions of Oklahoma law related thereto. Unless hereafter changed by specific resolution or the Trustees, the fiscal year of the Trust shall be identical with the calendar year. All expense incurred in connection with the annual audits shall be paid from the Trust Estate.

(11) Every person becoming a Trustee shall first take the Oath of Office required of an elected public officer. The Oath of Office shall be administered by any person authorized to administer oaths in the State, and shall be filed with the Clerk of the Beneficiary. Every officer and employee who handles funds of the Trust shall furnish a good and sufficient fidelity bond in an amount and with surety as may be specified and approved by the Trustees; the Trustees may, but shall not be obligated to, obtain bonds relating to the performance of their duties as Trustees. Such bonds shall be in a surety company authorized to transact surety business in the State and the cost thereof shall be paid from the Trust Estate.

Article VIII

Powers and Duties of the Trustees

To accomplish the purposes of the Trust, the Trustees shall have, in addition to the usual powers incident to their office and the powers granted to them otherwise by law or in other parts of this Trust Indenture, the following rights, powers, duties, authority, discretion and privileges, all to be exercised on behalf of, and in the name of the Authority:

(1) To sue and be sued.

(2) To have a seal and alter same at pleasure.

(3) To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions hereunder.

(4) To make and alter by-laws for its obligations and internal management as provided herein.

(5) To make and alter Rules and Regulations pertaining to any loan or other program developed by the Authority.

(6) To acquire, lease, convey, or otherwise hold and dispose of real and personal property for its Trust purposes; provided that, no purchaser at any sale or lessee under a lease made by the Trustees shall be bound to inquire into the expediency, propriety, validity or necessity of such sale or lease or to see or be liable for the application of the purchase or rental monies arising therefrom.

(7) To enter into contracts for sale of Bonds, Notes or other evidences of indebtedness, interim Notes or Bonds or other obligations of the Trust and to issue the same for any of the purposes of the Trust authorized hereby including but not limited to: the acquisition, construction, reconstruction, equipping or otherwise financing facilities discussed in Article IV hereof or for any other lawfully permitted facilities which may be secured with Mortgages, security interests or other collateral satisfactory to the Trustees; making Mortgage loans or purchasing Mortgage notes secured by Mortgages on dwellings; acquiring real or personal property or facilities at foreclosure of any loan or obligation or authorized to be acquired pursuant to the terms of this Trust Indenture or other purposes authorized under any instrument securing any indebtedness of the Trust; refunding or advance refunding any outstanding indebtedness of the Trust; creating any reserves or replacement funds, loan funds or other funds or accounts deemed advisable by the Trustees in the furtherance of the Trust purpose or in connection with the securing of any of the

Trust's debts or in the administration of Trust programs; and for any other purpose authorized by law and/or by Article IV hereof; and for those purposes the Trustees may:

- (a) Sell all Bonds, Notes or other evidences of indebtedness or obligations of the Trust at public or private sale in whole or in installments or series and on such terms and conditions and in such manner as is prescribed by law and as the Trustees shall deem to be in the best interest of the Trust Estate; and
- (b) Appoint and compensate attorneys, paying agencies and corporate Trustees in connection with the issuance of any such Bonds, Notes, evidences of indebtedness or other obligations of the Trust; and
- (c) Pay all expenses incident to the creation of any indebtedness or the issuance of any Bonds, Notes or other evidences of indebtedness including, but not limited to, printing expenses, feasibility studies, special consultants, travel expenses, reproduction expenses; and
- (d) Create any reserve fund and any and all other funds and accounts as the Authority shall deem necessary or desirable in connection with the issuance of any Bonds, Notes or other evidence of indebtedness.

Any such indebtedness, shall be deemed to be incurred or issued on behalf of the Beneficiary and may be general or special obligations of the Trust as the Trustees may from time to time determine.

(8) To purchase or redeem their Bonds, Notes or other evidences of indebtedness in whole or in part prior to the stated maturity thereof as specified in any instrument authorizing the issuance or securing the payment of any such indebtedness.

(9) To pledge any or all of the Trust's revenues or assets to secure the payment of any of its indebtedness.

(10) To enter into agreements with or participate in any programs of the Beneficiary, the State of Oklahoma, or any agency or instrumentality thereof, the United States of America, or any agency or instrumentality thereof.

(11) To enter into and execute, purchase, lease or otherwise acquire property, real, personal or mixed, contracts, leases, rights, privileges, benefits, choses in action or other things of value and to pay for the same in cash with bonds or other evidences of indebtedness or otherwise.

(12) To fix, demand and collect charges, rentals and fees for the services and facilities of the Trust and to discontinue the furnishings of services and facilities to, and foreclosure on any collateral of, any person, firm, or corporation, or public instrumentality, delinquent in the payment of any indebtedness to the Trust; to purchase and sell such supplies, goods and commodities as are incident to the operation of its properties.

(13) To make and perform contracts of every kind, including, management contracts, with any person, firm, corporation, association, joint venture, trusteeship, municipality, government, sovereignty or other entity; and without limitation as to amount, to draw, make, accept, endorse, assume, guarantee, account, execute and issue promissory notes, drafts, bills of exchange, acceptances, warranties, bonds, debentures and other negotiable or non-negotiable instruments, obligations and evidences of unsecured indebtedness, or of indebtedness secured by mortgage, deed of trust or otherwise upon any or all income of the Trust, in the same manner and to the same extent as a natural person might or could do. To collect and receive any property, collateral, money, rents, or income of any sort and distribute the same or any portion thereof for the furtherance of the authorized Trust purposes set out herein.

(14) To exercise or to request of, arrange or contract with the Beneficiary or any governmental unit, agency or political subdivision thereof for the exercise of eminent domain as necessary in establishing operating, administering, and maintaining any Trust facilities, systems, projects or programs.

(15) To expend all funds coming into the hands of the Trustees as revenue or otherwise for the payment of any indebtedness incurred by the Trustees for purposes specified herein, and in the payment of the aforesaid costs and expenses, and in payment of any other obligation properly chargeable against the Trust Estate, to from time to time transfer any surplus funds to the Beneficiary as the Authority in its sole discretion may determine and, upon termination of the trust, to distribute the residue and remainder of such funds to the Beneficiary.

(16) To contract for services with firms or persons or other units and entities of government or private entities or agencies to carry out the purposes of the Trust; to apply for, contract for, receive and expend for its purposes, funds or grants from any governmental or non-governmental agency or entity, the Beneficiary, the State, the Federal Government or any agency or department thereof, or from any other source.

(17) To receive funds, money, property, collateral, services, rights, and choses in action from any source to finance the programs and operations of the Trust; to receive grants, gifts, contributions and donations to carry out the purposes for which the

Trust is formed; to receive and accept from any Federal, State or private agencies or entities grants or loans for or in aid of the construction of any facility or system and to receive and accept aid or contributions of money, labor or any other valuable things from any source.

(18) To plan, coordinate, implement, administer or otherwise carry out public works or other project or programs for public purposes for the benefit of the Beneficiary.

(19) To make, or commit to make, or participate in the making of Mortgage Loans whether for construction, for acquisition, financing or purchasing of housing.

(20) To invest monies of the Authority not required for immediate use, including proceeds from the sale of any Bonds or Notes, in obligations of any Governmental Agency or obligations the principal and interest of which are guaranteed by such Governmental Agency or in certificates of deposit or time deposits secured in such manner as the Authority shall determine, or in obligations of any agency of the State or the United States of America which may from time to time be legally purchased by banks within the State as an investment of funds belonging to them or in their control.

(21) To sell any Mortgages or other personal property acquired by the Authority at public or private sale and at such price or prices as it shall determine.

(22) To renegotiate, refinance or foreclose, or contract for the foreclosure of, any Mortgage, security interest or other obligation in default; to waive any default or consent to the modification of the terms of any Mortgage; to commence any action to protect or enforce any right conferred upon it by any law, Mortgage, security interest, contract or other agreement, and to bid for and purchase such property at any foreclosure or at any other sale, or acquire or take possession of any such property; to operate, manage, rehabilitate, improve, lease, dispose of, and otherwise deal with such property, in such manner as may be necessary to protect the interests of the Trust and the holders of its Bonds, Notes or other obligations;

(23) To renegotiate or refinance any loan in default; waive any default or consent to the modification of the terms of any loan, and commence any action or proceedings to protect or enforce any right conferred upon it by law, loan agreement, contract or other agreement.

(24) To make and execute contracts and appoint agents for the administration or servicing of any loan made or acquired by the Trust and pay the reasonable value of services rendered to the Trust pursuant to such contracts.

(25) To sell any loans made or acquired by the Trust at public or private sale and at such price or prices and on such terms as the Trust shall determine.

(26) To collect any pay reasonable fees and charges in connection with making, committing to make, purchasing or committing to purchase and servicing its Mortgage Loans, Notes, Bonds, commitments and other evidences of indebtedness.

(27) To procure insurance against any type loss in such amounts, and from such insurers, as it may deem necessary or desirable.

(28) To consent, whenever it shall be deemed necessary or desirable in the fulfillment of its Trust purposes, to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms, of any Mortgage Loan, Mortgage Loan Commitment, construction loan, temporary loan, contract or agreement of any kind to which the Trust is a party.

(29) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted herein, and to do all other acts in their judgment necessary or desirable, for the proper and advantageous management, investment and distribution of the Trust Estate and income therefrom.

(30) To exercise exclusive management and control of the properties of the Trust Estate.

(31) To contract for the furnishing of any services or the performance of any duties that they may deem necessary or proper and pay for the same as they see fit.

(32) To select depositories for the funds and securities of this Trust. All Lending Institutions are eligible to participate in the programs of the Trust and act as such depositories with approval of the Trust.

(33) To compromise any debts or claims of or against the Trust Estate, and adjust any dispute in relation to such debts or claims against the Trust Estate upon any evidence deemed by the Trustees to be sufficient. The Trustees may bring any suit or action which in their judgment is necessary or proper to protect the interest of the Trust Estate, or to enforce any claim, demand or contract for the Trust; and they shall defend, in their discretion, any suit against the Trust, or the Trustees or employees, agents or servants thereof. They may compromise and settle any suit or action, and discharge the same out of assets of the Trust Estate, together with court costs and attorney's fees. All such expenditures shall be treated as expenses of executing this Trust.

(34) To do each and all things necessary to implement the purposes of this Trust as set out herein, and to that end Article IV "Purposes of Trust" is incorporated in its entirety under this "Powers" Article for the purposes of insuring that all appropriate power is granted to the Trustees to accomplish the purposes hereof without inhibition.

Article IX

Supervisory Control

The Trust created hereby and the Trustees appointed hereunder are subject to such supervision and control as may be determined from time to time by the Legislature of the State or by regulations that may be issued by departments or agencies of the United States of America, to insure the tax exempt status of any Bonds, Notes or other evidences of indebtedness issued by the Authority.

Article X

Beneficiary of Trust

(1) The Beneficiary of this Trust shall be the municipality designated in Article III herein, under and pursuant to Title 60, Oklahoma Statutes 1991, Sections 176 to 180.4, inclusive, as amended and supplemented, and other applicable statutes of the State presently in force and effect.

(2) The Beneficiary shall have no legal title, claim or right to the Trust Estate, its income, or to any part thereof or to demand or require any partition of distribution thereof. neither shall the Beneficiary have any authority, power or right whatsoever, to do or transact any business for, or on behalf of or binding upon the Trustees or upon the Trust Estate, nor the right to control or direct the actions of the Trustees pertaining to the Trust Estate or any part thereof except as herein provided. The Beneficiary shall be entitled solely to the benefits of this Trust as administered by the Trustees hereunder, and at the termination of the Trust, as provided herein, and only then, the Beneficiary shall receive the residue of the Trust Estate.

Article XI

Adoption and Amendment of By-Laws; Amendment and Termination of Trust

This Trust Indenture may be amended by an affirmative vote of at least two-thirds (2/3) of all Trustees and any such proposed amendment shall be further approved by the affirmative vote of two-

thirds (2/3) of the governing body of the Beneficiary before becoming effective.

The Trustees, by an affirmative vote of a majority of all Trustees may adopt, alter and amend By-Laws of the Trust.

PROVIDED, HOWEVER, that this Trust Indenture shall not be subject to revocation, alteration, amendment, revision, modification or termination in any manner which would be adverse to the interest of the holders of any evidence of indebtedness of the Trust without the consent of holders of indebtedness who would be adversely affected, which consent may be given by less than all of such holders, if so provided in any resolution, indenture or agreement relating to such indebtedness.

This Trust shall terminate --

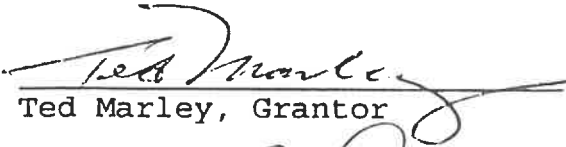
- (1) When the purposes set out in Article IV of this instrument shall have been fully executed;
- (2) In the manner provided by Oklahoma law. Provided, however, that this Trust shall not be terminated by voluntary action while there be outstanding indebtedness or fixed obligations of the Trustees, unless all owners of such indebtedness or obligations shall have consented in writing to such termination; or
- (3) Upon the termination of the existence of the Beneficiary.

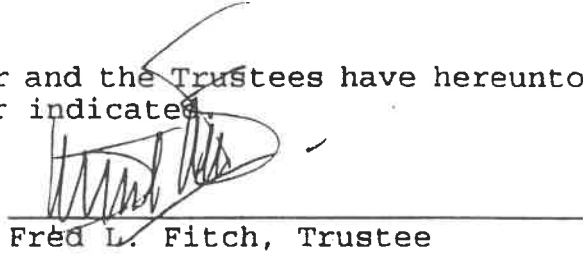
Upon the termination of this Trust, the Trustees shall proceed to wind up the affairs of this Trust, and after payment of all debts, expenses and obligations out of the monies and properties of the Trust Estate to the extent thereof, the Trustees shall distribute the residue of the money and properties of the Trust Estate to the Beneficiary hereunder. Upon final distribution, the powers, duties and authority of the Trustees hereunder shall terminate.

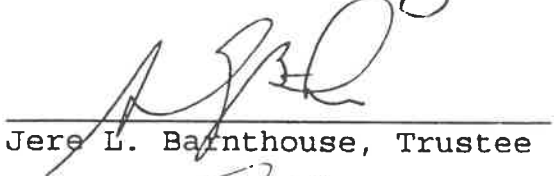
Article XII

The Trustees accept the Trust herein created and provided for, and agree to carry out the provisions of this Trust Indenture on their part to be performed.

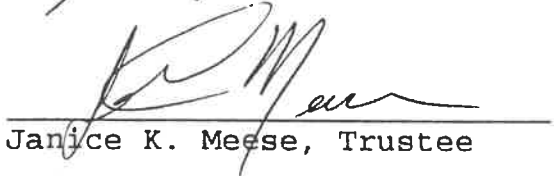
IN WITNESS WHEREOF, the Grantor and the Trustees have hereunto set their hands on the day and year indicated.

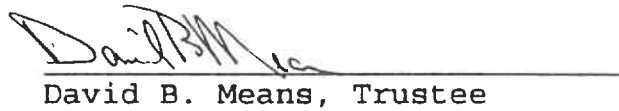

Ted Marley, Grantor

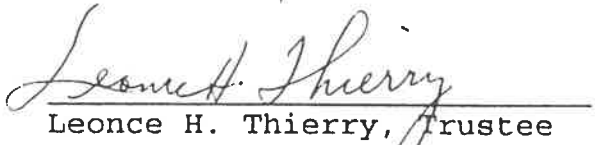

Fred L. Fitch, Trustee

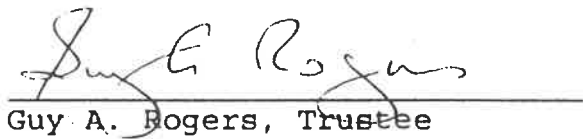

Jere L. Barnhouse, Trustee

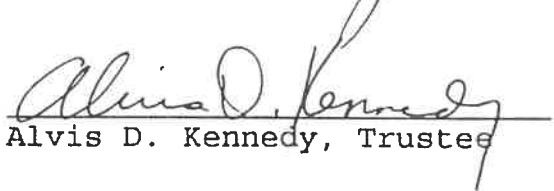

Larry G. Patton, Trustee


Janice K. Meese, Trustee


David B. Means, Trustee


Leonce H. Thierry, Trustee


Guy A. Rogers, Trustee


Alvis D. Kennedy, Trustee


Richard H. Zarle, Trustee

STATE OF OKLAHOMA)
) SS:
COUNTY OF COMANCHE)

BEFORE ME, the undersigned, a Notary Public in and for the above County and State, on the 15th day of December, 1992, personally appeared Ted Marley, and further known to me to be the identical person who subscribed his name to the foregoing instrument, as Grantor, and acknowledged to me that he executed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year aforesaid.


Notary Public


(SEAL)

My commission expires: 12-1-93

STATE OF OKLAHOMA)
) SS:
COUNTY OF COMANCHE)

BEFORE ME, the undersigned, a Notary Public in and for the above County and State, on the 15th day of December, 1992, personally appeared Fred L. Fitch, Jere L. Barnhouse, Larry G. Patton, Janice K. Meese, David R. Means, Leonce H. Thierry, Guy A. Rogers, Alvis D. Kennedy, and Richard H. Zarle, and further known to me to be the identical persons who subscribed their names to the foregoing instrument, as Trustees, and acknowledged to me that they executed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year aforesaid.


Notary Public

(SEAL)

My commission expires: 12-1-93

STATE OF OKLAHOMA)
)
COUNTY OF COMANCHE) SS:

ACCEPTANCE

KNOW ALL MEN BY THESE PRESENTS:

That the City Council of the City of Lawton, State of Oklahoma, hereby accepts the beneficiary interest in the Trust created by the within and foregoing Trust Indenture, for and on behalf of said City in all respects in accordance with the terms of said Trust Indenture.

WITNESS my hand as Mayor of said City, attested by the Clerk of said City, pursuant to direction of the City Council of said City, this 15th day of December, 1992.

THE CITY OF LAWTON, OKLAHOMA,
A MUNICIPAL CORPORATION, AS
BENEFICIARY



Mayor

(SEAL)

ATTEST:



City Clerk

STATE OF OKLAHOMA)
) SS:
COUNTY OF COMANCHE)


APPROVAL

KNOW ALL MEN BY THESE PRESENTS:

That the City Council of the City of Lawton, State of Oklahoma, on behalf of the City of Lawton, State of Oklahoma, beneficiary of the foregoing Trust Indenture, by an affirmative vote of at least two-third votes of all councilmembers hereby expressly approve the Trust Indenture of the Lawton Economic Development Authority.

WITNESS my hand as Mayor of said City, attested by the Clerk of said City, pursuant to direction of the City Council of said City, this 15th day of December, 1992.

THE CITY OF LAWTON, OKLAHOMA,
A MUNICIPAL CORPORATION, AS
BENEFICIARY



Mayor

(SEAL)

ATTEST:



City Clerk

Item Title:

Consider approving the minutes of the November 20, 2025, meeting.

Initiator: Tammy Branstetter, Senior Deputy City Clerk

Information Source: Tammy Branstetter, Senior Deputy City Clerk

Background:

Minutes from the November 20, 2025, meeting have been drafted and are awaiting approval.

Correlation to the True North Statement:

Transparency and Trust

Exhibit:

Draft Minutes - November 20, 2025

Key Issues:

N/A

Funding Source:

N/A

Recommended Action:

Approve the minutes of the November 20, 2025, meeting.

ATTACHMENTS:

1. LEDA Draft Minutes 11.20.2025



City of Lawton
**Lawton Economic
Development Authority**

Lawton City Hall
212 SW 9th Street
Lawton, Oklahoma
73501-3944

Minutes

Thursday, November 20, 2025

2:00 PM

**Lawton City Hall
3rd Floor Conference Room**

Meeting Called to Order and Roll Call

"Official action can be taken only on items which appear on the agenda. The Authority may adopt, approve, ratify, deny, defer, recommend, or continue any agenda item. The Authority may also propose and enact floor amendments to any matter presented before them. When more information is needed to act on an item, the Authority may refer the matter to City Staff. Under certain circumstances, items are deferred to a specific later date or stricken from the agenda entirely."

Chairman Fitch called the meeting to order at 2:00 PM in the 3rd floor conference room of City Hall.

ROLL CALL:

PRESENT: Fred Fitch, David Madigan, Larry Neal, George Gill, Mark Brace, Ron Nance, Randy Warren, Brandie Page

ABSENT: Jason Hensley (excused)

OTHERS PRESENT: Richard Rogalski, LEDA Executive Director; John Ratliff, City Manager; Timothy Wilson, Interim City Attorney; Tammy Branstetter, City Clerk's Office; Michaela Bertoch, Public Utilities Department; Matthew Modeste, Hatch, Croke & Associates; Kim McConnell, Lawton Consitution

Statement of Compliance with Oklahoma Open Meeting Act, 25 O.S. 301-314

Chairman Fitch confirmed with Branstetter that the meeting notice and agenda were posted by the City Clerk's Office as required by State Law.

Business Items

1. Consider approving the minutes of the October 23, 2025, meeting.

A copy of the minutes from the October 23, 2025, meeting may be obtained from the City Clerk's Office upon request.

Motion by Warren, **Second** by Brace, to approve the minutes from the October 23,

2025, meeting as presented. **AYE:** Gill, Warren, Madigan, Brace, Nance, Neal, Page, Fitch. **NAY:** None. **MOTION PASSED.**

2. Consider approving the September 2025 Financial Report from Hatch, Croke and Associates.

Matthew Modeste, Hatch Croke and Associates, presented the September 2025 Financial Report. A copy of the September 2025 Financial Report may be obtained from the City Clerk's Office upon request.

Modeste said the financials will start on page 18 of your agenda packets. We look at the statement of net position on your current assets. You have your seven bank accounts, which totaled \$6.7 million. Interest receivable from BOK, all of that was received in October, \$576.80. Property tax receivable, that is September's property tax, which was received in October. No change in the AR state matching number, so that gives you total current assets of \$7,274,553.51. No change in total fixed assets, no change in other assets, so your total assets are \$11.8 million. On the next page, page 19, you'll find your liabilities and net position. Total current liabilities are \$67,691, which is made up of your accounts payable and accrued interest payable for your note. There was one note payment made in September, totaling \$2,083,492. Because of that, the principal portion of that under the long-term liabilities, the note payable, trust financial, was reduced by \$1,805,000. No change in any of the other long-term liabilities listed. So, your assets less your liabilities gives you a net position of negative \$14.95 million. On page 20, you'll see the combined statement of revenue and expenses. The hotel and motel tax for August was received as \$27,431. Property tax, which was September's property tax, was \$12,346, giving us total revenue of \$39,777. For operating expenses, total operating expenses were \$144,854, and interest income for the month was \$13,215. This gives us a decrease in the net position of \$91,861.79. Page 21 is your statement of cash flows. If you look at the bottom of the page, you'll see that we had a net decrease in cash of \$2 million — the majority of that was the note payment, which was made. So, if you add that to the cash at the beginning of the period of \$8.7 million, that gives you cash at the end of September 30th of \$6.7 million. Pages 22 to 26 of your agenda packet detail the combined expenses that we listed out on page 20.

Madigan asked does it make any sense at all when we're looking at our—I'm going to call it the balance sheet, the statement of net positions—to create a year-over-year analysis? Because on the income statement, we do that, but for the balance sheet, does anybody else want to see the progress of the loan paid down and the cash on hand year over year?

Warren said it would be nice to see the progress.

Modeste said you also can see all those changes, for instance, if you look at page 21, you can see your increase or decrease in your current assets, and your increase or decrease in your current liabilities for the month and for the period.

Madigan said yes, but what I'm talking about is the prior year(s).

Modeste said maybe at the end of the year or something. It would have to be generated outside of the system for the prior year, but I'll discuss with Scott and see.

Richard Rogalski, LEDA Executive Director, said you guys had asked me a little bit about some sort of documentation along those lines, and I'm working on it. I was going to basically do it for your 2026 budget year. I'd kind of give you a year where we forecast what the amounts are going to be coming in. We can kind of put that together a little bit, and then try to tie that back to your cash assets. Maybe we can work with Matthew on something. I don't know what next year is going to be because I'm not sure how Westwin will be assessed. TIF 4 and TIF 3 are your only two steady earners, and we know what those earn — that's about \$1.5 million in revenue, and once I see how the county assesses those other ones, I'll know what to expect. Then, we'll put all that together.

Motion by Madigan, **Second** by Warren, to approve the September 2025 Financial Report as presented. **AYE:** Gill, Warren, Madigan, Brace, Nance, Neal, Page, Fitch. **NAY:** None. **MOTION PASSED.**

3. Receive a report from the City of Lawton Department of Public Utilities and consider approving Pay Application 007 from Fisher59 Properties in the amount of \$33,823.44 for the cost of public improvements associated with the construction of a new warehouse and distribution center made in accordance with the First Amended Redevelopment Agreement between LEDA and Fisher59 Properties, approved on January 14, 2025.

Michaela Bertoch, Public Utilities Department, gave a report regarding Pay Application 007 from Fisher59 Properties. A copy of Pay Application 007 from Fisher59 Properties may be obtained from the City Clerk's Office upon request.

Bertoch said we have Pay Application 007 for the amount of \$33,823.44. Joe Castillo is our inspector on this job. He goes out there all the time to make sure they're doing everything how they should. This one is for site utilities and earthwork that they're doing out there. We're about 42% complete with the job. This week they've been out there at three and four in the morning pouring concrete on the roads, so it's come along.

Gill said I like to look at the amount of money against the percentage of the work completed. You can derive a pattern there that should be at least for certain parameters.

Motion by Gill, **Second** by Nance, to approve Pay Application 007 from Fisher59 Properties. **AYE:** Gill, Warren, Madigan, Brace, Nance, Neal, Page, Fitch. **NAY:** None. **MOTION PASSED.**

4. Consider approving the First Amendment to the Purchase and Sales

Agreement dated effective as of July 17, 2025, between the Lawton Economic Development Authority and JAA Armada Acquisitions, LLC, for Lot Eight (8) of Block One (1), LAWTON DOWNTOWN CENTER, PART 2, to provide that the periods for both the First Inspection Period Extension and Second Inspection Period Extension shall be ninety (90) days rather than thirty (30) days.

Rogalski provided background information on this item. A copy of the First Amendment to the Purchase and Sales Agreement dated effective as of July 17, 2025, between the Lawton Economic Development Authority and JAA Armada Acquisitions, LLC may be obtained from the City Clerk's Office upon request.

Rogalski said we are still under a non-disclosure agreement regarding the affinity of the grocery stores they're working with, but I can tell you that they are working with the grocery stores — they're working very hard. With this agreement, what's come up is - we spoke to the developer and their broker, and Ted was on the call, and they all kind of agreed on this situation, that there's been some changes in the grocery store industry. There's been some acquisitions going on. Companies that were moving forward are now suddenly on the block for sale and that sort of thing. While this is happening, it's kind of delayed people making decisions. So, they requested to extend the timeline. We had a very detailed conversation with them, and they are working very hard. I was impressed by the amount of effort they're doing and the detail they gave us. With this extension, they're still putting down the \$5,000 nonrefundable deposit for the extension, but rather than a 30-day extension, they're requesting a 90-day extension. The second one would be the same — \$5,000 deposit, and it would be a 90-day extension. That's what this amendment does. I believe that it's a prudent thing to do. This is the best deal we've had for a long time, and they are working, like I said. This is a group that's connected and working very hard to get this project done.

Chairman Fitch said they're getting closer to the ICSC meeting in February, and they would like to have the opportunity to go and talk to people at that point in time and not be rushed from us. So this will incorporate that to where they will have plenty of time to do that. Because they're not just looking at grocery stores, you know, they're talking about buying that entire tract, and there's been talk about extending or adding some more retail to that area. These are good guys. I've known one for quite a few years. He was with Sooner Investments years ago, and I had met him and his son both. They're good people and he's a hard worker. So I'm very comfortable with the extension. I don't have any problem with it. And I think it's a good thing that we work with him as closely as we can.

Motion by Warren, **Second** by Gill, to approve the first and second inspection period of the First Amendment to the Purchase and Sales Agreement dated effective as of July 17, 2025, between the Lawton Economic Development Authority and JAA Armada Acquisitions, LLC. **AYE:** Gill, Warren, Madigan, Brace, Nance, Neal, Page, Fitch. **NAY:** None. **MOTION PASSED.**

5. Review a memorandum from the Center for Economic Development Law regarding a Compliance Review under the Economic Development Agreement with Republic Paperboard Company, LLC, dated December 1, 2019, and consider making a determination regarding Republic’s compliance with the Economic Development Agreement and the amount of assistance to be provided to Republic in accordance therewith.

Rogalski provided background information on this item. A copy of the memorandum from the Center for Economic Development Law regarding a Compliance Review under the Economic Development Agreement with Republic Paperboard Company, LLC may be obtained from the City Clerk's Office upon request.

Rogalski said for this item, I’m going to ask that you take no action. There's an issue. So what happened is, Lisa Harden and I were kind of working on this at the very tail end of this week, because all the numbers, I have all the certifications, the math all worked. We were looking at something that was a little bit of a discrepancy. And so we actually called the finance director at Republic. And unfortunately, we had an apple as the base year and oranges as the five years we were comparing them to. And so we need to have all apples or all oranges. And so we're working with them on getting that. So, the analysis is no longer complete because we found there was an error. What I want you to know for sure is their 2024 wages requirement is \$2.16 million of additional wages. They're at \$3.8 million, so they're beyond the threshold today. But what this thing does is it averages over five years, so that's why we need to look at that a little better.

Rogalski said the other thing is their minimum employment requirement was originally 145, their minimum was 165, and right now, they're at 183. Those are real numbers—so it's not a matter of them not doing what they're supposed to do. It's a matter of us getting the math right. It's been a very successful project. You've seen that your TIF revenue coming in on this project has exceeded expectations. So, this is a great project.

Chairman Fitch said we will take no action. This will be brought up in the next meeting, hopefully. It should be resolved by then.

No action was taken on this item.

Reports

1. Receive a report from the LEDA Executive Director
 - a. Lawton Downtown Economic Development Plan
 - b. State Match and Council Policy 04-07
 - c. STEM procedures and policies
 - d. Residential redevelopment program

Rogalski discussed the Lawton Downtown Economic Development Plan. Rogalski said that's proceeded very well. The last public hearing before the City Council is scheduled for December 2nd. The notice went out, so we're set on that one.

Rogalski discussed the state match and Council Policy 04-07. Rogalski said you saw in there you had an AR for the state match — we haven't sent that off yet. As we were getting the data together, it was brought to our attention that there's a Council Policy 04-07 that was approved in January of this current year. It has to do with directing how use tax is apportioned. And so we're resolving all that before we can get that state match out. And so I'm just letting you know that's underway. You'll probably see a resolution going to City Council that clarifies and sets that, so we know what we're supposed to do, and then we do that. And just so you know, use tax is not a tremendous amount. I think the total use tax is in the range of \$24,000 every six months, so it's \$48,000 a year total. So it's not a giant number, but it's still got to be done correctly. So it is delaying our state match application because we need to make sure we get the right one in. Rogalski noted that use taxes are separate from sales taxes in state statute, so they are not automatically part of the CIP. However, council policy said, "well, to put more money in the CIP, we're going to go ahead and on our own decide to separate that use tax with 2.18% going to the CIP." So that was sort of like an elective distribution. And so we have to make sure all the legalities are together so that whatever the Council wants, that's what we do. The reason we would argue with Council on this particular item is that if you leave it with us, we get a state match — we double the money. If you take it, you get just that money. You get \$24,000 a year to a \$340 million CIP. But if you leave it with us, I can make it \$48,000 a year. So, I don't think it's resolved. I think it's one of those things that we want Council to act on, and then we work it out.

Rogalski discussed STEM procedures and policies. Rogalski said we've completed kind of the first full year of our STEM program. A little rocky — it's a brand new thing for everybody. Donalynn has done a great job in the City Clerk's Office of working on some of the policies, so we're basically trying to create some better policies for next year. It sort of has to match the school year a little bit with how these things are done, because Lego Leagues match the school year, and we're just trying to do it so it's a little more user-friendly.

Rogalski discussed the residential redevelopment program. Rogalski said that's been one of those things we've talked about a few times—that LEDA would be managing a residential redevelopment program at some point. There's money in the CIP for that. So, I'm just letting you know we're working on some standards and things like that. There's a lot of interest in building a lot right now, and obviously the interest is in affordable housing, which is not easy to do. But I do think that there are some products out there that just might work out and be something where people invest and build a new home in a neighborhood where typically people wouldn't invest in new home construction because they feel like they're not going to get their money out. So, I think there's a lot of that going on, and it's kind of an exciting time. I think we're going to be able to rebuild some of these neighborhoods. So, that's a great deal.

Chairman Fitch asked with some of these areas that we are getting some blocks that could be buildable, are we looking at a situation where maybe there would be some other areas of houses that we could tear down and make a bigger area for building?

Rogalski said absolutely. There are multiple programs going on out there. The Lawton Urban Renewal Authority recently commissioned a blight study. LURA has an active Urban Renewal Plan in the downtown area — there's actually D6, the Civic Center and Downtown I. There are three urban renewal plans that are all connected, so they look like one. This body along with the LURA, about 15 years ago or more, did a major program. The Lawton Town Center was an urban renewal economic development incentivized program. So the question is, where to go? How to do? And has blight receded, or is blight increasing? And actually, I think the downtown is holding its own pretty well. From my look at the study, the study was presented to the LURA in its final form, I think last month. And the expectation is that the Lawton Urban Renewal Authority will maybe look at expanding someplace. I can tell you one place that somehow needs to be acquired and cleared is south of the railroad tracks, south of the mall, because I think the whole neighborhood is a floodplain. And so the best thing to do is clear all that off. And I mean, I've kind of thrown this idea out for the last, I think, 15 years — Numu Creek is a wet creek. It runs. It's kind of spring-fed. Clear it all out, and you build a real channel. You put in cofferdams, just like they did in Oklahoma City, and all of a sudden, you have a waterpark or riverwalk. And so it's a big idea, but you never get there if you never start. But if you start with a big idea, someday you might get there.

Gill said quite a bit of that is in the federal floodplain, and so there are things you have to do, but it would make a good water park naturally. You can't build on a lot of that now. If you tore it down, you couldn't really go back and do low income housing because of those federal restrictions.

Rogalski said what happened is that the water was channeled under the road, but then the underground culvert doesn't have capacity, so then it flows above the road. Well, that's extremely inefficient because it's flowing in people's front yards and around their houses. If I clear that up and channelize it, I can make it much more efficient, and I can reclaim a lot of that ground, but it's an expensive project.

Executive Session

Motion by Warren, **Second** by Neal, to convene in executive session. **AYE:** Gill, Warren, Madigan, Brace, Nance, Neal, Page, Fitch. **NAY:** None. **MOTION PASSED.**

The Authority convened in executive session at 2:30 PM and remained in executive session until 3:17 PM.

Motion by Gill, **Second** by Page, to return to session. **AYE:** Gill, Warren, Madigan, Brace, Nance, Neal, Page, Fitch. **NAY:** None. **MOTION PASSED.**

1. Pursuant to Section 307(C)(11), Title 25, Oklahoma Statutes, consider convening in executive session for the purpose of conferring on matters pertaining to economic development, including the transfer of property, financing, and the creation of a proposal to entice a business to locate within their jurisdiction if the public disclosure of which would violate the confidentiality of prospective business entities, and in open session, take action as necessary.

No action was taken on this item.

Adjournment

Motion by Gill, **Second** by Page, to adjourn the November 20, 2025, meeting. **AYE:** Gill, Warren, Madigan, Brace, Nance, Neal, Page, Fitch. **NAY:** None. **MOTION PASSED.**

There being no further business to discuss, the meeting was adjourned at 3:18 PM.

Item Title:

Consider approving the October 2025 Financial Report from Hatch, Croke and Associates.

Initiator: Tammy Branstetter, Senior Deputy City Clerk

Information Source: Matthew Modeste - Hatch, Croke & Associates

Background:

Matthew Modeste of Hatch, Croke & Associates has prepared the Authority's financial statements for October 2025, and they are now awaiting the Authority's review and approval.

Correlation to the True North Statement:

Transparency and Trust

Exhibit:

Financial Statements for the month of October 2025

Key Issues:

N/A

Funding Source:

LEDA

Recommended Action:

Approve the October 2025 Financial Report as presented.

ATTACHMENTS:

1. LEDA October 2025

Financial Statements

of
LAWTON ECONOMIC DEVELOPMENT AUTHORITY
For the Periods Ended October 31, 2025 and 2024

See Accountant's Compilation Report



Hatch, Croke & Associates, P.C.

417 SW C Avenue
Lawton, OK 73501

Certified Public Accountants
(580) 353-2122
Fax: (580) 353-2178

To Board of Directors
LAWTON ECONOMIC DEVELOPMENT AUTHORITY
Lawton, Oklahoma

Management is responsible for the accompanying financial statements of LAWTON ECONOMIC DEVELOPMENT AUTHORITY (an Oklahoma Public Trust), component unit of the City of Lawton, Oklahoma, which comprise the statement of net position as of October 31, 2025, and October 31, 2024, and the related statement of revenue and expenses for the 1 month and 4 months ended October 31, 2025, and October 31, 2024, and the related statement of cash flows for the 1 month and 4 months ended October 31, 2025 in accordance with accounting principles generally accepted in the United States of America. We have performed a compilation engagement in accordance with the Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the financial statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, a conclusion, nor provide any form of assurance on these financial statements.

Management has elected to omit substantially all the disclosures, management discussion and analysis (MD&A), statement of changes in net assets, and required supplementary information required by accounting principles generally accepted in the United States of America. If the omitted disclosures and statements were included in the financial statements, they might influence the user's conclusions about the Organization's net position, changes in net assets, and cash flows. Accordingly, the financials statements are not designed for those who are not informed about such matters.

Supplementary Information

The supplementary information contained in the departmental statements of revenue and expenses for the 1 month and 4 months ended October 31, 2025 and October 31, 2024, is presented for purposes of additional analysis and is not a required part of the basic financial statements. This information is the representation of management. The information was subject to our compilation engagement, however, we have not audited or reviewed the supplementary information and, accordingly, do not express an opinion, a conclusion, nor provide any form of assurance on such supplementary information.

Other Matters

While the financial statements are compiled in accordance with accounting principles generally accepted in the United States of America, their presentation is not.

We are not independent with respect to LAWTON ECONOMIC DEVELOPMENT AUTHORITY.

Hatch, Croke & Associates, P.C.

Hatch, Croke & Associates, P.C.
Lawton, Oklahoma
December 9, 2025

LAWTON ECONOMIC DEVELOPMENT AUTHORITY
Statement of Net Position
October 31, 2025 and 2024

ASSETS

	As of Oct. 31, 2025	As of Oct. 31, 2024	Change	Pct
Current Assets				
Cash-IBC Downtown TIF #5500	\$ 570,435.56	\$ 189,804.57	\$ 380,630.99	201
Cash-IBC TIF 2 #0944	1,364,827.51	50,383.41	1,314,444.10	999
Cash-CNB STEDI TIF #7680	1,921,337.77	2,493,011.45	(571,673.68)	(23)
Cash-Arvest TIF 2 Escrow #6585	0.00	86,070.65	(86,070.65)	(100)
Cash-BOK TIF2 #58-1 Restricted	136,252.59	54,294.83	81,957.76	151
Cash - CNB STEM #769	464,916.91	0.00	464,916.91	0
Cash-BOK 2019 Interest #58.2	153.85	0.00	153.85	0
Cash - CNB IntraFi	2,207,731.62	0.00	2,207,731.62	0
Interest Receivable - BOK	428.60	62.19	366.41	589
Sales & Use Tax Receivable	0.00	78,107.62	(78,107.62)	(100)
Property Tax Receivable TIF 1	7,488.00	0.00	7,488.00	0
A/R-State Matching Curr Yr	0.00	189,881.76	(189,881.76)	(100)
A/R-State Matching Pr Yrs	<u>586,905.02</u>	<u>1,617,531.23</u>	<u>(1,030,626.21)</u>	<u>(64)</u>
Total Current Assets	\$ 7,260,477.43	\$ 4,759,147.71	\$ 2,501,329.72	53
Fixed Assets				
Land - Town Center Lot 3 & 8	1,391,760.65	1,376,188.00	15,572.65	1
Land - SW Bishop Rd 40 Acres	<u>405,500.00</u>	<u>405,500.00</u>	<u>0.00</u>	<u>0</u>
Total Fixed Assets	1,797,260.65	1,781,688.00	15,572.65	1
Other Assets				
N/R - Westwin Elements	<u>2,700,000.00</u>	<u>2,700,000.00</u>	<u>0.00</u>	<u>0</u>
Total Other Assets	<u>2,700,000.00</u>	<u>2,700,000.00</u>	<u>0.00</u>	<u>0</u>
Total Assets	\$ <u>11,757,738.08</u>	\$ <u>9,240,835.71</u>	\$ <u>2,516,902.37</u>	<u>27</u>

LAWTON ECONOMIC DEVELOPMENT AUTHORITY
Statement of Net Position
October 31, 2025 and 2024

LIABILITIES AND NET POSITION

	As of Oct. 31, 2025	As of Oct. 31, 2024	Change	Pct
Current Liabilities				
Accounts Payable	\$ 27,190.52	\$ 6,420.00	\$ 20,770.52	324
Accrued Interest Payable	85,400.28	100,076.16	(14,675.88)	(15)
Total Current Liabilities	\$ 112,590.80	\$ 106,496.16	\$ 6,094.64	6
Long Term Liabilities				
N/P - CCIDA Westwin Project	2,000,000.00	2,000,000.00	0.00	0
N/P - Truist Financial	20,745,000.00	22,550,000.00	(1,805,000.00)	(8)
Payable to LURA-downtown plan	0.00	466,392.25	(466,392.25)	(100)
Payable to LEDC-TIF5 Incentive	243,535.00	0.00	243,535.00	0
Payable to LEDC-TIF4 Incentive	160,000.00	160,000.00	0.00	0
Payable to COL-TIF4 Incentives	325,543.33	325,546.33	(3.00)	(0)
Payable to COL - downtown plan	414,322.00	414,322.00	0.00	0
Payable to COL - STEDI Expense	0.00	(3.00)	3.00	(100)
Payable to COL-Westwin Project	1,000,000.00	1,000,000.00	0.00	0
Payable to COL - Prof Fees	0.00	6,420.00	(6,420.00)	(100)
Payable to COL-Fisher59(TIF 5)	1,770,310.30	0.00	1,770,310.30	0
TIF2 Bricktown Brewery Escrow	0.00	86,070.65	(86,070.65)	(100)
Total Long Term Liabilitie	26,658,710.63	27,008,748.23	(350,037.60)	(1)
Net Position				
Invested in Capital Assets	1,797,260.65	1,781,688.00	15,572.65	1
Net Position-Rest(BOK Cash)	136,406.44	54,294.83	82,111.61	151
Net Position-Restr(TIF 4 STEM)	0.00	16,450.06	(16,450.06)	(100)
Net Position-Restr(TIF 3 STEM)	404,373.14	290,942.43	113,430.71	39
Net Position - Unrestricted	(17,836,178.78)	(20,477,687.85)	2,641,509.07	(13)
Change in Net Position	484,575.20	459,903.85	24,671.35	5
Total Net Position	(15,013,563.35)	(17,874,408.68)	2,860,845.33	(16)
Total Liabilities & Net	\$ 11,757,738.08	\$ 9,240,835.71	\$ 2,516,902.37	27

See Accountant's Compilation Report

LAWTON ECONOMIC DEVELOPMENT AUTHORITY
Statement of Revenue and Expenses - Combined
For the Periods Ended October 31, 2025 and 2024

	1 Month Ended Oct. 31, 2025	Pct	1 Month Ended Oct. 31, 2024	Pct	4 Months Ended Oct. 31, 2025	Pct	4 Months Ended Oct. 31, 2024	Pct
Revenue								
Hotel/Motel Tax	\$ 30,392.00	80.23	\$ 61,108.00	24.38	\$ 91,454.00	9.70	\$ 90,387.00	11.99
State of OK Matching Funds	0.00	0.00	111,628.83	44.54	0.00	0.00	189,881.76	25.19
Property Tax Income	7,488.00	19.77	0.00	0.00	850,905.71	90.30	346,549.02	45.98
Sales and Use Tax	<u>0.00</u>	<u>0.00</u>	<u>77,910.83</u>	<u>31.08</u>	<u>0.00</u>	<u>0.00</u>	<u>126,884.76</u>	<u>16.83</u>
Total Revenue	37,880.00	100.00	250,647.66	100.00	942,359.71	100.00	753,702.54	100.00
Operating Expenses								
Advertising & Marketing	0.00	0.00	0.00	0.00	0.00	0.00	642.32	0.09
Bank Charges	0.00	0.00	0.00	0.00	35.00	0.00	35.00	0.00
Development Assistance	20,423.51	53.92	0.00	0.00	68,703.55	7.29	0.00	0.00
Interest Expense	42,700.13	112.72	50,038.08	19.96	178,231.10	18.91	200,152.34	26.56
License Fee - Lawton Lodging	20,261.33	53.49	40,738.67	16.25	83,335.33	8.84	40,738.67	5.41
Licenses & Fees	0.00	0.00	0.00	0.00	250.00	0.03	0.00	0.00
Mowing/Debris Removal	0.00	0.00	0.00	0.00	3,040.00	0.32	0.00	0.00
Office Expense	0.00	0.00	0.00	0.00	0.00	0.00	140.61	0.02
Professional Fees - Accountin	1,100.00	2.90	1,475.00	0.59	5,425.00	0.58	5,040.00	0.67
Professional Fees - Legal	19,441.52	51.32	0.00	0.00	64,378.45	6.83	32,706.50	4.34
Professional Fees - Other	6,649.00	17.55	6,420.00	2.56	26,596.00	2.82	25,680.00	3.41
STEM Community Events	0.00	0.00	0.00	0.00	14,815.63	1.57	0.00	0.00
TIF-Cache Public Schools	0.00	0.00	1,570.88	0.63	23,455.21	2.49	12,169.87	1.61
TIF-Comanche Cty Commissio	0.00	0.00	1,560.42	0.62	16,309.35	1.73	12,088.85	1.60
TIF-Comanche County Hlth De	0.00	0.00	390.49	0.16	4,081.32	0.43	3,025.17	0.40
TIF-Great Plains Tech Center	<u>0.00</u>	<u>0.00</u>	<u>2,326.15</u>	<u>0.93</u>	<u>24,312.57</u>	<u>2.58</u>	<u>18,021.03</u>	<u>2.39</u>
Total Operating Expens	<u>110,575.49</u>	<u>291.91</u>	<u>104,519.69</u>	<u>41.70</u>	<u>512,968.51</u>	<u>54.43</u>	<u>350,440.36</u>	<u>46.50</u>
Operating Income	(72,695.49)	(191.91)	146,127.97	58.30	429,391.20	45.57	403,262.18	53.50
Interest Income	<u>13,719.99</u>	<u>36.22</u>	<u>12,797.36</u>	<u>5.11</u>	<u>55,184.00</u>	<u>5.86</u>	<u>56,641.67</u>	<u>7.52</u>
Total Other Income	<u>13,719.99</u>	<u>36.22</u>	<u>12,797.36</u>	<u>5.11</u>	<u>55,184.00</u>	<u>5.86</u>	<u>56,641.67</u>	<u>7.52</u>
Change in Net Positi	\$ <u>(58,975.50)</u>	<u>(155.69)</u>	\$ <u>158,925.33</u>	<u>63.41</u>	\$ <u>484,575.20</u>	<u>51.42</u>	\$ <u>459,903.85</u>	<u>61.02</u>

LAWTON ECONOMIC DEVELOPMENT AUTHORITY
Statement of Cash Flows
For the Period Ended October 31, 2025
INCREASE (DECREASE) IN CASH OR CASH EQUIVALENTS

	<u>1 Month Ended</u> <u>Oct. 31, 2025</u>	<u>4 Months Ended</u> <u>Oct. 31, 2025</u>
Cash Flow from Operating Activities		
Net Income (Loss)	\$ (58,975.50)	\$ 484,575.20
Adjustments to Reconcile Cash Flow		
Decrease (Increase) in Current Assets		
Interest Receivable - BOK	148.20	799.21
A/R COL - Hotel/Motel Tax	0.00	33,549.00
Sales & Use Tax Receivable	0.00	199,573.01
Property Tax Receivable TIF 1	4,858.00	15,803.83
A/R-State Matching Curr Yr	0.00	1,215,898.01
A/R-State Matching Pr Yrs	0.00	(29,692.61)
Increase (Decrease) in Current Liabilities		
Accounts Payable	2,199.29	7,816.76
Accrued Interest Payable	42,700.13	(100,261.40)
TIF 3 Distributions Payable	<u>0.00</u>	<u>(32,598.02)</u>
Total Adjustments	<u>49,905.62</u>	<u>1,310,887.79</u>
Cash Provided (Used) by Operations	(9,069.88)	1,795,462.99
Cash Flow From Investing Activities		
Sales (Purchases) of Assets		
Cash Flow From Financing Activities		
Cash (Used) or provided by:		
N/P - Truist Financial	<u>0.00</u>	<u>(1,805,000.00)</u>
Cash Provided (Used) by Financing	<u>0.00</u>	<u>(1,805,000.00)</u>
Net Increase (Decrease) in Cash	(9,069.88)	(9,537.01)
Cash at Beginning of Period	<u>6,674,725.69</u>	<u>6,675,192.82</u>
Cash at End of Period	\$ <u>6,665,655.81</u>	\$ <u>6,665,655.81</u>

See Accountant's Compilation Report

LAWTON ECONOMIC DEVELOPMENT AUTHORITY
Statement of Revenue and Expenses - Operations
For the Periods Ended October 31, 2025 and 2024

	<u>1 Month Ended</u> <u>Oct. 31, 2025</u>	<u>Pct</u>	<u>1 Month Ended</u> <u>Oct. 31, 2024</u>	<u>Pct</u>	<u>4 Months Ended</u> <u>Oct. 31, 2025</u>	<u>Pct</u>	<u>4 Months Ended</u> <u>Oct. 31, 2024</u>	<u>Pct</u>
Revenue								
Operating Expenses								
Advertising & Marketing	0.00	0.00	0.00	0.00	0.00	0.00	642.32	0.00
Bank Charges	0.00	0.00	0.00	0.00	35.00	0.00	0.00	0.00
Interest Expense	42,700.13	0.00	50,038.08	0.00	178,231.10	0.00	200,152.34	0.00
Licenses & Fees	0.00	0.00	0.00	0.00	250.00	0.00	0.00	0.00
Mowing/Debris Removal	0.00	0.00	0.00	0.00	3,040.00	0.00	0.00	0.00
Office Expense	0.00	0.00	0.00	0.00	0.00	0.00	140.61	0.00
Professional Fees - Accountin	1,100.00	0.00	1,475.00	0.00	5,425.00	0.00	5,040.00	0.00
Professional Fees - Legal	19,441.52	0.00	0.00	0.00	64,378.45	0.00	32,706.50	0.00
Professional Fees - Other	6,649.00	0.00	6,420.00	0.00	26,596.00	0.00	25,680.00	0.00
STEM Community Events	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>14,815.63</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Total Operating Expens	<u>69,890.65</u>	<u>0.00</u>	<u>57,933.08</u>	<u>0.00</u>	<u>292,771.18</u>	<u>0.00</u>	<u>264,361.77</u>	<u>0.00</u>
Operating Income	(69,890.65)	0.00	(57,933.08)	0.00	(292,771.18)	0.00	(264,361.77)	0.00
Interest Income	<u>13,719.99</u>	<u>0.00</u>	<u>12,797.36</u>	<u>0.00</u>	<u>55,184.00</u>	<u>0.00</u>	<u>56,641.67</u>	<u>0.00</u>
Total Other Income	<u>13,719.99</u>	<u>0.00</u>	<u>12,797.36</u>	<u>0.00</u>	<u>55,184.00</u>	<u>0.00</u>	<u>56,641.67</u>	<u>0.00</u>
Change in Net Positi	<u>\$ (56,170.66)</u>	<u>0.00</u>	<u>\$ (45,135.72)</u>	<u>0.00</u>	<u>\$ (237,587.18)</u>	<u>0.00</u>	<u>\$ (207,720.10)</u>	<u>0.00</u>

See Accountant's Compilation Report

LAWTON ECONOMIC DEVELOPMENT AUTHORITY
Statement of Revenue and Expenses-TIF District 1
For the Periods Ended October 31, 2025 and 2024

	1 Month Ended Oct. 31, 2025	Pct	1 Month Ended Oct. 31, 2024	Pct	4 Months Ended Oct. 31, 2025	Pct	4 Months Ended Oct. 31, 2024	Pct
Revenue								
Property Tax Income	\$ <u>7,488.00</u>	<u>100.00</u>	\$ <u>0.00</u>	<u>0.00</u>	\$ <u>88,834.50</u>	<u>100.00</u>	\$ <u>70,731.50</u>	<u>100.00</u>
Total Revenue	7,488.00	100.00	0.00	0.00	88,834.50	100.00	70,731.50	100.00
Operating Expenses								
Bank Charges	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>35.00</u>	<u>0.05</u>
Total Operating Expens	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>35.00</u>	<u>0.05</u>
Operating Income	<u>7,488.00</u>	<u>100.00</u>	<u>0.00</u>	<u>0.00</u>	<u>88,834.50</u>	<u>100.00</u>	<u>70,696.50</u>	<u>99.95</u>
Change in Net Positi	<u>\$ 7,488.00</u>	<u>100.00</u>	<u>\$ 0.00</u>	<u>0.00</u>	<u>\$ 88,834.50</u>	<u>100.00</u>	<u>\$ 70,696.50</u>	<u>99.95</u>

See Accountant's Compilation Report

LAWTON ECONOMIC DEVELOPMENT AUTHORITY
Statement of Revenue and Expenses-TIF District 2
For the Periods Ended October 31, 2025 and 2024

	<u>1 Month Ended</u> <u>Oct. 31, 2025</u>	<u>Pct</u>	<u>1 Month Ended</u> <u>Oct. 31, 2024</u>	<u>Pct</u>	<u>4 Months Ended</u> <u>Oct. 31, 2025</u>	<u>Pct</u>	<u>4 Months Ended</u> <u>Oct. 31, 2024</u>	<u>Pct</u>
Revenue								
Hotel/Motel Tax	\$ 30,392.00	100.00	\$ 61,108.00	24.38	\$ 91,454.00	95.72	\$ 90,387.00	22.16
State of OK Matching Funds	0.00	0.00	111,628.83	44.54	0.00	0.00	189,881.76	46.56
Property Tax Income	0.00	0.00	0.00	0.00	4,093.00	4.28	680.00	0.17
Sales and Use Tax	<u>0.00</u>	<u>0.00</u>	<u>77,910.83</u>	<u>31.08</u>	<u>0.00</u>	<u>0.00</u>	<u>126,884.76</u>	<u>31.11</u>
Total Revenue	30,392.00	100.00	250,647.66	100.00	95,547.00	100.00	407,833.52	100.00
Operating Expenses								
License Fee - Lawton Lodging	<u>20,261.33</u>	<u>66.67</u>	<u>40,738.67</u>	<u>16.25</u>	<u>83,335.33</u>	<u>87.22</u>	<u>40,738.67</u>	<u>9.99</u>
Total Operating Expens	<u>20,261.33</u>	<u>66.67</u>	<u>40,738.67</u>	<u>16.25</u>	<u>83,335.33</u>	<u>87.22</u>	<u>40,738.67</u>	<u>9.99</u>
Operating Income	<u>10,130.67</u>	<u>33.33</u>	<u>209,908.99</u>	<u>83.75</u>	<u>12,211.67</u>	<u>12.78</u>	<u>367,094.85</u>	<u>90.01</u>
Change in Net Positi	<u>\$ 10,130.67</u>	<u>33.33</u>	<u>\$ 209,908.99</u>	<u>83.75</u>	<u>\$ 12,211.67</u>	<u>12.78</u>	<u>\$ 367,094.85</u>	<u>90.01</u>

LAWTON ECONOMIC DEVELOPMENT AUTHORITY
Statement of Revenue and Expenses-TIF District 3
For the Periods Ended October 31, 2025 and 2024

	<u>1 Month Ended</u> <u>Oct. 31, 2025</u>	<u>Pct</u>	<u>1 Month Ended</u> <u>Oct. 31, 2024</u>	<u>Pct</u>	<u>4 Months Ended</u> <u>Oct. 31, 2025</u>	<u>Pct</u>	<u>4 Months Ended</u> <u>Oct. 31, 2024</u>	<u>Pct</u>
Revenue								
Property Tax Income	\$ 0.00	0.00	\$ 0.00	0.00	\$ 757,978.21	100.00	\$ 275,137.52	100.00
Total Revenue	0.00	0.00	0.00	0.00	757,978.21	100.00	275,137.52	100.00
Operating Expenses								
TIF-Cache Public Schools	0.00	0.00	1,570.88	0.00	23,455.21	3.09	12,169.87	4.42
TIF-Comanche Cty Commissio	0.00	0.00	1,560.42	0.00	16,309.35	2.15	12,088.85	4.39
TIF-Comanche County Hlth De	0.00	0.00	390.49	0.00	4,081.32	0.54	3,025.17	1.10
TIF-Great Plains Tech Center	0.00	0.00	2,326.15	0.00	24,312.57	3.21	18,021.03	6.55
Total Operating Expens	0.00	0.00	5,847.94	0.00	68,158.45	8.99	45,304.92	16.47
Operating Income	0.00	0.00	(5,847.94)	0.00	689,819.76	91.01	229,832.60	83.53
Change in Net Positi	\$ 0.00	0.00	\$ (5,847.94)	0.00	\$ 689,819.76	91.01	\$ 229,832.60	83.53

See Accountant's Compilation Report

LAWTON ECONOMIC DEVELOPMENT AUTHORITY
Statement of Revenue and Expenses-TIF District 5
For the Periods Ended October 31, 2025 and 2024

	<u>1 Month Ended</u> <u>Oct. 31, 2025</u>	<u>Pct</u>	<u>1 Month Ended</u> <u>Oct. 31, 2024</u>	<u>Pct</u>	<u>4 Months Ended</u> <u>Oct. 31, 2025</u>	<u>Pct</u>	<u>4 Months Ended</u> <u>Oct. 31, 2024</u>	<u>Pct</u>
Revenue								
Operating Expenses								
Development Assistance	<u>20,423.51</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>68,703.55</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Total Operating Expens	<u>20,423.51</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>68,703.55</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Operating Income	<u>(20,423.51)</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>(68,703.55)</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Change in Net Positi	<u>\$ (20,423.51)</u>	<u>0.00</u>	<u>\$ 0.00</u>	<u>0.00</u>	<u>\$ (68,703.55)</u>	<u>0.00</u>	<u>\$ 0.00</u>	<u>0.00</u>

See Accountant's Compilation Report

Item Title:

Consider approving a joint resolution of the City of Lawton, the Lawton Economic Development Authority, and the Comanche County Industrial Development Authority acknowledging Westwin Elements, Inc.’s Written Notice of its Election Not to Proceed with the large-scale commercial refinery in Lawton, Oklahoma; approving a Notice of Termination of All Obligations under Part II of the Amended and Restated Redevelopment Agreement between the City, LEDA, CCIDA, and Westwin; and authorizing the Mayor or Vice-Mayor and Chairman or Vice-Chairman of LEDA and CCIDA to execute and deliver such notice.

Initiator: Richard Rogalski - LEDA Executive Director

Information Source: Richard Rogalski - LEDA Executive Director

Background:

This agenda item seeks approval of a joint resolution from the City of Lawton, the Lawton Economic Development Authority (LEDA), and the Comanche County Industrial Development Authority (CCIDA) acknowledging Westwin Elements, Inc.'s Written Notice of its Election Not to Proceed with the planned large-scale commercial refinery in Lawton, Oklahoma. In light of this decision, the resolution approves a Notice of Termination of all obligations under Part II of the Amended and Restated Redevelopment Agreement between the City, LEDA, CCIDA, and Westwin.

Correlation to the True North Statement:

Transparency and Trust

Exhibit:

Draft Resolution Approving Termination Notice
Draft Termination Notice

Key Issues:

N/A

Funding Source:

N/A

Recommended Action:

Approve a joint resolution of the City of Lawton, the Lawton Economic Development Authority, and the Comanche County Industrial Development Authority acknowledging Westwin Elements, Inc.’s Written Notice of its Election Not to Proceed with the large-scale commercial refinery in Lawton, Oklahoma; approving a Notice of Termination of All Obligations under Part II of the Amended and Restated Redevelopment Agreement between the City, LEDA, CCIDA, and Westwin; and authorizing the Chairman or Vice-Chairman of LEDA to execute and deliver such notice.

ATTACHMENTS:

1. LEDA Res Approv Term Notice
2. Termination Notice - 12.12.2025

RESOLUTION NO. 25-_____

A RESOLUTION ACKNOWLEDGING THE WRITTEN NOTICE FROM WESTWIN ELEMENTS, INC. THAT IT WILL NOT PROCEED WITH THE LARGE-SCALE COMMERCIAL REFINERY IN LAWTON, OKLAHOMA; APPROVING A NOTICE TERMINATING PUBLIC PARTY OBLIGATIONS UNDER PART II OF THE AMENDED AND RESTATED REDEVELOPMENT AGREEMENT WITH WESTWIN PERTAINING TO THE LARGE-SCALE COMMERCIAL REFINERY; ESTABLISHING CONDITIONS PRECEDENT TO TERMINATION OF PROJECT DOCUMENTS; AND AUTHORIZING THE CHAIRMAN TO EXECUTE AND DELIVER THE NOTICE AND RELATED DOCUMENTS.

WHEREAS, the Lawton Economic Development Authority (“LEDA”) is a public trust created pursuant to 60 O.S. §176 et seq., with the City of Lawton as its beneficiary, and is authorized to provide assistance in development financing, acquire and dispose of property, and enter into redevelopment agreements to advance economic-development objectives; and

WHEREAS, on December 12, 2023, LEDA, the City of Lawton (the “City”), the Comanche County Industrial Development Authority (“CCIDA”), and Westwin Elements, Inc. (“Westwin”) entered into that certain Amended and Restated Redevelopment Agreement, as amended from time to time (the “Redevelopment Agreement”), providing for, among other things, Westwin’s: (a) development and operation of a pilot-scale cobalt refining facility (the “Pilot Facility”); and (b) development of a future large-scale commercial refinery in Lawton, Oklahoma; and

WHEREAS, under the Redevelopment Agreement and related Project Documents, the City, and CCIDA provided LEDA with the \$3,000,000 in public assistance in development financing loaned to the Redeveloper, sourced from (i) a \$2,000,000 inter-authority loan from CCIDA to LEDA to support construction of the Pilot Facility, (ii) public assistance in development financing from the City in the amount of \$1,000,000; and

WHEREAS, the \$3,000,000 loan to Westwin, evidenced by a Loan Agreement and secured by a Redeveloper Promissory Note, Leasehold Mortgage, and other security documents, would have been eligible for forgiveness conditioned on Westwin’s performance of obligations relating to development of the commercial refinery; and

WHEREAS, CCIDA previously conveyed to LEDA fee title to the 40-acre Pilot Facility site pursuant to a Disposition and Development Agreement between CCIDA and LEDA, dated December 12, 2023, and LEDA leased such property to Westwin pursuant to a Ground Lease between LEDA and Westwin dated December 29, 2023, to provide for Westwin’s construction and operation of the Pilot Facility; and

WHEREAS, Section 4(b) of Part I of the Redevelopment Agreement authorizes Westwin to elect not to proceed with development of the large-scale commercial refinery, and provides that such election must be delivered to the Public Parties in writing; and

WHEREAS, on September 11, 2025, Westwin executed and delivered a written notice confirming that it will not proceed with development of the large-scale commercial refinery contemplated by the Redevelopment Agreement, and further acknowledged that the City has no remaining obligation to provide financial assistance with respect to the commercial refinery; and

WHEREAS, Westwin's September 11, 2025, notice constitutes an election not to proceed with the Redevelopment under Section 4(b) of Part I and triggers the Public Parties' right to terminate the Redevelopment Agreement; and

WHEREAS, notwithstanding termination of Part II, of the Redevelopment Agreement Westwin remains subject to all obligations under Part I of the Redevelopment Agreement and related Project Documents pertaining to the Pilot Facility, including continuous operations, employment maintenance, wage and employment certifications, and satisfaction of all obligations under the Ground Lease, the Loan Agreement, and other Project Documents; and

WHEREAS, LEDA desires to approve and issue a written Notice of Termination to Westwin confirming that all obligations solely relating to the commercial refinery under Part II of the Redevelopment Agreement are terminated, and establishing conditions precedent to the termination and release of the Project Documents, including repayment of the outstanding public assistance; payment for LEDA's conveyance of the Pilot Facility site; return of shares issued to LEDC; and execution of appropriate termination and closing documents; and

WHEREAS, approval of the Termination Notice includes confirmation that all representations, warranties, covenants, indemnification obligations, and undertakings of Westwin that expressly survive termination shall remain in full force and effect; and

WHEREAS, LEDA further finds it appropriate to recommend that the City of Lawton and the Comanche County Industrial Development Authority likewise consider, approve, and execute the Notice of Termination in substantially the same form, in order to ensure a uniform and coordinated termination of obligations pertaining solely to Part II of the Redevelopment Agreement; and

WHEREAS, the proposed Notice of Termination, attached hereto as Exhibit A and incorporated by reference, sets forth the terms and conditions under which: (a) all obligations pertaining to the commercial refinery under Part II of the Redevelopment Agreement are terminated; (b) Westwin's obligations pertaining to the Pilot Facility shall continue; (c) all Project Documents remain in full force unless and until the stated closing conditions are satisfied; (d) failure to satisfy closing conditions by May 31, 2026 results in expiration of the Ground Lease and acceleration of all outstanding loan obligations; and

(e) no releases of any claims or liabilities occur until the conditions are fully satisfied and closing is consummated; and

WHEREAS, LEDA finds that approval of the Notice of Termination is in the best interests of LEDA and its beneficiary, the City of Lawton, and is necessary to protect public funds, enforce contractual rights, and facilitate an orderly resolution of LEDA’s relationship with Westwin regarding the commercial refinery component of the Redevelopment Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Trustees of the Lawton Economic Development Authority that:

1. The Notice of Termination of all obligations pertaining to the large-scale commercial refinery under Part II of the Amended and Restated Redevelopment Agreement, in substantially the form attached as Exhibit A (the “Termination Notice”), is hereby approved.
2. LEDA recommends that the City of Lawton and the Comanche County Industrial Development Authority consider, approve, and execute the Notice of Termination in substantially the same form as Exhibit A.
3. The Chairman of LEDA is authorized and directed to execute the Termination Notice on behalf of LEDA, with such revisions as may be recommended by LEDA’s counsel.
4. LEDA staff, officers, and counsel are authorized to take all actions necessary or desirable to implement this Resolution, including coordinating with the City and CCIDA, preparing or approving closing documents, and ensuring enforcement of all obligations under the Redevelopment Agreement and Project Documents.
5. This Resolution shall take effect immediately upon adoption.

PASSED, APPROVED, AND ADOPTED the ____ day of December, 2025.

ATTEST:

Fred L. Fitch, Chairman

Secretary

(SEAL)

[LETTERHEAD]

January __, 2026

VIA EMAIL AND CERTIFIED MAIL

Westwin Elements, Inc.
Attn: KaLeigh Long, CEO
211 N. Robinson Ave., Ste N1100
Oklahoma City, OK 73102
kaleigh@westwinelements.com

Re: Notice of Termination of Part II (Large-Scale Commercial Refinery) of Amended and Restated Redevelopment Agreement dated December 12, 2023, as amended, by and among the City, LEDA, CCIDA, and Westwin (“Redevelopment Agreement”)

Dear Ms. Long:

The City, LEDA, and CCIDA (collectively, the “Public Parties”) acknowledge that by letter dated September 4, 2025, prepared to memorialize discussions among the Parties and executed by Westwin on September 11, 2025, Westwin confirmed and acknowledged its election to not proceed with development of the large-scale commercial refinery in Lawton, Oklahoma, as contemplated by the Redevelopment Agreement, and therein acknowledged that the City has no obligation to provide financial assistance for such development. Westwin’s execution of that letter constitutes written notice under Section 4(b) of Part I of the Redevelopment Agreement of its election not to proceed with the large-scale commercial refinery in Lawton. Accordingly, the Public Parties hereby confirm that all obligations of the Parties solely with respect to Part II of the Redevelopment Agreement (Large-Scale Commercial Refinery) are terminated, including any obligation of the Public Parties to provide additional financial assistance or convey property for purposes of the commercial refinery. This termination, resulting from Westwin’s election and confirmed by the Public Parties, does not apply to, and shall not impair or release, any obligations, representations, warranties, covenants, indemnification obligations, or undertakings of Westwin that expressly survive termination pursuant to the Redevelopment Agreement or any Project Document. This termination does not impair or release, and shall not be deemed to waive, any rights or remedies of the Public Parties under the Project Documents arising from or relating to Westwin’s defaults, including, without limitation, those identified in the notices of default dated February 11, 2025, and July 17, 2025.

Notwithstanding the foregoing, and notwithstanding anything in the Project Documents or any other document to the contrary, and for the avoidance of doubt, Westwin’s obligations relating to the Pilot Facility under Part I of the Redevelopment Agreement, the Ground Lease, and other Project Documents, remain in full force and effect, including, without limitation, the obligations to continuously operate the Pilot Facility, maintain minimum employment levels (which currently at 12-14 full time employees, remain below those specified in the Redevelopment Agreement), and deliver employment and wage certifications to LEDA at six-month intervals. These obligations

shall continue through the earlier of: (a) expiration of the Ground Lease, or (b) satisfaction of the termination conditions set forth below.

Conditions to Termination of Project Documents. On or before May 31, 2026 (“Closing Date”):

1. **Loan Repayment.** Westwin shall repay LEDA the full outstanding principal amount of public assistance previously advanced by LEDA, in the amount of Two Million Seven Hundred Thousand Dollars (\$2,700,000), in immediately available funds, wired at closing into an account designated by LEDA.

2. **Pilot Facility Site Purchase Price.** Westwin shall pay to LEDA the sum of Four Hundred Thousand Dollars (\$400,000), in immediately available funds, wired at closing into an account designated by LEDA, in exchange for LEDA’s conveyance of fee simple title to the Property. The conveyance shall be as-is, where-is, with all faults, subject to existing exceptions to title (including oil, gas, and other mineral interests), the lien of PCE Constructors, Inc., and any other liens or claims arising from Westwin’s activities, all of which shall be Westwin’s sole responsibility to resolve. Westwin shall defend, indemnify, and hold harmless the City, LEDA, CCIDA, and LEDC from and against any such liens, claims, or liabilities. The conveyance shall be subject to all ad valorem tax obligations, including minimum annual tax payments or payments in lieu thereof, for amounts established for the valuation year beginning January 1, 2025.

3. **Return of Stock.** To the extent Westwin has issued to the Lawton-Fort Sill Economic Development Corporation (“LEDC”) four thousand (4,000) shares of Westwin common stock, as required by the Redevelopment Agreement, LEDC shall return such shares to Westwin at closing.

Project Documents shall be terminated and released only upon (a) LEDA’s receipt of the funds described in items 1 and 2 above in immediately available funds, (b) execution by the Parties of termination agreements for the Project Documents, and (c) execution, delivery, and recording of all customary closing documents.

Failure to Satisfy Conditions. In the event the conditions above are not fully satisfied on or before the Closing Date, the Ground Lease will expire pursuant to its terms, on June 1, 2026, and Section 16.7 of the Ground Lease shall apply. In addition, all unpaid principal, and accrued interest thereon, at the Default Rate, under the LEDA-Redeveloper Loan Agreement and Redeveloper Note shall become immediately due and payable to LEDA.

Future Development of a Commercial Facility in Lawton. While this letter acknowledges and confirms the final termination of the Parties’ obligations under Part II of the Redevelopment Agreement with respect to the large-scale commercial refinery, nothing herein is intended to foreclose future discussions should Westwin elect to pursue development of a commercial facility in Lawton at a later date. In that event, the Public Parties would be willing to consider proposed terms for a new agreement, subject to negotiation and approval in their sole discretion.

Capitalized terms used but not otherwise defined herein have the meanings set forth in Exhibit A.

CITY OF LAWTON,
a municipal corporation

By: _____
Mayor

**LAWTON ECONOMIC DEVELOPMENT
AUTHORITY,** a public trust

By: _____
Chairman

**COMANCHE COUNTY INDUSTRIAL
DEVELOPMENT AUTHORITY,** a public trust

By: _____
Chairman

EXHIBIT A

DEFINED TERMS

“Project Documents” includes collectively, the Redevelopment Agreement; the Ground Lease; the Disposition and Development Agreement; the Inter-Authority Loan Agreement; the LEDA Note; the LEDA-Redeveloper Loan Agreement (including the Redeveloper Promissory Note); and the Security Documents (including, without limitation, the Leasehold Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing, and Collateral Assignment of Contracts and Work Product) securing Redeveloper’s obligations under the LEDA-Redeveloper Loan Agreement.

“Disposition Agreement” means that certain Disposition and Development Agreement dated December 12, 2023, between CCIDA and LEDA, pursuant to which CCIDA conveyed to LEDA fee simple title to the Property for Redeveloper’s construction of the Pilot Facility pursuant to, and subject to, the terms of the Redevelopment Agreement and the Ground Lease.

“Ground Lease” means that certain Ground Lease dated as of December 29, 2023, between LEDA, as Ground Lessor, and Redeveloper, as Ground Lessee, as thereafter amended, pursuant to which LEDA leased the Property to Redeveloper and granted Redeveloper the right to construct the Pilot Facility (as part of the Improvements, as defined therein), on the Property and to thereafter operate, manage, maintain and repair the Improvements and the Property during the term of the Ground Lease.

“Inter-Authority Loan Agreement” means that certain Loan Agreement dated December 12, 2023, executed between LEDA and CCIDA, pursuant to which CCIDA loaned to LEDA the principal amount of Two Million Dollars (\$2,000,000) to provide assistance in development financing to the Redeveloper to support the construction costs of the Pilot Facility, and LEDA issued a Promissory Note in the same principal amount (the “LEDA Note”).

“LEDA-Redeveloper Loan Agreement” means the Loan Agreement, pursuant to which LEDA extended a loan in the principal amount of Three Million Dollars (\$3,000,000), as evidenced by a Promissory Note executed by Redeveloper (“Redeveloper Note” and together with the LEDA-Redeveloper Loan Agreement, the “LEDA-Redeveloper Loan”) as assistance in development financing to support the costs of the Pilot Facility, which loan would have been forgivable on terms set forth in the Redevelopment Agreement provided the Redeveloper proceeded with the development of the large-scale commercial refinery and employment generation in Lawton.

“Property” means that certain real property owned by LEDA and leased to Redeveloper, as more particularly described in the Ground Lease.

“Parties” means the Public Parties and Redeveloper.

“Public Parties” means collectively, the City of Lawton, a municipal corporation (the “City”), the Lawton Economic Development Authority, a public trust having as its beneficiary the City of Lawton (“LEDA”), and the Comanche County Industrial Development Authority, a public trust (“CCIDA”).

“Redeveloper” and “Westwin” means Westwin Elements, Inc., a Delaware corporation.

Item Title:

Consider approving an agreement with Ryan Herring Construction to provide Construction Manager at Risk services for LEDA's portion of the construction of the Firehawk Aerospace development, for preconstruction fee of \$110,000.00 and a construction fee of 5.5% of the actual construction cost.

Initiator: Richard Rogalski - LEDA Executive Director

Information Source: Richard Rogalski - LEDA Executive Director

Background:

This agenda item proposes the approval of an agreement between the Lawton Economic Development Authority (LEDA) and Ryan Herring Construction Inc. for Construction Manager at Risk (CMAR) services for the Firehawk Aerospace development. As part of the agreement, Ryan Herring Construction will provide pre-construction services, including project coordination, cost estimation, and scheduling, for a pre-construction fee of \$110,000. Upon moving into the construction phase, the company will be paid a construction fee of 5.5% of the actual construction cost.

The Firehawk Aerospace project involves the development of a \$100 million energetics manufacturing and testing facility, which is expected to bring new jobs and economic growth to the area. Ryan Herring Construction will be responsible for managing the bidding process, coordinating subcontractors, maintaining project schedules, and ensuring the facility is built within the agreed-upon budget and timeline. The agreement supports the goal of creating a state-of-the-art manufacturing facility and ensuring efficient, high-quality construction of the project.

Correlation to the True North Statement:

Transparency and Trust

Exhibit:

Draft CMAR Agreement

Draft General Conditions of CMAR Agreement

Key Issues:

N/A

Funding Source:

ODFA Grant

Recommended Action:

Approve the Construction Manager at Risk agreement with Ryan Herring Construction, Inc., to specifically include Article 6 – Construction Manager Fees, comprised a preconstruction fee of \$110,000.00 and a construction fee of 5.5% of the actual construction cost, authorizing minor modifications as recommended by Chairman, Executive Director, and legal counsel, and authorizing the Chairman to execute the document.

ATTACHMENTS:

1. CMAR Form-Updated 12.6.2025 Clean
2. Form of General Conditions-Updated 12.16.2025

CONSTRUCTION MANAGEMENT AT-RISK AGREEMENT

BETWEEN

**LAWTON ECONOMIC DEVELOPMENT AUTHORITY,
a public trust**

(“Owner”)

AND

(“Construction Manager”)

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Exhibits:

- Exhibit A: Legal Description of the Property
- Exhibit B: Phasing Plan
- Exhibit C: General Conditions
- Exhibit D: Preliminary List of General Conditions Work Items (Includes General Requirements)
- Exhibit E: Constructability Implementation Program
- Exhibit F: Form of Guaranteed Maximum Price Proposal
- Exhibit G: Form of GMP/Schedule Amendment
- Exhibit H: Bond Requirements
- Exhibit I: Construction Manager’s Standard Form of Subcontract
- Exhibit J: Construction Manager’s Standard Form of Supply Contract
- Exhibit K: Construction Manager Personnel Assigned to Project
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CONSTRUCTION MANAGEMENT AT-RISK AGREEMENT

THIS CONSTRUCTION MANAGEMENT AT-RISK AGREEMENT (this “Agreement”) has been executed as of _____, 2025, between the Lawton Economic Development Authority, a public trust having as its beneficiary the City of Lawton (“Owner”), and Ryan Herring Construction Inc, (“Construction Manager”).

RECITALS:

A. The Owner desires to cause the design, development and construction of an energetics manufacturing, assembly, and compliance verification facility, on real property generally located at 680 NW Goodyear Blvd, in Lawton, Oklahoma and more particularly described on Exhibit A attached hereto (the “Land”), all as set forth in and in strict conformance with the Contract Documents (as hereinafter defined).

B. The new development will be comprised of fifteen separate structures, as depicted on Exhibit B, with a goal of bringing new industry and quality jobs to Lawton, Oklahoma, and will include an office, laboratory, machine shop, system control and monitoring, shipping and receiving of energetic and non-energetic materials, storage of raw, process, and energetic materials, quality control/batch testing, processing of energetic materials and additive manufacturing, and assembly of the propellant into a final product, and encompasses demolition, grading, detention ponds, utilities, infrastructure, paving, parking, sidewalks, lighting, landscaping, open space, green space, public areas, administrative and storage areas, and other improvements for the development as reflected in the Contract Documents (collectively, the “Improvements”). The Land and the Improvements are collectively referred to herein as the “Project.”

C. Firehawk Aerospace (“Firehawk”) has retained _____ (“Architect”), and _____ (“Civil Engineer”) to render architectural and civil engineering services, respectively, for the Project, and may retain other or substitute architects, engineers and consultants to provide professional services for the Project.

D. The Owner desires the Project to be designed and constructed on the Land pursuant to a Construction Manager At-Risk process pursuant to which the Construction Manager will perform pre-construction services for the Project, submit a proposed Guaranteed Maximum Price and Project Schedule for the Project, and, if and to the extent so authorized by the Owner, to construct all improvements comprising the Project, and the Construction Manager desires to accept such engagement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the Owner and the Construction Manager agree as follows:

ARTICLE 1 **SCOPE, GENERAL PROVISIONS, CERTAIN DEFINITIONS**

1.1 The Owner hereby designates and appoints the Construction Manager and authorizes the Construction Manager to so act in connection with the work and services set forth and described in this Agreement. All pre-construction and construction services furnished to Owner by Construction Manager shall be governed by this Agreement.

1.2 The Construction Manager shall (a) perform pre-construction services for the Project; (b)

submit a Guaranteed Maximum Price and Project Schedule for the Project; (c) if and to the extent authorized by the Owner, construct the Project, using Subcontractors as provided herein, in a professional and workmanlike manner, within the applicable Guaranteed Maximum Price and on schedule, and achieve full and satisfactory completion of the Project in accordance with the terms of the Contract Documents; and (d) perform all other obligations of the Construction Manager as provided herein. The Construction Manager's pre-construction services and construction and completion of the Project (if and to the extent authorized) and performance of all other obligations hereunder shall constitute the "Work." The Work includes all labor, materials and other items necessary to make the Project complete and functional whether or not such items are fully detailed or specified in the Contract Documents, as long as such items are reasonably inferable from the Contract Documents.

1.3 Owner and Construction Manager agree and acknowledge that Owner is entering into this Agreement in reliance on Construction Manager's expertise with respect to performing its obligations hereunder, and Construction Manager's special and unique abilities with respect to construction management. The Construction Manager accepts the relationship of trust and confidence established between it and the Owner by this Agreement. Construction Manager covenants with Owner to use its best efforts, skill, judgment, and abilities to perform the services hereunder and to further the interests of Owner in accordance with Owner's requirements and procedures, in accordance with the highest standards of Construction Manager's profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction.

1.4 Construction Manager warrants, represents, covenants, and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent Construction Manager's performance of the services required hereunder.

1.5 Construction Manager represents and agrees that it (i) has carefully examined and understands this Agreement, (ii) prior to submitting the GMP Proposal, shall have inspected and become familiar with the Contract Documents, along with the Land and its surrounding areas, and determine, after due investigations, to the best of the Construction Manager's knowledge and belief, the application of all Laws and Requirements affecting the Project, and shall have taken all steps reasonably necessary to ascertain the nature and location of the Work, and shall have investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost, including but not limited to: the anticipated labor supply and costs, availability and cost of materials, tools, and equipment, the physical conditions of the site, topographical characteristics of the Land, the uncertainties of weather and climactic conditions at the Site, expected loads and demands on the structural and mechanical systems of the Project during performance of the Work, zoning regulations and building code requirements, the availability of public and private water, electric power, and roads, and other similar issues pertinent to the performance of the Work, (iii) recognizes the extra degree of care required to coordinate the Project, and (iv) enters into this Agreement on the basis of its own examination, investigation, and evaluation of all such matters and not in reliance upon any opinions or representations of Owner, Architect, Civil Engineer, or any of their respective officers, agents, servants, independent contractors, or employees. As part of the Work, and prior to commencing delivery of its Construction Phase Services, Construction Manager shall carefully review and evaluate the Drawings and Specifications. Construction Manager shall advise Owner immediately if it believes they or any other part of the Contract Documents are flawed in any way.

1.5.1 Owner assumes no responsibility or liability for the physical condition of or safety at the Project Site or any improvements thereon. Except in the case of hazardous materials that are not its responsibility under the Contract Documents, Construction Manager shall be solely

responsible for providing a safe place for the performance of the Work.

1.5.2 Construction Manager hereby acknowledges and agrees that any information, materials, and test data furnished to Construction Manager by Owner or Architect, except the Drawings and Specifications, are supplied solely for the convenience of Construction Manager. Owner makes no representation or warranty regarding the accuracy, completeness, or adequacy of such information, materials, and data, and Construction Manager must verify independently that such items are sufficient to be relied upon in connection with the Work.

1.5.3 Owner shall not be required to make any adjustment in either the Guaranteed Maximum Price or the Contract Time in connection with matters described in, or the failure of Construction Manager to comply with, this Section 1.5.

1.6 Construction Manager shall promptly perform its duties under this Agreement and will give the Project as much priority as is necessary to cause Construction Manager's services hereunder to be timely performed. Time is of the essence of this Agreement. All services shall be performed strictly within the time limitations described in the Contract Documents and in accordance with all applicable laws, ordinances and regulations.

1.6.1 Construction Manager and all Subcontractors of any tier shall maintain throughout the term of this Agreement all required federal, state and local licenses, permits and certificates necessary to perform this Agreement.

1.6.2 Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering, unless such services are specifically required by the Contract Documents for a portion of the Work or unless Construction Manager has specifically agreed in writing to provide such services. If it does, Construction Manager shall cause such services to be performed by appropriately licensed professionals who carry adequate professional liability insurance.

1.7 As an inducement to Owner to execute this Agreement, Construction Manager represents and warrants (in addition to any other representations and warranties contained in the Contract Documents) that: (i) it and its Subcontractors and Suppliers are and will be financially solvent, able to pay all debts as they mature, and possess sufficient working capital to complete the Work and perform all obligations hereunder; (ii) it has the resources, including an adequate labor supply, and it is and will remain properly licensed to fulfill its obligations under this Agreement; (iii) it is able to furnish the tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder; (iv) it is authorized to do business in the state where the Project is located; (v) its execution of this Agreement and its performance thereof is within its duly authorized powers; (vi) its duly authorized representative has visited the site of the Project, is familiar with the local and special conditions under which the Work is to be performed, and has correlated its site observations with the requirements of the Contract Documents; and (vii) it possesses a high level of experience and expertise in the business administration, design, pre-construction, construction, construction management and superintendence of projects of the size, complexity and nature of the Project, and that it will perform the Work with the care, skill and diligence of such a Construction Manager. The foregoing representations and warranties are in addition to, and not in lieu of, any and all other liability imposed upon Construction Manager by law with respect to Construction Manager's duties, obligations and performance hereunder.

1.8 The Construction Manager shall cooperate with the Project Team including their respective

engineers and consultants, in furthering the interests of the Owner with respect to the Project.

1.9 The Drawings, Specifications, and other documents prepared for or in connection with the Project, regardless of whether they were prepared by Owner, Construction Manager, or a third party, belong to Owner. Construction Manager may retain one Contract record set. All copies of them, except Construction Manager's record set, shall be returned or suitably accounted for upon completion of the Work. They are for use solely with respect to the Project. Construction Manager shall not, without the prior written consent of Owner, use or permit anyone to use any Drawings, Specifications, or other documents prepared for or in connection with the Project, or any concepts or ideas developed in connection with the Project, for any purpose other than the Project. Owner shall at all times have access to and control over the disposition of any Drawings, Specifications, and other documents pertaining to the Project.

1.9.1 Construction Manager and Subcontractors are each granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project shall not be construed as publication in derogation of anyone's reserved rights.

1.10 If there are inconsistencies within, among or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes and ordinances, Construction Manager shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement—either or both in accordance with Owner's interpretation. The terms and conditions of this Section 1.10, however, shall not relieve Construction Manager of any of its other obligations under the Contract Documents. Other conflicts between or among the Contract Documents shall be resolved under the following rules of construction:

- (a) Specified dimensions shown on the Drawings shall govern, even though they may differ from dimensions scaled on the Drawings;
- (b) Drawings of larger scale shall govern over those of smaller scale of the same date;
- (c) Specifications shall govern over Drawings;
- (d) Documents of later date shall always govern; and
- (e) This Agreement shall govern over all other documents.

1.11 The Architect will not have authority from the Owner to alter the Owner's program for the Project, to modify the GMP or the time for performance and completion of the Work, to authorize the Construction Manager to proceed with construction, to amend or waive any provision of this Agreement, to execute or issue Requests for Payment that have not been signed by the Owner, to issue Change Orders that have not been signed by the Owner, to take any action that would entitle the Construction Manager to any increase in the compensation set forth in this Agreement or to incur any obligation on the Owner's part to provide any compensation to the Construction Manager. The scope of authority of the Architect will not be expanded to include such matters except in a writing signed by the Owner and delivered by the Owner to the Construction Manager.

1.12 Owner will seek to fund the cost of developing the Project through the use of state funding and/or construction and permanent financing extended by institutional or other Lenders on such terms as determined by Owner in its sole discretion. Such funding shall be the only source(s) of payment by Owner under this Agreement. Owner shall have no liability to make any payments hereunder except in accordance with the terms of the state funding agreement, loan agreement or other applicable agreements between

Owner and Owner's Lenders (individually and collectively "Loan Agreement").

1.13 Certain Definitions.

"Contract Documents" consist of this Agreement, all documents incorporated into it by reference, the General Conditions attached hereto as Exhibit C, all Supplementary Conditions and other Conditions agreed upon by Owner and Construction Manager, Drawings, Specifications, Addenda, other documents listed in this Agreement, all Exhibits attached hereto, all Progress Reports, the Project Schedule, the Master Construction Schedule, any Change Orders and amendments signed in accordance with this Agreement. Unless they are specifically enumerated and directly incorporated by reference into this Agreement, the Contract Documents do not include any other documents, such as bidding requirements, advertisements or invitations to bid, instructions to bidders, sample forms, soils, geotechnical, or other reports, surveys, or analyses, which may be printed, bound, or assembled with the Contract Documents, or otherwise made available to Construction Manager for review or information under this Agreement, Construction Manager's bid or portions of the Addenda relating to bidding requirements.

"Contract Time" is the period of time or timeframes set forth in the GMP/Schedule Amendment for Substantial Completion of the Project, including authorized adjustments.

"Construction Phase" means the coordination, implementation and execution of the Work required by the Contract Documents.

"Cost of the Work" means costs which the Construction Manager must necessarily incur to properly perform the Work in strict compliance with the Contract Documents and shall only include the items set forth in Section 5.1 of this Agreement.

"General Conditions" means the General Conditions applicable to this Agreement, attached hereto as Exhibit C and made a part hereof.

"General Conditions Work" means the administrative, supervisory, coordination, management and support services and related obligations of the Construction Manager under this Agreement and shall include, without limitation, the on-site labor employed by the Construction Manager to perform clean-up and other labor support functions ("Site Labor"), as well as the necessary services and items required for the Work but are not incorporated into the Project Improvements, including, without limitation, job site trailer, fencing, security, safety personnel, temporary utilities, temporary toilets, dumpsters, insurance, and bonds ("General Requirements"), and other items listed in the "Preliminary List of General Conditions Work Items" attached hereto as Exhibit D, as such list may be updated in the "Final List of General Conditions Work Items" to be attached to the GMP/Schedule Amendment and shall be subject to the requirements of this Agreement.

"Guaranteed Maximum Price" or "GMP" means the amount proposed by the Construction Manager and accepted by the Owner as the maximum cost to the Owner for performance of the Work in accordance with the Contract Documents. The GMP includes the Cost of the Work, the Cost of the General Conditions Work, the Construction Manager's Construction Fee, and the Contingency amount, if any.

"GMP/Schedule Amendment" means the amendment to this Agreement executed by Owner and Construction Manager establishing the Guaranteed Maximum Price provided Owner accepts the GMP Proposal submitted by Construction Manager pursuant to Section 2.6 of this Agreement.

“Lender” means either the Person or Persons who may provide use of equity contributions, construction and/or permanent financing, or guarantors of such financing, for the Project.

“Master Construction Schedule” shall mean a Project Schedule that is prepared for the Project under this Agreement.

“Milestone Dates” are those dates included in the Progress Reports, Project Schedule, and Master Construction Schedule that are critical to ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents.

“Person” shall mean any individual, entity, voluntary association, trust, or any other organization, including any Governmental Authority.

“Phase” refers to the implementation and execution of the Work required by the Contract Documents, to construct all Project Improvements pursuant to a phasing plan to be developed by the Construction Manager and approved by the Project Team and attached hereto as Exhibit B.

“Pre-Construction Phase” means the programming, design development, construction documents, and bidding phases to be performed by Construction Manager under this Agreement.

“Progress Report” shall mean a monthly progress report to be prepared by Construction Manager in a format and level of detail to be approved by Owner that will contain the following: (a) listing of actual costs for completed activities and estimates for incomplete tasks; (b) identification of variances between actual and budgeted or estimated costs; (c) progress photos; (d) a submittal log showing all Shop Drawings, Samples, and similar submittals to date, anticipated submittals and their status, all via a submittal schedule; (e) a log of all RFIs and discussion of pending items and existing or anticipated problems; (f) a safety and accident report; (g) information on each Subcontractor and each Subcontractor’s performance of the Work as well as the entire Work, showing percentages of completion and the hours worked by each Subcontractor broken down into a level of detail reasonably required by Owner; (h) the number and amounts of approved Change Orders; (i) an updated Project Schedule in the un-amended electronic source file format and a comparison of the original baseline Project Schedule with the updated Project Schedule, together with a narrative describing construction progress during the preceding month; (j) a list of all Claims and any threatened claims and issues (including of Subcontractors’) that, in the reasonable judgment of Construction Manager, may potentially become Claims; (k) any change in the critical path; (l) a discussion of all material issues/concerns that could affect the achievement of Substantial Completion by the Substantial Completion Date, along with plans as to how to remediate each issue; (m) significant activities and actions for the next month; (n) a look-ahead schedule; (o) reports and certifications for tests and inspections undertaken during the prior month; and (p) such other relevant information as may be reasonably required by Owner or Architect from time to time.

“Project Schedule” shall mean the detailed, comprehensive, computer-generated, logic-driven, precedence-style construction schedule for the Project and the overall completion of the Project submitted by Construction Manager as part of the GMP Proposal and accepted by Owner, in a form and using a software program satisfactory to Owner, that utilizes a critical path method (CPM) network and is in conformance with accepted industry standards for projects of the size, scope and complexity of the Work. The Project Schedule shall contain space for notations and revisions and shall show: (a) the complete sequence of the Work by activity; (b) the estimated time of each major element of the Work with sufficient detail as reasonably determined by Owner; (c) a break-down of each element or phase of the Work by trade;

and (d) early and late start dates for each element or phase of the Work so that all “Float” time will be accurately identified. The term “Float” means the amount of time an activity or portion of the Work may be delayed without delaying the critical path of the Project or extending the Contract Time. Float is not for the exclusive use or benefit of either the Owner or the Construction Manager but is a shared resource available for the benefit of the Project. A reference to the Project Schedule means the most recent Owner accepted version.

“Project Site” or “Site” shall mean the real property, improvements, easements, rights-of-way, and other areas designated by the Owner for performance of the Work, including the physical location of the Project as described in the Contract Documents, together with staging areas, storage areas, and access routes made available by the Owner for use in connection with the Work. References to the Project Site shall include, where the context requires, all adjacent or surrounding areas used by the Construction Manager, its Subcontractors, or Suppliers in the performance of the Work.

“Project Team” means the Owner, Construction Manager, Architect, Civil Engineer, any separate contractors employed by Owner, and other consultants employed for the purpose of programming, design, and construction of the Project. The constitution of the Project Team may vary at different phases of the Project. The Project Team will be designated by Owner and may be modified from time to time by Owner. For avoidance of doubt, the Architect and Engineers engaged directly by Firehawk under separate agreements are deemed members of the Project Team for purposes of design coordination, design services, and related responsibilities under this Agreement.

A "Subcontractor" is engaged by Construction Manager pursuant to a subcontract between Construction Manager and Subcontractor to perform the Trade Work or General Conditions, all on terms and conditions more particularly described in the Contract Documents. A "Supplier" is engaged by Construction Manager pursuant to a supply agreement or purchase order between Supplier and Construction Manager to provide materials, equipment or supplies in connection with the Work, all on terms and conditions more particularly described in the Contract Documents. (i) Subcontractors and Suppliers, (ii) all other persons in privity of contract with either of them or Construction Manager, (iii) anyone else providing labor, materials, supplies, equipment or services as part of or in connection with the Work, and (iv) all of their officers, employees, agents, independent contractors, guests and invitees, are referred to herein as “Subcontractors.”

The date of “Substantial Completion” of the Work or designated portion thereof is the date approved by the Owner and certified by the Architect when construction is sufficiently complete, in accordance with the Contract Documents, so the Owner can occupy or utilize the Work or designated portion thereof for the use for which it is intended. A Certificate of Occupancy or Temporary Certificate of Occupancy, issued by the governing authority, is required for Substantial Completion unless waived by the Owner.

“Trade Work” means all Work required under this Agreement other than the General Conditions Work.

“Value Engineering” shall mean the process of reviewing the systems, equipment and materials included in the Drawings and Specifications and identifying those systems, equipment and materials that can be replaced by alternative systems, equipment and materials that can be obtained at a lower price than those specified in the Drawings and Specifications. Value Engineering provided by or through the Construction Manager shall not be considered as providing design. All Value Engineering acceptable to Owner shall be added to the Contract Documents by appropriate Change Order and incorporated into the

Drawings and Specifications by Architect.

“Work” means the provision of all labor, supervision, transportation, utilities, storage and all other services (collectively hereinafter referred to as the "Services") and all materials, supplies, apparatuses, appliances, equipment, fixtures, tools, implements and all other facilities (hereinafter collectively referred to as the "Materials"), as and when required for or reasonably inferable in connection with the design, development, construction and equipping of, or for inclusion or incorporation in, the Project. Such construction and equipping of the Project and the furnishing of the Materials and Services in accordance with the Contract Documents are herein collectively referred to as the "Work.” The term “reasonably inferable” takes into consideration the understanding of the parties hereto that not every detail will be shown in the Contract Documents. The Construction Manager shall not be entitled to an increase in the Guaranteed Maximum Price (as defined herein) due to the absence of any detail or specification the Construction Manager may require or for any construction which may be found necessary as the Work progresses in order to complete the construction of the Project. If an item or system is either shown or specified, all material and equipment required for the proper installation of such item or system and needed to make a complete operating installation shall be provided whether or not detailed or specified, omitting only such parts as are specifically excepted by the Owner.

ARTICLE 2
CONSTRUCTION MANAGER’S SERVICES
PART 1: PRE-CONSTRUCTION SERVICES

In implementing the responsibilities and duties of the Construction Manager as set forth herein, the Construction Manager shall perform, in accordance with the Project Schedule, the following services during the Pre-construction Phase:

2.1 General Coordination.

2.1.1 The Construction Manager shall, in consultation with the Project Team, prepare a meeting schedule within 30 days after execution of this Agreement, and attend weekly meetings with other members of the Project Team during the development of the design of the Project. The first meeting shall be held not later than 45 days after execution of this Agreement. The Construction Manager's Pre-construction Phase Services team shall attend weekly project meetings with the Project Team throughout the duration of the pre-construction phase. Construction Manager shall consult with and advise the Project Team concerning site use and improvements, selection of materials, building systems, equipment and methods of Project delivery.

2.1.2 Make recommendations concerning (i) construction methods, the need for additional studies or tests, the availability, cost, and effective use of materials, equipment, and labor, time requirements for procurement, installation and construction, construction phasing, construction feasibility, selection of building systems and equipment, and factors related to cost, including, but not limited to, cost of alternative designs or materials, preliminary budgets, and possible cost savings, (ii) alternative solutions whenever design details affect construction feasibility, cost or schedule, (iii) assignment of responsibilities for prepared safety programs, temporary project facilities, equipment, materials and services for common use of Subcontractors, (iv) requirements and assignment of responsibilities that are included in the Contract Documents; and (v) any other matters necessary to accomplish the Project in accordance with the Project Schedule and the preliminary Project budget.

2.1.3 Develop and regularly update a “Constructability Review” report which is a report resulting from Construction Manager’s review of the design documents as they are developed and frequent communication with the Project Team and which will outline items that in the Construction Manager’s opinion may cause problems in the way the Project is to be constructed and which will review the overall coordination of specifications and drawings, details and discrepancies that if left unattended may result in Change Orders or claims once Project construction commences. A guide for developing a Constructability Implementation Program is attached as Exhibit E. The Construction Manager’s review shall not relieve the Architect of its professional responsibility for design, but the Construction Manager shall be responsible for promptly identifying and reporting to the Project Team those constructability issues that a contractor experienced in projects of similar size and scope would reasonably be expected to detect.

2.1.4 Create and continuously update a decision tracking system in a format acceptable to Owner.

2.1.5 Provide cash flow schedules for the Work.

2.1.6 Arrange for uncovering and investigation of possible hidden conditions that may affect the Project.

2.1.7 Prepare Site logistics/mobilization and safety plans.

2.1.8 Provide advice and assistance regarding approvals and permits. At Owner’s request, Construction Manager attend public meetings and hearings concerning the development and schedule of the Project.

2.1.9 Prepare standard documentation and reporting forms to be used on the Project, such as submittal logs, anticipated cost reports, requests for information (“RFI’s”), RFI logs and submittals and RFI tracking reports.

2.1.10 Separate the Project into subcontracts for various categories of Work and review Drawings and Specifications and make recommendations as required to ensure that (i) Work of separate Subcontractors is coordinated, (ii) all requirements for the Project have been assigned to the appropriate Subcontractor, (iii) bid documents for each Subcontract, including, without limitation, the scope of Work, will be complete, and (iv) proper coordination has been provided for phased construction.

2.1.11 Provide such other pre-construction services relating to the Project as the Owner and Construction Manager may agree.

2.2 Scheduling.

2.2.1 As soon as practical, and not later than 30 days after the execution of this Agreement, Construction Manager shall develop a preliminary critical path method Project Schedule for the Project, and for the overall completion of the Project, for the other Project Team members’ review and acceptance, that coordinates and integrates the Construction Manager’s services, the Architect’s design, the work of other consultants and suppliers, and the Owner’s activities with the anticipated construction schedules for other contractors, if any. The Project Schedule shall provide for the pre-construction and construction phases of the Project to include major elements such as phasing, the time of commencement and completion required of each Subcontractor, and the time, in relation to the Commencement Date, that each Supplier

must provide equipment, materials or supplies, and all key decision points of the Project Team.

2.2.2 The Project Schedule will incorporate a detailed listing for all activities for the Project, and the overall Project, including, without limitation:

- (a) commencement, milestone and completion dates for design development documents, construction documents, bid proposals and construction phasing;
- (b) times of commencement and completion for each Subcontractor;
- (c) required activity sequences and durations;
- (d) contract document packages, completion dates, Owner contract document package review periods, Project building permits acquisition time requirements, construction contract bid dates;
- (e) processing of Shop Drawings and Samples;
- (f) a recommended schedule for the Owner's purchase of materials and equipment requiring long lead time procurement, delivery dates of products requiring long lead time procurement, and methods to expedite and coordinate delivery of long lead time procurements including coordination of the Schedule with the early preparation of relevant portions of the Contract Documents by the Architect. A separate Schedule shall be prepared once the Phasing Plan is developed and approved, and for each set of bidding documents.

2.2.3 The Project Schedule shall be updated throughout the Pre-Construction Phase and the Construction Phase at least once a month and distributed to the Project Team seven days in advance of Project Team meetings.

If the Project Schedule updates suggest that previously approved schedules may not be met, Construction Manager shall make appropriate recommendations to the Project Team. Construction Manager shall obtain Architect's approval of that portion relating to the performance of Architect's services.

Construction Manager shall provide the necessary critical path schedule control with a goal to attain the Substantial Completion of the Project as provided herein so that the Owner can occupy and utilize the Project on such date.

The Construction Manager shall maintain the Project Schedule using software approved by Owner (the license and training for which shall be at Construction Manager's sole expense).

2.3 Preliminary Cost Projections.

2.3.1 Architect has prepared and Owner has approved schematic design documents of the Project. Construction Manager shall, within ___ days of execution of this Agreement, prepare for Project Team's review and approval a preliminary construction budget of the Project, which shall include supporting data. During the preparation of the design development documents, Construction Manager shall update and refine this budget at appropriate intervals.

2.3.2 When design development documents have been completed and approved by the Project Team, Construction Manager shall, within ___ days, prepare a detailed estimate of the Project budget, including supporting data, for review by Architect and approval by the Project Team.

2.3.3 At the completion of the Construction Documents (for any Phase of the Project), update and refine a comparison of actual and projected costs to the Project budget.

2.3.4 If any projection submitted to the Project Team exceeds previously approved projections or Project budget, Construction Manager shall, within __ days, make recommendations to the Project Team as to how the Project can be completed within Owner's budget.

2.3.5 The Project budget projections shall be made in good faith and shall have a reasonable basis.

2.3.6 Throughout the process of developing the Project budget projection, Construction Manager shall implement a "Cost Control Initiative" to enable it to assure Owner that all costs incurred are representative of the scope of the Work approved in the budget for the Project.

(a) The Cost Control Initiative commences with a budgeting process that tracks the evolution of the Project, from the conceptual stage when there may be little documentation; to the preliminary stages where designs are coming together; to the construction document stage where the full scope is represented.

(b) Project budget projections will consist of full quantity surveys wherever possible. If adequate documents do not exist, or are only minimally developed, Construction Manager will ascertain prudent allowances based on identified parameters.

(c) The Cost Control Initiative shall be tracked daily. A budget update and interim cost report shall be issued monthly with a summarization of the to-date approved budget and related committed cost.

2.4 Coordination of Design and Construction Contract Documents.

2.4.1 Review all plans, specifications, and other design documents during the schematic design phase, design development phase, and construction documents phase, and advise Owner on site use, foundations, systems, materials, equipment, construction feasibility, availability of labor and materials, procurement time requirements, installation and construction, relative costs, and provide recommendations to the Project Team without assuming Architect's professional responsibility.

2.4.2 Assist in development of any Special Conditions of the Construction Contract Documents, which shall be approved in writing by the Owner at Owner's sole option and discretion.

2.4.3 Review the Drawings and Project Manual as they are being prepared, advise the Project Team of any error, inconsistency or omission discovered, and recommend alternative solutions whenever the design affects construction feasibility, budget, risks, or schedules (without assuming the Architect's professional responsibility).

2.4.4 Update, at least monthly, and finalize the Constructability Report.

2.4.5 Consult with the Project Team to determine what materials, equipment, component systems, and construction types should be included in the Contract Documents; suggest reasonable adjustments in the scope of the Project; and suggest alternate bids in the Construction Documents to adjust the Cost of the Work projections in the Guaranteed Maximum Price (as defined herein).

2.5 Construction Planning.

2.5.1 Participate with the Project Team, as requested by Owner and subject to Owner's prior approval, in the preparation of performance specifications and requests for technical proposals for the

procurement and installation of systems, components, and for the procurement of long lead time equipment and materials. If requested by Owner, and subject to Owner's prior approval, issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation.

2.5.2 Make recommendations to the Project Team regarding the division of Contract Documents and Project Manual to facilitate the bidding and awarding of construction contracts, to allow for phased or staged construction, or multiple separate contracts, and to take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and on-site production costs, shipping costs, code restrictions, the Owner's goals, and other constraints.

2.5.3 Review the Drawings and the Project Manual with the other members of the Project Team to eliminate areas of conflict and overlap in the work to be performed by the various Subcontractors.

2.5.4 Provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for critical phases. Make recommendations for actions that will minimize adverse effects of labor shortages.

2.5.5 **Bid Packages and Scope Definitions.** The Construction Manager shall coordinate with the Project Team to develop bid packages and work scope descriptions for each separate bid category, such that the packages collectively represent the entirety of the Work for the Project. Each bid package shall clearly delineate the scope of Work, avoid overlaps or gaps, and identify any special systems, materials, or methods. The Construction Manager shall submit draft bid packages to the Project Team for review and approval prior to issuance.

2.5.6 **Subcontractor Prequalification.** The Construction Manager shall pre-qualify Subcontractors and Suppliers to confirm licensing, staffing, bonding capacity, financial standing, and relevant project experience. The Construction Manager shall establish a bidding schedule and conduct pre-bid conferences to familiarize qualified bidders with the bid documents. The Owner shall receive advance notice of all such conferences and may attend. The Construction Manager shall keep written minutes of all conferences and provide them to the Owner.

2.5.7 **Subcontractor Bidding and Award Procedures.**

(a) **Public Bidding Thresholds.**

- For trade packages with an estimated value of **Fifty Thousand Dollars (\$50,000) or more**, the Construction Manager shall publicly advertise the package, receive sealed bids, and conduct a public bid opening at a time and place designated in coordination with the Owner.
- For trade packages **greater than Twenty-Five Thousand Dollars (\$25,000) but less than Fifty Thousand Dollars (\$50,000)**, the Construction Manager shall solicit and obtain not fewer than three (3) written, sealed quotes from qualified firms, and shall tabulate such quotes for the Owner's review.
- For trade packages **equal to or less than Twenty-Five Thousand Dollars (\$25,000)**, the Construction Manager may select a Subcontractor without competitive bidding, provided that the Construction Manager documents the basis for its selection and obtains the Owner's written approval prior to award.

(b) **Self-Performance.** If the Construction Manager seeks to self-perform any portion of the Work normally performed by trade contractors, it shall submit its own sealed bid for that trade package in the same manner as all other bidders. The Construction Manager may be awarded such Work only if it is the lowest responsible bidder, and only upon the Owner's written approval.

(c) **Public Records and Retention.** All subcontractor bids shall be publicly opened with a representative of the Owner present, tabulated, and the tabulation shall be made available for public inspection at the Owner's offices. The Construction Manager shall maintain complete records of all subcontractor bids received, bid tabulations, and subcontract awards, and such records shall be made available to the Owner, the Oklahoma State Auditor, and the public upon request, and retained for not less than five (5) years after Final Completion.

(d) **Award Authority.** The Construction Manager shall prepare a trade-by-trade, product-by-product bid analysis and make recommendations to the Owner. All subcontracts shall be awarded by the Owner to the lowest responsible bidder, unless the Owner approves in writing an award to another bidder. The Construction Manager shall not enter into any subcontract until the Owner has formally approved the award in writing.

2.5.8 **Owner Approval of Subcontractors and Suppliers.**

(a) The Construction Manager shall identify to the Owner qualified Subcontractors and Suppliers by name and trade or material, equipment, or supplies to be provided. The Owner may object to any proposed Subcontractor or Supplier. The Construction Manager shall not contract with any Subcontractor or Supplier to whom the Owner has made a reasonable objection.

(b) If the Owner objects, the Construction Manager shall propose another to whom the Owner has no reasonable objection.

(c) The Construction Manager shall not change a Subcontractor or Supplier previously selected without prior written notice to the Owner or thereafter if the Owner makes a reasonable objection to such change.

(d) The Construction Manager shall verify that all proposed Subcontractors are properly licensed and sufficiently staffed to carry out their duties.

Construction Manager shall receive bids, and after bid opening with a representative of Owner present, prepare a trade-by-trade, product-by-product bid analysis, and make recommendations. This shall include a detailed review of each bid to determine whether it is complete, reasonable and consistent.

2.6 **Guaranteed Maximum Price Proposal and Contract Time.**

2.6.1 Once the bids are accepted by the construction manager and awards made by the Owner but before written agreements are executed, the Construction Manager shall submit to Owner a proposed GMP, the updated Project Schedule, together with the Master Construction Schedule ("GMP Proposal") in accordance with the Contract Documents. The Construction Manager shall include in the Project Schedule proposed dates for ordering long lead time items prior to the Owner's authorization to proceed with construction in order to avoid extension of the Contract Time. At the Owner's request, the Construction Manager shall also provide interim budget updates and preliminary GMP estimates at earlier design

milestones (e.g., 50% and 60%) for planning and financing purposes.

Once the bids are accepted by the construction manager and awards made by the Owner but before written agreements are executed, the Construction Manager will prepare a guaranteed maximum price (GMP) for the project or relevant portion of the work, as an amendment to the contract. After the Owner approves the construction manager's GMP amendment, the construction manager shall enter into written subcontractor and supplier agreements for the work previously awarded by the Owner.

2.6.4 The GMP Proposal shall be based on the budget developed under Section 2.3 of this Agreement and competitive bidding of the Work for the Project.

2.6.5 The GMP Proposal shall not include Allowances or Holds except with the Owner's prior approval. An "Allowance" is an amount included in the GMP for a Trade Work item that requires further scope definition by the Architect or Owner. In the event that the actual costs of the Trade Work covered by an Allowance are greater or less than the Allowance, a Change Order will be issued adjusting the GMP by the amount of such difference, plus percentages to cover payment and performance bonds, and other Construction Manager insurance, but without markup for General Conditions Work Costs or the Construction Fee. Use of Allowances will require the Owner's prior written approval. Unused Allowance amounts will not be available to cover other Costs of the Work. A "Hold" is an amount for a Trade Work item that has not yet been incorporated into a Subcontract scope. A Hold is not an Allowance, and the GMP will not be adjusted on account of costs that overrun or underrun a Hold. Use of Holds requires the Owner's prior written approval.

2.6.6 The GMP Proposal shall include a proposed contingency amount (the "Contingency"). The Contingency amount shall be subject to negotiation and approval by the Owner. Use of Contingency shall be subject to the Owner's prior written approval.

2.6.7 The GMP Proposal shall include the proposed construction fee to be paid to Construction Manager during the Construction Phase pursuant to Section 6.3 and the GMP Proposal.

2.6.8 The GMP Proposal shall include the Cost of the Work and a proposed General Conditions Amount supported by a detailed estimate and a proposed Final List of General Conditions Items. The estimated Cost of the Work and the proposed General Conditions Amount and Final List of General Conditions Items shall be subject to negotiation and approval by the Owner.

2.6.9 The Construction Manager shall include in the GMP Proposal the following:

- A. Executive Project Summary.
- B. Project Team.
- C. List of Documents.
- D. Qualifications and Value Engineering.
- E. Detailed GMP Proposal Cost Breakdown.
- F. Up-to-date Project Schedule and Master Construction Schedule.
- G. Schedule of Values.

All in form, substance, and detail as set forth in Exhibit F attached hereto.

The proposed GMP shall include the entire Cost of the Work, the General Conditions Costs, the Construction Fee, and the Contingency, with no add-ons, extras or reimbursable costs. Thus, for example, all fees and taxes shall be included.

2.6.10 The Owner has afforded the Construction Manager with unrestricted access to the Project Site and has given the Construction Manager the opportunity to thoroughly investigate the existing conditions of the Site. The Construction Manager acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered during performance of the Work. The Construction Manager acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, materials, water, electric power, and roads; (3) uncertainties of weather or similar physical conditions at the Site; (4) the surface and subsurface conditions of the Site and surrounding areas; and (5) the character of equipment and facilities necessary to perform the Work. The Construction Manager has reviewed and is familiar with the Drawings and Specifications, all applicable Requirements, laws, zoning and building code requirements for the performance of the Work, as well as the Owner's phasing and budget requirements. The Construction Manager represents and warrants that the results of Construction Manager's investigations have been taken into account in establishing the proposed GMP and the Project Schedule. Construction Manager shall not be entitled to a claim for an adjustment in time or price for conditions which Construction Manager discovers during construction that should have been discovered in Construction Manager's investigation.

2.6.11 Construction Manager shall meet with the Project Team to review the proposed GMP, Project Schedule and Master Construction Schedule. If the Project Team discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify Construction Manager, who shall make appropriate adjustments to the proposed GMP, its basis or both.

2.6.12 The Owner may negotiate and approve the GMP and components thereof, the Project Schedule and the Master Construction Schedule at any time within thirty (30) days after the Owner's receipt of the GMP Proposal or within such longer time as the Construction Manager may agree. The GMP shall not be subject to adjustment for subsequent delay in authorizing construction provided that the Owner authorizes the Construction Manager to proceed with construction within ninety (90) days after acceptance of the GMP as provided in Section 3.1 of this Agreement. If the Owner authorizes the Construction Manager to proceed with construction after such ninety (90) day period, the GMP shall be equitably adjusted on account of increase in the Cost of the Work resulting from delay in authorizing construction beyond such ninety (90) day period.

2.6.13 Prior to Owner's acceptance of Construction Manager's GMP proposal and issuance of a Notice to Proceed, Construction Manager shall not incur any cost to be reimbursed as part of the Contract Sum, except as Owner may specifically authorize in writing.

2.6.14 Upon acceptance by the Owner and Owner's Lender, if required, of the proposed GMP, Project Schedule and Master Construction Schedule (with any agreed revisions), the Owner and Construction Manager shall execute an Amendment to this Agreement in the form attached hereto as Exhibit G (the "GMP/Schedule Amendment"). The amount of the GMP set forth in the GMP/Schedule Amendment shall be the final GMP for the Project and the Construction Schedules attached thereto shall be the Project Schedule for the Project and the Master Construction Schedule for the Project. The GMP for the Project, as adjusted by Change Orders (if any), is the maximum compensation payable by the Owner to

the Construction Manager, except as otherwise expressly provided herein. The GMP for the Project is subject to adjustment only by Change Order executed by the Owner.

2.6.15 Owner shall authorize and cause Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in any amendment to this Agreement. Such revised Drawings and Specifications shall be furnished to Construction Manager in accordance with schedules agreed to by Owner, Architect and Construction Manager. Construction Manager shall promptly notify the Project Team if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

2.6.16 In the event that the Owner and Construction Manager do not execute a GMP/Schedule Amendment for the Project within thirty (30) days after the Owner's receipt of the GMP Proposal for the Project or within such longer time as the Construction Manager may agree, the Construction Manager shall have no obligation to provide further services with respect to the Project and the Owner shall have no obligation to make any payment to the Construction Manager for construction of the Project; provided, however, that the Owner shall pay the Construction Manager for its services during the Pre-Construction Phase as set forth in Section 6.2 of this Agreement.

2.6.17 If the Owner elects not to execute a GMP/Schedule Amendment, the Owner shall pay the Construction Manager for Preconstruction Services rendered under Section 6.2, and for any other services expressly authorized in writing. The Construction Manager shall not be entitled to lost profits, consequential damages, or other compensation.

ARTICLE 3
CONSTRUCTION MANAGER'S SERVICES
PART 2: CONSTRUCTION PHASE SERVICES

3.1 Commencement. No Work shall be performed until the Notice to Proceed is issued. Construction Phase services shall be deemed to commence upon the date specified in a Notice to Proceed issued by Owner after execution by Owner and Construction Manager of the GMP/Schedule Amendment with the Guaranteed Maximum Price, Project Schedule for the Project, and Master Construction Schedule (the "Commencement Date"). The Parties may establish separate commencement and completion dates for the respective Phases of the Project identified in the Phasing Plan approved by the Owner. Pre-construction Services may overlap Construction Services.

3.1.1 Before proceeding with the Construction Phase services, however, the Construction Manager shall review the Drawings and Specifications and notify the Project Team of any errors, omissions or discrepancies in the Drawings and Specifications it discovers with respect to the existing conditions. The Construction Manager shall not proceed with the Work, if any defect, defined as any error, omission, conflict, inconsistency or lack of clarity, is known, should be known, or is reasonably discoverable by the Construction Manager in the exercise of ordinary skill and care, by Construction Manager to exist in the Drawings or Specifications or other Contract Documents, and if Construction Manager nevertheless proceeds to perform the Work then Construction Manager shall be responsible for all foreseeable resulting cost, including the cost of redoing or remedying the Work and time delays resulting there from unless and to the extent such costs result from design or concealed conditions. Upon discovering a defect in the Drawings or Specifications, the Construction Manager shall immediately submit a written request for an explanation or decision to the Project Team.

In implementation of the responsibilities and duties of the Construction Manager for the Construction Phase Services, the Construction Manager shall provide the following services:

3.2 Project Control.

3.2.1 Supervise and direct the Work using Construction Manager's best skill and attention. Construction Manager shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work.

3.2.2 Perform the Work in strict accordance with the Contract Documents within the time required by the Project Schedule and Master Construction Schedule approved by Owner. Construction Manager shall award and enter into, as a general contractor, all Subcontracts necessary and appropriate to provide all labor and materials for the construction of the Project. Construction Manager shall self-perform only General Conditions Work and such other Work as may be approved by Owner to be self-performed by Construction Manager. If Construction Manager seeks to self-perform any portion of the Work other than General Conditions Work, such Work shall be competitively bid in the same manner as other trade packages, and Construction Manager may only self-perform if it is the lowest responsible bidder, subject to Owner approval.

3.2.3 Monitor the Work of the Subcontractors as required herein and coordinate such Work with the activities and responsibilities of the Project Team with a goal to attain completion of the Project at a cost not to exceed the Guaranteed Maximum Price, and to attain Substantial Completion by the date set forth herein.

3.2.4 Schedule and conduct weekly progress meetings with the Project Team for the purpose of updating the Owner with a Project status review, providing coordination between the design team and the Construction Manager and addressing responses to RFI's. Prior to each meeting, the Construction Manager shall prepare and distribute a written agenda for the meeting. Prepare and distribute to all attendees the minutes of such meetings within five (5) days of the meeting.

3.2.5 Schedule and conduct regular meetings with other members of the Project Team during the construction of the Project to discuss jointly such matters as procedures, progress, problems and scheduling. Prior to each meeting, the Construction Manager shall prepare and distribute to the other Project Team members a written agenda for the meeting. Prepare and distribute at each Project Team meeting a memorandum setting forth the list of critical activities that require immediate action and the date(s) by when the activity must be completed, and record and distribute the minutes of each meeting within five (5) days of the meeting.

3.2.6 Schedule and conduct weekly trade meetings with Subcontractors for the purposes of coordinating and scheduling the Subcontractors' Work. The Project Team shall be permitted to attend such meetings. Prepare and furnish minutes of such meetings to all attendees and the Owner and Architect, within five (5) days of the meeting.

3.2.7 Employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times during performance of the Work to coordinate and provide general direction over the Work and progress of the Subcontractors on the Project. The superintendent shall represent Construction Manager, and communications given to the superintendent shall be as binding as if given to Construction Manager. Construction Manager's superintendent shall be approved by Owner and shall not

be reassigned without Owner's prior written consent.

3.2.8 In consultation with Owner, establish procedures for coordination among the Project Team, Subcontractors, and other consultants with respect to all aspects of the construction of the Project, and implement such procedures.

3.2.8 Expedite and coordinate delivery and installation of Owner-procured material and equipment, if any.

3.2.9 Provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and all other facilities and services necessary for the proper execution and completion of the Work in strict accordance with the requirements of the Contract Documents.

3.2.10 Obtain building permits and special permits for permanent improvements as required by law or the Contract Documents. Assist Owner or Architect in obtaining all approvals required from authorities having jurisdiction over the Project.

3.2.11 Regularly inspect the Work of Subcontractors to ensure conformance with the Contract Documents. Supervise the correction by Subcontractors of any defective Work.

3.2.12 Implement and enforce the comprehensive safety plan and comprehensive safety procedures for the Project. Construction Manager is solely responsible for all safety precautions and programs in connection with the Work. Construction Manager shall ensure compliance by the Subcontractors.

3.2.13 Review Subcontractors' insurance certificates to determine whether they comply with the Contract Documents.

3.2.14 Consult with the Owner and Architect when any Subcontractor requests interpretation of the Contract Documents.

3.2.15 Cause Subcontractors to maintain and provide, on an on-going and continuous basis, comprehensive "as-built" drawings of their Work, under the terms of their respective Subcontracts, and deliver all as-built drawings to the Architect for approval and thereafter to the Owner, prior to final payment to each such Subcontractor or earlier as directed by the Owner.

3.2.16 Make recommendations to the Owner regarding the advisability of arranging payment for materials stored off-Site, cooperate with the Owner in making arrangements for inspection of such materials, including such arrangements as the Owner shall deem necessary or desirable for (i) access to such materials for the purpose of segregation, ongoing inspection and removal of such materials, (ii) protecting the Owner's title to such materials, free and clear of all liens, encumbrances and rights of others and (iii) insuring and protecting the same.

3.2.17 Keep the Site and the Project free at all times from unreasonable accumulation of waste material or rubbish caused by the Work. Daily stockpiling of rubbish and debris shall be required, to the maximum extent possible. Immediately before Substantial Completion of the Work, the Construction Manager shall cause all waste material and rubbish, and, to the extent practicable, all tools, construction equipment, machinery and surplus materials, to be removed from and about the Site, and shall cause the

Project to be broom cleaned.

3.2.18 Assist the Owner in obtaining final permits or approvals related to any existing certificate of occupancy or in obtaining a new certificate of occupancy for the Project.

3.2.19 Take all measures reasonably available to the Construction Manager to avoid and resolve labor disputes and jurisdictional disputes.

3.2.20 Take such action as may be reasonably necessary in an emergency to protect life and property and notify the Owner of such action as soon as practicable.

3.2.21 Cause inspection or approval to be performed if and to the extent any of the Work is required to be inspected or approved by any public authority or agency. No inspection or failure to inspect by the Owner or Architect shall be a waiver of any of the Construction Manager's obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.

3.2.22 Promptly notify the Project Team in writing if the Construction Manager observes that any of the Contract Documents or any portion of the Work as designed is at variance with any applicable laws, codes, ordinances, regulations or other governmental requirements in any respect and advise the Project Team as to any changes needed as a result of such variance.

3.2.23 Construction Manager shall maintain a daily activity log, which shall, at a minimum, include the following information: 1. Project name; 2. Report number; 3. Date and time report was generated; 4. Weather data: overhead conditions, precipitation (if so, how much), temperature (high and low), impact on progress; 5. Sediment and erosion control; 6. Work performed (include all major trades); 7. Number of workers on site; 8. Major equipment deliveries; 9. Major equipment working on site; 10. Difficulties encountered that may cause delay; 11. Time/Days of no Work performance and reason; and such other similar relevant data as Owner or Architect may reasonably require. The log shall be available for inspection at any time by Owner and Architect; and copies shall be provided to the Project Team on a weekly basis.

3.3 Updating and Maintaining the Project Schedule; Progress Reports.

3.3.1 The Construction Manager shall have prepared and submitted for the Project Team's acceptance and Architect's information a fully developed Project Schedule with the GMP Proposal. In addition to other requirements set forth herein, the Project Schedule shall include all items described in Paragraph 2.2 of this Agreement, shall relate to each Phase of the Project and the entire Project as the Contract Documents require, and shall provide for expeditious and practicable execution of the Work. The Project Schedule shall incorporate activities of the Subcontractors and other parties affecting the progress of the Work, including, without limitation, activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Samples, and other data, and delivery of long lead-time items. The Project Schedule shall include reasonable periods of time for the Project Team's review and approval of Shop Drawings and submissions and for the approval of other authorities having jurisdiction over the Project. The Project Schedule shall include Owner's occupancy requirements and occupancy priorities. Construction Manager shall evaluate Subcontractor's personnel and equipment, and availability of supplies and materials, with respect to each Subcontractor's ability to meet the Schedule. The Project Schedule shall be in a format approved by the Owner and shall show the critical path through the project. The Project Schedule shall directly relate to the Schedule of Values in a line-by-line manner. The Construction Manager shall adhere to the Project Schedule.

3.3.2 Should the Construction Manager depart more than seven (7) days from this schedule for the projected Substantial Completion Date for any Phase, then Construction Manager shall deliver a plan to the Owner as to how Construction Manager shall reform its practices to return to the original Project Schedule; or should the Owner allow, deliver a new Project Schedule.

3.3.3 Construction Manager shall develop its schedule, pricing, and execution plan to provide a minimum of ten percent total Float at acceptance of the baseline Project Schedule. Float time contained in the Progress Schedule is not for the exclusive benefit of Construction Manager or Owner but belongs to the Project and may be consumed by either party. Before Construction Manager uses any portion of the Float Construction Manager must submit a written request to do so to the Owner and receive Owner's written authorization to use the Float.

3.3.4 The obligation of the Construction Manager to maintain and update the Project Schedule in form and substance, and as and when required by this Agreement, is a material term of this Agreement and Construction Manager's failure to perform this obligation will constitute a breach of this Agreement. This obligation requires Construction Manager to provide regular monitoring, updating, and reissuing of all Project schedules as construction progresses, including, without limitation, detailed project schedules, submittal schedules, inspection schedules, and occupancy schedules; identify potential and actual variances between scheduled and probable completion dates, review the schedules for Work not started or incomplete and recommend to the Owner adjustments in the schedules to conform with the probable completion dates and provide summary reports to the Owner of each schedule update and document all changes in project construction schedules.

3.3.5 The Project Schedule shall be updated by the Construction Manager on a monthly basis (and provided with each Request for Payment) reflecting the progress of the Work to date and current plans for completing the Work while maintaining the original schedule, and shall separately note any changes in logic and duration made since the previous update. Each updated Project Schedule shall be sequentially numbered and dated for identification, and Construction Manager shall separately maintain and archive electronically each throughout the term of this Agreement (e.g., no updated Project Schedule shall "overwrite" the prior version or versions of the Project Schedule or updated Project Schedule). Each update shall be submitted in electronic format as well as paper copy.

3.3.6 The Project Schedule, as updated monthly, or more frequently when required hereunder, shall be subject to Owner's acceptance, shall not change the established Substantial Completion Date for the Project or Milestone Dates, and shall not be binding on the Owner until the Owner has approved such updated Project Schedule.

3.3.7 The Project Schedule is for Construction Manager's use in managing the Work and submittal of the schedule, and successive updates or revisions, is for the information of Owner and to demonstrate that Construction Manager has complied with requirements for planning and performing the Work. Owner's acceptance of a schedule, schedule update or revision constitutes Owner's agreement to coordinate its own activities with Construction Manager's activities as shown on the schedule.

(a) Submittal of the Project Schedule, schedule revision or schedule update constitutes Construction Manager's representation to Owner of the accurate depiction of all progress to date and that Construction Manager will follow the schedule as submitted in performing the Work.

(b) Acceptance of the Project Schedule, or update and/or revision thereto does not indicate any approval of Construction Manager's proposed sequences and duration.

(c) Acceptance of a Project Schedule update or revision indicating early or late completion does not constitute Owner's consent, alter the terms of this Agreement, or waive either Construction Manager's responsibility for timely completion or Owner's right to damages for Contractor's failure to do so.

(d) Construction Manager's scheduled dates for completion of any activity or the entire Work do not constitute a change in terms of this Agreement. Change Orders executed by the Owner are the only method of modifying the Substantial Completion Date(s) and Contract Time.

In addition to the updated Project Schedule, and any other reports required hereunder, Construction Manager shall provide monthly progress reports (in narrative form) that analyze and comment on issues in the updated Project Schedule. The monthly Progress Report shall include the following sections: executive summary, schedule progress last month, planned activities next month, analysis of critical path progress/slippage, general progress of the Work (earned value), variance reporting/exception analysis, action items and areas of concern, and upcoming Owner decisions required.

3.4 Cost Control.

3.4.1 Maintain the Schedule of Values allocating the Cost of the Work over the various portions of the Work, as required by the Contract Documents, which shall be updated on a monthly basis.

a. The Schedule of Values, the Project Schedule, the Master Construction Schedule, the Progress Reports, and other project schedules shall be in form and substance satisfactory to Owner, Owner's Lender and the Architect and include such data and documents as Owner, Owner's Lender, and the Architect or other Project Team members may require. The Schedule of Values, the Project Schedule, Master Construction Schedule, and any specific Project schedules, shall each include a written narrative which sets forth any clarifications, assumptions, conditions, and qualifications to the information as set forth, such as any line-items in the Schedule of Values or Milestone Dates in the Project Schedule and Master Construction Schedule.

b. By executing this Agreement and furnishing Owner with a Schedule of Values, Project Schedule, Master Construction Schedule, and specific Project schedules, Construction Manager represents and warrants that the Contract Documents, materials, and information furnished to Construction Manager as of the date of this Agreement and the ongoing discussions and meetings between Construction Manager and the Project Team have described the scope, construction requirements, and design and intent of the Work in detail sufficient to enable Construction Manager to establish firmly the Guaranteed Maximum Price as set forth herein, the Project Schedule and the Master Construction Schedule. Construction Manager shall not be permitted to claim any adjustment to the Guaranteed Maximum Price or the Contract Time, except as specifically provided in the Contract Documents.

3.4.2 Prepare and administer, and provide to Owner, Subcontractors' schedule of values, subcontractors' sworn statements and waivers of lien as required herein, contract and disbursement summaries, change order listings and change orders, and budget cost summary reports as required by Owner and Owner's Lender.

3.5 Administration of Change Orders. Develop and implement a system acceptable to the Owner, Architect and Owner's Lender for the preparation, review and processing of Change Orders, change order requests, and requests for information submitted by Subcontractors. Review requests for changes requested by the Owner, submit recommendations to the Owner regarding such requests, make independent recommendations regarding changes to the Work to enable expeditious and economical completion of the

Work, negotiate Change Orders with the Owner and Subcontract change orders with Subcontractors pursuant to Article XIV of the General Conditions, and prepare and process written Subcontract change orders and transmit them to appropriate Subcontractors.

3.6 Documents, Shop Drawings, and Submissions.

3.6.1 Architect shall be the interpreter of the design intent of the Construction Documents, subject to the terms and conditions of the agreement between the Architect and the Owner, provided, however, the Construction Manager shall request such interpretations from the Architect, with Owner consent, from time to time in order to facilitate the Construction Manager's accomplishment of its duties under this Agreement. The Owner's consent may be provided to the Construction Manager at the commencement of Work and does not have to be requested on an item-to-item basis.

3.6.2 In collaboration with the other members of the Project Team, the Construction Manager shall implement the procedures for Architect's approval of Shop Drawings and other submissions as set forth in the General Conditions; receive from the Subcontractors, and review, all Shop Drawings and other submissions for conformance with the Contract Documents; coordinate Shop Drawings and other submissions with the Contract Documents and other related documents prior to transmitting them to other members of the Project Team.

3.6.3 Record the progress of the Project, submit Progress Reports to the other members of the Project Team, including information on the Work and the percentage of completion, and keep a daily log of Project construction activities available to the other members of the Project Team; whose job function involves or includes observation of Project construction, shall maintain a daily log of construction activities and observations, which daily logs shall be submitted to the Owner no less frequently than weekly for the immediately preceding week.

3.6.4 Maintain at the Project site and make available to Owner updated records of subcontracts, drawings, examples, purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction related documents, including all changes and revisions, a directory of personnel, Project correspondence, inspection procedures (as prepared by others), testing laboratory procedures (as prepared by others), contract changes, time extensions, progress payment data, final acceptance procedures, instructions from Owner; and shall obtain data from Subcontractors and maintain a current set of record drawings and Project Manual.

3.6.5 Coordinate and facilitate the creation of record and as-built drawings, and the procurement of warranties and guarantees in binder and CD form.

3.7 Bonds.

3.7.1 Construction Manager Bonds. Within ten (10) days after execution of the GMP/Schedule Amendment and before commencing any Work at the Site, the Construction Manager shall furnish to the Owner payment, performance, maintenance, and defect bonds meeting the requirements of 61 O.S. §§ 1 and 113 and otherwise in the form and substance set forth in Exhibit H (Bond Requirements). Each bond shall be in the full penal sum of the GMP, and if the Work is phased or staged with multiple GMPs established at different times, the penal sum of the bonds shall be increased based on the cumulative total value of all GMPs then in effect.

3.7.2 Subcontractor Bonds.

3.7.1 Threshold for Bonds.

(a) The Construction Manager shall require payment and performance bonds from each Subcontractor: (i) whose subcontract covers a major trade category of the Work (including, without limitation, structural, mechanical, electrical, plumbing, roofing, or other trades designated by the Owner as critical to timely or proper completion of the Project), or (ii) whose subcontract amount exceeds the lesser of One Hundred Thousand Dollars (\$100,000) or ten percent (10%) of the Guaranteed Maximum Price.

(b) The Owner may, in its reasonable discretion, require bonds for smaller subcontract amounts if the trade involves unusual risk (e.g., waterproofing, fire protection, life-safety systems, or moisture control).

3.7.2 Form of Bonds. All Subcontractor bonds shall:

(a) be in an amount equal to one hundred percent (100%) of the subcontract price;

(b) name both the Construction Manager and the Owner as co-obligees;

(c) be executed by a surety licensed to transact business in Oklahoma, maintaining a current A.M. Best rating of not less than A-VII, and, preferably, listed on U.S. Treasury Circular 570, unless otherwise approved by the Owner as meeting equivalent financial standards;

(d) expressly provide that modifications, extensions of time, or other changes to the subcontract shall not discharge the surety; and

(e) remain in effect until all obligations of the Subcontractor have been fully performed, including warranty and correction obligations.

3.7.3 Delivery of Bonds. No Subcontractor subject to this Section shall commence Work until its payment and performance bonds have been delivered to the Construction Manager, and duplicate originals (with multiple obligee riders) have been delivered to the Owner.

3.7.4 Maintenance and Defect Bonds for Critical Trades. The Construction Manager shall require any Subcontractor performing roofing, waterproofing, fire protection, HVAC, or other trades designated by the Owner as critical to provide, in addition to performance and payment bonds, a maintenance/defect bond in an amount not less than one hundred percent (100%) of its subcontract price, issued by the same surety, guaranteeing the maintenance, repair, or replacement of the Subcontractor's work for a period of two (2) years after Final Completion, or such longer period as specified in the subcontract.

3.8 Subcontractors and Suppliers.

3.8.1 All Subcontractors shall possess the skill and experience appropriate to the services to be provided. The Construction Manager shall ensure that the Work complies with all terms and conditions of the Subcontracts and Contract Documents, and shall be fully responsible to the Owner for the complete performance of Work by the Subcontractors, including, without limitation, any defects or deficiencies in the Work and any other failures of the Subcontractors to comply with the Subcontracts and Contract Documents. If any Subcontractor fails to comply with the Contract Documents, the Construction Manager shall take prompt action to cure such failure and to bring about satisfactory performance.

3.8.2 Construction Manager shall closely supervise all Subcontractors throughout the Project. Construction Manager shall inspect the Work of the Subcontractors and ensure that this Work conforms to the provisions of the Contract Documents. Construction Manager shall pay all Subcontractors. Construction Manager shall coordinate and monitor the performance of all Subcontractors to ensure that the Project remains on schedule. Construction Manager guarantees the Work of all Subcontractors.

3.8.3 The provisions of this Agreement shall, to the extent they could be applicable to the Work to be performed by any Subcontractor or to any contract for materials, equipment or supplies, be incorporated into any contract to be entered into between Construction Manager and a Subcontractor or Supplier, and the Subcontractor or Supplier shall be responsible to Construction Manager and Owner for compliance, as if it were Construction Manager, with the provisions of this Agreement applicable to Construction Manager.

3.8.4 All agreements with Subcontractors and agreements with Suppliers shall (a) be in writing signed by Construction Manager and the Subcontractor or Supplier; (b) require the Subcontractor to comply with the terms of this Agreement when performing services or providing goods; (c) specifically state that this Agreement's terms require compliance with laws and note its confidentiality requirements; and (d) require the Subcontractor to provide insurance covering risks and in the amounts as set forth below in this Agreement.

3.8.5 Each subcontract or supply agreement shall preserve and protect the rights of Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor or materials and equipment to be provided by a Subcontractor or Supplier so that such rights will not be prejudiced, and shall allow to the Subcontractor and Supplier, unless specifically provided otherwise in the subcontract or supply agreement, the benefit of all rights, remedies and redress against Construction Manager that Construction Manager, by the Contract Documents, has against Owner, except that Subcontractors (of all tiers) and Suppliers shall be required to waive any claims or rights they may have against Owner for damage caused by fire or other peril for which a Subcontractor (of any tier) or a Supplier are or, under the terms of the Contract Documents should be, insured by property insurance. Construction Manager shall require each Subcontractor and Supplier to enter into similar "flow-through" agreements with their respective sub-Subcontractors. Construction Manager shall make available to each proposed Subcontractor and Supplier, prior to the execution of the subcontract or supply agreement, copies of the Contract Documents to which the Subcontractor or Supplier will be bound, and, upon written request of the Subcontractor or Supplier, identify to the Subcontractor or Supplier terms and conditions of the proposed subcontract or supply agreement which may be at variance with the Contract Documents. Subcontractors and Suppliers shall similarly be required to make copies of applicable portions of such documents available to their respective proposed sub-Subcontractors.

3.8.6 All subcontracts and supply contracts shall be in form and substance substantially similar to Construction Manager's standard form subcontract and supply contract, attached to this Agreement and made a part hereof as Exhibits I and J, respectively, and shall specifically provide that Owner is an intended third-party beneficiary. The Construction Manager shall not materially amend or change any Subcontract without the Owner's prior written approval, which approval shall not be unreasonably withheld, nor shall the Construction Manager take any action that is inconsistent with or in breach of any Subcontract.

3.8.7 The Construction Manager shall not enter into a Subcontract without first reviewing the Subcontractor's financial condition, capability of furnishing payment and performance bonds, qualifications

and experience and (to the extent required) licensed in its particular trade.

3.8.8 The Construction Manager shall be responsible for avoiding jurisdictional and other Site-specific labor disputes involving the labor employed at the Site by the Construction Manager, Subcontractors and sub-Subcontractors of any tier. The Construction Manager shall not be responsible for industry-wide labor disputes.

3.8.9 Subcontracts and agreements with Suppliers shall conform to the payment provisions of this Agreement.

3.8.10 Neither Construction Manager's employees nor Construction Manager's Subcontractors shall be deemed for any purpose to be employees of Owner. Accordingly, neither Construction Manager's employees nor its Subcontractors shall be entitled to any benefits normally accruing to Owner employees. Construction Manager and its Subcontractors shall be solely responsible for payment of all federal and state taxes, local occupational taxes, unemployment benefits and any other payment an employer is normally and customarily obligated to pay on behalf of its employees. Construction Manager and its Subcontractors have sole authority and responsibility to hire, fire and otherwise control their employees.

3.8.11 Construction Manager shall expedite and coordinate the purchase and delivery of long lead time items. Construction Manager shall identify qualified manufacturers for long lead time items and bid out materials to approved manufacturers (or if requested by Owner, negotiate with manufacturers) in order to meet the requirements of the Project Schedule and the Master Construction Schedule. Construction Manager shall monitor manufacturers for production timetables, quality control and performance testing to ensure complete compliance with the requirements of the Contract Documents.

3.8.12 Construction Manager shall review site conditions to determine if field assembly of the equipment is required and notify the manufacturer accordingly if units are to be shipped in sections.

3.8.13 Construction Manager shall cause pre-purchased equipment and material to be delivered to the job site or temporarily stored. Delivered equipment will be checked by Construction Manager to verify that quality, quantity and stated capacities meet the criteria of the Specifications therefor. Construction Manager shall confirm in writing to Owner prior to its installation, that the pre-purchased equipment fully meets the requirements of the Contract Documents, and Construction Manager will follow up this procedure with proper field tests prior to occupancy.

3.8.14 Construction Manager shall carefully coordinate all warranty and guaranty periods. All warranties, implied or expressed, must commence upon final completion and shall be for a minimum of one (1) year. Manufacturer's warranties for equipment having a duration of less than one (1) year shall be reviewed with and approved by Owner before an order is placed.

3.8.15 Neither the Construction Manager nor any of its parents, subsidiaries, affiliates, officers, directors, members, shareholders or employees shall have any interest, direct or indirect, in any Subcontractor of any tier by which a benefit is derived from the Subcontractor's participation in the Project; provided, however, that in the Owner's sole and absolute discretion the Owner may, based on demonstration by the Construction Manager of significant economic benefit to the Owner, authorize award of a Subcontract to an affiliate of the Construction Manager on condition that the Construction Manager has disclosed fully to the Owner the true and actual cost of the Subcontract, including any fees, rebates or other consideration to be derived by the Construction Manager from the proposed Subcontract.

3.9 Hazardous Materials and Other Conditions. If conditions are encountered at the Project Site that are (a) subsurface or otherwise concealed conditions that differ materially from those indicated in the Contract Documents, including material reasonably believed to be hazardous and is not identified as the Construction Manager’s responsibility under the Contract Documents or (b) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist or generally recognized as inherent in construction of the character provided for in the Contract Documents, then the Construction Manager shall stop Work in the affected area, give written notice of such conditions to the Project Team promptly and await instructions from the Owner. The Owner shall verify the presence or absence of hazardous material as reported by the Construction Manager. In the event such material is found to be hazardous, the Owner shall verify that it has been rendered harmless or cause it to be rendered harmless. Thereafter, Work in the affected area shall be resumed. The Construction Manager shall give written notice of any claim on account of such conditions as provided in Article 9 of this Agreement. Except for field coordination conditions not requiring structural redesign (which are to be covered by Contingency), the GMP shall be adjusted on account of demonstrable Cost of the Work directly attributable to such conditions, plus reasonable adjustment for General Conditions directly attributable to such conditions, plus adjustment of the Construction Fee attributable to the sum of the adjustment in the Cost of the Work and the Costs of the General Conditions.

The Construction Manager agrees that it will be solely responsible for the removal from, under or around the Site, of any hazardous material brought to the Project Site by the Construction Manager or improperly released as a result of negligence or willful misconduct by the Construction Manager, any Subcontractor of any tier or any of their employees. Any hazardous material present at the Project Site prior to the time construction commences is not the responsibility of the Construction Manager, except for proper removal thereof as part of the Work under the Contract Documents or wrongful release as provided in the preceding sentence. The provisions of this Section 3.9 shall survive the termination of the Contract Documents and the completion of the Work to be performed thereunder.

ARTICLE 4

CONTRACT TIME; SUBSTANTIAL COMPLETION; DELAYS; DAMAGES FOR DELAYS

4.1 Contract Time. The date of commencement of the Work is the date established in the Notice to Proceed issued by the Owner. The Construction Manager shall begin Work on the starting date established in the Notice to Proceed. No Work shall be performed before the Notice to Proceed is issued by the Owner. The Construction Manager shall cause construction of the Project to be commenced promptly and carried diligently to completion as expeditiously as possible to complete the Work within the Contract Time. The Construction Manager shall achieve Substantial Completion for the Project within the timeframes set forth in the GMP/Schedule Amendment. Time is of the essence of the Contract.

4.1.1 It is expressly understood and agreed that the Contract Time is a reasonable and acceptable time for completion of the Work considering the requirements of the Contract Documents, the type and scope of the Project, and the usual industrial and labor conditions prevailing in the locality of the Project.

4.1.2 It is expressly understood and agreed that the Contract Time includes adequate time to allow for usual weather delays considering the climatic conditions in the area of the Project. No adjustments to the Contract Time will be allowed on the account of usual weather. The Construction Manager shall include adequate Float or other allowance in the Project Schedule to accommodate weather conditions that may be associated with weather dependent work. An extension to the Contract Time will be considered only in a case where an abnormal or unusual weather delay has directly affected the critical path identified in the Project Schedule, but only as specifically set forth in Article XI of the General Conditions, including

§11.5 (Weather Delays).

4.1.3 Unless otherwise agreed, normal working days are considered to be Monday through Friday, excluding State holidays, between the hours of 7:00 a.m. and 5:00 p.m. If the Construction Manager desires to work on any weekend day, State holiday, or during any other hours of the day, Construction Manager shall obtain the Owner's written approval at least 5 days in advance of the requested deviation, which approval shall not be unreasonably withheld or delayed.

4.2 Materiality of All Dates and Milestones. The Contract Time and all dates and periods of time set forth in the Contract Documents and the GMP/Schedule Amendment, including, without limitation, those for the commencement, prosecution, interim milestones, and completion of the Work, and for the delivery and installation of materials and equipment, were included because of their importance to Owner, and constitute a material inducement to the Owner to approve the GMP/Schedule Amendment and authorize the Construction Manager to proceed with the Work.

4.3 No Change to Critical Path. Construction Manager shall not, without Owner's prior approval, reschedule or re-sequence the Work so that an action, approval, or activity of Owner moves onto the critical path or otherwise becomes critical to the Contract Time.

4.4 Substantial Completion. The Work of the Project shall be deemed to have reached "Substantial Completion" when the following conditions have been met, and as more particularly described in the General Conditions:

(a) The Architect has issued a Certificate of Substantial Completion (unless the Architect refuses to issue a Certificate of Substantial Completion because of a dispute between Firehawk and Architect); and

(b) All governmental and other approvals for use and occupancy of the Work have been received; and

(c) The Project is sufficiently complete in accordance with the Contract Documents such that the Owner can occupy and use each portion of the Project for its intended purposes. Minor items of completion or correction ("Punch List Work") may be performed after Substantial Completion, provided that such items can and shall be performed at such times and in such manner that such Work does not unreasonably interfere with the Owner's occupancy and use of the Project. The Construction Manager acknowledges that because of the nature of the Project, the Owner's occupancy and use will require a high level of completion and minimal Punch List Work.

4.5 Punch List Work. The Construction Manager shall complete the Punch List Work for the Project as set forth in the General Conditions but in any event no later than thirty (30) days after Substantial Completion of the Project.

4.6 Extraordinary Measures. Whenever, in the opinion of Owner, the Work falls behind schedule, or otherwise determines the Work has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right, in addition to any and all other remedies the Owner may have, to order the Construction Manager to take corrective measures necessary to expedite the progress of construction, including, without limitation, (a) causing Subcontractors to work additional shifts or overtime, increasing the number of working hours per shift, shifts per working day, working days per week, or any combination of these, (b) supply additional manpower, equipment and facilities by self-performing the Work or through additional Subcontracts, (c) expedite the delivery of Materials; and (c) other similar

measures (hereinafter referred to collectively as “Extraordinary Measures.”). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner’s right to require Extraordinary Measures is solely for the purpose of ensuring Construction Manager’s compliance with the Project Schedule and the Master Construction Schedule or any specific Project schedule. Extraordinary Measures shall be limited to those reasonably necessary to restore the Project to compliance with the Project Schedule or Master Construction Schedule.

4.6.1 The Construction Manager shall not be entitled to an adjustment in the GMP in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 4.6. Construction Manager shall not be entitled to collect any additional cost or compensation from Owner.

4.6.2 The Owner may exercise the rights provided the Owner under or pursuant to this Section 4.6 as frequently as Owner deems necessary to ensure that the Construction Manager’s performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

4.6.3 Nothing herein shall entitle Construction Manager to an extension of Contract Time or adjustment of GMP except as expressly permitted under Article XI of the General Conditions.

4.7 Damages for Delays. The Construction Manager acknowledges that the Owner will suffer material monetary damages if the Work is not substantially completed within the Contract Time, including, without limitation, loss of income, loss of federal funding, financing costs, insurance costs, and other loss of use and extension costs. For each consecutive calendar day the Substantial Completion Date has not been achieved in accordance with the Contract Documents, the amount of _____ Dollars (\$ _____) will be deducted, without further proof or showing of damages by Owner, from the amounts due or become due the Construction Manager, not as a penalty but as liquidated damages representing the parties’ estimate at the time of execution of this Agreement of the damages the Owner will sustain for late completion of the Project.

Liquidated damages shall be the Owner’s sole and exclusive remedy for the Construction Manager’s failure to achieve Substantial Completion of the entire Project by the Contract Time; provided, however, that nothing in this Section shall limit or impair the Owner’s rights and remedies with respect to (i) failure to meet interim milestones expressly designated in the Contract Documents as subject to damages or other remedies, (ii) failure to prosecute the Work with diligence or to implement acceleration or recovery measures as directed by the Owner, or (iii) damages, costs, or losses not related to late Substantial Completion (including defective Work, warranty obligations, or third-party claims).

Liquidated damages shall not apply to the extent that Construction Manager demonstrates, by timely written notice in strict compliance with Article 9, that the delay was directly and solely caused by (i) an excusable Force Majeure Event as defined herein, or (ii) an act or omission of the Owner that materially and adversely affected the Construction Manager’s ability to achieve Substantial Completion by the Contract Time. In the event of concurrent delay involving both excusable and non-excusable causes, Construction Manager shall be entitled only to such extension of the Contract Time as is reasonably attributable to the period of delay caused solely by the excusable event, and liquidated damages shall remain payable for the balance of any concurrent non-excusable delay.

Owner shall be entitled to deduct liquidated damages described in this Section from any unpaid amounts then or thereafter due Construction Manager under this Agreement. Any damages not so deducted from any unpaid amounts due Construction Manager shall be payable to Owner on demand, together with interest from the date of demand at ten percent (10%) per annum.

The Owner and Construction Manager further stipulate and agree that (a) it is impractical and unduly

burdensome to calculate the amount of loss or damages likely to be incurred by the Owner for late completion of the Project, (b) the damages described in this Section bear a reasonable proportion and are not plainly or grossly disproportionate to the probable loss likely to be incurred by the Owner, and (c) the parties are informed parties and have been represented by able legal counsel and have negotiated this Agreement at arm's length.

ARTICLE 5 COST OF THE WORK

5.1 Cost of the Work. The term "Cost of the Work" shall mean the costs identified in this Section 5.1 and as more particularly described in the General Conditions, Construction Manager shall endeavor to minimize costs consistent with this Agreement, sound business practice, and Owner's instructions.

5.1.1 Payments made to Subcontractors and Suppliers by Construction Manager pursuant to Subcontracts for Trade Work in accordance with the Contract Documents, excluding the costs of Subcontractor payment and performance bonds.

5.1.2 Site Labor costs consisting of wages paid for laborers, operators, foremen, teamsters, shop stewards, mechanics and other similar workers employed by the Construction Manager or for self-performed work, if approved by Owner, other than General Conditions Costs, in accordance with the Contract Documents and as approved by the Owner.

5.1.3 Cost of all Materials incorporated into the Work, including costs of transportation thereof.

5.1.4 Cost of site debris removal and disposal if not otherwise included in the General Conditions Costs.

5.1.5 Licenses, tests, and intellectual property royalties for any items specifically required by the Contract Documents and which are used in the Work.

5.2 General Conditions Costs. Construction Manager is entitled to receive payment for the actual cost of the allowable General Conditions Costs incurred after receipt of a Notice to Proceed with Construction from the Owner through Substantial Completion of the Project plus thirty (30) calendar days. Construction Manager is not entitled to reimbursement for General Conditions Costs incurred before receipt of the Notice to Proceed. General Conditions Costs incurred after Substantial Completion must be approved in advance by the Owner. Items that are allowable as General Conditions Costs are identified below and by attached exhibit. These items shall be included in the General Conditions Costs shown as a line item in the Guaranteed Maximum Price Proposal and as detailed on the Schedule of Values. Items not specifically included below or in the exhibit will not be allowed as a General Conditions Costs.

5.2.1 Personnel Costs. The actual wage rate for Construction Manager's hourly employees who are identified on the Final List of General Conditions Work Items to be attached to the GMP/Schedule Amendment approved by Owner for the time worked during the preceding month on the Project, not to exceed the approved total allocations Final List of General Conditions Work Items. All personnel costs are subject to audit by Owner under Section 7.3.3 to determine the actual cost of the wages, salaries and allowable employer contributions incurred by the Construction Manager for services performed for the Project.

5.2.2 General Requirements set forth in the Final List of General Conditions Work Items, as set forth in the General Conditions, and as follows:

5.2.2.1 Costs of materials, supplies, temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Project site by Construction Manager, if such items are fully consumed in the construction of the Work and are included in the list of allowable General Condition Costs. Cost for used items shall be based on fair market value and may include transportation, installation, and minor maintenance costs, and removal costs. If an item is not fully consumed in the construction of the Work, its cost shall be based on actual cost of the item less its fair market salvage value.

5.2.2.2 Rental charges of all necessary tools, machinery, equipment, and temporary facilities used at the site of the Work, except for those customarily owned by construction workers, and may include installation, minor maintenance costs, removal, transportation and delivery costs thereof, at rental charges consistent with the competitive prices prevailing in the area, all so long as Owner has approved such items and the rental rates in advance in writing; and provided, however, rental of equipment owned by the Construction Manager shall be first approved by the Owner and if so approved, the aggregate rentals of any such equipment shall not exceed 75% of the published rental rates based on the local prevailing rental rates, and in no event shall the total rental on any piece of machinery or equipment furnished by contractor from its own stock exceed eighty percent (80%) of its fair market value at the time it was first utilized on the Project.

5.2.2.3 Cost of crossing, protecting or altering any public utility, if required and as directed by the Owner.

5.2.2.4 Permit fees and inspection fees.

5.2.2.5 Actual cost of the premiums for all bonds and insurance coverage Construction Manager is required to purchase and maintain under this Agreement, supported by documentation and calculations demonstrating the actual direct costs properly attributable to the Project without markups. Premiums for company-wide coverage will be pro-rated on the basis of value of Work completed during the premium period. The cost of (or payment of) all deductible amounts, not otherwise recoverable from third parties or not the result of a claim based upon Construction Manager's negligence, under any insurance furnished by Owner, or under insurance policies required by this Agreement or deemed necessary by the Construction Manager in the normal pursuit of the Work.

5.2.2.6 Reasonable and customary travel expenses of Construction Manager's personnel incurred directly and solely in support of the Project and approved in advance in writing by Owner.

5.2.2.7 Costs of long-distance telephone calls, telegrams, postage, package delivery and courier service, telephone service, and reasonable and customary expenses of Construction Manager's jobsite office, incurred directly and solely in support of the Work, and all incurred at the site.

5.3 Costs Not Included in the Cost of the Work or General Conditions Costs. The following and such other costs as set forth in the General Conditions shall not be included in the Cost of the Work to be paid by Owner:

5.3.1 Any and all personnel costs, including, without limitation, wages, salaries, and benefits, except for personnel based at the site office and only as specifically provided herein.

5.3.2 Any and all overhead expense, or office expense at any location, except site office expense to the extent specifically included herein.

5.3.3 Any part of the Construction Manager's capital expenses, including interest on capital, regardless of whether it is related to the Project.

5.3.4 Costs including, but not limited to, the failure to perform of any Subcontractor or the bankruptcy or insolvency of any Subcontractor.

5.3.5 Legal, accounting, administrative or other professional costs to review and negotiate these Contract Documents, or in regard to disputes, mediation, litigation or other such proceedings with Subcontractors, with municipal authorities, with the Owner, the Architect or any other person or entity relating to the Project or otherwise.

5.3.6 Travel and subsistence expense of Construction Manager, its officers or employees incurred while traveling between the Project and Construction Manager's principal or branch offices, and travel in the metropolitan area of the Project.

5.3.7 Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of Construction Manager.

5.3.8 Costs incurred by Construction Manager resulting from the failure of Construction Manager or its Subcontractors to coordinate their work with that of Owner and its contractors, if any, after agreeing to the schedules therefore, or failure of Construction Manager to comply with directives of Owner not in conflict with said schedules.

5.3.9 Costs resulting from the failure of Construction Manager or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.

5.3.10 Any cost arising out of the fault or negligence of Construction Manager, its Subcontractors, or any person or entity for whom they may be liable, including, without limitation, costs related to defective, rejected, or nonconforming work, materials or equipment, and damage to persons or property.

5.3.11 Liquidated or actual damages imposed by Owner for failure of Construction Manager to complete the Work within the Contract Time.

5.3.12 Any and all costs not specifically authorized herein, including, without limitation, any cost which would cause the Guaranteed Maximum Price to be exceeded.

5.3.13 Costs related to Construction Manager's indemnification obligations pursuant to Article 12 hereof.

The categories of Cost of the Work, General Conditions Costs, and Excluded Costs set forth in this Article 5 are intended to be consistent with, and are supplemented by, the more detailed provisions of Article XII of the General Conditions. In the event of any overlap, inconsistency, or ambiguity between Article 5 of

this Agreement and Article XII of the General Conditions, the provisions of Article XII shall control, and no cost or expense shall be reimbursable unless expressly permitted under both.

5.4 Discounts, Rebates and Refunds. The Cost of the Work to be paid by Owner shall be credited with the following items:

5.4.1 Proceeds of the sale of all tools, surplus materials, construction equipment, and temporary structures which have been charged to the Work other than by way of rental, and remaining after completion, whether such sale is made to the Owner, the Construction Manager, or to some other party; and any such sale, if made to others than the Owner, shall be at fair market price.

5.4.2 If Owner makes funds available to Construction Manager, discounts earned by the Construction Manager through advance or prompt payments. The Construction Manager shall obtain all possible trade and time discounts on bills for material furnished and shall pay said bills within the highest discount periods. The Construction Manager shall purchase materials for this Project in such quantities as will provide the most advantageous prices to the Owner.

5.4.3 Reasonable market value as approved by the Owner at the time of removal of all materials, tools, and equipment actually purchased for the Work and upon completion of the Work retained by the Construction Manager.

5.4.4 Rebates, discounts, or commissions allowed to and collected by the Construction Manager from suppliers of materials or from subcontractors, together with all other refunds, returns, or credits received for return of materials, or on bond premiums, or insurance and sales taxes.

5.4.5 Construction Manager shall reimburse Owner for deposits made by Owner and not returned to Owner due to the fault of the Construction Manager. Should Construction Manager not promptly reimburse Owner upon demand, Owner shall be entitled to recover said amount from Construction Manager, including, but not limited to, by deducting the amount from payments due the Construction Manager.

5.5 Use of Contingency Funds. The Contingency included in the GMP shall be available to cover unanticipated expenses which are necessary to complete Work, changes that do not increase the scope of the Project, and for which the Construction Manager is not entitled to an increase in the GMP under the terms of this Agreement. The Contingency is not meant to add to the Construction Fee. The Contingency may be used to cover the following (but only after the Construction Manager has exhausted all credits, unused Allowances, and any and all other remedies the Construction Manager might have): (a) costs incurred due to latent physical conditions or changed conditions not covered by equitable adjustment under Section 3.9 of this Agreement; (b) costs for Work that is reasonably inferable from the Contract Documents but was not included in the initial Subcontract scopes; (c) costs incurred due to Force Majeure Delays (as defined in Section 11.4 of the General Conditions); (d) costs due to unanticipated cost escalation for materials not included in an executed Subcontract; (e) costs of implementing construction schedule recovery plans for delays; (f) costs to correct non-conforming work, curing any default in performance by Subcontractors (but only to the extent costs are not recoverable from Subcontractors, Subcontractor bonds or other insurance or security); (g) costs resulting from unanticipated construction disturbances such as strikes or accidents not due to the fault of the Construction Manager; (h) costs of premium time, multiple shift or weekend time not due to an unexcused delay of Construction Manager or its Subcontractors; (i) changes in design or scope of the Project; and (j) other costs authorized in writing by Owner to be drawn from Contingency to the extent so authorized.

5.5.1 Contingency Transfers. The Construction Manager is responsible for initiating, managing, and reporting on transfers into and out of Contingency. Prior to initiating any Contingency transfer, the Construction Manager shall submit a written request for approval to Owner. The request shall describe the need for the transfer and identify how the transfer will be accounted for within the GMP. The Owner will promptly consider the request to determine if the transfer should be made from Contingency or by another means and will not unreasonably withhold or delay its approval or determination. Construction Manager shall maintain a log of all contingency transfer requests and shall summarize and include this log with their Monthly Status Reports

5.5.2 Use of Unspent Contingency. As the Project nears Substantial Completion, it may become apparent from the Construction Manager's reports and projections that there may be unspent contingency remaining in the GMP that would otherwise be returned to Owner as "savings" pursuant to this Agreement. The Owner may utilize these "savings" to fund additional scope or other adjustments to the GMP as agreed to by the Parties. These savings transfer transactions shall be implemented via the issuance of "zero dollar" change orders to the Agreement.

ARTICLE 6 CONSTRUCTION MANAGER PERSONNEL; FEES

6.1 Personnel Assigned by Construction Manager During Pre-Construction and Construction Phases. In accordance with this Agreement, Construction Manager shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Construction Manager acknowledges that, as an essential inducement for the Owner to enter into this Agreement, the Construction Manager has agreed to assign the personnel listed on Exhibit K to perform services as indicated therein during the Pre-Construction Phase and Construction Phase of the Project. The title/role, hourly rate and number of work hours for each position during the Construction Phase is included on Exhibit K and shall be included in the General Conditions Cost. The Construction Manager agrees not to remove or reassign any personnel while in the Construction Manager's employ, other than administrative personnel, without obtaining, in each case, the Owner's prior written approval. If any personnel becomes unable to perform by virtue of sickness or other disability or leaves the Construction Manager's employ or is removed or reassigned with the Owner's prior written approval or at the Owner's request, the Construction Manager shall submit to the Owner the names and resumes of proposed candidates for a successor and shall continue to do so until the Owner approves a successor. No individual shall be assigned by Construction Manager to work on the Project as a Superintendent or higher level without the Owner's prior written approval.

If the Owner at any time reasonably requests that one of the Construction Manager's assigned staff members or other employees be removed from further duties in connection with the Project, the Construction Manager shall comply immediately with such request and, subject to the Owner's prior written approval, promptly submit a replacement following the procedures provided above.

6.2 Pre-Construction Phase Fees and Expenses. The Construction Manager agrees to provide all Pre-Construction services as set forth in this Agreement for a fixed fee of one hundred ten thousand dollars (\$110,000.00), other than reimbursement of demonstrable out-of-pocket expenses reasonably incurred by Construction Manager to perform the Pre-Construction services. A list of such approved expenses is attached hereto as Exhibit L. Reimbursable expenses shall not include any mark-up or profit.

Construction Manager shall submit its reimbursement request and receipts or invoices for all reimbursable expenses incurred during the preceding month on or before the 5th day of each month during the Pre-

Construction Phase. Subject to Owner's right to object to the reimbursement request, or any portion of it, Owner will make payment to Construction Manager in the amount of the reimbursement request within thirty (30) days of Owner's receipt of such request.

In the event Owner does not approve the GMP Proposal or execute the GMP/Schedule Amendment, the Construction Manager shall be entitled to reimbursement only for its documented, demonstrable out-of-pocket costs reasonably incurred in obtaining subcontractor and supplier bids for purposes of preparing the GMP Proposal.

All reimbursement requests shall be subject to Owner's audit rights under Section 7.3.3.

6.3 Construction Phase. For all services performed by Construction Manager to construct the Project during the Construction Phase, the Owner shall pay the Construction Manager, a fixed fee as set forth in the GMP/Schedule Amendment for the Project, but in any event shall not exceed five and one-half percent (5.5%) of the Cost of the Work ("Construction Fee"). The Construction Fee shall be paid in monthly installments, based on the percentage of completion of Work as set forth in Article 7.

The Construction Fee shall cover the Construction Manager's profit and general overhead. All costs and expenses excluded from the Cost of the Work under Section 5.3 of this Agreement are deemed to be covered by the Construction Fee and shall not be reimbursable separately.

ARTICLE 7 PAYMENTS

7.1 Guaranteed Maximum Price. As consideration for full and complete performance of the Construction Phase Work and all of Construction Manager's obligations under the Construction Documents, Owner shall pay Construction Manager and Construction Manager shall accept, the GMP reflected in the GMP/Schedule Amendment. The GMP, unless changed by a supplemental agreement or Change Order, represents the absolute limit of obligation or liability the Owner will ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Construction Manager, Subcontractors and Suppliers are concerned. Should additional amounts be required to be expended, over and above the GMP, to achieve completion of the Work, including Project construction, and payment to Construction Manager, in accordance with this Agreement, liability for and payment of such additional amounts shall be the sole responsibility of Construction Manager and its Surety herein, and Owner shall never be liable for same. Should the final Cost of the Work and Construction Manager's compensation total less than the GMP, or any approved revision thereof, the difference shall inure to the benefit of Owner and no claim for all or any portion of said difference shall be valid against or payable by Owner. Owner's limitation of obligation or liability set out in this Section shall be incontrovertible and unequivocal; any term or provision of this Agreement, any of the Contract Documents, the Exhibits, attachments, or provisions incorporated by reference in or to this Agreement, or of any Subcontract executed in furtherance of the anticipated Work under this Agreement shall not be construed or deemed to alter or waive this absolute condition. Likewise, Construction Manager's absolute responsibility for the completion of the Project in accordance with the Contract Documents, including the Plans and Specifications, and within the agreed cost constraints, as well as Construction Manager's agreement to bear all costs in excess of the GMP without recourse to Owner, if such excess costs are necessary for the completion of the Work, shall be incontrovertible and undisputable, and shall take precedence over all other terms and provisions of this Agreement, the Contract Documents, and the Exhibits, no part of which shall be deemed to alter, diminish or waive such obligations.

If the actual final General Conditions Cost is less than the amount shown in the Guaranteed Maximum Price Proposal, the entire savings shall be returned to the Owner and a final adjustment made to the Contract Sum. The Construction Manager's General Conditions cost shall be considered a Cost of the Work with respect to the Guaranteed Maximum Price. The Owner shall be entitled to one hundred percent (100%) of any unexpended Contingencies or Allowances or of the savings resulting from any design or construction changes reducing the scope of the Work.

7.2 Schedule of Values. Construction Manager shall submit to Owner a Schedule of Values in form, format, and substance as the originally established value for each work classification line item or Subcontractor, and shall not contain any revisions to costs or cost estimates for each such classification or subcontractor. The format and tracking method of the original Schedule of Values and of all updates thereto shall be subject to the approval of Owner. If at any time, the amount shown on the Schedule of Values exceeds the Guaranteed Maximum Price allocable to that classification or subcontractor, then the amount payable to Construction Manager by Owner shall be reduced by the amount of such excess. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work (including the Construction Fee) shall not exceed the unpaid balance of the Guaranteed Maximum Price (less retainage on Work previously completed). Payments to Subcontractors included in a Request for Payment shall not exceed the percentage of Work allocable to that Subcontractor for each respective Schedule of Values classification which has been actually completed. The accepted Schedule of Values shall be the basis for progress payments.

No progress payments will be made prior to Owner's receipt and acceptance of the Schedule of Values, provided in such detail as requirements by Owner, and not submitted less than twenty-one (21) days prior to the preceding request for payment. The Schedule of Values shall follow the order of trade divisions of the Specifications and include itemized costs for Cost of the Work, General Conditions, Construction Fee, Contingency, if any, and Allowances, if any, so that the sum of the items equal the GMP.

7.3 Payments and Procedures. Construction Manager shall submit requisitions for payment in conformance with the following procedures and requirements of the Owner or as otherwise required by Owner's Lender.

7.3.1 Progress Payments. Not later than the fifth (5th) day of each calendar month during the performance of the Work, the Construction Manager shall submit to Owner and Owner's Lender for approval a request for payment ("Request for Payment") in a format approved by Owner (AIA Document G702 and G703 or similar form) for Work performed during the immediately preceding calendar month. Each Request for Payment shall set forth: (a) the Cost of the Work incurred or paid by the Construction Manager during the immediately preceding calendar month for Work actually performed and for materials and equipment incorporated in the Work or suitably stored at the site or at some other location previously agreed upon in writing by the Construction Manager and the Owner and which are coordinated with the progress of the Work; (b) installment of the Construction Fee; (c) amount of payment requested pursuant to the current Request for Payment, including adjustments for Retainage; (d) amounts by and paid to Construction Manager prior to the date of the current Request for Payment; and (e) any adjustments to the GMP. The Request for Payment shall be verified under oath by an officer of the Construction Manager.

For each Request for Payment:

(e) For compensation of the Construction Manager's personnel, a labor distribution report and payroll register (certified by the Construction Manager to be correct) identifying individual charges including hours for the Project covered by the Request for Payment shall be attached. Each Request for Payment also shall attach supporting documentation including

timesheets showing the time properly charged by all reimbursable personnel, accurate payroll reports showing compensation paid to reimbursable personnel, a schedule of approved rates for all personnel and workers. Changes to timesheets must be initialed and dated by a manager/supervisor or otherwise similarly approved electronically.

(f) For materials purchased by the Construction Manager as part of the General Conditions Work, supporting invoices noting the Project, the specific materials delivered and the price shall be attached.

(g) For other General Conditions Work expenses, supporting expense reports and receipts signed by the employee and approved by appropriate Construction Manager personnel shall be attached.

(h) Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the Site. If approved in advance by the Owner, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the Project Site shall be conditioned upon submission by the Construction Manager of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance and transportation to the Project Site for those materials and equipment stored off the Site.

(i) A schedule setting forth all Subcontractors requesting payment shall be attached and shall be accompanied by properly and fully executed partial releases and lien waivers, the form of which is subject to the Owner's approval. Each Request for Payment shall include a certification by the Construction Manager of the amounts due to the Subcontractors covered by the Request for Payment and such certification shall constitute the Construction Manager's representation to the Owner that the Subcontractors' Work has progressed at least to the point indicated, that the Work is in accordance with the Contract Documents and that the amounts certified are properly due.

(j) Each Request for Payment covering Subcontract Work shall include Subcontractor requisitions setting forth calculations of the amounts requested for Subcontractors based on the approved trade payment breakdowns.

(k) An updated Project Schedule for Owner's review and acceptance shall be attached to each Request for Payment.

(l) Such other information and documentation in form and substance as may be requested by Owner or Owner's Lender.

7.3.2 Time for Payment. Owner shall pay undisputed portions of a proper invoice within thirty (30) days of receipt, in accordance with 61 O.S. §223(A). Within thirty (30) days of receipt by Owner and Owner's Lender of a properly prepared and certified Request for Payment, Owner shall, subject to Owner's right to withhold payment under Sections 7.3.9 and 7.3.10 of this Agreement, make payment to Construction Manager for approved amounts on account of: (a) the Cost of the Work properly performed or furnished as of the date covered by such Request for Payment, less Retainage as set forth below, plus (b) the monthly installment of the Construction Fee.

7.3.2.1 Retainage. All amounts payable to Construction Manager except the Construction Fee shall be subject to retention (“Retainage”) which shall be, unless such other amount is specifically approved in writing by Owner, not less than five percent (5%) of the gross amount set forth in each Request for Payment until: (a) the Construction Manager has achieved in excess of fifty percent (50%) completion of the Work, (b) the Work has been performed in accordance with the Contract Documents, and (c) the Work is on schedule consistent with the approved Progress Schedule, all as determined by the Owner and Architect. Thereafter, the Retainage shall be reduced to two and one-half percent (2.5%) of the gross amount set forth in each Request for Payment.

Each Subcontract shall provide for retainage in accordance with 61 O.S. § 226(B), not to exceed 5% of amounts due, reduced to 2.5% once the Subcontractor’s work is more than 50% complete and satisfactory progress is being made.

7.3.3 Owner's Right to Audit and Review Work. Owner and Owner’s Lender shall be entitled to rely upon the accuracy and completeness of the information furnished by Construction Manager in connection with its Requests for Payment. Owner shall have the right, however, upon demand, to make a detailed examination, audit or inspection of Construction Manager’s books and records for the purpose of verifying the accuracy and completeness of such information. Owner and Owner’s Lender shall have the right to verify and audit the details set forth in Construction Manager’s Requests for Payments, and any billings, certificates, invoices, accountings, cost data, and statements, either before or after payment therefore, by (1) inspecting the books and records of Construction Manager during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing Construction Manager’s business employees; (4) visiting the Project site; and (5) other reasonable action. Owner shall have the right to review all Work performed at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Request for Payment and as required by the Contract Documents. In the event Owner or Owner’s Lender determines that Construction Manager has been paid any sums not due Construction Manager, same shall be reimbursed by Construction Manager to Owner within forty-eight (48) hours of demand by Owner.

7.3.4 Updated Project Schedule and Lien Waivers: Conditions Precedent to Payment. The Construction Manager shall perform the following as conditions precedent to the Owner’s payment of any Request for Payment: (a) submit an updated Project Schedule for the performance of the Work as required by this Agreement, and (b) furnish to Owner and Owner’s Lender properly executed waivers of lien, in a form acceptable to Owner and Owner’s Lender, from all Subcontractors, materialmen, Suppliers or others having lien rights, wherein they shall acknowledge receipt of all sums due pursuant to all prior pay requests and waive and relinquish any liens or lien rights relating thereto. In addition to all other conditions precedent contained herein, the Owner shall have no obligation to make a progress payment if the Request for Payment is not accompanied by the updated Project Schedule and lien waivers, all in form and substance as required by Owner.

7.3.5 Passage of Title to Construction Work. Immediately upon the performance of any part of the Work, title thereto shall vest in the Owner; provided, however, the vesting of such title shall not impose any obligations on the Owner or relieve the Construction Manager of any of its obligations hereunder.

7.3.6 Construction Manager's Use of Progress Payments. Upon receipt of any payment from Owner, Construction Manager shall promptly pay all Subcontractors, materialmen, laborers, and Suppliers such amounts as they are entitled for the Work covered by such payment.

7.3.7 Use of Joint Checks. If Owner becomes informed that Construction Manager has not paid

a Subcontractor, materialman, laborer, or Supplier as provided herein, Owner shall have the right, but not the duty, to issue checks and payment then or thereafter otherwise due to Construction Manager naming Construction Manager and any such Subcontractor, materialman, laborer, or Supplier as joint payees. Such joint check procedure, if employed by Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit Owner to repeat the procedure in the future nor to create any contractual or other relationship of any kind between Owner and such person or entity.

7.3.8 Payment Not A Waiver or Acceptance. No payment to Construction Manager, nor any use or occupancy of the Project by Owner, shall be interpreted or construed to constitute acceptance of any Work not in strict compliance with the Contract Documents, and Construction Manager expressly accepts the risk that defective Work may not be detected (a) during any inspection by Owner, (b) prior to making of any payment to Construction Manager, or (c) before Owner's occupancy of the Project.

7.3.9 Withholding of Payment. Notwithstanding anything herein to the contrary, Architect shall have the right to withhold certification of a Request for Payment and Owner shall have the right to withhold from payments due Construction Manager in the event Construction Manager persistently fails to perform the Work in accordance with the Contract Documents or is otherwise in material breach or default of this Agreement or otherwise fails or refuses to perform any of its obligations hereunder, including without limitation, Construction Manager's failure to submit an updated Project Schedule with each Request for Payment, in form and substance required by this Agreement. In addition, Owner shall have the right to refuse to make payment in whole or in part, and, if necessary, may demand the return of a portion or the entire amount previously paid to Construction Manager in an amount then believed by Owner to be adequate to cover the penalties, damages, and losses resulting from:

- (a) Unsatisfactory or disputed job progress not remedied within twenty (20) days after written notice;
- (b) Any defective Work not remedied;
- (c) The value of disputed Work, or the quantity of Work not being as represented in Construction Manager's Request for Payment, or otherwise;
- (d) Failure to comply with other material provisions of the Contract Documents;
- (e) Damage to property of the Owner;
- (f) Construction Manager's failure to pay Construction Manager's Project-related obligations including, but not limited to, Subcontractors, laborers and material and equipment Suppliers;
- (g) Such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Construction Manager or failure of Construction Manager to perform Construction Manager's obligations under this Agreement;
- (h) If Owner, in its good faith judgment, determines that the portion of the GMP then remaining unpaid will not be sufficient to complete the Work in accordance with this Agreement, no additional payments will be due Construction Manager hereunder unless and until Construction Manager, at Construction Manager's sole cost, performs a sufficient portion of the remaining Work so that such portion of the Contract Sum then remaining unpaid is determined by Owner to be sufficient to so complete the then remaining Work;
- (i) Nothing contained herein shall require the Owner to pay the Construction Manager an aggregate amount exceeding the Guaranteed Maximum Price or to make payment if the Owner reasonably believes the cost to complete the Work would exceed the Guaranteed Maximum Price less previous payments to Construction Manager.

If Owner disapproves a Request for Payment or a portion thereof, or withholds payment after initial approval, Owner shall prepare and issue to the Construction Manager a written statement describing those items in the Request for Payment for which approval or payment is withheld. When the grounds for withholding approval or payment are removed, payment shall be made for amounts withheld on account of such grounds. In the event that Owner makes written demand upon Construction Manager for amounts previously paid by Owner as contemplated in this Section 7.3.9, Construction Manager shall promptly comply with such demand.

Notwithstanding anything herein to the contrary, any withholding or reduction of a Request for Payment shall comply with the Fair Pay for Construction Act, 61 O.S. §223, including but not limited to: (i) providing written notice of the reasons for withholding or reduction within fourteen (14) calendar days of receipt of the proper invoice; (ii) limiting the withholding or reduction to no more than the amount reasonably necessary to correct the identified deficiency; and (iii) requiring that any such reduction be detailed in writing and forwarded to affected subcontractors, sub-subcontractors, or suppliers within seven (7) calendar days as applicable. Failure to comply with these requirements shall render such withholding ineffective.

7.3.10 Limitation on Duty to Pay. In addition to the grounds for withholding payment as set forth in Section 7.3.9 above, Owner and Construction Manager further agree as follows:

(a) As set forth in this Agreement, Construction Manager shall have submitted to Owner and Owner's Lender a Schedule of Values allocating the Guaranteed Maximum Price to the various portions of the Work. Such Schedule of Values shall be prepared in such form, with such detail, and supported by such data as Owner and Owner's Lender may require to substantiate its accuracy. Construction Manager shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by Construction Manager shall constitute a material breach of this Agreement. The Schedule of Values may be utilized as a basis for evaluating Construction Manager's Requests for Payment and shall only constitute such basis after it has been acknowledged in writing by Owner;

(b) Each Request for Payment shall include a certification by Construction Manager of the percentage of completion, as of the date of such Request for Payment, of those portions of the Work as identified in the Schedule of Values. Construction Manager shall furnish to Owner such documentation or other supporting data as Owner or Owner's Lender may request in order to verify the percentage of completion certified by Construction Manager;

(c) Owner shall have no obligation to make payment to Construction Manager for any Work where the amount for which such payment is requested is in excess of the amount allocated in the Schedule of Values for such Work based upon the percentage of completion as of the date of the Request for Payment;

(d) All Requests for Payment shall be subject to approval by Owner's Lender. Owner shall have no obligation to make payment to Construction Manager unless and until Owner's Lender approves and funds payments requested by Construction Manager, as approved by Owner and certified by the Architect pursuant to the terms and conditions of this Agreement.

Notwithstanding anything herein to the contrary, any withholding or reduction of a Request for Payment shall comply with the Fair Pay for Construction Act, 61 O.S. § 223, including but not limited to: (i) providing written notice of the reasons for withholding or reduction within fourteen (14) calendar days of receipt of the proper invoice; (ii) limiting the withholding or reduction to no more than the amount

reasonably necessary to correct the identified deficiency; and (iii) requiring that any such reduction be detailed in writing and forwarded to affected subcontractors, sub-subcontractors, or suppliers within seven (7) calendar days as applicable. Failure to comply with these requirements shall render such withholding ineffective.

For purposes of 61 O.S. §223, an invoice shall not be deemed “proper” unless accompanied by the documentation and substantiation required by Section 7.3.1 of this Agreement. In addition, no invoice shall be deemed “proper” to the extent it seeks payment of amounts subject to a pending Claim under Article 9 for which Construction Manager has not provided the documentation and substantiation required therein. Owner shall in all events timely pay undisputed portions of a proper invoice, and shall provide written notice of the disputed portion within thirty (30) days, in compliance with 61 O.S. §223. Nothing in this Agreement is intended to expand or diminish the Owner’s statutory obligations under the Fair Pay for Construction Act.

7.3.11 Unexcused Failure to Pay. If Owner, without cause or basis hereunder, fails to pay Construction Manager any amounts due and payable to Construction Manager within thirty (30) days after the date established in this Agreement for payment of such amounts, then the payment shall bear interest at a rate consistent with 61 O.S. §225(E). Provided, however, that Owner shall not be liable for interest due on any late or delayed progress payment or final payment caused by the Lender’s delay in approving or processing the requisition properly submitted by Owner, by any good faith claim or dispute, any discrepancy in quantities, any failure by Construction Manager to provide supporting documentation or other information required with the Request for Payment or as a precondition to payment under the Contract Documents, or due to any payment Owner has a right to withhold or not certify under the Contract Documents.

7.4 Final Payment.

(a) Retainage Release at Substantial Completion. Upon Substantial Completion of the Work, and issuance of a Certificate of Substantial Completion by the Architect, the Owner shall, no later than twenty-one (21) calendar days thereafter, release to the Construction Manager all Retainage then held, less an amount not to exceed one hundred fifty percent (150%) of the reasonably estimated cost to correct any incomplete or defective Work identified, itemized, and attached to the Certificate of Substantial Completion. Release of Retainage under this Section shall be conditioned upon (i) approval of release by the surety; (i) the Construction Manager furnishing lien waivers and releases through the date of Substantial Completion, and (ii) evidence that all Subcontractors and Suppliers have been paid to the extent of prior payments received by the Construction Manager. Retainage withheld for incomplete or defective Work shall be released from time to time as each such deficiency is satisfactorily corrected, consistent with 61 O.S. § 226(C).

(b) Final Payment. Upon Final Completion of the Work, the Construction Manager shall submit written notice to the Owner and Architect that the Work is ready for final inspection, together with a final Request for Payment. The Architect shall promptly perform a final inspection and, if the Work is found to be in compliance with the Contract Documents, issue a final Certificate for Payment. Within thirty (30) days after receipt by Owner and Owner’s Lender of (i) the Construction Manager’s final Request for Payment, and (ii) evidence satisfactory to the Owner and Owner’s Lender that all bills for labor and materials have been paid in full and that the Project is free of mechanics’ and materialmen’s lien claims, the Owner shall pay the Construction Manager the remaining unpaid balance of the Contract Sum, including any Retainage then held under Section 7.4(a). Final Payment shall be due and payable in accordance with 61 O.S. § 223(A), subject always to the Owner’s rights to withhold or reduce payment under 61 O.S. § 223(B).

7.5 **General Conditions.** Payments shall otherwise be governed by the General Conditions.

ARTICLE 8 Changes in the Work; Construction Change Directives; Change Orders

Changes in the Work may be authorized by a written Construction Change Directive as provided this Article 8 and as provided in Article XIV of the General Conditions.

8.1 Owner's Right to Order Changes. Changes in the Project scope or the Work under this Agreement, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by Owner without invalidating this Agreement and without approval of Construction Manager's Surety. Such changes shall be communicated by Change Order, or Construction Change Directive. A Change Order reflecting any equitable adjustment to the Contract Time, Construction Fee and/or GMP resulting from the Owner's requested Change Order will be prepared and processed for the parties' approval in accordance with Article XIV of the General Conditions. All Work authorized by Change Order shall be performed under the applicable conditions of the Contract Documents.

8.2 Construction Change Directive. A "Construction Change Directive" ("CCD") is a written order signed by the Owner directing a change in the Work and which may (but need not) state a proposed basis for adjustment in Guaranteed Maximum Price and/or the Contract Time.

8.2.1 A CCD may be issued by the Owner alone and may or may not be agreed to by the Construction Manager.

8.2.2 The Guaranteed Maximum Price and the Contract Time shall be adjusted appropriately when changes in the Work are ordered via a CCD. However, the Contract Time shall be adjusted only if the Construction Manager demonstrates to the Owner that the changes in the Work required by the CCD adversely affect the Critical Path of the Work.

8.2.3 A CCD may be used in the absence of total agreement on the terms of a Change Order.

8.2.4 If the CCD provides for an adjustment to the Guaranteed Maximum Price, it shall state the method that the Owner proposes to be used for the adjustment.

8.2.5 Upon receipt of a CCD, the Construction Manager shall within seven (7) days advise the Owner of the Construction Manager's agreement or disagreement with the method, if any, provided in the CCD for determining the proposed adjustment in the Guaranteed Maximum Price or the Contract Time.

8.2.6 A CCD signed by the Construction Manager indicates the Construction Manager's agreement with all of its terms, including adjustment in the Guaranteed Maximum Price and the Contract Time or the method for determining them. An agreement shall be effective immediately and shall have the same legal effect of and be recorded as a Change Order.

No verbal order, verbal statement, or verbal direction of Owner or its duly appointed representative shall be treated as a change under this Article or entitle Construction Manager to an adjustment to the Contract Time or Guaranteed Maximum Price.

8.3 Minor Changes. Architect, with the concurrence of the Owner, will have authority to order minor changes in the Work not involving an adjustment to the Guaranteed Maximum Price or an extension of the Contract Time. Such minor changes shall be effected by written order which Construction Manager shall carry out promptly in accordance with the Contract Documents and record the Work in the Project log.

ARTICLE 9 CLAIMS BY CONSTRUCTION MANAGER

9.1 Terms and Conditions of Claims. A “Claim” is a demand or assertion by one of the parties seeking adjustment or interpretation of contract terms, payment of money, extension of time or other relief with respect to the terms of the Agreement or any of the Contract Documents. The term “Claim” also includes all other disputes, controversies and matters in question between or among the Owner and the Construction Manager arising out of or in any way relating to the Agreement, the Project or the Work. Claims must be made by written notice to the other party containing as much detail as reasonably possible. The responsibility to substantiate claims shall rest with the party making the Claim. Claims by Construction Manager against Owner for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the Pre-Construction or Construction phase, are subject to the terms and conditions of this Agreement and the General Conditions, and strict compliance herewith shall be a condition precedent to any liability of Owner therefor.

9.2 Written Notice. The Construction Manager must give written notice to the Owner of any Claim by the Construction Manager for extension of time, extra compensation, increase to the GMP or damages of any sort within seven (7) calendar days after the Construction Manager first learns of the act, omission, occurrence or circumstance on which the Claim is based. The purpose of this notice is to give the Owner prompt opportunity: (a) to cancel or revise orders or directions, change plans, mitigate or remedy circumstances giving rise to the claim or to take other action that may be desirable; (b) to monitor and verify the facts and circumstances as they occur; and (c) to verify any costs and expenses claimed by the Construction Manager contemporaneously as they are incurred. Written notice is required whether or not the Owner or Architect is aware of the facts or circumstances that constitute the basis for the Construction Manager’s Claim, and no action or conduct of the Owner, Architect or any other person will be regarded as a waiver of such notice requirement except only a written statement to such effect signed by the Owner. Failure of the Construction Manager to give written notice as required shall be deemed conclusively to be a waiver and release of any Claim, and such notice shall be a condition precedent to the Construction Manager’s right to make any Claim arising out of, under or in connection with this Agreement or its performance of the Work.

9.2.1 Notice pursuant to this Article 9 shall be addressed and sent to the Owner in accordance with Article 18 of this Agreement. Notice of a claim given to the Architect or any other person engaged by the Owner shall not constitute notice to the Owner.

9.3 Claims by Subcontractors. The Construction Manager also shall furnish the Owner with copies of all written notices and documentation of claims submitted by Subcontractors to the Construction Manager, within five (5) days after receipt by the Construction Manager.

9.4 Additional Requirements. In addition to giving notice pursuant to Section 9.2 of this Agreement, the Construction Manager shall comply with the following requirements:

9.4.1 Subject to the limitations contained in Article 11 of the General Conditions, if the Construction Manager wishes to make a Claim for an increase in the Guaranteed Maximum Price, to the extent the Claim is reasonably discoverable, written notice of it shall be given to the Owner before the Construction Manager proceeds to execute the Work for which the Claim is made. Prior notice is not required for Claims relating to a bona fide emergency endangering life or property.

9.4.2 If the Construction Manager contends that it is entitled to an adjustment to the Guaranteed Maximum Price in accordance with the Contract Documents, the Construction Manager shall be obligated to substantiate any such Claim with complete detailed and accurate cost records as required by the Owner meeting the requirements of the Contract Documents. The Owner shall be entitled to determine amounts, if any, due to the Construction Manager for Claims made by the Construction Manager if the Construction Manager fails to submit complete, detailed and accurate cost records substantiating the amount claimed by the Construction Manager.

9.4.3 If the Construction Manager or any Subcontractor is performing disputed work or otherwise complying under protest with any direction or order of the Owner, the Construction Manager shall furnish to the Owner daily a written report containing such information as may be required by Owner with respect to the labor and materials furnished by the Construction Manager or Subcontractor as a result of such direction or order. Failure of the Construction Manager and Subcontractor to comply strictly with this requirement shall constitute a waiver of any and all claims for adjustment in the GMP and Subcontract price on account of such direction or order.

9.4.4 If the Construction Manager or any Subcontractor claims to have sustained damage by reason of any act, omission or circumstance for which the Owner is claimed to be responsible, the Construction Manager shall furnish to the Owner, not later than the fifteenth (15th) day of the month following that month during which any such damage shall have been sustained, an itemized written statement setting forth in detail the damages sustained by the Construction Manager or Subcontractor, together with copies of all documentary evidence of such damage then available. Failure of the Construction Manager and Subcontractor to comply strictly with this requirement shall constitute a waiver of any and all claims for adjustment in the GMP and Subcontract price on account of such direction or order.

9.4.5 Construction Manager shall provide, and continue to provide, to Owner all such documentation, including cost and time records, as and when Owner may request so that Owner may evaluate Construction Manager's Claim.

9.4.6 The Owner, in consultation with the Architect, shall review any Claim by the Construction Manager and give the Construction Manager a written statement of its position regarding the claim within thirty (30) days after submission of the Claim to the Owner, and in case the Owner fails to do so the Construction Manager may suspend the Work after giving the Owner ten (10) days' written notice and opportunity to cure such failure. When the Owner rejects a Claim, the Owner's statement shall indicate whether the Claim is rejected because of a dispute over the amount of the claimed compensation or because of a dispute over entitlement to compensation. The Owner and Construction Manager shall negotiate the amount of any Claim that is rejected because of a dispute over amount but not entitlement, in a good faith effort to reach agreement on the amount of compensation for the Claim.

9.5 Duty to Continue Performance. Construction Manager shall continue its performance under

this Agreement regardless of the existence of any Claims submitted by Construction Manager against Owner, and Owner shall continue to make payments in accordance with the Contract Documents, except as to amounts disputed in good faith. Should Owner deny Construction Manager's claim for an extension of Contract Time, either in whole or in part, Construction Manager shall proceed to prosecute the Work in such a manner as to achieve Substantial Completion on or before the then existing Scheduled Completion Date. Nothing herein shall obligate Owner to pay any amounts subject to a good faith dispute, provided Owner complies with the requirements of 61 O.S. §223, including payment of all undisputed amounts within thirty (30) days of receipt of a proper invoice

9.6 Limit of Owner's Liability for Increased Compensation. In connection with any Claim by Construction Manager against Owner for compensation in excess of the Guaranteed Maximum Price or the not-to-exceed limit of the Pre-Construction services compensation, any liability of Owner shall be strictly limited to the Cost of the Work, as defined herein, and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Construction Manager or its Subcontractors. Owner shall not be liable to Construction Manager for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which Owner would not be liable to Construction Manager under the terms of the Contract. As a condition precedent to Owner's liability to Construction Manager for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreement with Construction Manager and such claims must have been submitted to Owner by Construction Manager in strict compliance with all the requirements of this Article 9. Owner shall not be liable to Construction Manager for claims of third parties including Subcontractors, unless and until the liability of Construction Manager has been established in a court of competent jurisdiction.

9.7 Claims Resolved by Change Order. The resolution of any Claim under this Article 9 resulting in a change in the Contract Time or Guaranteed Maximum Price shall be reflected by a Change Order or supplemental agreement executed by Owner and Construction Manager.

9.8 Good Faith Effort to Resolve Claim. If, following the process set forth in this Article 9, the Claim remains unresolved within forty-five (45) days after notice of the Claim, the Claim shall then be submitted to a Senior Officer from each party for resolution by mutual agreement. Any mutual agreement reached by the Senior Officers shall be binding upon the parties. For purposes of this section, the term "Senior Officer" shall mean, with respect to the Construction Manager, the Construction Manager's president or chief executive officer, and with respect to the Owner, the Executive Director or Assistant Executive Director.

If the Senior Officers fail, after making good faith efforts (including at least one face-to-face meeting), to come to a resolution by mutual agreement within thirty (30) days after notice to both Senior Officers of the Claim, the Claim shall proceed under Article 10 (Dispute Resolution).

9.8.1 Tolling. All applicable periods of limitation shall be tolled during the pendency of negotiations under this Section 9.8. If the parties mutually agree to defer resolution of any Claim until completion of the Work or another mutually acceptable date, all applicable limitations periods shall remain tolled until the agreed date.

ARTICLE 10 DISPUTE RESOLUTION

10.1 Condition Precedent; Negotiation and Mediation. As a condition precedent to any right to invoke the procedures in this Article 10, the Party asserting a Claim must have strictly complied with the

notice, substantiation, documentation, and other requirements of Article 9. No Dispute shall be submitted under this Article unless and until such requirements are satisfied.

The Parties shall attempt in good faith to resolve any claim, controversy, or dispute arising under this Agreement (a “Dispute”), including but not limited to any properly preserved Claim under Article 9, through informal discussions between their authorized representatives. If the Dispute is not resolved within thirty (30) days after written notice by one Party to the other, the Parties shall participate in non-binding mediation conducted in Oklahoma County, Oklahoma, under the then-current Mediation Procedures of the American Arbitration Association, unless the Parties mutually agree otherwise.

10.2 Litigation. If the Dispute is not resolved by mediation, either Party may pursue resolution by filing suit in the District Court of Oklahoma County, State of Oklahoma, or, if jurisdiction is proper, in the United States District Court for the Western District of Oklahoma. The Parties hereby irrevocably consent to the jurisdiction and venue of such courts.

10.3 Continued Performance. During the pendency of any Dispute, Construction Manager shall continue to perform its obligations under this Agreement, and Owner shall continue to make payments in accordance with the Contract Documents, except as to amounts subject to a good faith dispute.

10.4 Remedies and Damages. The Parties agree that the sole measure of damages recoverable against the Owner shall be direct damages. The mediator, or court shall not have authority to award punitive damages, consequential damages, lost profits, or exemplary damages against the Owner.

10.5 Costs. Each Party shall bear its own attorneys’ fees and costs incurred in connection with any Dispute, except as otherwise provided by statute. Mediation administrative costs shall be shared equally unless otherwise allocated in a final judgment.

10.6 Survival. The provisions of this Article shall survive completion or termination of the Agreement.

ARTICLE 11 OWNER RESPONSIBILITIES

11.1 The Owner shall provide all relevant construction information regarding its requirements for the Project, including the Owner’s objectives, constraints and criteria and drawings and specifications marked for construction.

11.2 Owner shall designate a representative authorized to act on Owner’s behalf with respect to the Project. A successor may be designated by Owner in writing.

11.3 Owner may appoint an on-site Project representative to observe the Work.

11.4 Unless Construction Manager is in default or has given prior consent, Owner shall communicate with Subcontractors only through Construction Manager or at meetings where Construction Manager is represented.

11.5 If the Owner has actual knowledge of any fault or defect in the Project or non-conformance with the Drawings and Project Manual, Owner shall give prompt written notice thereof to the Construction Manager.

**ARTICLE 12
INDEMNIFICATION**

12.1 To the fullest extent permitted by law, Construction Manager and its affiliates, partners, parent company, subsidiary entity, and each of their respective officers, directors, trustees, partners, members, employees, agents, representatives, and designees (collectively, “Indemnitors”) shall and do hereby agree to indemnify, protect and hold harmless the Lawton Economic Development Authority, a public trust, the City of Lawton, a municipal corporation, and their respective officers, directors, trustees, members, employees, agents, representatives, and designees (hereinafter collectively called the “Indemnitees”) from and against any and all losses, claims, liabilities, injuries, damages, and expenses whatsoever, including attorneys’ fees and costs, that the Indemnitees may incur arising out of, by reason of, caused by, or resulting from (i) the breach of this Agreement by Construction Manager, (ii) any injury or damage sustained to any person or property (including, but not limited to, any one or more of the Indemnitees), (iii) Construction Manager’s errors, omissions, or negligent acts or those of any of Subcontractors, or (iv) the performance or lack of performance by Construction Manager or any Subcontractors of their duties and obligations under or pursuant to this Agreement. This obligation shall not be construed to negate, abridge or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to any party or person.

12.2 In the cases of claims against any Indemnitee by an employee of Construction Manager or any Indemnitor, Construction Manager’s indemnification obligation shall not be reduced by a limitation on amount or type of damages, compensation or benefits payable by or for Construction Manager or one of the Indemnitors under workers’ compensation acts, disability benefit acts or other employee benefit acts.

12.3 Construction Manager shall defend each Indemnitee, through counsel approved by such Indemnitee, in any action, proceeding, or mediation brought against the Indemnitee by reason of any claim described in this Article 12, regardless of whether or not they were caused or alleged to have been caused in part by one or more Indemnitees. Indemnitor’s obligation to defend an Indemnitee shall not, however, extend to any action, proceeding, or mediation that asserts or alleges only that the injury to the claimant resulted solely from the negligence or misconduct of the Indemnitee and from no other cause, or if a final judgment is obtained, establishing that injury to the claimant resulted solely from the negligence or misconduct of the Indemnitee and from no other cause, in which latter event Indemnitors’ obligation to defend the Indemnitee shall cease upon the date the judgment becomes final, and the Indemnitee shall thereupon reimburse Construction Manager for its reasonable attorneys’ fees and court costs in so defending the Indemnitee.

12.4 If any claim of lien or stop-notice or any other demand for payment or security therefor, including claims or demands upon performance and payment bond sureties for this Contract, is made or filed with Owner or the Project by any person claiming that Construction Manager or any Subcontractors has failed to perform its contractual obligations or to make payment for any labor, services, trust fund contribution, materials, equipment, taxes, or other item furnished or obligation incurred for, or in connection with, the Work, or if at any time there shall be evidence of such nonperformance or nonpayment of any claim or lien or stop-notice or other demand for which, if established, Owner or the Project might become liable, then Owner shall have the right to retain from any payment then or thereafter due under the Contract Documents or to be reimbursed by Construction Manager an amount sufficient to satisfy or discharge any such claim of lien or stop-notice or other demand.

12.5 If Construction Manager or Subcontractor, Supplier or other person makes, records, or files, or maintains any action on or respecting a claim of construction or mechanics’ lien, stop-notice, equitable lien, payment, or performance bond, or a *lis pendens*, relating to the Work, Construction Manager shall immediately and at its own expense procure, furnish, and record appropriate statutory release bonds, which

will extinguish or expunge said claim, stop-notice, lien, or *lis pendens*.

12.6 The indemnities contained herein shall survive the termination of this Agreement for any reason whatsoever.

ARTICLE 13 INSURANCE

13.1 Builder's Risk Insurance.

(a) Owner's Obligation. Owner shall procure and maintain, at its sole cost and expense, a policy of property insurance (the "Builder's Risk Policy") covering the Work at the Site during the course of construction. Such insurance shall be written on an "all-risk" or equivalent policy form on a replacement cost basis, in an amount not less than the Contract Sum as adjusted by Change Orders, and shall insure against risks of direct physical loss or damage, including, without limitation, fire, extended coverage, theft, vandalism, malicious mischief, collapse, earthquake (subject to sublimit), flood (subject to sublimit), windstorm, testing and startup, temporary buildings, transit, off-site storage of materials and equipment, debris removal (including demolition and increased cost of construction occasioned by enforcement of any applicable legal requirements).

(b) Named Insureds and Loss Payees. The Builder's Risk Policy shall name Owner as the first named insured and sole loss payee. Construction Manager, Subcontractors, and sub-subcontractors of all tiers shall be named as additional insureds, but only to the extent of their insurable interest in the Work. Proceeds of insurance shall be applied to the repair, replacement, or restoration of the Work, unless otherwise directed by Owner and its lender.

(c) Permission to Occupy and Use. The Builder's Risk Policy shall include a "permission to occupy" endorsement to permit occupancy or use of the Project by Owner or its lessee prior to Final Completion without voiding or limiting coverage.

(d) Deductibles. Owner shall be responsible for payment of deductibles under the Builder's Risk Policy; provided, however, that if any loss is caused by the negligence, recklessness, or willful misconduct of the Construction Manager, any Subcontractor, or anyone for whose acts they are responsible, then Construction Manager shall bear or promptly reimburse Owner for the deductible applicable to such loss.

(e) Exclusions. The Builder's Risk Policy shall not cover (i) tools, equipment, scaffolding, staging, towers, or forms owned, borrowed, or rented by Construction Manager or its Subcontractors; or (ii) property of Construction Manager or its Subcontractors not intended to become a permanent part of the Work. Construction Manager and its Subcontractors shall be solely responsible for procuring and maintaining insurance for such excluded items.

(f) Waiver of Claims and Subrogation. Owner, Construction Manager, Subcontractors, and sub-subcontractors of any tier hereby waive, and shall cause their respective insurers to waive, all rights of recovery against each other for damages (whether or not due to the negligence of any such party) to the extent covered by the Builder's Risk Policy or any other property insurance applicable to the Work. The Builder's Risk Policy shall include a waiver of subrogation endorsement in favor of Owner, Construction Manager, Subcontractors, and sub-subcontractors of all tiers.

(g) Cooperation. Construction Manager, Subcontractors, and sub-subcontractors shall assist and cooperate in connection with the adjustment of all claims under the Builder's Risk Policy, and shall promptly provide information reasonably requested by Owner or its insurer, including schedules of values, progress reports, and inventories of materials in storage. Construction Manager shall promptly report all losses or potential claims to Owner.

(h) No Limitation of Liability. The existence of the Builder's Risk Policy shall not be deemed to limit or waive the liability of Construction Manager for loss or damage to the Work arising from its negligence, recklessness, or willful misconduct, nor shall it limit Construction Manager's indemnification obligations under this Agreement.

13.2 Provided by the Construction Manager. Without limitation of any of the other provisions of the Contract Documents, the Construction Manager and all Subcontractors performing Work on the Project, shall purchase and maintain in force the policies of insurance and endorsements, and on the specific terms and conditions as described on Exhibit M attached hereto.

ARTICLE 14 LIENS

The Construction Manager shall not voluntarily permit any laborers materialmen's, mechanics', or other similar liens to be filed or otherwise imposed on any part of the Work, the Land or the Project on which the Work is performed. If any laborers', materialmen's, mechanics', or other similar lien or claim thereof is filed, then, as the Owner in its sole discretion may require, the Construction Manager shall either: (a) cause such lien to be released and discharged forthwith or (b) forthwith deliver to the Owner a payment bond, in form and substance satisfactory to the Owner, covering the claim. If the Construction Manager fails to cause such lien to be released and discharged forthwith or fails to deliver such bond to the Owner forthwith, whichever the Owner may require, then the Owner shall have the right to pay all sums necessary to obtain such release and discharge and deduct all amounts so paid from the Contract Sum. The Construction Manager shall protect, indemnify, defend and hold harmless the Owner from all claims, losses, demands, causes of action or suits of whatever nature arising out of any lien which by the terms hereof the Construction Manager is not to permit to be filed or is required to release. The Construction Manager hereby expressly subordinates all of its constitutional, statutory, and contractual mechanics' and materialmen's liens with respect to the Land and Improvements to the liens which will be created thereon by the Owner in favor of any Lender. The Construction Manager further agrees, upon request of said Lenders, to deliver a subordination agreement in form and content acceptable to such lender, further evidencing the agreement of the Construction Manager to subordinate as aforesaid.

ARTICLE 15 SUSPENSION AND TERMINATION

The rights under this Article 15 are in addition to the rights and remedies of the parties in the event of default as more particularly described in the General Conditions.

15.1 Owner's Rights to Terminate During Pre-Construction Phase. Owner may terminate this Agreement at the following times: (a) at any time for convenience upon thirty (30) days' written notice to Construction Manager; (b) at the conclusion of the Design Development Phase; (c) at the conclusion of the Construction Documents Phase; (d) if the GMP Proposal from Construction Manager is not accepted by Owner; (e) if Construction Manager is in default or breach under this Agreement and does not cure such

default or breach within seven (7) days after written notice from Owner specifying the nature of the default; (f) prior to the commencement of construction, Owner may terminate for convenience upon seven (7) days' written notice to Construction Manager.

If the Contract is terminated under Section 15.1, then Construction Manager shall be compensated for the Pre-construction Phase services which it has completed in accordance with this Agreement prior to the date of termination. No termination expenses or anticipated profits shall be paid to Construction Manager.

15.2 Suspension of Work for Cause. Owner may, at any time without prior notice, suspend all or any part of the Work if, after reasonable observation and/or investigation, Owner determines it is necessary to do so to prevent or correct any condition of the Work which constitutes an immediate safety hazard or which may reasonably be expected to impair the integrity, usefulness or longevity of the Work when completed.

15.2.1 Owner will give Construction Manager a written notice of suspension for cause, setting forth the reason for the suspension and identifying the Work suspended. Upon receipt of such notice, Construction Manager shall immediately stop the Work so identified. As soon as practicable following the issuance of such a notice, Owner will initiate and complete a further investigation of the circumstances giving rise to the suspension, and issue a written determination of the findings.

15.2.2 If it is confirmed that the cause was within the control of Construction Manager, Construction Manager will not be entitled to an extension of time for delay resulting from the suspension. If the cause is determined not to have been within the control of Construction Manager, and the suspension has prevented Construction Manager from completing the Work within the Contract Time, the suspension is an excusable delay and a time extension will be granted through a Change Order.

15.2.3 Suspension of Work under this provision will be no longer than is reasonably necessary to remedy the conditions giving rise to the suspension.

15.3 Suspension of Work for Owner's Convenience. Upon seven (7) days written notice to Construction Manager, Owner may at any time without breach of the Agreement suspend all or any portion of the Work for a period of up to sixty (60) days for its own convenience. Owner will give Construction Manager a written notice of suspension for convenience, which sets forth the number of suspension days for which the Work, or any portion of it, and the date on which the suspension of Work will cease. Upon receipt of such notice, Construction Manager shall stop the Work when the suspension becomes effective. When such a suspension prevents Construction Manager from completing the Work within the Contract Time, it is an excusable delay. A notice of suspension for convenience may be modified by Owner at any time on seven (7) days written notice to Construction Manager. If Owner suspends the Work for its convenience for more than sixty (60) consecutive days, Construction Manager may elect to terminate this Agreement pursuant to Section 15.8.

In the event Owner directs a suspension of performance under this Section 15.3, and provided Construction Manager submits a proper claim as provided in this Agreement, Owner shall pay Construction Manager as full compensation for such suspension Construction Manager's reasonable, actually incurred, and documented costs, subject to Owner's audit rights under Section 7.3.3, for:

- (1) demobilization and remobilization, including such costs paid to Subcontractors;
- (2) preserving and protecting Work in place;
- (3) storage of materials or equipment purchased for the Project, including insurance

- thereon; and
- (4) performing in a later, or during a longer, time frame than that contemplated by this Agreement.

Owner shall not be liable for lost profits, home office overhead, or consequential damages due to suspension.

15.4 Resumption of Construction Work After Suspension. If Owner lifts the suspension it shall do so in writing, and Construction Manager shall promptly resume performance hereunder unless, prior to receiving the notice to resume, Construction Manager has exercised its right of termination as provided herein.

15.5 Termination by Owner for Convenience. Owner reserves the right, for any reason whatsoever (including, but not limited to, non-appropriation of funding), or without reason, to delete any portion of the Work from this Agreement, or to terminate this Agreement for convenience by giving the Construction Manager ten (10) days' written notice. Construction Manager shall incur no further obligations in connection with the deleted portion of the Work or this Agreement, as applicable, and Construction Manager shall stop Work when such termination becomes effective. Construction Manager shall also, at Owner's direction, either terminate or assign to Owner outstanding orders and subcontracts. Construction Manager shall settle the liabilities and claims arising out of any terminated subcontracts and orders. Owner may direct Construction Manager to assign Construction Manager's right, title and interest under terminated orders or subcontracts to Owner or its designee. Construction Manager shall transfer title and deliver to Owner such completed or partially completed Design Documents, Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Construction Manager has.

15.6 Submission of Termination Claim and Compensation for Termination for Convenience. When terminated for convenience, Construction Manager shall be compensated, subject to Owner's audit rights under Section 7.3.3, as follows:

15.6.1 Construction Manager shall submit a termination claim to Owner specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by Owner. If Construction Manager fails to file a termination claim within sixty (60) days from the effective date of termination, Owner shall pay Construction Manager an amount derived in accordance with Section 15.6.3 below:

15.6.2 Owner and Construction Manager may agree to the compensation, if any, due to Construction Manager under this Section 15.6;

15.6.3 Absent agreement to the amount due to Construction Manager, Owner shall pay Construction Manager, as full compensation for termination for convenience, the following amounts:

- (1) The Cost of the Work to the extent incurred or paid prior to receipt by Construction Manager of the notice of termination;
- (2) Such portion of Construction Fee which is earned and unpaid as of the date of receipt by Construction Manager of the notice of termination; and
- (3) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Section 15.6 hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Agreement.

In no event shall Construction Manager be entitled to recover lost profits, anticipatory profits, unabsorbed overhead, or consequential damages.

15.7 Termination by Owner for Cause. Upon fifteen (15) days written notice to Construction Manager and its Surety, Owner may, without prejudice to any right or remedy, terminate this Agreement and take possession of the Site and of all materials, equipment, tools, construction equipment, and machinery thereon owned by Construction Manager under any of the following circumstances:

- (a) Persistent or repeated failure or refusal, except during complete or partial suspensions of Work authorized under this Agreement, to supply enough properly skilled workmen or proper materials;
- (b) Persistent disregard of laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or of the Owner;
- (c) Persistent failure to prosecute the Work in accordance with the Contract Documents, and to ensure its completion within the time, or any approved extension thereof, specified in the Contract Documents;
- (d) Persistent or repeated failure to provide an updated Project Schedule as required hereunder;
- (e) Persistent failure to observe and perform the covenants and obligations of the Construction Manager under the Contract Documents;
- (f) Failure to remedy defective Work;
- (g) Failure to pay Subcontractors, laborers, and material suppliers;
- (h) Persistent endangerment to the safety of labor or of the Work;
- (i) Failure to supply or maintain statutory bonds or to maintain required insurance, pursuant to this Agreement;
- (j) Any material breach of the Contract Documents; or
- (k) Construction Manager insolvency, bankruptcy, or demonstrated financial inability to perform the Work.

Notwithstanding anything above to the contrary, the Owner may immediately terminate this Agreement, without providing a cure period, in the event of Construction Manager's insolvency, bankruptcy, failure to supply or maintain required statutory bonds or insurance, loss of license required to perform the Work, or the existence of an imminent danger to the safety of persons or property.

15.7.1 Failure by Owner to exercise the right to terminate in any instance is not a waiver of the right to do so in any other instance.

15.7.2 Upon receipt of a termination notice, the Construction Manager or its Surety has thirty (30) days to cure the reasons for the termination or demonstrate to the satisfaction of the Owner that it is prepared to remedy to the condition(s) upon which the notice of termination was based with diligence and promptness. If the Owner is satisfied that the Construction Manager or its Surety can remedy the reasons for the termination and complete the Work as required, the notice of termination shall be rescinded in writing by the Owner and the Work shall continue without an extension of time.

15.7.3 If at the conclusion of the thirty (30) day cure period the Construction Manager or its Surety is unable to demonstrate to the satisfaction of the Owner its ability to remedy the reasons for termination, the Owner may immediately terminate the employment of the Construction Manager, make alternative arrangements for completion of the Work and deduct the cost of completion from the unpaid GMP.

- (a) Owner's cost to complete the Work includes, but is not limited to, fees for additional services by Architect and other consultants, and additional contract administration costs.
- (b) If the Cost of the Work to complete the Work exceeds the unpaid balance of the GMP, Construction Manager or its Surety will pay the difference to Owner.
- (c) This obligation for payment survives the termination of this Agreement.
- (d) Owner reserves the right in termination for cause to take assignment of all the Subcontracts between Construction Manager and its Subcontractors, vendors, and suppliers. Owner will promptly notify Construction Manager of the Subcontracts Owner elects to assume. Upon receipt of such notice, Construction Manager shall promptly take all steps necessary to effect such assignment.

15.7.4 Conversion to Termination for Convenience. In the event that any termination of Construction Manager for cause under Section 15.7.3 is later determined to have been improper, the termination shall automatically convert to a termination for convenience under Section 15.5 and Contractor's recovery for termination shall be strictly limited to the payments allowable under Section 15.6.

15.8 Termination by Construction Manager. Construction Manager may suspend or terminate this Agreement only as expressly permitted under this Agreement and the Oklahoma Fair Pay for Construction Act, 61 O.S. §221, *et seq.* Specifically:

- (a) If Owner fails to make payment of an undisputed amount within the time required under 61 O.S. § 225, Construction Manager may, after giving Owner at least seven (7) days' written notice of nonpayment, suspend performance of the Work or terminate this Agreement as permitted under 61 O.S. §225.
- (b) Construction Manager may also terminate this Agreement if Work is stopped for sixty (60) consecutive days due solely to Owner's suspension of the Work under § 15.3 or due to Owner's failure to make available funds as required for the Project, provided that such stoppage is not attributable to Construction Manager, its Subcontractors, or anyone for whom it is responsible.

In the event of termination under this Section, Construction Manager shall be entitled to recover, subject to Owner's audit rights under Section 7.3.3:

1. the portion of the Preconstruction Fee earned through the termination date (if termination occurs during Preconstruction);
2. Authorized and properly documented Costs of the Work incurred to the termination date;
3. Earned but unpaid portion of the Construction Fee through the termination date; less any amounts properly withheld or offset by Owner under this Agreement or applicable law.

In no event shall Construction Manager recover lost profits, anticipatory profits, unabsorbed overhead, or consequential damages.

ARTICLE 16 NONDISCRIMINATION

As a condition of this Agreement, Construction Manager covenants that it and its Subcontractors will comply with all applicable federal, state, and local nondiscrimination laws, including but not limited to the Oklahoma Anti-Discrimination Act (25 O.S. §1101, *et seq.*), Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act (42 U.S.C. §§12101–12213), and other applicable statutes. Construction Manager shall not discriminate in its employment practices or in the selection and treatment of Subcontractors and suppliers on the basis of race, color, religion, sex, national

origin, age, disability, sexual orientation, gender identity, veteran status, or any other classification protected by applicable law.

Construction Manager shall keep, retain, and safeguard all records relating to compliance with this Article 16, subject to Owner’s audit rights under Section 7.3.3.

**ARTICLE 17
ASSIGNMENT**

This Agreement shall be binding upon and inure to the benefit of the Owner and Construction Manager and their respective successors and assigns, except that this Agreement may not be assigned by any party without the prior written consent of the other party. The Construction Manager hereby consents to (a) the collateral assignment of this Agreement to any lender for the Project, if such collateral assignment is required under the terms of a construction loan, and (b) the Owner’s assignment of this Agreement in the event of the Owner’s sale of the Site and its interest in the Project (provided that the assignee is creditworthy and all payments due are current). Any assignment requiring consent under this Article 17 which is made without such prior written consent shall not vest any rights in the assignee and shall be void.

**ARTICLE 18
NOTICES**

All notices, demands or communications to be given hereunder shall be in writing, and may be given or served by depositing the same in the United States mail addressed to the party to be notified, postpaid and registered or certified with return receipt requested, or by delivering the same in person to such person or by a nationally recognized overnight courier service. Notices deposited in the mail in accordance with the provisions hereof shall be effective unless otherwise stated later in such notice or in this Agreement three (3) days from and after the date they are mailed or the date they are delivered in person or the next business day following the day sent by overnight courier. Notices may also be sent by electronic mail provided a confirming copy sent within one (1) day by any other means described herein and shall only be effective as set forth herein. All notices to be given under this Agreement shall be directed to the following addresses or to such other or additional addresses within the continental United States of America as any party may properly designate by written notice to the other parties:

If to Owner: _____

With a copy to: Center for Economic Development Law
301 North Harvey, Suite 200
Oklahoma City, OK 73102
Attn:

If to Construction
Manager: _____

With a copy to: _____

ARTICLE 19
[INTENTIONALLY OMITTED]

ARTICLE 20
MISCELLANEOUS

20.1 Entire Agreement. This Agreement, the General Conditions and the Exhibits hereto constitute the entire agreement between the parties hereto with respect to the matters covered hereby. All prior negotiations representations, and agreements with respect hereto not incorporated herein are hereby cancelled. This Agreement can be modified or amended only by a document duly executed by duly authorized officer of the Construction Manager and the Owner.

20.2 Attorney's Fees. If any party institutes an action or proceeding against the other relating to the provisions of this Agreement or any default thereunder, the unsuccessful party to such action or proceeding will reimburse the successful party therein for the reasonable attorneys' fees, disbursements and litigation expenses incurred by the successful party.

20.3 Severability. If any clause or provision of this Agreement is held by a court having jurisdiction to be illegal, invalid, or unenforceable under any present or future law, the remainder of this Agreement will not be affected thereby. It is the intention of the parties that if any such provision is held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision similar in terms to such provisions as is possible to be legal, valid and enforceable.

20.4 Time. Time is of the essence of each provision of this Agreement.

20.5 Headings. The section headings in this Agreement and in the General Conditions are included for convenience of reference only and shall not govern or control the meaning of any provision hereof or of the General Conditions.

20.6 Gender. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural.

20.7 Counterpart Execution. This Agreement may be executed in counterparts, each of which will be deemed an original document, but all of which will constitute a single document.

20.8 Governing Law; Venue; Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma, without giving effect to the principles of conflicts of laws. Subject to Article 10 of this Agreement, all actions, proceedings, or claims arising out of or relating to this Agreement may be instituted in any state court sitting in Oklahoma City, Oklahoma, or the United States District Court for the Western District of Oklahoma, and in any appellate court therefrom. Nothing contained herein should be deemed to affect the parties' right to remove to Federal Court within the Western District of Oklahoma if removal is otherwise available. By execution of this Agreement, the Parties

irrevocably and unconditionally submit to the jurisdiction (both subject matter and personal) of any such court and irrevocably and unconditionally waive any objection now or hereafter to venue in such courts or to the assertion that such proceedings have been brought in an inconvenient forum.

20.9 Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement. Even though nothing contained in this Agreement shall create a contractual relationship between Owner and any third party, it is understood and agreed that Owner is an intended third-party beneficiary of all contracts for design or engineering services, subcontracts, supply agreements, purchase orders and other agreements between Construction Manager and third parties.

20.10 Survival of Representations and Warranties. Construction Manager's representations and warranties, obligations of Construction Manager which are of a continuing nature, and Construction Manager's liability hereunder shall survive Owner's final acceptance of and payment for the Work and the termination of this Agreement for any reason whatsoever.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]**

EXHIBIT A

Legal Description of the Property

A 320-acre parcel of land located west of NW 97th Street/NW Goodyear Blvd, east of NW 112th St and north of what would be W Gore Blvd, more particularly described as the South Half (S/2) of Section Twenty-Five (25), Township Two (2) North, Range Thirteen (13) West, I.M., Comanche County, Oklahoma, according to the U.S. Government Survey thereof.

EXHIBIT B

Phasing Plan

[To Be Attached]

EXHIBIT C

**GENERAL CONDITIONS
(ATTACHED)**

EXHIBIT D

**PRELIMINARY LIST OF GENERAL CONDITIONS WORK ITEMS
(INCLUDES GENERAL REQUIREMENTS)**

On-Site Project Management Staff

Project Executive	Area Superintendent
Sr. Project Manager	Pre-Con Manager
Sr. Superintendent	Lead Superintendent
Superintendent	Field Engineer
Project Manager	Project Engineer
Administrative Assistant	

General Requirements

Bonds and Insurance

General Liability Insurance
Payment and Performance Bonds (not trade contractors or subcontractors bonds)
Other Project Insurance as Required by the Agreement

Temporary Project Utilities

Dumpsters	Project Water
Project Electricity	Temporary Toilets
Monthly Hardwire Telephone /Internet Service	Temporary Fire Protection
Street Rental and Barricades	Telephone / Internet System Installation
Fencing and Covered Walkways	Temporary Water Distribution and Meters
Temporary Electrical Distribution and Meters	Site Erosion Control (BMP) and Project Entrance(s)

Field Offices & Office Supplies

First Aid Supplies	Job Photos/Videos
Reproduction Services	Project Specific Signage
Monthly Office Supplies	Postage/Special Shipping
Remote Parking Expenses	Project/As-Built Drawings
Project Reference Manuals	Security System/Watchman
Move-In/Out and Office Setup	Safety Material and Equipment
Employee Identification System	Drinking Water and Accessories
Small Tools and Storage Trailers	Monthly Office Trailer Rental Costs
Mobilization and Demobilization (Equipment Only)	

EXHIBIT E

CONSTRUCTABILITY IMPLEMENTATION PROGRAM

Program Objectives:

- Identify constructability priorities and special challenges or concerns
- Identify and document project cost and schedule savings

Proposed Steps:

- **Constructability Implementation Meeting**

- identification of all project team personnel and all project stakeholders
- clarification of project goals, objectives, and progress to date
- team briefing on objectives, methods, and concepts of constructability
- familiarization with implementation program

- **Constructability Review of Schematic Design (SD) Documents; Comments Submitted to CM Team**

- establishment of project constructability procedures, including procedures for documenting savings

- **Meeting to Review Schematic Design Constructability Comments**

- prioritization and time-phasing of constructability concepts
- detailed discussions of front-end, high-priority concepts (identify concerns, identify information needs, start to brainstorm alternative approaches, conduct preliminary evaluation of approaches, identify needs for further analysis, chart path forward, documentation of savings)

- **Design Development Constructability Review Comments to CM Team**

- follow-up discussions on front-end, high-priority concepts
- detailed discussions of front-end, high-priority concepts (identify concerns, identify information needs, start to brainstorm alternative approaches, conduct preliminary evaluation of approaches, identify needs for further analysis, chart path forward, documentation of savings)

- **Constructability Review Meeting**

- review plans & specifications developed to date, identifying sub-optimal or potentially problematic design elements
- recommend alternative design suggestions for consideration and document potential savings
- conduct Value Engineering investigations into selected high-cost design elements; consider life-cycle cost effect

- **30% CD Constructability Review Comments to CM Team**

- review plans & specifications developed to date, identifying sub-optimal or potentially problematic design elements
- recommend alternative design suggestions for consideration and document potential savings
- conduct Value Engineering investigations into selected high-cost design elements

- **50% CD Constructability Review Comments to CM Team**

- review plans & specifications developed to date, identifying sub-optimal or potentially problematic design elements

- recommend alternative design suggestions for consideration and document potential savings
- conduct Value Engineering investigations into selected high-cost design elements

- **95% CD Constructability Review Comments to CM Team**
- **Constructability Discussions with CM Team**
- **Document On-site Constructability Lessons Learned**
- **Close-out Project Constructability Documentation**

EXHIBIT F

FORM OF GUARANTEED MAXIMUM PRICE PROPOSAL

_____, a _____ corporation/limited liability company/limited partnership ("Construction Manager") hereby submits to _____ ("Owner"), a Guaranteed Maximum Price for the _____ Development/Project, pursuant to the provisions of Section 2.6 of the Construction Management At-Risk Agreement by and between the Owner and the Construction Manager dated _____, 20__ (the "Agreement"), based on the Contract Documents (as defined by the Agreement) developed for the Project, as follows:

1. Cost of the Work: A lump sum, not-to exceed amount (as described in Section 5.1 of the Agreement excluding all items set forth in Section 5.3 of the Agreement): \$ _____

[Detailed breakdown by project element, phase, stage, schedule of values, separate subcontract, or as otherwise specified by Owner for this Project, attached]

2. General Conditions: A lump sum, not-to-exceed amount for General Conditions provided by Construction Manager pursuant to the Agreement: \$ _____

[Detailed breakdown by project element, phase, stage, schedule of values, separate subcontract, or as otherwise specified by Owner for this Project, attached]

2. Contingency: Not-to-exceed amount \$ _____

4. Allowances, if any: \$ _____
[Detailed breakdown attached]

5. Construction Fee: The product of the Construction Fee (___%) times the Cost of the Work, not-to-exceed amount \$ _____

TOTAL GUARANTEED MAXIMUM PRICE \$ _____
(Total of Items 1 – 5)

This represents the Guaranteed Maximum Price that Construction Manager guarantees is payable by Owner for construction of the Project pursuant to the Agreement. Attached to and incorporated in this Proposal are:

A. Executive Project Summary.

- 1. State any amended services or scope changes included in the Proposal.
2. Provide a brief project summary defining the scope of work associated with the construction phase of work included in this GMP Proposal.
3. Include the description of building type, size, character and general materials.

4. Summarize any relationship with existing structures, unusual site conditions, utility issues, or conditions effected by other governmental agencies (i.e. right-of-way issues)
5. State the anticipated Notice to Proceed date and Substantial Completion date

B. Project Team. List the various teams and the team members, in graphic and written form, including names, titles, job responsibilities, and contact information.

C. List of Documents.

- a. Drawings Index. provide detailed listing of each sheet number, sheet title, original date of drawing, revised date of drawing
- b. Specification Index: Provide a detailed listing of each specification section required by the Owner as identified in the Agreement (see the Exhibit for “Owner’s Specifications”). Provide a detailed listing of all other spec sections describing the Project.

D. Qualifications and Value Engineering.

Qualifications: A summary of all qualifications and assumptions organized by drawing sheet number or by specification sections to match those in TAB C.

Exclusions: A summary of exclusions organized by drawing sheet number or by specification section.

Substitutions: A summary of substitutions to materials or systems described by drawing sheet number or by the specifications listed in TAB C. Organize by specification section.

Value Engineering Recommendations: List all items proposed to date and for each item identify if the item is accepted by the Owner and included in the GMP. State the date of acceptance. In addition, identify those VE items not currently accepted. State if the price is good for a limited time period.

Alternates List: State the amount of each alternate and the last date in which the price is good in the event the alternate is not currently included in the GMP price.

E. Detailed GMP Proposal Cost Breakdown. A calculation of the proposed GMP, including detailed breakdowns of the estimated costs organized by trade categories for all Trade Work, General Conditions Work Costs, together with the proposed Construction Fee, detailed lists of Contingency items, Allowances and Holds, if any, all of which comprise the proposed GMP.

F. Project Schedule. The Project Schedule shall be submitted electronically and paperbound with the GMP Proposal. The Project Schedule shall include detailed, logic driven activities for all Construction Service activities for the Project and the overall Project that is scheduled to commence during the first one hundred eighty (180) days following the Notice to Proceed for Construction. The remaining construction activities (those commencing after the first 180 days) may be summarized by trades and may have longer durations than the “detailed” activities mentioned above; provided the Project Schedule is updated as required by the Agreement.

All paths in the Project Schedule must lead to a milestone activity for Substantial Completion, which shall be logic driven and indicate completion within approximately 90% of the time

allowed by Construction Manager for the Owner’s established Substantial Completion Date.

G. Master Construction Schedule. A master Project Schedule developed for all Work to be performed under the Agreement.

H. Preliminary Schedule of Values.

CONSTRUCTION MANAGER: _____,
a _____ corporation/limited liability company/limited partnership

By: _____

Name: _____

Title: _____

ACCEPTED this ____ day of _____, 20__.

OWNER: **LAWTON ECONOMIC DEVELOPMENT
AUTHORITY, a public trust**

By: _____
, Chairman

EXHIBIT G

Form of GMP/Schedule Amendment

This GMP/Schedule Amendment is made this ___ day of ___, 20__ by and between _____ ("Owner"), and _____, a _____ corporation/limited liability company/limited partnership ("Construction Manager").

RECITALS:

A. Owner and Construction Manager previously executed that certain Agreement for Management and Construction Services dated ___, 20__ ("Agreement").

B. Pursuant to Section 2.6 of the Agreement, Construction Manager submitted a GMP Proposal to Owner and which has been approved by Owner, a copy of which is attached hereto as Schedule 1.

C. Unless otherwise defined in this Amendment, the defined terms used herein shall have the meanings set forth in the Agreement.

D. To the extent the terms of this Amendment are inconsistent with the terms of the Agreement, the terms of this Amendment will control.

NOW, THEREFORE, in consideration of the premises and the mutual covenants, agreements and undertakings herein contained, and in further consideration of the mutual benefits to accrue to each of the parties hereto, the Owner and Construction Manager hereby agree as follows:

1. Guaranteed Maximum Price. The Guaranteed Maximum Price ("GMP") for construction of the Project is \$_____. The fixed General Conditions Amount included in the GMP is \$_____. The Construction Fee included in the GMP is \$_____.

2. Documents Used to Determine Guaranteed Maximum Price. The following Exhibits are attached to and incorporated into this GMP/Schedule Amendment:

- A. Summary of the Work.
- B. Project Team.
- C. Scope Clarifications and Assumptions.
- D. Detailed List of Drawings, Specifications and Other Documents used in arriving at the GMP.
- E. Detailed Breakdown of All Components of the GMP.
- F. Final List of General Conditions Work Items and General Requirements.
- G. Schedule of Values for the Project.
- H. Project Schedule.
- I. Master Construction Schedule.

3. Dates of Substantial Completion. The Construction Manager shall achieve Substantial

EXHIBIT H

BOND REQUIREMENTS

Pursuant to Section 3.7 of the Agreement, the Construction Manager shall furnish the following bonds:

1. Required Bonds.

(a) **Performance Bond and Payment Bond (CMAR).** The Construction Manager shall provide performance and payment bonds meeting the requirements of 61 O.S. §§ 1 and 113, each in an amount equal to 100% of the Guaranteed Maximum Price (“GMP”), as adjusted by Change Orders.

(b) **Maintenance Bond (CMAR).** The Construction Manager shall provide a Maintenance Bond, issued by the same surety, in an amount equal to 100% of the final GMP. This bond shall guarantee the maintenance, repair, or replacement of the Work for a period of two (2) years after Final Completion, or such longer period as specified in the Contract Documents, covering defects in workmanship and materials.

(c) **Defect Bond (CMAR).** The Construction Manager shall provide a Defect Bond, issued by the same surety, in an amount equal to 100% of the final GMP. This bond shall guarantee correction of defects in materials or workmanship discovered during the contractual correction period, which shall not be less than two (2) years after Final Completion.

(d) **Subcontractor Bonds.** Subcontractor bonds shall be provided in accordance with § 3.7.2 of the Agreement. The Construction Manager shall not permit a Subcontractor subject to § 3.7.2 to commence Work until the required bonds are delivered and duplicate originals provided to the Owner.

2. Surety Qualifications.

Sureties shall be licensed in Oklahoma, have a current A.M. Best rating of not less than A- VII, and, preferably, be listed in U.S. Treasury Circular 570. The Owner reserves the right to approve sureties meeting equivalent financial standards.

3. Terms of Bonds.

(a) Each bond shall be in a form and substance satisfactory to the Owner.

(b) Each bond shall expressly provide that modifications, extensions of time, or other changes to the Contract Documents shall not release the Surety.

(c) Surety’s obligations shall extend to the Owner’s successors, grantees, or assignees.

(d) Renewal certificates shall be provided by the Construction Manager as necessary to maintain the Maintenance and Defect Bonds in force.

(e) Upon request of any claimant under applicable law, the Construction Manager shall promptly furnish a copy of the required bonds or authorize release of such copy.

EXHIBIT I

CONSTRUCTION MANAGER'S STANDARD FORM OF SUBCONTRACT

(TO BE PROVIDED BY CONSTRUCTION MANAGER)

EXHIBIT J

CONSTRUCTION MANAGER'S STANDARD FORM OF SUPPLY CONTRACT

(TO BE PROVIDED BY CONSTRUCTION MANAGER)

EXHIBIT K

CONSTRUCTION MANAGER PERSONNEL ASSIGNED TO PROJECT

Pre-Construction Phase:

Title	Role	Hourly Rate	Total # of Hours	Total Cost

Construction Phase:

Title	Role	Hourly Rate	Total # of Hours	Total Cost

EXHIBIT L

REIMBURSABLE EXPENSES DURING PRE-CONSTRUCTION PHASE

Reimbursable expenses shall be limited to the following actual, necessary and reasonable expenses incurred by the Construction Manager directly or indirectly in connection with the Project, provided such expenses are approved in advance by the Owner:

1. Performance and payment bond premiums;
2. Insurance premiums required under this Agreement;
3. Site or soils testing;
4. Geotechnical services; and
5. Building permit fees.

The following expenses shall not be reimbursed to the Construction Manager:

1. Transportation, lodging, meals, and subsistence for project visitation;
2. Reproduction expenses;
3. Cell phone expenses;
4. Postage and delivery expenses;
5. Office supplies; and
6. Excluded Costs described in Section 5.3 of the Agreement.

All reimbursable expenses shall be supported by detailed invoices and receipts, shall be subject to Owner's approval and audit rights under Section 7.3.3 of the Agreement, and shall not include any mark-up or overhead.

**EXHIBIT M
INSURANCE REQUIREMENTS**

A. In General. Construction Manager shall purchase and continuously maintain in full force and effect for the policy periods specified below the insurance policies specified in this Section. Construction Manager shall forward updated certificates of insurance and endorsement(s) when policies are renewed or changed.

The insurance required hereunder shall not be interpreted to relieve the Construction Manager of any obligations under the Agreement. The Construction Manager shall remain fully liable for all deductibles and amounts in excess of the coverage actually realized.

B. Certificates of Insurance. Prior to Work commencing under the Agreement, Construction Manager shall furnish to Owner certificates of insurance and attach all required policy endorsements providing additional insured coverage and permitting waiver of subrogation, as evidence of insurance required herein. Renewal certificates shall be provided to Owner, prior to expiration of the policies. The certificates are to be signed by a person authorized by the insurer(s) to bind coverage on their behalf. All policies shall include that there will be no cancellation, suspension, non-renewal, or reduction of coverage without thirty (30) days prior written notice to the Construction Manager. Construction Manager shall provide Owner with written notification of such cancellation, non-renewal, or modification no later than five (5) days after receipt of insurer's notice so that Owner has had at least twenty-five (25) days' notice before the policy is modified or cancelled. If Construction Manager fails to give such notice to Owner or Owner is subject to damage or a claim because the insurance required by this Subcontract is not in effect or no longer complies with the requirements of this Subcontract, then Construction Manager shall indemnify and defend Owner, Owner's Indemnitees and Owner against such damage or claim to the extent not covered by Construction Manager's insurance. Receipt by Owner of a non-conforming certificate of insurance or policy without objection, or Owner's failure to collect a certificate of insurance shall not waive or alter Construction Manager's duty to comply with the insurance requirements.

C. Mandatory Insurance Coverage. Construction Manager shall, at its own expense, maintain in effect at all times during the performance of the Work under the Agreement not less than the following coverage and limits of insurance. The coverage and limits set forth below are the minimum acceptable to Owner. In specifying minimum insurance requirements, Owner does not represent that such insurance is adequate to protect Construction Manager from loss, damage or liability arising from its work. Construction Manager is solely responsible to inform itself of types or amounts of insurance it may need beyond these requirements to protect itself. Notwithstanding anything to the contrary in the Agreement or in this Exhibit M, if the Construction Manager has procured any insurance coverage and/or limits (either primary or on an excess basis) that exceed the minimum acceptable coverage and/or limits set forth herein or elsewhere in the Agreement, the broadest coverage and highest limits actually afforded under the applicable policy(ies) of insurance shall be considered the coverage and limits that are required by this Agreement and such coverage and limits shall be provided in full to the additional insureds and indemnified parties under this Agreement. The Parties expressly intend that the provisions set forth in the Agreement and in this Exhibit M shall be construed as broadly as permitted to be construed by applicable law to afford the maximum insurance coverage available under the Construction Manager's insurance policies.

1. Workers' Compensation and Employer's Liability. Workers' compensation coverage as required by any applicable law or regulation. Employer's Liability/Stop Gap Insurance shall be provided in amounts not less than:

\$1,000,000 each accident for bodily injury by accident

\$1,000,000 policy limit for bodily injury by disease
\$1,000,000 each employee for bodily injury by disease

2. Commercial General Liability. Covering operations by or on behalf of Subcontractor, with coverage on an occurrence basis, and shall be subject to terms no less broad than the Insurance Services Office (“ISO”) Commercial General Liability Form CG0001 (2004 or later edition). By its terms or appropriate endorsements such coverage shall include the following coverage, to wit: Bodily Injury, Property Damage, Personal injury liability insurance hazards A, B, C, with employee exclusion (c) deleted; Fire Legal Liability (not less than the replacement value of the portion of the premises occupied), Broad form property damage liability (including completed operations) (ISO Form CP 10 20); Personal Injury, Blanket Contractual, Independent Contractors, Premises Operations, Products and Completed Operations (for a minimum of five (5) years following Final Completion of the Project). All required terms and conditions of coverage shall be maintained during this completed operations period, including the minimum required coverage limits and the requirement to provide additional insured coverage for completed operations. The policy shall not be endorsed to exclude the perils of explosion (x), collapse (c) and underground (u) exposures without the specific written approval of the Owner. The commercial general liability coverage shall be endorsed to include terms no less broad than ISO form CG 2274 (Limited Contractual Liability Coverage for Personal and Advertising Injury). There shall be no limitations or exclusions of coverage beyond those contained in the ISO Commercial General Liability Form. The commercial general liability policy shall not be issued under a “claims-made” policy form or a “modified occurrence” policy form.

2.2.1 Minimum Limits of Liability (Refer to Appendix 1 – Trade Category List).

Construction Manager and Category I Trades - structural, roofing, HVAC, plumbing, fire protection, electrical, or other trades designated by Owner as critical.

\$1,000,000 each occurrence Bodily Injury and Property Damage
\$1,000,000 Personal and Advertising Injury
\$2,000,000 aggregate for Products - Completed operations
\$10,000,000 Excess/Umbrella each occurrence and aggregate (Construction Manager)
\$3,000,000 Excess/Umbrella each occurrence and aggregate (Category I Subcontractors)

Category II and III Trades (moderate trade risks such as drywall, masonry, scaffolding, painting, etc.):

\$1,000,000 each occurrence Bodily Injury and Property Damage
\$1,000,000 Personal and Advertising Injury
\$2,000,000 aggregate for Products – Completed operations
\$1,000,000 Excess/Umbrella each occurrence and aggregate (unless higher limits are reasonably required by Owner based on the scope or risk of the Work).

Category IV Trades (low-risk trades or suppliers)

\$1,000,000 each occurrence Bodily Injury and Property Damage
\$1,000,000 Personal and Advertising Injury
\$2,000,000 aggregate for Products - Completed operations
\$2,000,000 general aggregate

2.2.2 Per Project General Aggregate. The policy must have an endorsement providing that the general aggregate limit applies separately to this Project.

2.3 Automobile Liability. Covering all owned, hired, and non-owned automobiles in limits of liability not less than \$1,000,000 each accident, combined single limit. Coverage shall include liability for bodily injury and property damage arising from the use or operation of any auto, including those owned, hired or otherwise operated or used in the performance of the Work. The coverage shall be provided by Insurance Services Office form for Commercial Auto Coverage (CA-00-01-10-01) or equivalent.

2.4 Subcontractor's Equipment/Property Insurance. Construction Manager and each Subcontractor and sub-subcontractor of any tier shall secure, pay for and maintain whatever property insurance each may deem necessary for protection against loss of or damage to owned or rented capital equipment, tools, other equipment, scaffolding, staging, towers and forms, hoists and other items to be used by the Construction Manager or its Subcontractors of any tier in the performance of the Work; provided, however, that whether or not any such insurance is obtained it is agreed that the Owner shall have absolutely no liability whatsoever with respect to loss of, theft of or damage to any such equipment, tools and other items. Failure of the Construction Manager or any Subcontractor or sub-subcontractor of any tier to secure such insurance or to maintain adequate levels of coverage shall not in any way obligate the Owner or its employees, agents or representatives for any loss of or damage to any of the aforesaid owned or rented equipment, tools and other items. If the Construction Manager or any Subcontractor or sub-subcontractor of any tier secures such insurance, the insurance policy shall include a waiver of subrogation substantially as follows: It is agreed that in no event shall this insurance company have any right of recovery against the Lawton Economic Development Authority, a public trust, or the City of Lawton, a municipal corporation, or such other persons as Owner may designate.

3. Other Required Insurance Coverage where Exposure Exists. The following insurance shall be required by the Construction Manager and Subcontractors to the extent that such activities exist in the performance of Work under the Agreement. Limits of liability for policies listed below shall supersede the limits listed under Section 2.2.1:

3.1 Crane Services Liability. Should any Work include providing crane services, then the commercial general liability policy shall be amended to apply with minimum limits of liability to insure against bodily injury and property damage arising from such crane operations. The policy shall include coverage for Rigger's Liability and shall not exclude coverage for damage to property being lifted. If not included in required limits specified below, Rigger's Liability shall be provided in limits not less than the maximum value of property lifted at any one time. Owner will accept a separate Rigger's Liability policy in lieu of provision of this coverage under an existing Commercial General Liability policy.

\$10,000,000 each occurrence Bodily Injury and Property Damage
\$10,000,000 Personal and Advertising Injury
\$10,000,000 aggregate for Products - Completed operations
\$10,000,000 general aggregate

Coverage for crane services may be provided either by Construction Manager's own policy(ies), or by the policy(ies) of a lower tier contractor providing such crane services for Subcontractor. The policy shall include a "Per Project General Aggregate" pursuant to Section 2.2.2.

3.2 Professional Liability. During the Pre-Construction Phase and thereafter if Construction Manager or any subcontractor of any tier provides professional design or engineering services (such as architecture, structural, mechanical, electrical, civil, environmental engineering, surveying, or other licensed professional services), such party shall maintain Professional Liability insurance with minimum limits of \$2,000,000 per Claim and \$2,000,000 in the Aggregate. This requirement does not apply to subcontractors whose services are limited to incidental design responsibilities (such as shop drawings, layout, or means and methods of construction). If coverage is issued on a claims-made form, such coverage shall apply with a retroactive date to reflect the date in which professional services commenced under the Agreement or else include an Extended Reporting Period for the equivalent number of years. Construction Manager agrees to continue to procure and maintain professional liability insurance coverage meeting these requirements for the applicable period of statutory limitation of claims (or statute of repose, if applicable) after the Project completion. If Work includes environmental, engineering, or consulting services involving Hazardous Materials, coverage shall not exclude such services.

3.3 Contractor's Pollution Liability. Contractors Pollution Liability insurance shall be provided on a **project-specific basis**, naming the Project and the Owner as insureds, and shall apply exclusively to the Work under this Agreement.

3.3.1 Microbial Matter: Mold, Fungi, & Bacteria (Refer to Appendix 1–Trade Category List).

Category I Trades (HVAC, plumbing, roofing, waterproofing, fire protection, or other trades where water intrusion or moisture control is central to the Work) – If CGL policy excludes microbial matter, coverage with limits of not less than \$2,000,000 per occurrence/\$4,000,000 aggregate shall be provided to include coverage for mold, fungus, or bacteria.

Category II Trades - If a CGL policy excludes microbial matter, and the Work involves moisture barriers, enclosure penetrations, or liquid-conveying piping, such coverage shall be provided as above for Category I Trades.

Category III & IV Trades – Not required.

Alternate Coverage: In lieu of a stand-alone microbial endorsement, Construction Manager or Subcontractors may satisfy this requirement through Contractors Pollution Liability insurance that expressly includes microbial matter coverage with limits not less than \$2,000,000 per occurrence / \$4,000,000 aggregate.

3.3.2 Environmental Services. If Work includes Environmental Services, Construction Manager and Subcontractor's pollution liability insurance shall be provided on an occurrence basis (or on a **claims-made basis** with retroactive date and Extended Reporting Period acceptable to Owner), with limits of not less than \$2,000,000 per occurrence and \$4,000,000 aggregate or as specified by Owner. "Environmental Services" means any contact with a Hazardous Material, including abatement, removal, remediation, transporting, or disposal of a Hazardous Material or working in areas where contact with such Hazardous Materials may take place. "Hazardous Material" means asbestos, asbestos containing material, lead (including lead-based paint), PCB, silica, silica dust, molds and microbial matter, any other chemical, material, or substance subject to regulation as a hazardous material, hazardous substance, toxic substance, or otherwise, under applicable federal, state, or local law; and any other chemical, material, or substance that may have adverse effects on human health or the environment.

3.3.3 Automobile Pollution Liability. If Construction Manager or a Subcontractor of any tier haul or otherwise transport Hazardous Materials, automobile liability limits of at least \$2,000,000 combined single limit each accident shall be carried including the broadened pollution liability coverage endorsement (CA 99 48) and MCS 90 endorsement. In lieu of this coverage, Owner shall consider, as an alternate, a transportation coverage endorsement extension from Construction Manager or its Subcontractors' respective contractor's pollution liability policy to cover this requirement and shall Construction Manager provide copies of such endorsements and policy for review and approval by Owner.

3.3.4 General CPL Requirements. The limits of liability required herein shall apply solely to this Project and shall not be eroded or reduced by claims under other projects or activities of the Construction Manager or its Subcontractors. The Contractors Pollution Liability insurance shall remain in effect through the completion of the Work and for a minimum period of five (5) years following Final Completion, including coverage for completed operations. The Contractor's Pollution Liability and any related environmental or microbial coverage shall name the Lawton Economic Development Authority, a public trust, the City of Lawton, a municipal corporation, and other Additional Insureds as additional insureds on a primary and non-contributory basis. If written on a claims-made basis, CPL coverage shall have a retroactive date no later than the commencement of Work and shall include an Extended Reporting Period of not less than five (5) years after Final Completion.

3.4 Installation Floater Insurance. Installation Floater Insurance shall insure against damage or destruction of the materials or equipment in transit to, or stored on or off the Project Site which is to be used in the Work. A separate certificate of insurance evidencing the coverage required herein shall be provided to the Owner.

4. Acceptance by Owner and Owner's Lender. The required insurance shall be subject to the approval of Owner and Owner's Lender. Such insurance shall be maintained under forms of policies and from companies satisfactory to Owner. The insurance company must have a financial rating of at least A VII as defined by A.M. Best Company and must be authorized to transact business in the state where Work is being performed. Each insurance company's rating as shown in the latest Best's Key Rating Guide shall be fully disclosed and entered on the required certificate of insurance. Certified copies of policies, including all endorsements, shall be provided to Owner. Any acceptance of policies or certificates of insurance by Owner, or failure of Construction Manager or any Subcontractor to provide policies or certificates of insurance, shall in no way limit or relieve Construction manager and Subcontractors of their duties and responsibilities hereunder.

5. Additional Insured Endorsement and Primary Insurance Clause. Construction Manager agrees the Lawton Economic Development Authority, a public trust, and the City of Lawton, a municipal corporation, and their respective officers, directors, trustees, members, employees, agents, representatives, and designees shall be named as additional insureds (using Form CG2026 Additional Insured – Designated Person or Organization) under the commercial general liability insurance policy and all other liability insurance policies with the exception of the professional liability policy, with respect to liability arising out of activities, "operations" or "work" performed by or on behalf of Construction Manager, and products and completed operations of Construction Manager. Further, Construction Manager agrees Owner's Lender and all other entities, if any, which Owner is obligated to name as additional insured pursuant to its loan documents or any agreements with the Project's end-user shall be named as additional insureds (hereinafter referred to as the "Additional Insureds"). To the maximum extent permitted by law, the coverage provided to the Additional Insureds under the commercial

general liability policy shall be provided by a policy provision or an endorsement which is as least as broad as CG 20 10 07 04 (ongoing operations) in combination with CG 20 37 07 04 (completed operations). Notwithstanding the foregoing, Construction Manager shall provide ISO Form B - CG 20 10 11 85 or equivalent coverage where available from its carrier. If any policy provided in compliance with this Exhibit states that the insurance afforded to an Additional Insured will not be broader than that required by contract, or words of similar meaning, the Construction Manager agrees that nothing in this Exhibit is intended to restrict or limit the breadth of such insurance. All policies and endorsements shall further provide that coverage is primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the Additional Insureds. The parties further agree that the obligations set forth and arising under this Section 5 are separate and independent of the obligations set forth and arising under the Agreement.

6. Waiver of Subrogation. Construction Manager shall waive and shall require (by endorsement or otherwise) all its insurers to waive subrogation rights against the Lawton Economic Development Authority, a public trust, and the City of Lawton, a municipal corporation, and other Additional Insureds for losses paid under all of the insurance policies required by this Agreement, including, without limitation workers' compensation, or other insurance applicable to the Construction Manager or its Subcontractors. The waiver shall apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Construction Manager or its Subcontractors. Where permitted by law, Construction Manager shall require similar written express waivers subrogation and insurance clauses from each of its Subcontractors of every tier. The policy or endorsement shall substantially provide: "It is agreed that in no event shall this insurance company have any right of recovery against the Lawton Economic Development Authority, a public trust, or the City of Lawton, a municipal corporation, or such other persons as Owner may designate." If the policies of insurance referred to in this paragraph require an endorsement to provide for continued coverage where there is a waiver of subrogation, endorsement CG 24 53 12 19. Construction Manager agrees to hold harmless and indemnify Owner and other Additional Insureds for any loss or expense incurred as a result of Subcontractor's failure to obtain such waivers of subrogation.

7. Umbrella/Excess Liability. The limits required by this Exhibit can be met by either providing a primary policy or in combination with umbrella / excess liability policy(ies). To the extent that umbrella/excess coverage is used to satisfy the limits of coverage required hereunder, the terms of such coverage shall be follow form to, or otherwise at least as broad as, the primary underlying coverage, including amending the "other insurance" provisions as required so as to provide additional insured coverage on a primary non-contributory basis.

8. Deductibles/Self Insured Retentions. Any self-insured retention or deductible in excess of \$50,000 must be declared and is subject to Owner's approval. Funding of deductibles and/or self-insured retentions maintained by Construction Manager shall be the sole responsibility of Construction Manager, including any deductible or self-insured retentions applicable to coverage afforded to Owner or other required Additional Insureds.

9. Insurance Requirements for Subcontractors. The Construction Manager shall ensure that its Subcontractors of any tier shall procure and maintain insurance that complies with the requirements set forth in this Exhibit, including the additional insured, primary and non-contributory and waiver of subrogation requirements. Copies of the certificates of insurance must be provided prior to the Subcontractors' performance of any Work or entering the site.

10. Construction Manager's duty to provide the insurance coverage set forth in the Agreement is

severable from its indemnification obligations of Article 12 of the Agreement. Nothing in these insurance requirements shall be deemed to limit Construction Manager's liability under the Agreement. The insurance requirements are set forth as minimum amounts and shall not be construed to relieve Construction Manager for liability in excess of such coverage, nor shall it preclude Owner from taking such actions, as is available to Owner, under any other provisions of the Agreement.

11. Failure of Construction Manager to maintain the required insurance shall constitute a material breach entitling Owner to terminate the Agreement for default, withhold payment, and/or purchase the required insurance at Construction Manager's expense. Any delays in the completion of the Work due to Construction Manager's failure to obtain or maintain insurance shall be treated as delay due to Construction Manager's breach of contract.

12. Other General Insurance Requirements.

Forms: (i) if the forms of policies, endorsements, certificates, or evidence of insurance required herein are superseded or discontinued, Owner shall have the right to require other equivalent forms; (ii) any policy or endorsement other than a form specific herein must be approved in advance by Owner.

Evidence of Insurance. Insurance must be evidenced as follows: (i) ACORD Form 25 Certificates of Liability Insurance for liability coverages (ii) ACORD Form 28 Evidence of Property Insurance for property coverages; (iii) ACORD forms must: (a) show the Owner and others as required herein as certificate holders (with mailing addresses); (b) show the Construction Manager/Subcontractor as the "Named Insured"; (c) show the insurance companies producing each coverage and the policy number and policy date of each coverage; (d) name the producer of the certificate (with correct address and phone number) executed by an authorized representative of the producer; (e) specify the additional insured status and waivers of subrogation; (f) state the amounts of all deductibles and self-insured retentions; (g) show the primary status and aggregate limit per project where required; and (h) be accompanied by copies of all required additional insured endorsements.

Appendix 1 to Exhibit M
(Insurance Requirements by Trade)

Trade Category I Full Insurance and Mold Requirements

Infection Control	Lath & Plaster
Tilt-Up Concrete	Tile
Glass-Fiber-Reinforced Concrete	Louvers & Vents
Stone/Marble (Adhered)	Environmentally Controlled Rooms
Stone/Marble (Mechanically Fastened)	Clean Rooms
Expansion Control	Pre-Engineered Structures
Dampproofing and Waterproofing	Hydraulic Elevators and Lifts
Exterior Insulation and Finish Systems (EIFS)	Process Piping
Metal Roof and Wall Panels	Medical Gases
Roofing	Fire Protection
Flashing and Sheet Metal	Pre-Action Fire Suppression
Joint Sealants	Plumbing
Entrances and Storefronts	Heating Ventilating Air Conditioning
Automatic Entrance Doors	Electrical
Windows - Wood & Vinyl	Instrumentation & Controls
Skylights	Building Systems Controls
Glass & Glazing (Exterior)	Site Remediation & HazMat Abatement

Trade Category II Full Insurance and Conditional Mold Requirements

Groundwater Treatment Systems	Concrete Restoration and Cleaning
Demolition	Masonry
Dewatering	Wood Framing
Tunneling, Boring and Jacking	Glass & Glazing (Interior)
Fountains & Water Features	Specialty Glazing
Landscaping & Irrigation	Framing & Drywall
Cast-in-Place Concrete (Contractors)	Painting & Wallcovering
Pneumatically Placed Concrete (Shotcrete)	Commercial Laundry & Dry Cleaning
Sand & Water Blasting	Food Service Equipment
Precast Concrete	Residential Laundry/Kitchen Equipment
Cementitious Decks and Underlayment	Swimming Pools and Spas

Trade Category III Full Insurance and No Mold Requirements

Testing & Inspection Services	Hoists and Cranes
High Purity QAQC	Testing, Adjusting and Balancing
Communications	Fire Alarm Systems
Security Systems	Audio Visual System
Const. Elevator/Hoist/Cranes	Scaffolding
Construction Aids	Traffic Control
Jobsite Security Guard Service	Survey & Layout

Trade Category III Full Insurance and No Mold Requirements (continued)

Machinery & Equipment Moving (Rigging)	Theater and Stage Equipment
Retail Fixtures & Showcases	Loading Dock Equipment
Athletic, Recreation, & Therapy Equipment	Laboratory Equipment
Lab Equipment Salvage	Medical Equipment
Lab & Medical Casework Systems	Manufactured Wood Casework
Furniture	Multiple Seating
Radiation Protection	Tennis Court Construction
Escalators and Moving Walks	Non-Hydraulic Elevators and Lifts
Conveyors	Chutes
Pneumatic Tube Systems	Shoring and Underpinning
Earthwork	Soil Stabilization & Erosion Control
Soil Treatment	Driven Piles
Site Utilities	Site Utilities (Dry) - Electrical & Tel/Data
Traffic Signs & Signals	Asphalt Concrete Paving
Paving Specialties	Concrete
Unit Pavers	Athletic and Recreational Surfaces
Fences and Gates	Retaining Walls
Structural Excavation & Backfill	Concrete Formwork (Non-Skin)
Concrete Accessories	Concrete Reinforcement
Post-Tensioning	Concrete Pump
Concrete Finishing	Granite Countertops
Welding	Structural Steel
Structural Steel Erection	Metal Joists/Trusses
Metal Deck	Channel Frame Strut
Miscellaneous Metals	Metal Stairs & Ladders Handrails and Railings
Ornamental Metal	Finish Carpentry & Millwork
Plastic Fabrications	Traffic Coatings
Building Insulation	Fireproofing
Fire stopping	Metal Doors, Frames & Hardware
Doors, Frames & Hardware - Installation	Doors - Packaged (Total Doors)
Wood and Plastic Doors	Specialty Doors
Coiling Doors and Grilles Acoustical Ceilings	Floor Treatment & Coatings
Specialty Flooring	Wood Flooring
Resilient Flooring	Carpet & Resilient Flooring
Acoustical Wall Treatment	Special Coatings (Epoxy Coatings)
Intumescent Fireproofing	Access Flooring
Fabric/Canvas Awnings Canopies	Operable Partitions
Storage Shelving	Sun Control Devices
Window Washing Equipment	

Trade Category IV Minimum Insurance and No Mold Requirements

Temporary Facilities and Controls	Signage
Jobsite Trailer Rental & Lease	Lockers
Temporary Barriers, Enclosures & Fencing	Fire Extinguishers/Cabinets

Trade Category IV Minimum Insurance and No Mold Requirements (continued)

Product Delivery Requirements
Equipment Suppliers
Cleaning
Site Furnishings
Pavement Markings
Concrete Ready Mix
Lumber Suppliers
Prefabricated Structural Wood
Roof Accessories
Access Doors and Panels
Specialties
Chalkboards & Markerboards

Postal Specialties
Audio-Visual Equipment
Parking Control Equipment
Rugs and Mats
Window Treatments
Toilet Partitions & Compartments
Cubicle Track & Curtains
Flagpoles
Wall & Corner Guards
Wire Mesh Partitions
Telephone Specialties
Toilet & Bath Accessories
Shower & Tub Doors

EXHIBIT C

GENERAL CONDITIONS

Attached to and made a part of
that certain

CONSTRUCTION MANAGEMENT AT-RISK AGREEMENT

Between

**LAWTON ECONOMIC DEVELOPMENT AUTHORITY,
a public trust**

and

Ryan Herring Construction Inc.

dated _____, 2025

ARTICLE I
Definitions

1.1 The Agreement. When used herein, “Agreement” shall mean the CONSTRUCTION MANAGER-AT RISK AGREEMENT between the Lawton Economic Development Authority, a public trust having as its beneficiary the City of Lawton (“Owner”), and Ryan Herring Construction Inc. (“Construction Manager”), to which these General Conditions are attached.

1.2 Terms Defined in the Agreement. When used herein, the terms defined in the Agreement shall have the same meaning as is ascribed to them in the Agreement.

“Architect” has the meaning set forth in the Agreement and Section 3.1 of these General Conditions, unless the Owner gives the Construction Manager written notice naming another party as the Architect.

“Addenda” are written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the bidding documents, including the Drawings and Specifications, by addition, deletion, clarification, or correction.

“Bulletins” are written or graphic instruments issued by Owner or Architect after the execution of this Agreement which request a proposal from Construction Manager that, if accepted by Owner, will cause the execution of a Change Order.

A “Change Order” is defined in Article XIV of these General Conditions.

A “Construction Change Directive” (“CCD”) is a written order signed by the Owner directing a change in the Work and which may (but need not) state a proposed basis for adjustment in the GMP and/or the Contract Time in accordance with Article 8 of the Agreement and Article XIV of these General Conditions.

“Critical Path” means the longest continuous chain of activities through the Project Schedule that establishes the minimum time to achieve Final Completion of the Work.

“Drawings” are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

“Governmental Authority” shall mean the United States of America, the State of Oklahoma, the County of Comanche (“County”), the City of Lawton (“City”), any political subdivision thereof and any agency, department, commission, board, bureau or instrumentality of any of the foregoing, now existing or hereafter created, having jurisdiction over the Project or any portion thereof or site thereof.

“Improvements” shall mean (i) _____, (ii) _____, (iii) _____, and (iii) encompasses demolition, grading, detention ponds, utilities, infrastructure, paving, parking, sidewalks, lighting, landscaping, open space, green space, public areas, administrative and storage areas, and other improvements necessary for the full completion and equipping of the Project, all pursuant to and in strict accordance with the approved Drawings and the approved Specifications, and which will be constructed in phases as set forth in the Contract Documents. Construction Manager and Owner shall approve the Drawings and Specifications by signing or initialing each page thereof.

“Prime Interest Rate” shall mean, as of a particular date, the prime rate of interest as published on that date in *The Wall Street Journal*, and generally defined therein as “the base rate on corporate loans posted by at least 75% of the nation’s 30 largest banks.” If *The Wall Street Journal* is not published on a date for which the interest rate must be determined, the prime interest rate shall be the prime rate published in *The Wall Street Journal* on the nearest-preceding date on which *The Wall Street Journal* was published. If *The Wall Street Journal* discontinues publishing a prime rate, the prime interest rate shall be the prime rate announced publicly from time to time by Bank of America, N.A. or its successor.

“Project Manual” means the written documents prepared for, and made available for, procuring and constructing the Work, including but not limited to the bidding documents, bidding requirements, and other construction procurement documents, geotechnical and existing conditions information, the Agreement, General Conditions, Supplementary Conditions, Specifications, and sample forms. The contents of the Project Manual may be bound in one or more volumes.

“Requirements” means, in addition to the other obligations, responsibilities and limitations set out in the Contract Documents, the obligations, responsibilities and limitations imposed by all present and future laws, rules, orders, ordinances, regulations, statutes, requirements, codes and executive orders, extraordinary as well as ordinary (including, without limitation, any of same relating to the environment and hazardous materials), of all governmental authorities, including those affecting the real property or the maintenance, use or occupation thereof, or any street, avenue or sidewalk comprising a part of or in front thereof, or requiring removal of any encroachment.

“Samples” are defined in Section 6.1 of these General Conditions.

“Shop Drawings” are defined in Section 6.1 of these General Conditions.

“Site”, “Project Site”, or “Premises” mean the Land together with such additional areas or locations in which construction operation or Work required under the Contract Documents is being carried out.

“Specifications” shall mean that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction system, standards and workmanship for the Work, and performance of related services.

“Supplemental General Conditions” and “Special Conditions”, if included by the Owner in the Contract Documents, are revisions, modifications, amendments, deletions or substitutions to, and that take precedence over, the Standard General Conditions.

Other terms of construction:

When the words "consent," "approved," "satisfactory," "proper," "as directed" or any derivatives thereof or similar terms are used, they shall mean written approval by Owner, and may include approval of Architect if Owner so directs. Owner shall have the right to grant or withhold approval in its sole discretion.

When the word “provide” or any derivatives thereof or similar terms are used, they shall mean to properly fabricate, complete, transport, deliver, install, erect, construct, test and furnish all labor, materials, equipment, apparatus, appurtenances, and all items and expenses necessary to properly complete in place, ready for operation or use under the terms of the Specifications.

The terms “knowledge,” “recognize,” “believe,” and “discover,” or any derivatives thereof and similar terms, when used in reference to Construction Manager shall be interpreted to mean that which Construction Manager knows or should reasonably know, recognizes or should reasonably recognize, and discovers or should reasonably discover in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression “reasonably inferable” and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a Construction Manager familiar with the Project and exercising the care, skill, and diligence required of Construction Manager by the Contract Documents.

The phrase “persistently fails” and other similar expressions, when used in reference to Construction Manager, shall be interpreted to mean any combination of two or more instances of Construction Manager’s failure to perform any of its specific obligations under this Agreement, or two or more acts or omissions of Construction Manager which causes Owner or Architect to reasonably conclude that Construction Manager will not complete the Work within the Contract Time for the Guaranteed Maximum Price in accordance with this Agreement, or in substantial compliance with the requirements of the Contract Documents.

The word "including" shall not be a word of limitation, but instead shall be construed as introducing one or more nonexclusive examples.

Whenever the word “strictly” is used, it means “strictly, not substantially.” Likewise, use of the word “strict” means “strict, not substantial.”

When the phrases “at no cost to the Owner,” “without additional cost to the Owner,” “without increase in the cost to the Owner,” “without adjustment to the Construction Manager’s Compensation,” or phrases having like import are used, they shall mean that the required task shall be performed solely at the expense of the Construction Manager, without any additional cost to the Owner, whether by increase in the Guaranteed Maximum Price or use of any contingency, claim or otherwise.

Other terms are defined elsewhere in this Agreement and in the General Conditions. If the Contract Documents contain words or abbreviations that are not defined but have well-known technical, trade or construction industry meanings, those meanings shall be ascribed to them. The singular shall include the plural and vice versa. Pronouns are interchangeable. When a defined document is later modified by the parties, any reference to that document in the Contract Documents shall mean the document as modified. In the interest of brevity, the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

ARTICLE II
Contract Documents; Drawings

2.1 Contract Documents The intent of the Contract Documents is to include all labor, materials, equipment and all things necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Work called for on the Drawings and not mentioned in the Specifications, or vice versa, shall be performed as though fully set forth in both. Nothing in this Section, however, shall relieve the Construction Manager of any of its obligations under the Contract Documents.

2.2 Division of Work. The organization of the Plans and Specifications into divisions, sections and articles, and the arrangements of the Drawings, shall not control the Construction Manager in dividing the Work among subcontractors or in establishing the extent of the Work to be performed by any trade. Neither the Owner nor the Architect assume any liability arising out of jurisdictional issues raised or claims advanced by trade organizations or other interested parties based on the arrangement or manner of subdivision of content of the Plans and Specifications and the Drawings.

2.3 Written Interpretations by Architect. Written interpretations necessary for the proper execution or progress of the Work, in the form of Drawings or otherwise, will be issued with reasonable promptness by the Architect, and the Work shall be executed in conformity therewith and the Construction Manager shall do no Work without such additional interpretations. Either party to the Agreement may make written requests to the Architect for such interpretations and shall give the other party notice thereof. Any interpretations by the Owner shall be consistent with or reasonably inferable from the Contract Documents.

2.4 Copies Furnished. The Construction Manager shall have no ownership rights with respect to the Plans, the Specifications or the Drawings and shall have no right to use the same for any purpose after the termination of the Agreement.

2.5 Interrelation of Specifications and Drawings. The interrelation of the Specifications and the Drawings is as follows: the Specifications determine the nature and setting of the Materials; and the Drawings establish the dimensions, details and locations of the Improvements. Collectively, the Specifications and the Drawings shall control and govern the scope, character, and design of the Work, and any item called for in any one of those documents shall be included as though mentioned in all.

2.6 Representative Detail. A typical or representative detail indicated on the Drawings shall constitute the standard for workmanship and material throughout corresponding parts of the Work. Where necessary, and where reasonably inferable from the Drawings, the Construction Manager shall adapt such representative detail for application to such corresponding parts of the Work. The details of such adaptation shall be subject to prior approval by the Architect and Owner. Repetitive features shown in outline on the Drawings shall be in exact accordance with corresponding features completely shown.

2.7 Layouts. The layout of mechanical and electrical systems, equipment, fixtures, piping, ductwork, conduit, specialty items, and accessories indicated on the Drawings is diagrammatic, and all variations in alignment, elevation, and detail required to avoid interferences and satisfy architectural and structural limitations are not necessarily shown. Actual layout of the Work shall be carried out without affecting the architectural and structural integrity and limitations of the Work and shall be performed in such sequence and manner as to avoid conflicts, provide clear access to all control points, including valves, strainers, control devices, and specialty items of every nature related to such systems and equipment, obtain maximum head room, and provide adequate clearances as required for operation and maintenance.

2.8 Dimensions. The Drawings shall be scaled for dimensions. If figured dimensions are not given on the Drawings, the Construction Manager shall request same from the Architect, giving reasonable advance notice.

2.9 Preparation of Shop Drawings. The Construction Manager shall check and verify all field measurements, and shall submit with such promptness as to cause no delay in the Work an adequate number of copies of all the Shop Drawings (hereinafter defined) required for the Work of the various trades. The Architect shall check and approve the Shop Drawings, with reasonable promptness, and the Construction Manager shall make any corrections required by the Architect and shall furnish to the Architect corrected copies thereof. The Architect's approval of the Shop Drawings shall not relieve the Construction Manager from responsibility for deviations from the Specifications or the Drawings, unless the Construction Manager has in writing called the Architect's attention to such deviations at the time of submission, and secured the written approval of the Architect and the Owner, nor shall it relieve the Construction Manager from the responsibility for errors in the Shop Drawings.

2.10 Samples. The Construction Manager shall furnish for approval, with reasonable promptness, all Samples (hereinafter defined) as directed by the Architect. The Architect shall check and approve such Samples with reasonable promptness. The Work shall be performed in accordance with the approved Samples.

2.11 "Fast Track" Job; Detailed Drawings and Specifications. Notwithstanding anything in the Contract Documents to the contrary, the Owner may request the Construction Manager to construct certain portions of the Improvements using the "fast tracking" technique, pursuant to which detailed, working Drawings and Specifications for each phase of the Work are prepared as the Work for a previous phase or phases progresses. As a result, on such occurrence, working Drawings for the next and possibly succeeding phases of the Work will be developed as the Work for a prior phase or phases is being performed. It is the Architect's responsibility to prepare detailed working Drawings and Specifications that constitute a reasonable development of the schematic plans and specifications, but which fully delineate and describe architectural, structural, mechanical, electrical and site development work, and the scope, Materials and quality of workmanship for all parts of the Drawings, and which will be furnished to the Construction Manager as the Work progresses; but when requested by the Architect, the Construction Manager will review the Drawings and the Specifications in proposed form as they are being developed, and will advise the Architect and make recommendations to the Architect with respect to such factors as construction feasibility, possible savings, availability of materials and labor, time requirements for procurement and construction, and projected costs. The Construction Manager will also assist in the coordination of all sections of the Drawings and the Specifications without, however, assuming any of the Architect's customary responsibilities for design.

ARTICLE III
The Architect

3.1 Relationship with the Owner. _____ is the design professional firm with general oversight and responsibility for observing construction, interpreting Drawings and Specifications, and reviewing project submittals under the Contract Documents (and is hereinafter referred to as the "Architect"). The Architect and Owner have entered into a separate agreement for design professional services and construction contract administration services whereby the Architect agrees to provide the services therein

described (the "Owner-Architect Agreement"). Some of the services to be provided by the Architect under the Owner-Architect Agreement and the duties and responsibilities of the Architect thereunder are repeated in the Agreement and these General Conditions, but in the event of any conflict between the Contract Documents and the Owner-Architect Agreement as to the Architect's obligations to the Owner or the scope of the services to be provided by the Architect, the Owner-Architect Agreement shall control. Nothing contained in the Contract Documents, however, shall create any contractual relationship between the Architect and the Construction Manager.

3.2 The Architect's Duties. The Architect shall provide general administration of the Agreement and these General Conditions and in connection therewith shall have the following responsibilities:

- (a) The Architect shall advise and consult with the Owner as the representative of the Owner and, when requested by the Owner, shall relay any of the Owner's instructions to the Construction Manager;
- (b) The Architect shall review and assist the Owner in and approving all Shop Drawings, Materials, Samples, schedules, and colors, and shall assemble and submit to the Owner all manuals, brochures and drawings needed for the operation and maintenance of the Project;
- (c) The Architect shall prepare on approval by the Owner and distribute to all appropriate persons any necessary bulletins, drawings, supplemental specifications, interpretations or other documents necessary to clarify or supplement the Plans and Specifications during construction;
- (d) The Architect shall evaluate all proposals for changes in the Work and shall advise and consult with the Owner with respect thereto, and at the direction of the Owner shall prepare all Change Order Requests approved by the Owner for submissions to the Construction Manager;
- (e) The Architect shall make periodic trips to the Site on an average of once during each week for architectural inspections, for job meetings, or as needed to deliver decisions in the field and interpret Drawings, and on the average of once each month for mechanical, electrical and structural inspections, and submit written reports to the Owner at least monthly on the progress of construction with recommendations as to Materials and quality of the Work;
- (g) The Architect shall compile and submit to the Owner for approval a final punch list prior to final payment to the Construction Manager and then keep the Owner apprised of punch list corrections;
- (h) The Architect shall at all times have access to the Work at the Site in order to perform its obligations hereunder, and, on the basis of its on-site observations as an architect, the Architect shall endeavor to guard the Owner against defects and deficiencies in the Work of the Construction Manager. Based on such observations at the Site and on the Construction Manager's Requests for Payment, the Architect shall review the amounts claimed by the Construction Manager from time to time

and shall make recommendations to the Owner concerning such Requests for Payment. Additionally, the Architect shall be responsible for advising the Owner if the Architect, based upon its or its representative's on-site observations as an architect, is aware that the construction means, methods, techniques, sequences, or procedures will or may result in defects or deficiencies in the Work of the Construction Manager or the failure of the Project to conform to the Plans, the Specifications and other Contract Documents;

- (i) The Architect shall assist the Owner in interpreting the requirements of the Contract Documents and shall assist the Owner in judging the performance thereunder by the Construction Manager. The Architect shall assist the Owner in making decisions on all claims of the Construction Manager relating to the execution and progress of the Work and on all other matters or questions related thereto, but all such decisions shall be subject to the approval and the direction of the Owner;
- (j) The Architect shall review and assist the Owner with approving any submissions of the Construction Manager for conformance with the design concept of the Project and for compliance with the information given in the Plans and Specifications;
- (k) The Architect shall review and approve Shop Drawings, Samples and other submissions of the Construction Manager for conformance with the design concept of the Project and for compliance with the information given in the Specifications and the Drawings;
- (l) The Architect shall conduct observations to determine the Date of Substantial Completion and the Date of Final Completion, shall receive and review written guarantees and related documents assembled by the Construction Manager, and shall issue a final Certificate for Payment; and
- (m) The Architect shall have the authority to reject the Work which does not conform to the Plans and the Specifications. If the Architect considers it necessary or advisable to ensure the proper implementation of the Plans and the Specifications, it shall not have the authority, unless authorized to do so in writing in each instance by the Owner, to require special inspection or testing of any of the Work in accordance with the provisions of the Plans and the Specifications whether or not such Work will be then fabricated, installed or completed.

3.3 Change in Duties. The duties, responsibilities and limitations of the authority in the Architect during construction as set forth herein will not be modified or extended without the written consent of the Owner and Architect.

ARTICLE IV **The Owner**

4.1 Owner's Right to Stop Work. If the Construction Manager (a) persistently fails to perform its obligations under the Agreement, (b) fails to correct any defective Work, (c) fails to supply materials or equipment in accordance with the Contract Documents, or (d) performs any Work in violation of any

applicable Requirements, laws, ordinances, rules, regulations or restrictions, the Owner may order the Construction Manager to stop the Work (“Stop Work Order”), or any portion thereof, until the cause for such order has been eliminated. The Construction Manager shall be held accountable for all costs and Schedule impacts associated with a Stop Work Order issued by the Owner hereunder.

4.2 Owner’s Right to Perform. If the Construction Manager defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any material provision of the Agreement, the Owner shall have the right, after providing seven (7) days written notice to the Construction Manager, and the opportunity to cure, which cure must commence within said seven (7) day period, and without prejudice to any other remedy the Owner may have, to perform, or make arrangements for the performance of, any of the obligations of the Construction Manager under the Contract Documents, all at the expense of the Construction Manager, including, without limitation, the cost of the Owner’s attorney’s fees and the Architect's additional services made necessary by such default, neglect or failure. Owner will charge the entire cost incurred by the Owner in performing any such obligation of Construction Manager to the Construction Manager and will deduct such expenses from monies due, or which at any time thereafter may become due, to the Construction Manager. If such expenses incurred by Owner are more than the sum that would otherwise have been payable under the Agreement, then the Construction Manager or Surety shall pay the amount of such excess to the Owner upon notice from the Owner. Owner shall not be required to obtain the lowest price for completing the Work under the Agreement, but may make such expenditures that, in its sole judgment, shall best accomplish such completion. Owner, will, however, make reasonable efforts to mitigate excess costs of completing the Work.

ARTICLE V
Construction Manager

5.1 Supervision of Work. The Construction Manager shall supervise and direct the Work, using its best skill and attention. The Construction Manager shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement.

5.2 Dependent Work. Wherever the Work of a Subcontractor is dependent upon the Work of other Subcontractors or contractors, then the Construction Manager shall require the Subcontractor to:

- (a) Coordinate its Work with the dependent Work;
- (b) Provide necessary dependent data and requirements;
- (c) Supply and/or install items to be built into dependent Work of others;
- (d) Make provisions for dependent Work of others;
- (e) Examine dependent Drawings and Specifications;
- (f) Examine previously placed dependent Work;
- (g) Check and verify dependent dimensions of previously placed Work;

- (h) Notify the Construction Manager of previously placed dependent Work or dependent dimensions which are unsatisfactory or will prevent a satisfactory installation of his Work; and
- (i) Not to proceed with his Work until the unsatisfactory dependent conditions have been corrected.

Installation of Work by a Subcontractor in any given area shall constitute acceptance by the Subcontractor and Construction Manager of the previously placed dependent Work.

5.3 Overtime Work. Except in the event of emergency, no substantial field operations shall be performed outside of regular working hours without the prior notification to the Architect and the Owner. The Construction Manager will not be entitled to additional compensation for Work performed outside of regular working hours except as otherwise expressly authorized in writing by the Owner prior to the performance of such overtime Work. Additional compensation for such authorized overtime shall be limited to the direct cost of the premium portion of such authorized overtime.

5.4 Substitute Materials. In the event that the Construction Manager desires to request approval of a substitute material, product, article, equipment, brand, manufacturer, or process in lieu of that which is specified, Construction Manager shall submit to the Architect a written request prepared in the form of a Change Order Request setting forth the proposed substitution in detail and including an itemized analysis of the increase or reduction in the amount of the Guaranteed Maximum Price, if any, which will result if the proposed substitution is approved. If such proposed substitution will involve or require structural changes or other modifications to any element of the Work or item of equipment, the Construction Manager shall submit detailed Drawings showing all proposed or required modifications. If the proposed substitution is approved, the Work related to such modifications shall not be undertaken prior to the approval of such Drawings by the Architect and Owner.

5.5 Materials. All materials and equipment shall be delivered, handled, stored, installed and protected in accordance with best current practice in the industry, in accordance with manufacturers' specifications and recommendations, and in accordance with Contract Document requirements. Store packaged materials and equipment shall be kept in their original and sealed containers, marked with the brand and manufacturer's name, until ready for use. Construction Manager shall deliver materials and equipment in ample time to facilitate inspection and tests prior to installation. The term "delivery" in reference to any item specified or indicated, means the unloading and storing with proper protection at the Site.

5.6 Trade Names. Unless specifically requested and approved in writing, no material, equipment, or other element of the Work visible in or outside of the completed Project shall display a company name, trade name, commercial designation, or slogan on its finished surface. Mechanical and electrical equipment rooms not exposed to public view are excluded from the foregoing limitation.

5.7 Dimensions. Before ordering materials, equipment, or performing Work, the Construction Manager shall verify indicated dimensions. If any discrepancy exists, the Construction Manager shall take field measurements required for the proper installation of the Work. Upon commencement of any item of Work, the Construction Manager shall be responsible for dimensions related to such item of Work.

5.8 New Materials. The Construction Manager warrants to the Owner and the Architect that all materials and equipment furnished under this Agreement will be new unless otherwise specified. If required by the Architect, the Construction Manager shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

5.9 Taxes. The Construction Manager shall pay all sales, consumer, use and other similar taxes required by law.

5.10 Allowances. The Construction Manager shall include any Allowances in the GMP Proposal. If approved, these Allowances shall cover the net cost of the materials and equipment delivered and unloaded at the Site, and all applicable taxes, labor and installation costs. The Construction Manager's handling costs on the Site, overhead, profit and other expenses contemplated for the original Allowance shall be included in the Guaranteed Maximum Price and not in the Allowance. The Construction Manager shall cause the Work covered by these Allowances to be performed for such amounts and by such persons as the Owner or, at the Owner's direction of the Architect may direct, but will not be required to employ persons against whom the Owner makes a reasonable objection. If the cost, when determined, is more than or less than the Allowance, the Guaranteed Maximum Price shall be adjusted accordingly by Change Order which will include additional handling costs on the Site, labor, installation costs, and other expenses resulting to the Construction Manager from any increase over the original Allowance. If there is no substantive change in the scope of operations or services to be performed at the Site pursuant to the Allowance, no adjustment in handling costs on the Site, labor, installation costs or other expenses related thereto will be included in the Change Order.

5.11 Superintendent. The Construction Manager shall employ a competent superintendent and necessary assistants who shall be in attendance at the Site during the progress of the Work. The superintendent shall represent the Construction Manager and all communications given to the superintendent shall be as binding as if given to the Construction Manager. The Construction Manager shall not change the Superintendent during the course of construction without prior written notification to the Architect and Owner. The Construction Manager shall nor replace the Superintendent during the course of construction without the approval of Owner as set forth in the Agreement.

5.12 Drawings and Specifications at the Site. The Construction Manager shall maintain at the Site for the Owner one (1) copy of all Drawings, Specifications, approved Shop Drawings, Addenda, approved Drawings, Change Orders and other Modifications, in good order and marked to record all changes made during construction. These shall be available to the Architect and Owner for review during on-site inspections. The Drawings, marked to record all changes made during construction, shall be delivered to the Architect for the Owner upon completion of the Work.

5.12 Documents Kept Current. All Contract Documents utilized in connection with the Work shall be kept current, incorporating all revisions and/or supplements to the initial set of Contract Documents. All superseded documents shall be maintained in such sets in the inverse sequence of revisions and shall be clearly identified as having been superseded. The Construction Manager shall require all subcontractors to maintain their respective sets of Contract Documents on a current basis in the same manner.

5.13 Quality of Contract Documents. The Construction Manager represents to the Owner that, after due investigation and to the best of the Construction Manager's knowledge and belief, the Contract

Documents will be in compliance with all applicable Requirements and building codes applicable to the Project. Except as otherwise expressly provided hereunder, the Construction Manager agrees that the Plans and Specifications will be satisfactory for the purposes intended.

5.14 Termination; Document Ownership. In the event the Agreement is terminated for any reason, the Construction Manager will deliver to the Owner the originals and five (5) legible copies of all the Drawings, Plans and Specifications and related materials prepared to the date of the termination. All Drawings, Plans, Specifications, renderings, the Contract Documents, and all other documents and models, if any prepared by the Construction Manager with respect to the Project are and will remain the property of the Owner.

ARTICLE VI
Shop Drawings and Samples

6.1 Prepared and Submitted by Construction Manager. The term “Shop Drawings” means drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared by the Construction Manager or any subcontractor, manufacturer, supplier or distributor, and which illustrate some portion of the Work. The term “Samples” means physical examples furnished by the Construction Manager to illustrate materials, equipment or workmanship, and to establish standards by which the Work will be judged.

The Construction Manager shall review, stamp with his approval and submit, with reasonable promptness and in orderly sequence so as to cause no delay in the Work or in the Work of any other contractor, all Shop Drawings and Samples required by the Contract Documents or subsequently by the Architect. Shop Drawings and Samples shall be properly identified as specified, or as the Architect may require. At the time of submission, the Construction Manager shall inform the Architect in writing of any deviation in the Shop Drawings or Samples from the requirements of the Contract Documents. Any deviation shall also be indicated on such Shop Drawing, Sample or related submittal by circling or other approved means.

The Construction Manager's identification of Shop Drawings and Samples shall include verification of the following:

- (a) Proper title, original date, Drawing No., (which shall not be changed if resubmitted), revision numbers and dates, designation of Construction Manager, subcontractor and/or supplier; and
- (b) Identification of Shop Drawings or Samples by Specification section and subsection or paragraph where appropriate and identification of Drawings by number and detail.

No extension of time will be granted, nor will any consideration be given to claims arising out of the Construction Manager's failure to submit any Shop Drawings, Samples or related submittals which do not allow adequate lead time for the Architect's review, and also do not allow ample time for revision, resubmission and subsequent review by the Architect as required.

6.2 Approval of Shop Drawings and Samples. By approving and submitting the Shop Drawings and the Samples, the Construction Manager thereby represents that Construction Manager has determined

and verified all field measurements, field construction criteria, materials, catalog numbers and similar data, checked the Shop Drawings and the Samples for complete dimensional accuracy; that Construction Manager has checked to ensure that Work contiguous with and having bearing on the Work shown on the Shop Drawings is accurately and clearly shown, that he has checked the Shop Drawings against the composite Drawings prepared by the Construction Manager, and that the Work has been coordinated and that the equipment will fit into the assigned spaces; and that Construction Manager has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and of the Contract Documents. Any Shop Drawing or Sample submitted without the Construction Manager's review and approval stamp will not be processed for approval by the Architect, but will be returned to the Construction Manager for compliance with the above procedures, in which event it will be deemed that the Construction Manager has not complied with the provisions herein specified and the Construction Manager shall bear the risk of all delays as if no Shop Drawing or Sample had been submitted.

6.3 Approval by Architect. The Architect shall review and approve the Shop Drawings and the Samples with reasonable promptness so as to cause no delay, but only for conformance with the design concept of the Project and with the information given in the Contract Documents. The Architect's approval of a separate item shall not indicate approval of an assembly in which the item functions. The Architect reserves the right to review and approve Shop Drawings, Samples and submittals in a sequence consistent with the sequence of erection, installation and assembly of the various elements of the Work. The Architect's approval of the Shop Drawings or the Samples shall not relieve the Construction Manager of responsibility for any deviation from the requirements of the Contract Documents unless the Construction Manager has informed the Architect in writing of such deviation at the time of submission and the Architect has given written approval to the specific deviation, nor shall the Architect's approval relieve the Construction Manager from responsibility for errors or omissions in the Shop Drawings or the Samples.

6.4 Corrections. The Construction Manager shall make any corrections required by the Owner or the Architect and shall resubmit the required number of corrected copies of Shop Drawings or new Samples until approved. The Construction Manager shall direct specific attention in writing or on resubmitted Shop Drawings to revisions other than the corrections requested on previous submissions.

6.5 Scope of Approval. Shop Drawings and Sample submittals are to be made to obtain approval of the information concerning materials, equipment and assemblies thereof proposed for incorporation in the Work. The review of such submittals and any approval, conditional approval or disapproval thereof shall all be limited to the same scope for which such submittals were made. In no way shall such review constitute any judgment, assumption of responsibility or decision concerning any other information revealed on such submittals relating to construction means, methods, sequence, procedures and safety precautions and shall in no way limit, modify or abrogate the responsibility of the Construction Manager therefor as undertaken in the Contract Documents.

6.6 Work to Commenced Only after Approval. No portion of the Work requiring a Shop Drawing or Sample submission shall be commenced until the submission has been approved. All such portions of the Work shall be performed in accordance with approved Shop Drawings and Samples. No Shop Drawing or Sample shall be issued to the field without the Architect's approval stamp affixed thereto.

6.7 Shop Drawing Procedures.

- (a) Drawing Requirements. Shop Drawings shall show design, materials (kind, thickness and finish), dimensions, connections, and other details necessary to ensure that they accurately interpret the Drawings and the Specifications and also show adjoining Work in such detail as required to provide proper connection with the same. Shop Drawings shall be numbered consecutively and insofar as possible shall be uniform in size.
- (b) Identification. All Shop Drawings shall be identified with the name of the Project, building or buildings for which the Shop Drawings are being submitted, the Architect's name, the Project number, the Construction Manager's name, subcontractor's name, date of submittal, drawing number, revision number and date of each revision, if any, as well as the Specification section under which the Work is to be performed and the Drawing and detail numbers that relate to the Shop Drawings.
- (c) Transmittals. All Shop Drawings, cuts and brochures shall be accompanied by a letter of transmittal from the Construction Manager setting forth the same identification information as required in Section 6.7(b) hereof under "Identification". The Construction Manager shall number transmittals consecutively and shall indicate the Submittal Procedure number being followed. Transmittals shall also indicate if the Shop Drawing is resubmitted and note the Architect's file number for the original submittal.
- (d) Submittal Procedures. The Construction Manager shall submit copies of Shop Drawings in accordance with Submittal Procedure number listed below. Reproducible prints shall be sepias or ozalid prints with positive side up. Black and white prints shall be black line on white background.

Submittal Procedure No. 1: Architectural Shop Drawings: One (1) reproducible print and two (2) black and white prints submitted to the Architect's office in Dallas, Texas.

Submittal Procedure No. 2: Structural, Mechanical and Electrical Shop Drawings: One (1) reproducible print and three (3) black and white prints submitted to the Architect's office in Dallas, Texas.

Submittal Procedure No. 3: Vertical Transportation and Special Equipment, i.e. Elevators, Food Service, Conveyors, etc., Shop Drawings: One (1) reproducible print and five (5) black and white prints submitted to the Architect's office in Dallas, Texas.

When Shop Drawings are submitted in the form of brochures, manufacturers' standard drawings, or catalog cuts not readily available in reproducible form, seven (7) copies of each shall be submitted to the

Architect's office in Dallas, Texas with additional copies being furnished only upon request by the Architect.

- (e) Architect's Distribution and Stamp. Following the Architect's review of each Shop Drawing submission, the Architect will retain the black and white prints, and return the reviewed reproducible print to the Construction Manager with the Architect's stamp and signature affixed thereto, annotated as follows:

"APPROVED" means approved for construction, fabrication, and/or manufacture, subject to the provision that the Work shall be in accordance with the requirements of the Agreement. Final acceptance of the Work shall be contingent upon such compliance.

"APPROVED AS NOTED" means, unless otherwise noted on the Shop Drawings, approved for construction, fabrication, and/or manufacture, subject to the provision that the Work shall be carried out in compliance with all annotations and/or corrections indicated on the reproducible print and in accordance with the requirements of the Agreement. Final acceptance of the Work shall be contingent upon such compliance. If also marked "RESUBMIT", approval as noted is valid, and a corrected submittal of the Shop Drawing is required.

"DISAPPROVED" means that major deviations from the requirements of the Agreement exist in the submittal. No Work based on such Shop Drawings shall be constructed, fabricated, or manufactured. The Construction Manager shall revise the Shop Drawing in compliance with the Architect's annotations and pursuant to all requirements of the Agreement and shall resubmit the Shop Drawing to both the Owner and the Architect.

- (f) Construction Manager's Distribution. When transparencies are returned "APPROVED" or "APPROVED AS NOTED", the Construction Manager shall obtain and provide such number of prints of the transparency as determined by the Construction Manager for his field distribution. Construction Manager shall have copies of all "APPROVED" or "APPROVED AS NOTED" Shop Drawings at the Site at all times and shall make them available to the Owner, the Architect and their representatives.
- (g) Cost of Submittal and Distribution. All charges in connection with the delivery of Shop Drawings to the Owner and the Architect and to the Architect's designated local associate, as applicable, or where otherwise directed by the Owner or the Architect (and all charges in connection with the subsequent distribution thereof by the Architect) shall be paid by the Construction Manager.

6.8 Samples Procedures.

- (a) Sample Requirements. Where possible, all Samples required for a particular Specification section shall be submitted together. Samples shall be submitted from the same source which will supply the actual job. Samples shall be of adequate size to show quality, type, color, range, finish, texture and other specified characteristics. Samples of materials or products which are normally furnished in containers or packages, which bear descriptive labels and/or application or installation instructions, shall be submitted with such labels and/or instructions.
- (b) Identification. All Samples shall be labeled, tagged, or otherwise clearly identified. Labels or tags shall set forth the name of the Project, building or buildings for which the Sample is being submitted, the name of the Architect, the name of the Construction Manager, subcontractor, and/or supplier, the name of the manufacturer, fabricator, or processor, the trade designation, grade and quality of the material or product, the date of submittal, and specific identification of each Sample and a precise reference to the Specification section, Article and paragraph wherein the material, produce, or element of the Work is specified. Each label or tag shall have sufficient clear space to permit the application of the approval stamps of the Construction Manager and the Architect.
- (c) Transmittals. All Samples shall be accompanied by a letter of transmittal from the Construction Manager setting forth the same identification information as required in Section 6.8(b) hereof under "Identification". The Construction Manager shall number transmittals consecutively in sequence with the Shop Drawing transmittals. Where appropriate, test data and/or manufacturers' certificates shall be referenced in and forwarded with the letter of transmittal. Samples without accompanying certificates or test data will be returned without action.
- (d) Submittal Procedure. The Construction Manager shall submit the number of Samples as indicated below:

In the event that a range of variations in texture, graining, color or other characteristics may be anticipated in furnished materials, assemblies, or elements of the Work, a sufficient number of Samples of such materials or products shall be submitted to indicate the full range of characteristics which will be present in the materials or products proposed for the Work. Any such materials or products delivered or erected prior to approval of full range Samples shall be subject to rejection.

All Samples shall be submitted in triplicate to the Architect's designated local associate, or where directed by the Owner or the Architect, except as otherwise set forth in other sections of the Contract Documents.

- (e) Architect's Distribution and Stamp. Following the Architect's review of each Sample submission, and such consultation with the Owner as the Owner might require, the Architect will return one (1) Sample of each set of Samples to the Construction Manager, with the Architect's stamp and signature affixed thereto and annotated in a manner conforming to the convention established in the paragraph

dealing with "Architect's Distribution and Stamp" under Section 6.7 above. Range Samples shall be treated in a manner consistent with the first subparagraph under "Submittal Procedure" of this Section 6.8.

- (f) Construction Manager's Distribution. When Samples are returned "APPROVED" or "APPROVED AS NOTED", the Construction Manager shall retain such Samples in a suitable place at the Site for use by the Construction Manager, his subcontractors, the Architect, the Owner and their authorized representatives to ensure that all Work is being installed in accordance with approved Samples. The remaining approved Samples will be retained by the Architect.
- (g) Cost of Submittal and Distribution. All charges in connection with the delivery of Samples to the Owner and to the Architect's designated local associate, as applicable, or where otherwise directed by the Owner or the Architect (and all charges in connection with the subsequent distribution thereof by the Architect) shall be paid by the Construction Manager.

ARTICLE VII

Use of Site; Clearing of Site and Improvements

7.1 Use of Site. The Construction Manager shall confine operations at the Site to areas owned or leased by Owner and to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Site with unnecessary or unused materials or equipment; and Construction Manager agrees to use reasonable efforts to confine its operations to as small an area as possible within the confines of said areas owned or leased by Owner. Notwithstanding the designation of contract limits or the indication of temporary fences or barricades, the provisions of the Contract Documents governing certain portions or phases of the Work may require that certain operations be carried out beyond such designated limits. Trenching, utility work, site development, landscaping and all other Work, if required beyond such designated limits, shall be scheduled in such a manner as to cause or occasion a minimum of inconvenience or disturbance to or interference with the normal operations of the Owner, abutters, and the public. The Construction Manager shall obtain the Owner's prior approval for such operations, prosecute such operations expeditiously and restore the affected area and other areas needed for access to their original condition immediately upon completion of such operations, unless otherwise specified herein.

7.2 Water Control. Pumping, draining and control of surface and ground water shall be carried out so as to avoid endangering the Work of any adjacent facility or property, or interrupting, restricting or otherwise infringing or interfering with the use thereof.

7.3 Cutting and Patching of Work. The Construction Manager shall do all cutting, fitting or patching of his Work that may be required to make its several parts fit together properly, and shall not endanger any Work by cutting, excavating or otherwise altering the Work or any part of it. Structural elements of the Work shall not be cut, patched, or otherwise altered or repaired without prior authorization by the Architect after approval by the Owner. Authorizations to proceed with remedial operations on any damages or defective element or portion of the Work shall not constitute a limitation or a waiver of the Architect's right to require the removal and replacement of any Work which fails to fulfill the requirements of the Contract Documents.

7.4 Cleaning Up. The Construction Manager shall at all times keep the Premises upon which it is working free from accumulation of waste materials or rubbish caused by its employees and subcontractors. Upon completion of the Work, the Construction Manager shall remove all waste materials and rubbish from and about the Project as well as all tools, scaffolding, construction equipment, machinery and surplus materials, and shall clean all glass surfaces and leave the Work “broom-clean” or its equivalent, except as otherwise specified. If the Construction Manager fails to clean up the Site, the Owner may do so and the cost thereof shall be deducted from the Guaranteed Maximum Price.

7.5 Glass. The Construction Manager shall be responsible for all breakage of glass and shall replace all broken glass and deliver the buildings with all glazing intact and clean.

7.6 Cleaning Building Prior to Occupancy. Prior to occupancy or before final inspection, as directed by the Owner or, at the direction of the Owner, or the Architect, the entire interior and exterior of the Improvements, the Site of the Work and the surrounding Premises effected by the Work shall be thoroughly cleaned in accordance with the requirements of these Contract Documents, including the following additional specific requirements:

All finished and/or exposed surfaces within the buildings, including ceilings, floors, wall surfaces, window and door frames, glass, glazing, metal work, hardware, casework and trim, conveyor systems, mechanical and electrical systems, equipment and devices, piping, conduits, ductwork, and similar elements or items of the Work, shall be swept, dusted, or washed, or cleaned by other methods approved by Owner and Architect. This includes cleaning of the Work of all finishing trades where needed, whether or not cleaning for such trades is included in their respective specifications.

All resilient flooring, resilient base, ceramic tile, and other finished flooring shall be thoroughly cleaned with a well rinsed mop containing only enough moisture to clean off any surface dirt or dust. Resilient floors shall then be buffed dry by machine, bringing the surfaces to a sheen.

The Construction Manager shall install and maintain adequate runner strips of building paper on all finished floors, all to the satisfaction of the Owner. All glass shall be washed on both sides, by a window cleaning contractor specializing in such Work. All bright architectural metal shall be left in an undamaged, bright, clean, polished condition.

Pipe or duct spaces, chases, furred spaces, etc., shall be left thoroughly cleaned and free from mortar or plaster droppings or any other extraneous materials.

If, pursuant to the provisions of these Contract Documents which establish conditions governing occupancy of the buildings, the Owner, a tenant, licensee, or invitee is to take beneficial occupancy of specific areas or portions of the Improvements prior to the completion and acceptance of the entire Project, the Construction Manager shall remove or relocate, when appropriate, all surplus materials, equipment,

supplies, construction plant, equipment and facilities as required pursuant to the beneficial occupancy and utilization of such specific areas or portions of the Improvements and carry out final cleaning operations as herein specified in such specific areas or portions of the Improvements prior to occupancy thereof.

After the entire Project or any specific area or portion thereof has been inspected and accepted and the final cleaning thereof accepted as satisfactory and complete, the Construction Manager shall not be required to perform supplementary cleaning in such areas or portions of the Project after such approval, unless subsequent operations on the part of the Construction Manager, in the opinion of the Owner or the Architect, makes such supplementary cleaning of portions of the Project necessary. In that event, such supplementary cleaning operations shall be performed at no additional cost to the Owner.

7.7 Beneficial Occupancy. The Owner shall have the privilege of beneficial occupancy and the use and benefit of designated areas, subdivisions or portions of the Work prior to completion and acceptance of the entire Work, provided that, in the opinion of the Construction Manager, such occupancy shall not unduly interfere with the Construction Manager's operations nor unduly delay him in completing the entire Work. Such occupancy and use shall be further subject to the provisions set forth herein.

In the event that the Owner desires to exercise the privilege of beneficial occupancy, he shall give reasonable notice to the Architect and Construction Manager. In such event, the Construction Manager shall cooperate with the Owner in providing basic services and facilities reasonably required for the health, safety, and comfort of the occupants and other parties lawfully present and/or entering or leaving the premises. Mutually acceptable arrangements shall be made between the Owner and the Construction Manager with regard to procedures, terms, and conditions governing the operation and maintenance of such services and facilities as may be utilized for the benefit of the Owner. The Owner will assume responsibility for operation of systems, equipment and/or utilities required to provide such services, in total, including proportionate and reasonable expenses of operation incidental thereto, and mutually acceptable arrangements shall be made as to guarantees affecting designated portions or elements of the Work associated therewith.

The Owner's occupancy or use of such designated areas, subdivisions, or portions of the Work shall not constitute acceptance of systems, materials or elements of the Work which are not in accordance with the requirements of the Contract Documents; nor relieve the Construction Manager from his obligations to complete the Work; nor for responsibility for loss or damage due to or arising out of defects in, or malfunctioning of, systems, materials, equipment, or elements of the Work; nor from other unfulfilled obligations or responsibilities of the Construction Manager under the Agreement. If, however, damage results solely from any act of the Owner, the Owner will assume its proportionate responsibility for such damage.

ARTICLE VIII
Subcontractors

8.1 Definitions. A "subcontractor" is a person or organization who has a direct contract with the Construction Manager to perform any of the Work at the Site. The term subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a subcontractor or his authorized representative.

A "sub-subcontractor" is a person or organization who has a direct or indirect contract with a subcontractor to perform any of the Work at the Site. The term sub-subcontractor is referred to throughout

the Contract Documents as if singular in number and masculine in gender and means a sub-subcontractor or an authorized representative thereof.

8.2 No Relationship with Owner or Architect. Nothing contained in the Contract Documents shall create any contractual relation between the Owner or the Architect and any subcontractor or sub-subcontractor.

8.3 Award of Subcontractors and Other Contracts for Portions of the Work. The Construction Manager shall furnish to the Owner and the Architect the names of the subcontractors proposed for the principal portions of the Work. The Owner shall notify the Construction Manager if either the Owner or the Architect, after due investigation, has reasonable objection to any subcontractor on such list and does not accept said subcontractor.

By an appropriate written agreement, the Construction Manager shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to the Construction Manager by the terms of the Contract Documents, and to assume all the obligations and responsibilities which the Construction Manager, by the Contract Documents, has agreed to perform. Said agreement shall preserve and protect the rights of the Owner and the Architect under the Contract Documents with respect to the Work to be performed by the subcontractor. Where appropriate, the Construction Manager shall require each subcontractor to enter into similar agreements with his sub-subcontractors. Each subcontract shall contain provision for execution of lien waivers in form and substance acceptable to Owner as a condition of payment by the Construction Manager. Construction Manager shall require each subcontractor to (1) inspect the Project site before beginning Work and (2) accept or cite necessary corrections in the Project site, including surfaces or job conditions, before beginning Work. At the request of the Owner, the Construction Manager shall furnish to the Owner copies of all subcontracts and other agreements entered into by the Construction Manager in connection with the performance of the Work.

8.4 Information Submitted on Subcontractors. To facilitate and expedite the investigations of proposed subcontractors, sub-subcontractors, fabricators and suppliers of materials and equipment, the Construction Manager, at the request of the Architect or the Owner, shall submit a statement in writing in sufficient detail to establish that each has the capability, experience, reliability and uncommitted productive capacity to carry out the Work to be performed pursuant to each such proposed subcontract, sub-subcontract, or procurement contract in a manner consistent with the requirements of the Agreement.

8.5 Subcontractors Rejected. The Construction Manager shall not contract with any subcontractor or any person or organization (including those who are to furnish materials or equipment fabricated to a special design) proposed for portions of the Work who has been rejected by the Owner or the Architect. The Construction Manager will not be required to contract with any subcontractor or person or organization against whom it has a reasonable objection.

8.6 Substitutes. If the Owner or Architect refuses to accept any subcontractor or person or organization submitted by the Construction Manager in response to the requirements of the Contract Documents, the Construction Manager shall submit an acceptable substitute and the Guaranteed Maximum Price shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued. The Construction Manager shall not make any substitution for any subcontractor or person or organization who has been accepted by the Owner, unless the substitution is acceptable to the Owner.

8.7 Payments to Subcontractors. The Construction Manager shall pay subcontractors based only on Work actually completed and shall make all payments due under each subcontract at the time those payments become due, and shall hold the Owner harmless from any loss on account of Construction Manager's failure to do so. Neither the Owner nor the Architect shall have any obligation to pay or to see to the payment of any sums so due to any subcontractor.

ARTICLE IX
Separate Contracts

9.1 Owner's Right to Award Separate Contracts. The Owner reserves the right to award other contracts in connection with other portions of the Project. When separate contracts are awarded for different portions of the Project, the "contractor" in the contract documents in each shall be the contractor who signs each separate contract.

9.2 Mutual Responsibility of Contractors. The Construction Manager shall afford other contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their Work, and shall properly connect and coordinate the Construction Manager's Work with theirs. The Construction Manager shall permit separate contractors to examine copies of the Agreement Drawings, the Plans, the Specifications, the Shop Drawings, the Samples, coordination or "interference" drawings and/or clarification drawings, which relate to the Work of such separate contractors and shall examine any such documents presented by such separate contractors and cooperate with such separate contractors in coordinating appropriate construction means, methods, techniques, sequences, procedures and schedules related to such Work.

9.3 Other Contractors' Work. If any part of the Work depends for proper execution or results upon the Work of any other separate contractor, the Construction Manager shall inspect and promptly report to the Owner any apparent discrepancies or defects in such Work that render it unsuitable for such proper execution and results. Failure of the Construction Manager to so inspect and report shall constitute an acceptance of the other contractor's Work as fit and proper to receive Construction Manager's Work, except as to defects which may develop in the other separate contractor's Work after the execution of the Construction Manager's Work.

9.4 Damage to Other Contractors' Work. Should the Construction Manager cause damage to the Work or property of any separate contractor on the Project, the Construction Manager shall, upon due notice, settle with such other contractor by agreement or arbitration, if the other contractor will so settle. If such separate contractor sues the Owner or the Architect on account of any damage alleged to have been so sustained, the Owner or the Architect shall notify the Construction Manager who shall defend such proceedings at the Construction Manager's expense, and if any judgment or award against the Owner or the Architect arises therefrom the Construction Manager shall pay or satisfy it, together with all fees, costs, expenses, disbursements, or liabilities related thereto, and shall reimburse the Owner or the Architect for all attorneys' fees and court costs which the Owner or the Architect has incurred.

9.5 Cutting and Patching Under Separate Contracts. The Construction Manager shall be responsible for any cutting, fitting and patching that may be required to complete the Work except as otherwise specifically provided in the Contract Documents. The Construction Manager shall not endanger

any Work of any other contractors by cutting, excavating or otherwise altering any Work and shall not cut or alter the Work of any other contractor except with the written consent of the Architect and other contractor. Any costs caused by defective or ill-timed Work shall be borne by the party responsible therefor.

9.6 Owner's Right to Clean Up. If a dispute arises between the separate contractors as to their responsibility for cleaning up as required by these General Conditions, the Owner may clean up and charge the cost thereof to the several contractors as the Owner shall determine to be just.

ARTICLE X
Testing

10.1 Notices to the Owner and the Architect. If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to be inspected, tested or approved, the Construction Manager shall give the Owner timely notice of its readiness and of the date arranged so the Owner may observe such inspection, testing or approval.

10.2 Costs. Certain testing and inspection requirements are set forth in detailed form in the various subdivisions of the Contract Documents. The Construction Manager shall retain the services of testing laboratories or agencies to perform such tests and render such services as may be required to verify that the Work fulfills the requirements and intent of the Contract Documents. Such services shall be performed in a manner consistent with the requirements and intent of the Contract Documents and with the requirements of the various agencies having jurisdiction over the Work and in accordance with reasonable standards of architectural and engineering practice.

10.3 Changes to Scope of Tests. The Owner reserves the right to modify the scope of, or to reallocate, any of the testing and inspection services specified herein to be performed by a testing laboratory retained by the Owner in connection with the Work when it can be satisfactorily established that such adjustment in scope is consistent with the intent of the Contract Documents. In the event that the Construction Manager does not concur with such modification of scope or reallocation of such services, he shall immediately notify the Architect and the Owner in writing.

10.4 Procedure for Initiating Testing. If after the commencement of the Work the Architect determines that any Work requires special inspection, testing, or approval which Section 10.1 does not include, the Architect shall, upon written authorization from the Owner, order the performance of such services by qualified independent testing laboratories, agencies, or consultants as may reasonably be required, or, instruct the Construction Manager to order such special inspection, testing or approval, and the Construction Manager shall give notice as required in Section 10.1. If such special inspection or testing reveals a failure of the Work to comply (a) with the requirements of the Contract Documents, or (b) with respect to the performance of the Work, with Requirements, laws, ordinances, rules, regulations or orders of any Governmental Authority, the Construction Manager shall correct such Work.

If the Architect's observation of any inspection or testing undertaken pursuant to Section 10.1 hereof or this Section 10.4 reveals a failure in any one of a number of identical or similar items or elements incorporated in the Work to comply with (aa) the requirements of the Contract Documents, or (bb) with respect to the performance of the Work, with Requirements, laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, the Architect shall have the authority to order inspection and/or testing of all such items or elements of the Work, or of a representative number of such items or elements of

the Work, as Architect may reasonably consider necessary or advisable. However, neither the Architect's authority to act under Section 10.1 or this Section 10.4, nor any decision made by Architect in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Architect to the Construction Manager, any subcontractor, any of their agents or employees, or any other person performing any of the Work.

10.5 Certificates and Reports. Required certificates of inspection, testing or approval shall be secured by the Construction Manager and promptly delivered to the Architect. Copies of reports issued as a result of services performed pursuant to the provisions of this Article X shall be distributed to all parties to the Agreement.

10.6 Observations. If the Owner or the Architect wish to observe the inspections, tests or approvals required by Section 10.1 or Section 10.4, they shall do so promptly and, where practicable, at the source of supply. Neither such observations of the Architect in administering the Agreement, nor any other inspections, tests or approvals by persons other than the Construction Manager, shall relieve the Construction Manager of any obligations to perform the Work in accordance with the Contract Documents.

10.7 Test Specimens. In connection with testing and inspection services, the Construction Manager shall provide Samples of materials and/or elements of the Work required as test specimens and shall provide incidental labor and facilities at the Site reasonably required in support of such services.

ARTICLE XI
Delays

11.1 Except as provided in this Article XI the Construction Manager shall be fully responsible for the timely completion of the Work in accordance with the Construction Schedule. The Construction Manager shall meet all Milestone Dates in the Project Schedule and the Master Construction Schedule. The Construction Manager agrees to use its best efforts to avoid the occurrence of any cause for delay, to avoid any extension of performance dates, and to mitigate the effect of any delay that does occur.

11.1.1 The Construction Manager acknowledges that in preparing the Project Schedule and in agreeing to the times or dates of completion set forth the Contract Documents it will be required to make an appropriate allowance for all events that are on the Critical Path.

11.1.2 Without limiting the specific procedure applicable to Owner Delays and Force Majeure (as defined in Section 11.3 and Section 11.4 respectively), immediately following the commencement of any cause for delay, representatives of the Construction Manager shall contact the Owner and they shall confer for the purpose of determining the probable length of the delay and a course of action which would end or eliminate the occurrence or event that is causing delay.

11.1.3 The Guaranteed Maximum Price will be adjusted, and Contract Time will be extended only under the exact circumstances described in this Article XI and then if, and only, if the Construction Manager complies strictly (not substantially) with the requirements of this Article XI.

11.1.4 Except only as provided in Section 11.3, an extension of the Contract Time, to the extent permitted under this Article XI, and the Construction Manager's rights in connection with a suspension of the Work as provided in Article 9 of the Agreement, shall be the sole and exclusive

remedies (in lieu of all other remedies whatsoever) of the Construction Manager for any delay, interference, hindrance in the performance of the Work, loss of productivity, manpower inefficiencies, impact damages and similar claims and damages, whether or not contemplated by the parties. Except only as provided in Section 11.3, under no circumstances shall the Construction Manager be entitled to any compensation or recovery of any damages in connection with any delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration. Except as permitted under Section 11.3, the Construction Manager hereby expressly waives and covenants and agrees not to assert any claims against the Owner for any damages, costs, losses or expenses of any nature whatsoever which Construction Manager may incur as a result of any delays, interferences, suspensions, rescheduling, changes in sequences, congestion, disruptions, or the like arising from, out of or in connection with any act or omission of the Owner, its representatives or agents.

11.2 A delay is a "Critical Delay" if and only to the extent it adversely affects the Critical Path of the Work as established in the Project Schedule or subsequent Subcontractor schedules that fall within the Project Schedule. When two (2) or more delays occur concurrently, and each such concurrent delay by itself without consideration of the other delay(s) would be critical, then all such concurrent delays shall be considered Critical Delays. For the purpose of determining whether and to what extent the Contract Time should be adjusted, such concurrent Critical Delays shall be treated as a single delay which commences at the start of the delay that begins first and terminates at the cessation of the delay that ends last, subject to the notice requirements set forth in this Article XI.

11.3 "Owner Delay" means, and is limited to, a Critical Delay to the completion of the Work to the extent caused by one or more of the following: (i) Construction Change Directives (CCDs) (excluding minor changes in the Work and Architect's interpretations), (ii) the Owner's failure (or that of any other person for whom the Owner is responsible to the Construction Manager including, the Architect or a separate contractor hired by the Owner) to provide any data or information requested by the Construction Manager in writing that is reasonably necessary for Construction Manager to carry out its duties and is the Owner's obligation to provide (so long as the Owner and any other responsible person are given adequate time to respond); or (iii) interference by the Owner or persons for whom it is responsible to the Construction Manager, including, the Architect or a separate contractor hired by the Owner, with the Construction Manager's performance of the Work (which continues after written notice to the Owner of such interference). Notices in connection with Owner Delays shall be made by the Construction Manager to the Owner in accordance with Section 11.3.5.

11.3.1 The Owner's exercise of any of its rights under the Contract Documents or the Owner's good faith exercise of any of its remedies, including requirement of correction or re-execution of any Defective Work, regardless of the extent, number or frequency of the Owner's good faith exercise of such rights or remedies, shall not under any circumstances be construed as interference with the Construction Manager's performance of the Work or an event of default.

11.3.2 In the event of Owner Delay, and provided required notice has been given in accordance with Section 11.3.5, the Construction Manager shall be entitled to an equitable adjustment in the Guaranteed Maximum Price. This adjustment shall be based solely upon and limited to additional direct out-of-pocket expenses to the extent they are incurred directly as a result of the Owner Delay. Without limiting the generality of the foregoing, such out-of-pocket expenses shall be calculated on an actual out-of-pocket cost basis, and shall exclude home office expense and

other overhead, profit and the value of lost opportunities. The Construction Manager shall furnish such documentation as may be requested by the Owner, including, without limitation, cost records, to substantiate its claim and allow the Owner to evaluate it.

11.3.3 Following receipt of all requested information, the Owner shall decide whether to grant, grant in part or deny a request for an equitable adjustment to the Guaranteed Maximum Price. Any adjustment granted shall be memorialized in the form of a Change Order. Acceptance and execution of any such Change Order by the parties shall constitute an accord and satisfaction that forever bars any and all claims for an equitable adjustment to the Guaranteed Maximum Price arising out of or in connection with the Owner Delay. If the Construction Manager disagrees with the Owner's decision, it may pursue the remedies available to it under Article 10 of the Agreement.

11.3.4 Subject to, and in accordance with the provisions of, Section 11.5.2, the Construction Manager may also be entitled to an extension of Contract Time in the case of Owner Delay.

11.3.5 The Construction Manager shall give the Owner written notice of any alleged Owner Delay within ten (10) calendar days of the commencement of the alleged Owner Delay, describing in detail the acts or omissions creating the Owner Delay, and submit its Claim for an adjustment to the GMP, if any, subject to the limitations set forth in Section 11.3.2, and to what extent the Owner Delay has adversely affected the Critical Path of the Work.

11.3.6 Failure of the Construction Manager to timely assert any alleged Owner Delay or claim for an equitable adjustment to the GMP or the Contract Time strictly (not substantially) in accordance with the provisions of this Section 11.3 shall constitute a waiver of and shall forever bar that claim, even if the Owner was not prejudiced thereby.

11.3.7 The Construction Manager shall use its best efforts to avoid or reduce its damages caused by Owner Delay.

11.4 The term "Force Majeure" means, and is limited to, the following:

(a) strikes, lockouts, or picketing (legal or illegal) of an area-wide, trade-wide, or industry-wide nature that cause unusual delays to the Work onsite or to the delivery of materials or equipment to be incorporated into the Work. A strike, lockout or picket (legal or illegal) specific to the Project Site, or directed at the Construction Manager shall not be considered an area-wide, trade-wide or industry-wide strike, and does not constitute Force Majeure;

(b) governmental stop-work orders or other governmental action resulting from emergency circumstances, and condemnation;

(c) riot, civil commotion, insurrection, and war;

(d) fire or other casualty not the fault of the Construction Manager, accident, acts of the public enemy;

(e) unavailability of fuel, power, supplies or materials that is not the fault of the Construction Manager; or

(f) the passage or unexpected interpretation or application of any statute, law, regulation or moratorium of any governmental authority that has the effect of delaying the Work, excluding any

green building statute, law, or regulation as to which any public or advance notice was available prior to its adoption or issuance.

11.4.1 If the Construction Manager is delayed by Force Majeure and the delay is a Critical Delay, then the Project Schedule and the Contract Time may be adjusted for each day of such demonstrated delay.

11.4.2 If the Construction Manager is delayed by a Force Majeure Event, it shall immediately notify the Owner by telephone and promptly (and not more than 24 hours following the commencement of the occurrence of a Force Majeure delay), also notify the Owner in writing as set forth below, setting forth the cause of the delay, a description of the portions of the Work affected, and additional relevant details, such as the anticipated duration of the delay. Failure to submit the notice of Force Majeure delay required herein shall constitute a waiver of claim by the Construction Manager.

11.4.3 All claims for extension of time on account of Force Majeure shall be made in writing to the Owner not more than seven (7) calendar days after the commencement of the delay; otherwise it shall be waived.

11.5 A “Weather Delay” is a Critical Delay caused by lightning, earthquake, tornado, natural disaster, or unusually severe weather conditions not reasonably expected for the location of the Work and the time of the year in question as documented in accordance with Section 3.2.23 of the Agreement and this Section 11.5. Temporary delays or Work stoppages due to normal seasonal rain, snow, or other inclement weather shall not be considered valid basis for an extension of time. In order for the Owner to consider an extension of time for a Weather Delay, the following conditions must be satisfied:

- (a) The weather experienced at the Project Site during the Contract Time must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the Project location during any given month. The unusually severe weather must actually cause a delay to the completion of the Work. The delay must be unforeseeable, beyond the control and without the fault or negligence of the Construction Manager or Subcontractors.
- (b) The following schedule of monthly anticipated adverse weather delays is based on local climate data available from the National Oceanic and Atmospheric Administration (NOAA) or similar data for the Project location for the same intervals as the Contract Time during the preceding ten (10) year climatic range average and constitutes the base line for monthly weather time evaluations. The Project Schedule must reflect those anticipated adverse weather delays on all weather-dependent activities.

Month	Anticipated Adverse Weather Delays Based on 5 Day Work Week
January	3
February	4

March	6
April	7
May	11
June	10
July	7
August	7
September	8
October	6
November	5
December	4

(c) Actual adverse weather day delays must prevent Work on Critical Path activities for fifty percent or more of the scheduled work day.

11.5.1 The Construction Manager may only be entitled to extension of the Contract Time for the number of actual Weather Delays that exceed the agreed upon Anticipated Adverse Weather Delays attributable to a given month as set forth above. For the purpose of determining the extent of a delay attributable to unusual weather, a determination shall be made by comparing the number of Anticipated Adverse Weather Delays for a given month and the daily weather logs previously recorded and maintained at the Project site by the Construction Manager, reflecting the effect of the weather on progress of the Work, and which have been submitted to the Owner and Architect pursuant to Section 3.2.2 of the Agreement. Time extensions for Weather Delays do not entitle the Construction Manager to additional General Conditions and are in all other ways non-compensable. Notwithstanding the immediately preceding paragraph, not all Weather Delays above the anticipated Adverse Weather Delays will warrant a Contract Time extension. Justification for the request for weather related Contract Time extensions must also be based on the effect of the weather on critical path work activity in progress during the period of the request and additionally be predicated on the Construction Manager's diligent prosecution of the Work.

11.5.2 A request for an extension of time due to Weather Delays must include a copy of the previously recorded daily logs maintained at the jobsite by the Construction Manager showing the effect of the weather on the progress of the critical path work and the critical path schedule. Requests for time extensions based on Weather Delays must be received by the Owner and the Architect on or before the 5th day of the month immediately following the month in which the Weather Delay occurred. The request must include all required documentation.

11.5.3 If the request is approved, Owner will make an equitable adjustment and extend the number of days lost because of excusable Weather Delays, as measured by the Project Schedule. All extensions of time will be granted in calendar days.

11.5.4 The Construction Manager agrees it will have no right to claim a contract time extension if the request is not received by the Owner and Architect in strict accordance with the procedures set forth in this Section 11.5

11.6 If the Construction Manager intends to request an extension of time on account of an Owner Delay, it shall give notice pursuant to Section 11.3.5, or if on account of Force Majeure, it shall give notice pursuant to Sections 11.4.2 and 11.4.3, or if on account of a Weather Delay, it shall follow the procedures of

Section 11.5, and in all instances shall provide all required information and documentation. The Construction Manager shall furnish such other documentation as may be requested by the Owner, including, without limitation, Project Schedule analysis, to substantiate its claim and allow the Owner to evaluate it. Following receipt of all requested information, the Owner shall decide whether to grant, grant in part or deny the request. Any extension of time or adjustment granted shall be memorialized in the form of a Change Order. Acceptance and execution of any such Change Order by the parties shall constitute an accord and satisfaction that forever bars any and all claims arising out of or in connection with the Construction Manager's request for schedule relief. If the Construction Manager disagrees with the Owner's decision, it may pursue the remedies available to it under Article 10 of the Agreement.

11.6.1 When permitted under this Article XI, schedule relief shall be granted as necessary to compensate for the delay (but the total extension of all Critical Path Work may not exceed the period of time required by the Construction Manager, using its best efforts, to mitigate the effect of the delay).

11.6.2 Adjustments in the Contract Time will be permitted for any Owner Delay, Force Majeure or Weather Delay only to the extent such delay (i) is not caused or contributed to, and could not have been anticipated, by the Construction Manager using the degree of diligence required by the Contract Documents, (ii) could not have been prevented by the exercise of reasonable care, reasonable precautions, or reasonably circumvented by the Construction Manager through the use of alternate sources, workaround plans or other means, including disaster recovery plans; (iii) was a Critical Delay; (iv) was not concurrent with any other contemporaneous delays attributable to or controlled by the Construction Manager; (v) could not be limited or avoided by the Construction Manager's timely notice to the Owner of the delay, (vi) for which an equitable adjustment is provided or excluded under any other provision of the Contract Documents, or (vii) is of a duration of not less than one (1) day.

11.6.3 In no event, however, will an extension of time be granted for delays that merely extend the duration of non-critical activities, or which only consume float without delaying the project Substantial Completion date(s).

11.6.4 Failure of the Construction Manager to timely assert any alleged delay or claim for schedule relief strictly (not substantially) in accordance with the provisions of this Article XI shall constitute a waiver of and shall forever bar that claim, even if the Owner was not prejudiced thereby.

11.7 If the Construction Manager, but for a delay not within its control, would have completed the Work prior to the expiration of the Contract Time, the Construction Manager shall not be entitled to recovery of damages arising out of any event or delay whatsoever which prevented such early completion of the Work.

11.8 The Construction Manager acknowledges that there may be items of the Work which the Construction Manager is responsible to provide under the Agreement which are not drawn or specified in the Design but which are necessary for the proper execution and completion of the Work and are consistent with and reasonably inferable from the Drawings and Specifications. All such items shall be provided as part of the Work without delay in its progress and without any increase in the Guaranteed Maximum Price.

11.9 Nothing contained in this Article XI shall preclude the Owner from recovering liquidated damages pursuant to Section 4.7 of the Agreement for failure to achieve Substantial Completion within the

Contract Time, or from recovering other actual damages the Owner incurs as a result of delays for which the Construction Manager is responsible, to the extent such damages are not inconsistent with or duplicative of the remedies provided in Section 4.7. Without limitation, the Owner retains the right to recover its costs and damages arising from acceleration or Extraordinary Measures directed under Section 4.6, extended professional or consulting services, or other consequences of Construction Manager-caused delay.

ARTICLE XII
Payments and Completion

Payments under this Article XII are subject to and shall be construed in accordance with the Fair Pay for Construction Act, 61 O.S. § 221, *et seq.* To the extent of any conflict between this Article XII and the Fair Pay for Construction Act, the Fair Pay for Construction Act shall control.

12.1 Guaranteed Maximum Price. As provided in the Agreement, the Guaranteed Maximum Price is the total amount payable by the Owner to the Construction Manager for the performance of all of Construction Manager’s obligations under the Contract Documents, payable in accordance with the terms of the Agreement.

12.2 Cost of the Work; Included and Excluded Costs. The categories of Cost of the Work, General Conditions Costs, and Excluded Costs set forth in Article 5 of the Agreement are intended to be consistent with, and are supplemented by, the more detailed provisions of Article XII of the General Conditions. In the event of any overlap, inconsistency, or ambiguity between Article 5 of the Agreement and Article XII of the General Conditions, the provisions of Article XII shall control, and no cost or expense shall be reimbursable unless expressly permitted under both.

As stated in the Agreement, the term “Cost of the Work” shall mean those costs necessarily and actually incurred by Construction Manager in the proper performance of the Work as expressly set forth in sub-section 12.2.1 below, but excluding all costs specified in sub-section 12.2.2 below, and further excluding all costs otherwise excluded by the Contract Documents or expressly required by the Contract Documents to be provided by Construction Manager as no additional cost to Owner. Notwithstanding anything to the contrary in the Contract Documents, Construction Manager shall provide the costs described below at rates that are not higher than those customarily paid at the place of the Project except with the specific and express prior written consent of Owner and any costs exceeding such rates shall not be part of the Cost of the Work.

12.2.1 Included Costs / Costs to be Reimbursed.

1. Labor Costs.

(a) Wages of construction workers directly employed by Construction Manager to perform the construction of the Work at the Site or, with Owner’s prior written agreement, at off-site workshops.

(b) Wages or salaries of Construction Manager’s supervisory and administrative personnel when stationed at the Site. In addition to the foregoing, and with Owner’s prior written approval, the wages or salaries of specifically identified employees of Construction Manager not stationed at the Site, but only for that portion of their time spent in performing their duties directly associated with the Project.

(c) Wages and salaries of contractor's supervisory or administrative personnel engaged, at factories, 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, and provided the number of such personnel and the employees shall not be more than the number required to perform the Work in a good, workmanlike and timely manner.

(d) Costs paid or incurred by Construction Manager for payroll taxes, worker's compensation insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, the following additional benefits: sick leave, medical and health benefits, holidays, vacations, pensions, and qualified profit sharing plans, provided that such costs are based on wages and salaries included in the Cost of the Work under the preceding sub-sections 12.2.1.1(a) through 1(c); *provided, however*, that the cost of bonuses, if any, paid by Construction Manager shall be excluded.

(e) If specifically agreed to by Owner in writing at the time of the execution of the Agreement, the parties may agree that, in lieu of one or more of the accounting methods provided for in the preceding sub-sections 12.2.1.1(a) through 1(d), that the time spent on the Project for particular, named personnel shall be reimbursed at a stated rate (which includes the wages or salaries of such personnel and all of the costs specified in the preceding sub-section 12.2.1.1(d)). When a stated rate is used, Construction Manager represents and warrants to Owner that the amounts stipulated rate does not exceed the actual costs calculated in accordance with the preceding sub-sections 12.2.1.1(a) through 1(d) and do not contain any additional mark up or profit.

2. Costs of Materials and Equipment Incorporated in the Completed Construction.

(a) Costs, including transportation, of materials and equipment actually incorporated or to be incorporated into the completed Work.

(b) Costs of materials described in the preceding sub-section 12.2.1.1(a) in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage.

(c) Unused excess materials, if any, shall be handed over to Owner at the completion of the Work or, at Owner's option, shall be sold by Construction Manager; amounts realized, if any, from such sales shall be credited to Owner as a deduction from the Cost of the Work.

3. Costs of Other Materials and Equipment, Temporary Facilities and Related Items.

(a) Costs, including 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 contractor 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 Construction Manager; provided, however, that Owner may, at Owner's sole discretion, forego the credit of salvage value and retain Ownership of such unconsumed materials. Cost for items previously used by Construction Manager shall mean fair market value.

(b) Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by contractor at the Site, whether rented from contractor or others, and costs of transportation, installation, minor repairs and

replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to Owner's prior written approval but in no event shall the rental rates for machinery and equipment furnished by Construction Manager from its own stock exceed seventy-five percent (75%) of the published rental rates based on the local prevailing rental rates, and in no event shall the total rental on any piece of machinery or equipment furnished by contractor from its own stock exceed eighty percent (80%) of its fair market value at the time it was first utilized on the Project. If the total rental cost of any item is anticipated at the time of contracting to exceed fifty percent (50%) of the fair market value of such item, Construction Manager shall present to Owner an analysis of and opportunity to purchase rather than rent the item; if Owner, in its sole discretion, chooses to purchase the item, such cost shall be part of the Cost of the Work and title to such property shall vest in Owner upon completion of the Work. Unless otherwise designated by Owner in writing, the fair market value of any item shall be established by the lowest blue book price most recently published for such item. The fair market value of any item not listed in a blue book shall be established by any method reasonably established by Owner in consultation with Architect. Rental charges for vehicles are not covered by this sub-section, but rather are covered by sub-section (c) below.

(c) Rental charges for vehicles used in the performance of the Work. Rates and quantities of vehicles rented shall be subject to Owner's prior written approval but in no event shall the rental rates for vehicles furnished by Construction Manager exceed the lesser of the actual rental cost of such vehicles or the lowest available rate prevailing in the place of the project for a one-half ton, two-wheel drive pickup truck. If the rental cost of any vehicle is anticipated at the time of contracting to exceed fifty percent (50%) of the fair market value of such vehicle, Construction Manager shall present to Owner an analysis of and opportunity to purchase rather than rent the vehicle; if Owner, in its sole discretion, chooses to purchase the vehicle, such cost shall be part of the Cost of the Work and title to such vehicle shall vest in Owner upon completion of the Work. Unless otherwise designated by Owner in writing, the fair market value of any vehicle shall be established by the lowest blue book price most recently published for such vehicle.

4. Subcontract Costs. Payments made by Construction Manager to Subcontractors for Trade Work performed in strict accordance with the requirements of the Agreement. Only those costs expressly provided as reimbursable under the Agreement will be due and payable to contractor by Owner on account of Work performed by a Subcontractor.

5. Miscellaneous Costs.

(a) Costs incurred due to an emergency affecting the safety of persons and property, provided said emergency is not a result of the negligence, reckless, or willful misconduct of Construction Manager or any subcontractor.

(b) Cost of complying with the requirements imposed by any governmental authority having proper jurisdiction (including costs of complying with the Federal Occupational Safety and Health Act) with respect to the Work and for which the Construction Manager is liable.

(c) Cost of obtaining and using all utility services required for the Work. After any occupancy of any dwelling unit, arrangements will be made for any occupant to pay the cost of any utilities consumed by it between the date of occupancy and Date of Substantial Completion. After the Date of Substantial Completion, the cost of utilities not required for the further prosecution of the Work shall be paid by the Owner and shall not be included as part of the Construction Manager's

Cost. If utility services are needed for the prosecution of the Work after the Date of Substantial Completion, however, the total cost of utility services shall be prorated between the Owner and the Construction Manager, and with the Construction Manager paying an amount each month equal to the average monthly cost of utility services during the three (3) month period prior to the Date of Substantial Completion.

(d) Cost of crossing, protecting or altering any public utility, if required and as approved by the Owner.

(e) The costs of obtaining any necessary permits or licenses to perform the Construction Manager's obligations under the Contract Documents or the Work.

(f) Insurance and Bond Premiums.

(i) That portion directly attributable to this Agreement of premiums for the insurance and the bonds that are expressly required by the Contract Documents; *provided, however*, that such costs shall not be used in the calculation of the Construction Fee. Premiums for insurance and bonds shall be the actual net cost of premiums after taking into consideration cost adjustments including, for example, experience modifiers, premium discounts, policy dividends, rebates, and refunds, retrospective rating plan premium adjustments, and assigned risk pool rebates.

(ii) Any and all costs of subcontractor bonds and Subcontractor default insurance shall not be a Cost of the Work, unless expressly authorized by Owner in writing. Inclusion of such costs in the Schedule of Values shall not be considered authorization by Owner; such authorization shall require a separate express authorization.

(g) The cost of actual fees charged directly by a laboratory for any tests required by the Contract Documents.

12.2.2 Excluded Costs. The Cost of the Work shall not include the following items:

- (a) The wages or salary of any officer of the Construction Manager.
- (b) Salary or wages of any person employed in the main office, or in any regularly established branch office, of the Construction Manager.
- (c) Expenses of the Construction Manager's principal and branch offices (other than the field office for the Work located on the Land), and overhead and general expenses of any kind.
- (d) Amounts spent by the Construction Manager to correct defects in the Work.
- (e) Costs incurred by Construction Manager in performing any of the Work contrary to any laws, ordinances, rules, regulations, or restrictions enacted by any governmental authority having property jurisdiction.
- (f) Any and all costs that are:

- (1) Not specifically and expressly described and included in Section 12.2.1 (Included Costs/Costs to be Reimbursed), whether or not included on the Schedule of Values or any other Contract Document;
- (2) Expressly excluded from the Cost of the Work by Section 12.2.2 (whether or not included in Section 12.2.2) or any other provision of the Contract Documents; and/or
- (3) Expressly stated to be at the cost or expense of Construction Manager (or by other words of similar meaning).

12.3 Progress Payments. At the times specified in the Agreement, the Construction Manager shall submit to the Owner and Architect an itemized Request for Payment, supported by such data substantiating the Construction Manager’s right to payment, such as receipts, releases, and waivers of liens arising out of the Agreement, to the extent and in such form as may be designated by the Owner, which shall include provisions saving the Owner harmless from any claim, demand, lien, or right of lien which may be asserted against the Owner, as the Owner or the Architect may require.

Based upon such Requests for Payment submitted to the Owner and the Architect by the Construction Manager and Certificates for Payment issued by the Architect as herein provided, the Owner shall make progress payments to the Construction Manager on the basis set forth in the Agreement.

12.4 Payment for Materials Stored at Site or Elsewhere. If payments are to be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the Site, or at some other location agreed upon in writing, such payments shall be conditioned upon submission by the Construction Manager of bills of sale or such other procedures satisfactory to the Owner to establish the Owner’s title to such materials or equipment or otherwise protect the Owner’s interest including applicable insurance and transportation to the Site.

12.5 No Lien on Materials. The Construction Manager warrants and guarantees that title to all Work, materials and equipment covered by a Request for Payment, whether incorporated in the Project or not, will pass to the Owner upon the receipt of such payment by the Construction Manager, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article XII as “liens”; and that no Work, materials or equipment covered by a Request for Payment will have been acquired by the Construction Manager (or by any other person performing the Work at the Site or furnishing materials and equipment for the Project) subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Construction Manager or such other Person.

12.6 Construction Manager's Records. The Construction Manager shall keep accurate records of all persons employed by the Construction Manager, Materials purchased, and Work subcontracted to other parties, which records shall be open to inspection by the Owner, at reasonable times during ordinary business hours and may be copied by the Owner. Accounting records pertaining to the Project shall be prepared and maintained on a generally accepted accounting basis or such accounting methods approved by the Owner.

12.7 Certificates of Payment. If the Construction Manager has made Request for Payment, the Architect will, with reasonable promptness but not more than seven (7) days after the receipt of the Request, issue a Certificate for Payment to the Owner, with a copy to the Construction Manager, for such amount as

the Architect believes to be properly due, or state in writing the reasons for withholding a Certificate for Payment as provided in Section 12.8.

The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on observations at the Site and the data comprising the Request for Payment, that the Work has progressed to the point indicated; that in the opinion of the Architect, the quality of the Work is in accordance with the Contract Documents; and that the Construction Manager should be entitled to the amount certified. In addition, the Architect's final Certificate for Payment will constitute a further representation that the conditions precedent to the Construction Manager's being entitled to final payment as set forth in Section 12.10 have been fulfilled.

After the Architect has issued a Certificate for Payment, the Owner shall make a payment in the amount and manner provided in the Agreement. No certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

Nothing in this Section shall extend or alter the Owner's statutory obligation under 61 O.S. § 223(A) to pay any undisputed portion of a proper invoice within thirty (30) calendar days of receipt, subject always to the Owner's rights to withhold or reduce payment in accordance with 61 O.S. § 223(B). The Architect's certification is an administrative condition under the Agreement and shall not be construed to defeat, delay, or extend statutory payment deadlines applicable to undisputed amounts.

12.8 Payments Withheld. The Architect may decline to approve all or any portion of a Request for Payment and may withhold his Certificate in whole or in part, to the extent necessary to protect the Owner, if in the Architect's opinion he is unable to make representations to the Owner as provided in Section 12.7. The Architect may also decline to approve all or any portion of any Request for Payment to such extent as may be necessary in his opinion to protect the Owner from loss because of:

- (a) any defective Work not remedied by the Construction Manager;
- (b) third party claims filed or reasonable evidence indicating probable filing of such claims;
- (c) reasonable indication that the Construction Manager or any subcontractor, employee or agent of the Construction Manager has filed a lien on the Property;
- (d) failure of the Construction Manager to make payments properly to subcontractors or for labor, materials, and equipment;
- (e) reasonable indication that the Work will not be completed within the Contract Time or unsatisfactory prosecution of the Work by the Construction Manager;
- (f) any breach of the Agreement by Construction Manager or subcontractor or failure of Construction Manager or any subcontractor to comply with the terms and conditions of the Agreement, including, without limitation, the failure to maintain all required policies of insurance.

When the above grounds for withholding payment are removed, payment shall be made for amounts withheld because of them.

Notwithstanding anything herein to the contrary, any withholding or reduction of a Request for Payment shall comply with the Fair Pay for Construction Act, 61 O.S. § 223, including but not limited to: (i) providing written notice of the reasons for withholding or reduction within fourteen (14) calendar days of receipt of the proper invoice; (ii) limiting the withholding or reduction to no more than the amount reasonably necessary to correct the identified deficiency; and (iii) requiring that any such reduction be detailed in writing and forwarded to affected subcontractors, sub-subcontractors, or suppliers within seven (7) calendar days as applicable. Failure to comply with these requirements shall render such withholding ineffective.

12.9 Substantial Work Completion. The Project will be deemed to have been substantially completed (such date of substantial completion being called the "Date of Substantial Completion") on the date on which the Architect has certified to the Owner, and the Owner shall have approved, that: (a) all of the Work is essentially completed, except for minor adjustments or minor deficiencies which have no material effect upon the utilization, function or intrinsic value of the Improvements to the point that the Owner is able to furnish all utilities, heating and air conditioning, electric lighting and other services normally furnished in similar facilities; and (b) an occupancy permit has been issued for the Improvements by the appropriate Governmental Authorities. Accordingly, when the Construction Manager determines that the Work or a designated portion thereof acceptable to the Owner is substantially complete, the Construction Manager shall prepare for submission to the Architect a list of items to be completed or corrected. The list prepared by the Construction Manager shall constitute a complete, comprehensive, itemized, and detailed list of defects and deficiencies, which when remedied will complete all requirements under the Contract Documents and the submittal shall be accompanied by a statement to that effect, executed by the Construction Manager. The Construction Manager's submittal shall also set forth a detailed time schedule for the corrections of such defects and deficiencies. The failure to include any items on such list does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents. When the Architect, on the basis of an inspection, determines that the Work is substantially complete, the Architect will then prepare a Certificate of Substantial Completion which, on acceptance and approval by the Owner, shall establish the Date of Substantial Completion, shall state the responsibilities of the Owner and the Construction Manager for maintenance, heat and utilities, and shall fix the time within which the Construction Manager shall complete the items listed therein. The Certificate of Substantial Completion shall be submitted to the Owner and the Construction Manager for their written acceptance of the responsibilities assigned to them in such Certificate.

12.10 Final Completion. Upon receipt of the Construction Manager's written notice that the Work is ready for final inspection and acceptance and upon Owner's receipt of a final Request for Payment, the Architect shall promptly perform such inspection. If the Architect and Owner find the Work acceptable under the Contract Documents and the Agreement fully performed, the Architect shall prepare a final Certificate for Payment for Owner's approval. Final Payment shall be due in accordance with this Section and 61 O.S. § 223(A), subject to the Owner's rights to withhold or reduce payment under 61 O.S. § 223(B). The acceptance of Final Payment shall constitute a waiver of all claims by the Construction Manager except those previously made in writing and properly submitted to the Owner before the final Request for Payment.

12.11 Failure of Payment. If the Owner fails to pay the Construction Manager any undisputed portion of a proper invoice (as defined in 61 O.S. §222), and such nonpayment continues for forty-nine (49) calendar days after the Owner's receipt of the proper invoice, then, subject to the written notice requirements of 61 O.S. § 225(A), the Construction Manager may suspend performance of the Work or terminate this Agreement. Any such suspension or termination shall not be deemed a breach of the Agreement.

For purposes of this Section:

(a) An invoice is not “proper” unless it complies with the requirements of this Agreement and the Fair Pay for Construction Act, 61 O.S. §221, *et seq.*, including submission of all required supporting documentation, lien waivers, updated schedules, and certifications.

(b) Amounts the Owner reasonably and in good faith disputes, or properly withholds or reduces in compliance with 61 O.S. § 223(B), shall not be considered “undisputed” and shall not trigger any rights of suspension or termination by the Construction Manager.

(c) If the Construction Manager suspends performance under this Section, its remedies shall be limited to those expressly provided in 61 O.S. §225.

12.12 Effect of Warranty. Regardless of approval and issuance of Final Payment, the Agreement is not deemed fully performed by Construction Manager and closed until the expiration of all warranty periods provided in the Contract Documents.

ARTICLE XIII
Protection of Persons and Property

13.1 Safety Precautions and Programs. The Construction Manager shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

13.2 Safety of Persons and Property. The Construction Manager shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- (a) all employees on the Work and all other persons who may be affected thereby;
- (b) all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody or control of the Construction Manager or any of his subcontractors or sub-subcontractors; and
- (c) other property at the Site or adjacent thereto, including walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

13.3 Compliance with Laws. The Construction Manager shall comply with all Requirements and applicable laws, ordinances, rules, regulations and lawful orders of any governmental authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. The Construction Manager shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Owners and users of adjacent utilities.

13.4 Hazardous Materials. When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Construction Manager shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

13.5 Protection of the Work. The Construction Manager shall protect the Materials and the Work from deterioration and damage during construction and shall store and secure flammable materials from fire, remove oily rags, waste and refuse from buildings as may be necessary. In the event Owner or Architect shall request the Construction Manager to remove such refuse, and the Construction Manager fails to do so within three (3) days after such request, the Owner may do so at the cost and expense of the Construction Manager. The Construction Manager shall maintain all temporary walkways, roadways, trench covers, barricades, colored lights, danger signals and other devices necessary to provide safety in traffic necessary in the prosecution of the Work. In order to provide safety controls to protect the life and health of employees of the Construction Manager, its subcontractors and the Owner, and other persons who may enter the premises upon which the Project is located to prevent damage to property, Materials, supplies and equipment and to avoid interruption in the performance of the Agreement, the Construction Manager will take or cause to be taken such additional measures as may be necessary for that purpose.

The Construction Manager shall continuously maintain adequate protection of all Work from damage and shall protect the Owner's property from injury or loss, including but not limited to the protection thereof from damage by the elements, theft, or vandalism. The Construction Manager shall make good any such damage, injury or loss at no cost to the Owner, except to the extent directly caused by agents or employees of the Owner. The Construction Manager shall adequately protect the Work and adjacent property as required by law, the Contract Documents, or as otherwise required, to cause no damage to the Work and adjacent property during the execution of the Work. This requirement shall also apply to structures above and below ground as conditions of the site require.

The Construction Manager shall provide protection to prevent damage or loss to: (a) the Work and materials and equipment to be incorporated therein, whether in storage on or off the Project Site, under care, custody or control of the Construction Manager; (b) other property at the Project Site such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and (c) any property adjacent to the Project Site and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Construction Manager.

13.6 Superintendent for Safety. The Construction Manager shall designate a responsible member of its organization at the Site whose duty shall be the prevention of accidents.

13.7 Loads. The Construction Manager shall not load or permit any part of the Work to be loaded so as to endanger its safety. The Improvements are, or must be, designed to support the loads of the finished Building and equipment. No provision is included for stresses or loads imposed by construction operations. If the Construction Manager desires to place such loads in excess of the design load (shown on the Plans and Specifications), he shall submit plans and calculations prepared by, and bearing the seal of a professional engineer of the proposed method for supporting such loads for the Architect's review and approval. No loading of any kind in excess of design loads shall be placed on any part of the building structures prior to Owner's approval of submitted plans and calculations. The costs of the Architect's review shall be borne by the Construction Manager.

13.8 Reports on Accidents. The Construction Manager shall prepare a written report setting forth the circumstances and details related to any accident or occurrences involving death, bodily injury, sickness, disease, personal injury, and/or loss or injury to or destruction of tangible property. Such reports shall be forwarded promptly to the insurance carriers, the Architect, and the Owner.

13.9 Emergencies. In any emergency affecting the safety of persons or property, the Construction Manager shall act, at its discretion, to prevent threatened damage, injury or loss, and shall as promptly as conditions permit notify the insurance carriers, Owner, and the Architect of the nature of the emergency and circumstances related thereto. Immediately thereafter, the Construction Manager shall prepare a written report setting forth in detail the action taken and describing in detail all circumstances and conditions which are related to such action. Any additional compensation or extension of time claimed by the Construction Manager on account of emergency Work shall be determined as provided herein for changes in the Work.

ARTICLE XIV
Changes in the Work and Change Orders

14.1 The Owner may, from time to time, by written Construction Change Directive with instructions or drawings, order changes in the Work within the general scope of the Contract Documents consisting of additions, deletions or other revisions to the Work. The Construction Manager shall give written notice of any claim for increase in the GMP or extension of the time for completion of the Work on account of any change as provided in Article 9 of the Agreement.

14.2.1 In the event of a change in the Work resulting in an increase or decrease in the Cost of the Work, the GMP shall be adjusted on account of demonstrable Trade Work Costs directly attributable to the change in the Work, determined in accordance with Section 14.2.3, plus an adjustment of the GMP as provided in Section 14.2.2 for General Conditions Work Costs. In addition, the Construction Fee shall be adjusted by negotiated fixed amount not to exceed _____ percent (____%) of the adjustment in the Cost of the Work (sum of the adjustment of Trade Work Costs and the adjustment of the General Conditions Work Costs) and the GMP shall be adjusted to cover any increase in the Construction Fee.

14.2.2 Demonstrable increased General Conditions Work Costs attributable to a change. Such adjustment shall cover all General Conditions Work Costs associated with or resulting from the change (including, without limitation, any increased insurance premiums).

14.2.3 The Owner shall have the right to select the method of pricing to be used by a Subcontractor in pricing any change. Owner's decision shall control unless clearly impracticable for the nature of the change. The options will be (a) lump sum, (b) unit price and (c) cost plus, as defined by the following provisions:

14.2.3.1 Lump Sum. The Subcontractor will submit a properly itemized lump sum change order proposal covering the additional work and/or the work to be deleted. This proposal will be itemized for the various components of work and segregated by labor, material and equipment in a detailed format satisfactory to the Owner. Itemized calculations will be required on all change order proposals from the Subcontractors and sub-subcontractors regardless of tier. Details to be submitted will include detailed line item estimates showing detailed materials quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line item by drawing as applicable).

Labor. Estimated labor costs to be included for self-performed work shall be based on the actual cost per hour paid by the Subcontractor for those workers or crews of workers that the Subcontractor reasonably anticipates will perform the change order work. Estimated labor hours shall include hours only for those

workers and working foremen directly involved in performing the change order work. Supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is considered to be included in the markup percentages as outlined herein.

Labor Burden. Labor burden allowable in change orders shall be defined as employer's net actual cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for employer's cost of union benefits (or other usual and customary fringe benefits if the employees are not union employees), and net actual cost to employers for workers' compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, etc. Subcontractors shall reduce their standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to Federal and State payroll taxes.

Material. Estimated material change order costs shall reflect the Subcontractor's reasonably anticipated net actual cost for the purchase of the material needed for the change order work. Estimated material costs shall reflect cost reductions available to the Subcontractor due to trade discounts, free material credits, and/or volume rebates. Cash discounts available on material purchased for change order work shall be credited to the Owner if the Subcontractor is provided Owner funds in time for the Subcontractor to take advantage of any such cash discounts. Price quotations from material suppliers must be itemized by each specific item to be purchased. "Lot pricing" quotations will not be considered sufficient substantiating detail.

Equipment. Allowable change order estimated costs may include appropriate amounts for rental of major equipment specifically needed to perform the change order work (defined as tools and equipment with an individual purchase cost of more than \$750). For owned equipment, the "bare" equipment rental rates allowed to be used for pricing change order proposals shall be seventy-five percent (75%) of the monthly rate listed in the most current publication of The AED Green Book applicable to the work site divided by 173 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the change order work. Further, for owned equipment, the aggregate equipment rent charges for any single piece of equipment used in any change order work shall be limited to fifty percent (50%) of the fair market value of the piece of equipment when the first change order is priced involving usage of the piece of equipment. Fuel necessary to operate the equipment will be considered as a separate direct cost associated with the change order work.

14.2.3.2 Maximum Markup Percentage Allowable on Self-Performed Work. With respect to pricing change orders and unless noted otherwise in the Subcontract, the maximum markup percentage fee to be paid to any Subcontractor (regardless of tier) on self-performed work shall be a single markup percentage not-to-exceed ten percent (10%), which includes overhead costs and profit of the net direct cost of (a) direct labor and allowable labor burden costs applicable to the change order or extra work; (b) the net cost of material and installed equipment incorporated into the change or extra work, and (c) net rental cost of major equipment and related fuel costs necessary to complete the change in the Work.

14.2.3.3 Maximum Markup Percentages Allowable on Work Performed by Lower Tier Subcontractors. With respect to pricing the portion of change order proposals involving work performed by lower tier Subcontractors, and unless noted otherwise in the Subcontract, the maximum markup percentage fee allowable to the Subcontractor shall not exceed five percent (5%).

14.2.3.4 Sales and use tax (if applicable) shall not be subject to any markup percentage fee. Any sales or use tax properly payable by the Contractors shall be added, after computing the change order amount before tax.

14.2.3.5 As a further clarification, the agreed upon markup percentage fee is intended to cover the Subcontractor's profit and all indirect costs associated with the change order work. Items intended to be covered by the markup percentage fee include, but are not limited to: home office expenses, branch office, warehouse costs and field office overhead expense of any kind; estimating; engineering; coordination; expediting; purchasing; detailing; legal, accounting, data processing or other administrative expenses; shop drawings; material handling costs; safety costs; and costs of small tools (defined as tools and equipment, power or non-power, with an individual value of \$750 or less).

Superintendents, general foremen, and project management personnel are likewise deemed included in the markup percentage fee, except to the extent that additional on-site supervision or project management is required solely and directly as a result of the change order and is separately documented and approved in writing by the Owner.

Permit fees and incremental insurance or bond premiums required solely and directly by reason of the change order may be reimbursed as direct costs if approved in writing by the Owner.

14.2.3.6 The application of the markup percentages referenced in the preceding paragraphs will apply to both additive and deductive change orders. In the case of a deductive change order, the net credit shall be computed by applying the markup percentages as outlined, and no further adjustment or reduction shall be made; i.e., the credit to the Owner shall equal one hundred percent (100%) of the computed credit amount. In those instances where a change involves both additive and deductive work, the additions and deductions will be netted and the markup percentage adjustments will be applied to the resulting net amount.

14.2.3.7 In no event will any lump sum or percentage amounts for "contingency" be allowed to be added as a separate line item in Subcontractor change order estimates. Unknowns attributable to labor hours will be accounted for when estimating labor hours anticipated to accomplish the work. Unknowns attributable to material scrap and waste will be estimated as part of material costs.

14.2.3.8 Unit Price. The Owner may choose the option to use unit prices. Quantities must be itemized in relation to each specific contract drawing. Unit prices will be applied to net differences of quantities of the same item. Unit prices will be considered to cover all direct and indirect costs of furnishing and installing the item including the Subcontractor's markup percentage fee.

14.2.3.9 Cost Plus. The Owner may elect to have any extra work performed on a cost plus markup percentage fee basis. Upon written notice to proceed, the Subcontractor shall perform such authorized extra work at actual cost for direct labor (working foremen, journeymen, apprentices, helpers, etc.), actual cost of labor burden, actual cost of material used to perform the extra work, and actual cost of rental of major equipment (without any charge for administration, clerical expense, general supervision or superintendence of any nature whatsoever, including general foremen, or the cost or rental of small tools, minor equipment, or plant fabrication), plus the approved markup percentage fee. The intent of this clause is to define allowable cost plus chargeable costs to be the same as those allowable when pricing lump sum change proposals as above. The Owner may agree in advance in writing on a maximum price for this work and the Owner shall not be liable for any charge in excess of the maximum. Daily time sheets with names of all of the Subcontractor's

employees working on the Project will be required to be submitted to the Owner for both labor and equipment used by the Subcontractor for time periods during which extra work is performed on a cost plus fee basis. Daily time sheets will break down the paid hours worked by the Subcontractor's employees showing both base contract work as well as extra work performed by each employee.

14.3 The GMP shall not be increased on account of costs covered by the Contingency.

14.4 A "Change Order" is (a) a written instrument signed by the Owner and Construction Manager stating their agreement on adjustment of the GMP, Construction Fee and/or the Contract Time, resulting from a change in the Work or any other cause; or (b) a written instrument signed by the Owner directing the Construction Manager to proceed with a change in the Work prior to agreement on any adjustment of the GMP, Construction Fee and/or Contract Time. In the case of a Change Order issued pursuant to subparagraph (b) of this Section 14.4, the adjustment to the GMP shall be determined on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Cost of the Work, a reasonable allowance for Subcontractor general conditions, insurance overhead and profit as provided in Section 14.2. In such case, the Construction Manager shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Adjustment of the Construction Fee and Contract Time for completion of the Work as a result of the Change Order shall be in accordance with the applicable provisions of this Agreement. Pending final determination of the amount or length of any such adjustment, amounts not in dispute for a change in the Work shall be paid to the Construction Manager in accordance with Article 7 of the Agreement.

14.5 The Construction Manager shall proceed with any change ordered in accordance with this Article XIV.

14.6 The Construction Manager shall require any Subcontractor performing a change in the Work without final adjustment of its Subcontract price to furnish the Construction Manager daily an original and one copy of a written report signed by the Subcontractor's representative at the Project Site showing (a) the number of workers engaged in performing such change, the number of hours each such worker devoted thereto and a description of the specific work performed; and (b) the nature and quantity of all materials and equipment furnished or used in connection with the performance of such work. The Construction Manager shall verify the information contained in such reports on a daily basis as the work is performed. The Construction Manager shall furnish copies of such reports to the Owner upon the Owner's request. Failure of the Construction Manager and Subcontractor to comply strictly with this requirement shall constitute a waiver of any and all claims for adjustment in the GMP and Subcontract price on account of such change.

ARTICLE XV

Uncovering and Correction of Work

15.1 Uncovering of Work. If any Work should be covered contrary to the request of the Owner or the Architect, it must, if required by the Owner or the Architect, be uncovered for his observation and replaced at the Construction Manager's expense. If any Work has been covered which the Architect has not specifically requested to observe prior to being covered, the Architect may request to see such Work and it shall be uncovered by the Construction Manager. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work be found not in accordance with the Contract Documents, the Construction Manager shall pay such costs.

15.2 Correction of Work. As provided in the Agreement, the Construction Manager shall: (a) re-execute any parts of the Work that fail to conform with the requirements of the Contract Documents that appear in the progress of the Work; (b) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year after the Date of Final Completion of the Work or within such longer period of time as may be set forth in the Plans and the Specifications or the other Contract Documents; and (c) replace, repair, or restore any part of the Improvements or furniture, fixtures, equipment, or other items of personal property placed therein (whether by the Owner or any third party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Contract Documents or by defects in the Work. The provisions of this section apply to Work performed by subcontractors of the Construction Manager and sub-subcontractors as well as Work performed by direct employees of the Construction Manager. Additionally, the Construction Manager shall promptly correct all Work rejected by the Architect as defective or as failing to conform to the Contract Documents whether observed before or after the Date of Substantial Completion and whether or not fabricated, installed or completed. The Construction Manager shall bear all cost of correcting such rejected Work, including the cost of the Architect's additional services thereby made necessary.

If, within one year after the Date of Final Completion or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Construction Manager shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Construction Manager a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition.

All such defective or nonconforming Work shall be removed from the Site if necessary, and the Work shall be corrected to comply with the Contract Documents without cost to the Owner. The Construction Manager shall bear the cost of making good all Work of separate contractors destroyed or damaged by such removal or correction.

If the Construction Manager does not remove such defective or nonconforming Work within a reasonable time fixed by written notice from the Owner or the Architect, the Owner may remove it and may store the Materials or equipment at the expense of the Construction Manager. If the Construction Manager does not pay the cost of such removal and storage within ten (10) days thereafter, the Owner may upon ten (10) additional days' written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Construction Manager. If such proceeds of sale do not cover all costs which the Construction Manager should have borne, the difference shall be charged to the Construction Manager and an appropriate Change Order shall be issued. If the payments then or thereafter due the Construction Manager are not sufficient to cover such amount, the Construction Manager shall pay the difference to the Owner.

If the Construction Manager fails to correct such defective or nonconforming Work, the Owner may correct it in accordance with these General Conditions. If the Construction Manager does not remove and replace and re-execute defective or non-conforming Work within a reasonable time as determined by the Owner, then after seven (7) business days' written notice to the Construction Manager the Owner may have such removal and re-execution done by others and the GMP and amounts payable to the Construction Manager shall be reduced by the reasonable costs thereof.

15.3 Acceptance of Defective or Nonconforming Work. If the Owner prefers to accept defective or nonconforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect an appropriate reduction in the Guaranteed Maximum Price, or, if the amount is determined after final payment, it shall be paid by the Construction Manager.

ARTICLE XVI
Owner's Audit Rights

16.1 Construction Manager's Records. Construction Manager shall check all materials, equipment, and labor entering into the Work Site and keep detailed accounts as may be necessary for proper financial management under the Agreement. Construction Manager's accounting system must be satisfactory to the Owner and shall be kept in accordance with the Contract Documents. Upon Owner's request, Owner will be afforded access to all of Construction Manager's records, books, correspondence, instructions, Drawings, As-Built Drawings, receipts, vouchers, memoranda and all other similar data relating to the Agreement and the Work. Upon such request, all such documentation shall be provided at Construction Manager's offices at the address for Notices in the Construction Agreement or such other place as the parties may agree. Construction Manager will preserve all records for a period of four (4) years, or for such longer period as may be required by applicable Laws, after Final Payment. All documentation shall be retained in accordance with generally accepted accounting principles or such other standards as are reasonable and customary in the construction industry for the place of the Project.

16.2 Records of Cost. Construction Manager shall account for and maintain separate records of the costs of the Project under the Agreement.

16.3 Change Order. Construction Manager shall maintain separate cost records for Work authorized by Owner pursuant to Change Orders. An itemized line item must be shown on the Project billing invoice for each Owner approved Change Order. Owner recognizes as to actual labor to be performed it may be difficult to segregate actual labor spent on Change Orders from the base labor being performed on the Work, but such distinction shall be maintained to the extent practicable.

16.4 Project Logs. In addition to all other records, Construction Manager shall maintain current and complete logs of all Change Orders, Minor Changes in the Work, Requests for Information, Submittals, and other transmittals, correspondence, related to the Project. The log shall indicate the up-to-date status of each document.

16.5 Billing Format. Construction Manager shall provide, among other systems agreed upon by Owner and Construction Manager, the monthly billing on Owner's billing form or similar billing format approved by Owner.

16.6 Auditing of Construction Manager. At any time, Owner has the right to audit Construction Manager's Requests for Payment and books and records (hard copy, as well as computer readable data if it can be made available). Construction Manager agrees to provide Owner with all information reasonably requested to audit the Cost of the Work, the Guaranteed Maximum Price, and any fees or other costs requested or paid for the Work. Owner shall be afforded access to all of Construction Manager's records, and shall be allowed to interview any of Construction Manager's employees pursuant to the provisions of this Section 16 throughout the term of this Agreement and for a period of four (4) years after Final Payment or longer if required by law. All audits will take place at Construction Manager's office within the State of

Oklahoma, with full cooperation by Construction Manager. Construction Manager will provide all information from its Subcontractors that Owner requests in connection with the audit to Owner for its review and/or reproduction. Construction Manager shall require its Subcontractors to comply with the provisions of this section of the General Condition by insertion of the requirements hereof in Construction Manager's contracts with its Subcontractors. Daily records of Construction Manager's employees and agents pertaining to the Work must be kept and made available, upon ten (10) Days' notice, to Owner at Owner's office for examination during normal business hours. If, as a result of an audit, Owner finds that it has been overcharged for any costs, fees or services in excess of the amount submitted on a Request for Payment or paid, contractor will immediately remit the amount of the overcharge to Owner. If the overcharge is in excess of three (3) percent of the amount submitted on a Request for Payment or paid, Construction Manager shall also remit to Owner: (a) the costs of the audit incurred by Owner, and (b) interest on the amount of the overcharge at the interest rate charged to Owner to finance the Work from the date of the initial overcharge. If Construction Manager does not remit within five (5) days of Owner's demand, Owner may deduct the amount owed to Owner from any amounts owed to Construction Manager. Notwithstanding any other term of this Agreement, if any expense item asserted to be a "Cost of the Work" is not substantiated by accounting records deemed appropriate under generally accepted accounting principles, such expense item shall not be a "Cost of the Work" and shall not be reimbursable.

ARTICLE XVII

BOOKS AND RECORDS

17.1 The Construction Manager's Project staff shall maintain a daily log of all on-Site operations and progress of the Work. The daily log for each day shall include, without limitation, a count of all workers on Site by Subcontractor (and such additional information as may be required by an OCIP, if implemented), the equipment in use, the Work performed, deliveries received and significant events affecting the Work. The Project staff also shall maintain correspondence, minutes of meetings, schedules and requisitions, accounting journals, bank records and cancelled checks, which shall be maintained at the Project office or the Construction Manager's home office and shall be available for inspection by the Owner and its authorized representatives.

17.2 The Construction Manager shall perform all accounting and bookkeeping services required to carry out the Work and to document the Construction Manager's Costs of the Work. This shall include, without limitation, processing of all Subcontractor requisitions and payroll and invoice processing for all labor and materials utilized by the Construction Manager in the performance of the Work.

17.3 Construction Manager's "records" as defined herein shall upon reasonable notice be open to inspection and subject to audit and/or reproduction during normal business working hours. Such audits may be performed by an Owner's representative or an outside representative engaged by Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this Agreement and for a period of six (6) years after final payment or longer if required by law. Construction Manager's "records" as referred to in this Agreement shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, Subcontractor requisitions, invoices, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in the Owner's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Documents. Such records shall include (hard copy, as well as electronic computer readable data if it can be made available):

written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; files relating to Change Orders from the Owner and change orders from the Construction Manager to Subcontractors (including documentation covering negotiated settlements); back charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Construction Manager records which may have a bearing on matters of interest to the Owner in connection with the Construction Manager's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of (i) Construction Manager compliance with Agreement requirements, (ii) compliance with the Owner's business ethics policies and (iii) compliance with provisions for pricing and submitting Change Orders, Requisitions or claims submitted by the Construction Manager or its payees.

17.4 The Construction Manager understands and agrees that in the event of any billing adjustments in respect to amounts previously paid to the Construction Manager from the Owner as a result of the Owner's (or its representatives') inspection or audit, such adjustment shall be final, binding and conclusive if the Construction Manager cannot provide adequate documentation to support the amount in dispute. The Construction Manager shall immediately refund to the Owner any overpayments that, pursuant to an audit, have been determined to have been made by the Owner to the Construction Manager.

ARTICLE XVIII
Representations and Warranties

18.1 The Construction Manager represents and warrants:

(a) That it is financially solvent and is experienced in and competent to perform the Work, and has the staff, manpower, equipment, subcontractors, and suppliers available to complete the Work within the Contract Time for the Guaranteed Maximum Price,

(b) That it is familiar with all applicable Federal, State or other laws, ordinances, orders, rules and regulations, which may in any way affect the Work;

(c) That all Work required by the Contract Documents can be satisfactorily performed, and that construction of the Project will not injure any person or damage any property;

(d) That it has carefully examined the Agreement and the Site of the Work and that, from the Construction Manager's own investigations is satisfied as to the nature and materials likely to be required, the character of equipment and other facilities needed for the performance of the Work, the general and local conditions, and all other conditions or items which may affect the Work;

(e) That it is satisfied that all required or appropriate roads and public utilities, including telephone, sewer, water, electricity, and gas are, or will be available upon completion, in sufficient volume to the Project;

(f) That it is satisfied that upon completion of the Project, it will conform with all applicable Requirements; and

(g) That it is satisfied that the Work can be performed and completed as required in the Contract Documents, and warrants that it has not been influenced by any oral statement or promise of the Owner or the Architect.

ARTICLE XIX
Miscellaneous

19.1 Independent Contractor. In performing its obligations hereunder, the Construction Manager shall be deemed an independent contractor and not an agent or employee of the Owner. The Construction Manager shall have exclusive authority to manage, direct, and control the Work. The Owner is interested only in the results obtained and not in the methods used in achieving the results.

19.2 Waiver. No consent or waiver, express or implied, by any party or of any breach or default by the other in the performance of any obligation hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default by such party hereunder. Failure on the part of any party hereto to complain of any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder. Inspection by or tentative approval or acceptance by the Owner or the Architect or the failure of the Owner or the Architect to perform any inspection hereunder, shall not constitute a final acceptance of the Work or any part thereof and shall not release the Construction Manager of any of its obligations hereunder.

19.3 Patents and Royalties. The term "Construction Manager's Processes" shall mean all inventions, methods, ideas, equipment, processes, and materials of every kind to be furnished by the Construction Manager in performance of the Work. The Construction Manager represents and warrants that it has the right to use all Construction Manager's Processes, and agrees to pay all royalties and other fees required to be paid in connection therewith and agrees to protect, indemnify, defend and hold harmless the Owner from all losses, costs, damages, and expenses of whatsoever nature in connection therewith.

19.4 Compliance with Laws. Any provisions hereof to the contrary notwithstanding, the Construction Manager shall observe and abide by and perform all of its obligations hereunder in accordance with all applicable laws and orders of all governmental authorities having proper jurisdiction.

19.5 Personnel. All personnel used by the Construction Manager in the performance of the Work shall be qualified by training and experience to perform their assigned tasks. At the request of the Owner, the Construction Manager shall not use in the performance of the Work any personnel deemed by the Owner to be incompetent, careless, unqualified to perform the work assigned to him, or otherwise unsatisfactory to the Owner.

19.6 As-Built Drawings. The Construction Manager shall, during the progress of the Work, keep an accurate record of all substantial changes and corrections of the Plans and the Specifications, including, but not limited to, all mechanical and electrical layouts, and prior to final payment, the Construction Manager shall submit to the Owner the Plans and the Specifications showing any changes in mechanical and electrical layouts. Said as-built drawings shall show accurately all deviations from the Contract Documents and the location of underground utilities and appurtenances, all referenced to permanent surface improvements.

19.7 Place of Work. The Construction Manager shall, under regulations prescribed by the Owner, use only established roadways and such temporary roadways as may be authorized by the Owner unless circumstances reasonably require otherwise. When it is necessary to cross curbing or sidewalks, protection against damage shall be provided by the Construction Manager, and any damage caused will be, as soon as reasonably possible, repaired by the Construction Manager when such use is terminated. All existing sidewalks, curbs and pavements which are disturbed, broken, removed or otherwise damaged by the Construction Manager by or during the performance of the Work shall be replaced by the Construction Manager and shall be part of the Construction Manager's Cost. Replaced sidewalks, curbs and pavements shall be smooth, shall blend into the existing Work and shall not present depressions or humps, and shall be constructed of similar materials and by methods utilized in the original construction. All construction work, materials, forms, etc., used in repairs and replacement shall conform to the Plans and the Specifications that govern the original Work.

19.8 Storage Facilities. The Construction Manager may store materials on the job site, but only within such areas on the Land approved by the Owner. Any temporary buildings shall be removed by the Construction Manager when no longer needed, or when ordered to do so by the Owner as circumstances reasonably permit, and all storage areas shall be kept clean of unreasonable accumulations of debris and rubbish by the Construction Manager. Any damage to the ground where sheds were constructed shall be repaired by the Construction Manager.

19.9 Removal of Equipment. In the case of termination of the Construction Manager's duty to complete the Work before completion according to the provisions hereof, the Construction Manager, if notified to do so by the Owner, shall remove any part or all of its equipment and supplies from the property of the Owner within fifteen (15) days from the date thereof, failing which the Owner shall have the right to remove and/or store such equipment and supplies at the expense of the Construction Manager and to deduct the cost of doing so from the Guaranteed Maximum Price.

19.10 Entire Agreement. The Agreement, these General Conditions and the Contract Documents constitute the entire agreement between the parties hereto with respect to the matters covered hereby. All prior negotiations representations, and agreements with respect hereto not incorporated herein are hereby cancelled. The Contract Documents can be modified or amended only by a document duly executed by duly authorized officer of the Construction Manager and by the general partner of the Owner.

19.11 Assignment. Except with the express written consent of the Owner, the Construction Manager shall not assign or otherwise transfer any of its obligations hereunder or right to receive payments hereunder. Subject to the foregoing, the Contract Documents shall inure to the benefit of and shall be binding on the parties hereto and their respective successors and permitted assigns.

19.12 Attorneys' Fees. If any party institutes an action or proceeding against the other relating to the provisions of the Contract Documents or any default thereunder, the unsuccessful party to such action or proceeding will reimburse the successful party therein for the reasonable attorneys' fees, disbursements and litigation expenses incurred by the successful party.

19.13 Severability. If any clause or provision of the Contract Documents is held by a court having jurisdiction to be illegal, invalid, or unenforceable under any present or future law, the remainder of the Contract Documents will not be affected thereby. It is the intention of the parties that if any such provision

is held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision similar in terms to such provisions as is possible to be legal, valid and enforceable.

19.14 Time. Time is of the essence of each provision of the Contract Documents.

19.15 Headings. The section headings in the Agreement and in these General Conditions are included for convenience of reference only and shall not govern or control the meaning of any provision hereof or thereof.

19.16 Gender. Words of any gender used in the Agreement and these General Conditions shall be held and construed to include any other gender, and words in the singular shall be held to include the plural.

19.17 Counterpart Execution. The Agreement and the Contract Documents may be executed in counterparts, each of which will be deemed an original document, but all of which will constitute a single document.

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Item Title:

Consider approving a Term Sheet for an agreement with CCIDA regarding acquisition of the 320 acre property that is planned as the future site of the Firehawk Aerospace development.

Initiator: Richard Rogalski - LEDA Executive Director

Information Source: Richard Rogalski - LEDA Executive Director

Background:

This agenda item proposes the approval of a Term Sheet outlining the terms for the transfer of approximately 320 acres of land from the Comanche County Industrial Development Authority (CCIDA) to the Lawton Economic Development Authority (LEDA) for the Firehawk Aerospace project. Firehawk Aerospace plans to build a \$100 million facility for energetics manufacturing, assembly, and testing, employing at least 100 people with an average salary of \$93,500. LEDA has secured a \$22 million grant for the project.

In exchange for the property, LEDA will remit \$1,920,000 to CCIDA over ten years from Tax Increment Financing (TIF) revenues, with annual payments equal to 35% of the TIF revenue. The agreement also includes a provision that the property will revert to CCIDA if construction does not begin within three years, subject to certain delays. This agreement supports the development of the Firehawk Aerospace facility and the economic growth of the region.

Correlation to the True North Statement:

Transparency and Trust

Exhibit:

Firehawk CCIDA & LEDA Term Sheet dated 12.17.2025

Key Issues:

N/A

Funding Source:

TIF Revenue

Recommended Action:

Approve the Term Sheet for an agreement with CCIDA regarding acquisition of the 320 acre property that is planned as the future site of the Firehawk Aerospace development.

ATTACHMENTS:

- 1. Firehawk CCIDA & LEDA Term Sheet 12.17.25

Project Firehawk Aerospace

Basic Terms of Agreement between Comanche County Industrial Development Authority (CCIDA), and the Lawton Economic Development Authority (LEDA)

Purpose and Structure

This Term Sheet outlines the basic terms for (a) the conveyance of approximately 320 acres of real property by the Comanche County Industrial Development Authority (“CCIDA”) to the Lawton Economic Development Authority (“LEDA”), and (b) LEDA’s agreement to remit to CCIDA a defined share of lease revenues and other proceeds from its lease agreement with Firehawk Aerospace, Inc., a Delaware corporation (“Firehawk”).

Project Description:

1. LEDA has been awarded a grant in the amount of \$22 million from the Oklahoma Development Finance Authority (ODFA) to develop a facility for Firehawk for energetics manufacturing, assembly, and compliance verification; to include an office, laboratory, machine shop, system control and monitoring, shipping and receiving of energetic and non-energetic materials, storage of raw, process, and energetic materials, quality control/batch testing, processing of energetic materials and additive manufacturing, and assembly of the propellant into a final product.
2. The construction cost of the complete facility, including process equipment, is estimated to approach \$100 million.
3. LEDA has retained Ryan Herring Construction Inc. as a Construction Manager at Risk to assist LEDA with construction of the project.
4. LEDA is pursuing a Lease/Purchase and Agreement with Firehawk (“Firehawk Agreement”) which will include, among other things, Firehawk’s obligations to make lease payments, and to retain design professionals to provide the plans and specifications for the construction of the facility, the cost of which will be credited as lease prepayments. The agreement will also provide for the purchase of the subject property, which may be in the form of a forgivable loan.
5. Firehawk will employ a minimum of 100 employees at the facility with an average annual salary of \$93,500.

Project Site (“Property”):

A 320-acre parcel of land located west of NW 97th Street/NW Goodyear Blvd, east of NW 112th St and north of what would be W Gore Blvd, more particularly described as the South Half (S/2)

of Section Twenty-Five (25), Township Two (2) North, Range Thirteen (13) West, I.M., Comanche County, Oklahoma, according to the U.S. Government Survey thereof.

Property Transfer and Reversion:

CCIDA shall convey fee simple title to the Property to LEDA by Special Warranty Deed, subject to existing easements of record. The deed shall include a reversionary provision providing that, if Commencement of Construction of the Firehawk facility has not begun within **three (3) years** following the date of conveyance, title to the Property shall automatically revert to CCIDA, absent delays beyond LEDA’s control related to funding, permitting, approvals, or force majeure events, in which case the period shall be extended for the duration of such delay. For purposes of this Term Sheet, “**Commencement of Construction**” means the earlier of (a) issuance of a grading or building permit, or (b) substantial mobilization of equipment and materials to the Project site.

Consideration:

In consideration of CCIDA’s conveyance of the Property, LEDA shall remit to CCIDA the amount of one million, nine hundred twenty thousand dollars (\$1,920,000.00), to be paid over a ten (10) period from Tax Increment Financing (TIF) revenues received by LEDA, attributable to the TIF district activated for the Property. The amount paid to CCIDA each year will be equal to thirty-five percent (35%) of the TIF revenue so received by LEDA, until the total amount has been paid to CCIDA. No interest or other fees will be applicable.

CCIDA Obligations:

CCIDA will deliver to LEDA a Commitment for Title Insurance (the “Existing Title Commitment”) for an owner’s policy of title insurance (the “Title Policy”), showing good and marketable title vested in CCIDA. The Existing Title Commitment shall show all matters affecting title to the Property, including all exceptions, easements, restrictions, rights-of-way, covenants, reservations, encumbrances and other conditions affecting the Property, together with legible copies of all recorded documents constituting exceptions under the Title Commitment (the “Exception Documents”). LEDA may obtain an ALTA/NSPS Land Title Survey (“Survey”) prepared by a professional land surveyor of the Property. LEDA may give CCIDA written notice of any matters contained in the Title Commitment or the Survey to which there is an objection (“Title Objection”). Nothing herein shall preclude LEDA from objecting to matters materially affecting their ability to use or finance the Property. Any matters affecting marketability of the title to the Property which first arise after the effective time of the Existing Title Commitment shall be deemed a Title Objection, unless such is waived in writing. Any delinquent real property taxes, mortgages, deeds of trust, judgments and mechanics liens arising out of the acts or omissions of CCIDA (collectively, the “Monetary Liens”) shall be automatically deemed Title Objections by LEDA without any further action or notice thereof to CCIDA. CCIDA shall cause all Monetary

Liens and Title Objections to be satisfied and removed from the Title Commitment on or before the date the Property is transferred to LEDA.

LEDA Obligations:

LEDA, through its Construction Manager at Risk, will manage the bidding and construction of the Facility, will collect annual lease payments, and manage TIF revenue generated by the project to include reimbursement of CCIDA, as included herein, and the City of Lawton for cost of the offsite public utilities, roadways, and other improvements as directed by the City Council. LEDA will make payments to CCIDA annually, with no interest or penalties applied thereto. Any lease revenue received by LEDA will be used as directed by LEDA board and the City Council.

This term sheet is intended solely as a preliminary expression of general intentions and is to be used for discussion purposes only. The parties intend that neither shall have any contractual obligations with respect to the matters referred to herein, unless and until definitive agreements have been fully executed and delivered by the parties. Prior to delivery of definitive executed agreements, and without any liability to the other party, either party may propose different terms from those summarized herein.

COMANCHE COUNTY INDUSTRIAL
DEVELOPMENT AUTHORITY, a public trust

By: _____
Name: _____
Title: _____

LAWTON ECONOMIC DEVELOPMENT
AUTHORITY, a public trust

By: _____
Name: _____
Title: _____

Item Title:

Consider approving a resolution approving the commencement of payments under the Economic Development Agreement with Republic Paperboard Company, LLC, dated December 1, 2019, making a determination regarding Republic’s compliance with the Economic Development Agreement, and the amount of assistance to be provided to Republic in accordance therewith.

Initiator: Richard Rogalski - LEDA Executive Director

Information Source: Richard Rogalski - LEDA Executive Director

Background:

Republic Paperboard Company, LLC operates a manufacturing facility in the West Side Industrial Park in Lawton, Oklahoma, producing various paper products. As part of its expansion plans, Republic committed to a \$94 million investment and the creation of 20 new jobs with an average annual salary of \$108,006. To support this growth, the City of Lawton, through the Lawton Economic Development Authority (LEDA), entered into an Economic Development Agreement with Republic on December 1, 2019, within the framework of the STEDI Project Plan and Increment District No. 3. This agreement provides financial assistance, paid from the ad valorem tax increment generated by Republic's operations, subject to meeting specific performance goals related to employment, payroll, investment, and valuation.

Republic has submitted the required documentation to LEDA, which has reviewed and confirmed that the company has met or exceeded its performance obligations under the Agreement. Based on a Compliance Memorandum dated December 15, 2025, LEDA has determined that Republic is eligible to receive development financing assistance of up to \$4,320,240, payable in annual installments from Years 6 through 25 of Increment District No. 3. This resolution seeks approval to commence payments and authorize LEDA to administer the assistance in accordance with the terms of the Agreement.

Correlation to the True North Statement:

Transparency and Trust

Exhibit:

CEDL Memo to LEDA regarding Republic EDA Performance
Draft LEDA Resolution - Republic Performance Obligations

Key Issues:

N/A

Funding Source:

TIF 3 Funds

Recommended Action:

Approve the resolution approving the commencement of payments under the Economic

Development Agreement with Republic Paperboard Company, LLC, dated December 1, 2019, making a determination regarding Republic's compliance with the Economic Development Agreement, and the amount of assistance to be provided to Republic in accordance therewith.

ATTACHMENTS:

1. 12.15.25 Memo to LEDA re Republic EDA Performance
2. LEDA Resolution-Republic Performance Obligations



MEMORANDUM

Date: December 15, 2025
To: Richard Rogalski, Executive Director, Lawton Economic Development Authority
From: Dan Batchelor and Lisa M. Harden
Re: Compliance Review under EDA with Republic Paperboard Company, LLC

I. Background.

Pursuant to the Economic Development Agreement (“EDA”) dated December 1, 2019, by and among the City of Lawton, the Lawton Economic Development Authority (“LEDA”), and Republic Paperboard Company, LLC (“Republic”), Republic agreed to:

1. Make a \$94 million capital investment in personal and real property and
2. Create 20 new permanent quality jobs with an average annual compensation of approximately \$108,006 per position (collectively, the “Project Expansion”).

LEDA, in turn, agreed to provide economic development incentives in the form of a reimbursement of a portion of the business personal property taxes generated by the ad valorem tax increment revenues in Increment District No. 3, up to \$4,320,240 (“Total Assistance”), in annual payments, commencing in year 6 of the Increment District and continuing through year 25 of the Increment District, subject to Republic’s satisfactory performance of its obligations under the EDA.

The Total Assistance is conditioned upon Republic’s compliance with:

- Employment and payroll requirements under Section 2.2(f); and
- Investment and valuation requirements under Sections 2.2(e) and 4.1, which require that the total assessed value of Republic’s investment equal or exceed \$75 million.

II. EDA Performance Requirements.

A. Employment and Payroll

Under Sections 2.2(f) and 3.2, Republic must:

- Add twenty (20) new employees at an average annual wage of \$108,006, thereby creating a Net New Project Annual Payroll of \$2,160,120; and
- Maintain this payroll level for the five-year period following completion of the Project Expansion.

The Actual Net New Project Annual Payroll is calculated by subtracting Republic’s total annual payroll as of January 1, 2019, from its total annual payroll for each subsequent reporting year. If actual payroll falls below \$2,160,120, Section 3.2 provides that the Total Assistance will be reduced proportionally using the following formula:

$$\text{Reduction Factor} = \frac{\text{Average Actual Net New Project Payroll (5 years)}}{2,160,120}$$

Section 6.13 of the EDA provides for an extension of the time for performance of any term, covenant, condition, or provision of the Agreement for the duration of any “Unavoidable Delay,” defined as a delay beyond the reasonable control of the obligated party.

B. *Investment and Valuation.*

Under Sections 2.2(e) and 4.1 of the EDA, Republic must have made a total capital investment of not less than \$94 million in the development, construction, expansion, and operation of the Project Expansion, with the total assessed value of the investment being no less than \$75 million.¹

III. Employment and Payroll Documentation.

Republic has submitted annual Employment Certifications for 2019-2025 verifying full-time and part-time employment counts, total annual payrolls, job titles, and benefits. These certifications and supporting documentation have been reviewed and confirm compliance with the EDA’s employment obligations for each reporting year.

Reporting Year	FTE	Total Payroll	Increase above 2019 Baseline
2019	148	\$14,423,757.61	Baseline
2020	160	\$14,981,499.65	+\$557,742.04 (Period of Unavoidable Delay)
2021	168	\$15,464,533.32	+\$1,040,775.71
2022	173	\$15,734,218.77	+\$1,310,461.16
2023	175	\$16,236,499.74	+\$1,812,742.13
2024	183	\$17,656,331.89	+\$3,232,574.28
2025	185	\$17,879,205.85	+\$3,455,448.24 (Projected as of 12/2/2025)

IV. Compliance Analysis

The COVID-19 pandemic resulted in widespread, well-documented disruptions to business operations and labor markets during 2020 and qualifies as an *Unavoidable Delay* under Section 6.13 of the EDA. Accordingly, the time for performance of Republic’s payroll obligations was extended for the duration of such Unavoidable Delay, and calendar year 2020 is appropriately excluded from the five-year payroll measurement period for purposes of evaluating compliance.

The 2025 Employment Certification reflects payroll and employment levels projected as of December 2, 2025. Acceptance of that certification for purposes of this compliance review is reasonable given that it is based on actual payroll data for a substantial portion of the year and is consistent with Republic’s sustained pattern of payroll growth above the 2019 baseline in each preceding reporting year.

Applying the foregoing assumptions, Republic’s compliance with the employment and payroll requirements of the EDA is evaluated below.

¹While the EDA refers to “total assessed value,” that phrase, if applied literally, would imply a total investment far exceeding the \$94 million contemplated by the parties. Consistent with the County Assessor’s methodology and the intent of the EDA, the requirement is properly understood to mean the resulting Taxable Fair Cash Value of the improvements added to the tax rolls as a result of the Project Expansion, from which the property taxes are assessed.

A. Employment Requirement

- **Baseline Employment:** 148 full-time employees
- **2025 Employment:** 185 full-time employees
- **Net Increase:** 37 new full-time positions

Republic has exceeded the required addition of 20 new employees by 17 positions.

B. Payroll Requirement

Excluding calendar year 2020 as a period of Unavoidable Delay, the payroll compliance analysis focuses on the 2021–2025 reporting years. Those years reflect sustained growth in Republic’s payroll above the 2019 baseline, notwithstanding the operational and labor-market disruptions caused by the COVID-19 pandemic.

It is notable that even during 2020 - the period of Unavoidable Delay - Republic increased both employment and total payroll above the 2019 baseline, though not to the level initially projected prior to the pandemic. This performance demonstrates that the pandemic affected the *rate* of growth rather than Republic’s overall compliance trajectory and further supports the reasonableness of excluding 2020 from the five-year payroll measurement period pursuant to Section 6.13 of the EDA.

For the applicable five-year payroll measurement period (2021–2025), the cumulative increase in payroll above the 2019 baseline is as follows:

$\$1,040,775.71 + \$1,310,461.16 + \$1,812,742.13 + \$3,232,574.28 + \$3,455,448.24 = \$10,852,001.52$

Average Actual Net New Project Annual Payroll = $\$10,852,001.52 \div 5 =$ **\$2,170,400.30, exceeding the contractual benchmark of \$2,160,120.** Thus, Republic met its payroll obligations under the EDA.

C. Investment and Valuation

Based on increment revenues for Increment District No. 3 received by LEDA, commencing in 2022, the resulting Taxable Fair Cash Value attributable to the Project Expansion exceeded the \$75 million investment threshold:

- 2022: \$76,844,533.71
- 2023: \$96,800,144.99
- 2024: \$89,224,076.13

Accordingly, the valuation requirement under the EDA has been satisfied. See *R. Rogalski Memorandum of Oct. 24, 2025*.

V. Conclusion

Republic has met or exceeded all the performance obligations under the EDA. Specifically, Republic has:

1. Achieved and surpassed the capital investment obligations;
2. Created more than the required number of new full-time jobs; and
3. Exceeded the Net New Project Annual Payroll requirement.

Therefore, Republic is eligible for the Total Assistance under the EDA. In accordance with Section 3.2 of the EDA, the Total Assistance is payable solely from the business personal property ad valorem increment generated by and collected from Increment District No. 3, in annual payments during Years 6 through 25 of the Increment District, in such amounts as may be determined by LEDA.

Attachments:

1. Employment Certifications (2019–2025)
2. Supporting Payroll Documentation
3. Memorandum from Richard Rogalski, Executive Director, dated October 24, 2025, regarding Determination of Total Assessed Value of Project Expansion by Republic Paperboard Company, LLC

RESOLUTION NO. 25-_____

RESOLUTION OF THE LAWTON ECONOMIC DEVELOPMENT AUTHORITY DETERMINING SATISFACTION OF PERFORMANCE OBLIGATIONS UNDER THE ECONOMIC DEVELOPMENT AGREEMENT WITH REPUBLIC PAPERBOARD COMPANY, LLC AND AUTHORIZING PAYMENT OF ASSISTANCE IN DEVELOPMENT FINANCING FROM INCREMENT DISTRICT NO. 3, CITY OF LAWTON

WHEREAS, Republic Paperboard Company, LLC (“Republic”) owns and operates a manufacturing plant located on approximately 70 acres of real property in the West Side Industrial Park in Lawton, Oklahoma, with a core business in manufacturing the face and back paper used to produce gypsum paperboard, as well as brown and white bag papers, and high-performance linerboard products used in the manufacture of boxes (collectively, the “Facilities”); and

WHEREAS, Republic previously proposed an economic development project pursuant to which Republic would: (1) make a \$94 million capital investment in personal and real property to expand the Facilities, and (2) create 20 new permanent quality jobs with an average compensation of approximately \$108,006.00 per year per position (collectively, the “Project Expansion”); and

WHEREAS, pursuant to the Oklahoma Local Development Act, 62 O.S. § 850, *et seq.*, the City Council of Lawton has approved and adopted by Ordinance the Skills Training, Education, Development and Investment (STEDI) Project Plan (“Project Plan”), as thereafter amended from time to time, that established, among others, an ad valorem and sales tax increment district, designated as “Increment District No. Three, City of Lawton” (“Increment District No. 3”); and

WHEREAS, the Project Plan envisions the Project Expansion and Republic’s continued operation of its Facilities within Increment District No. 3, which would generate substantial capital investment, create significant new employment, and enhance the ad valorem tax base; and

WHEREAS, in furtherance of the Project Plan and the economic objectives of the City of Lawton (“City”), the Lawton Economic Development Authority (“LEDA”), the City, and Republic entered into that certain Economic Development Agreement dated December 1, 2019 (the “Agreement”); and

WHEREAS, the Agreement provides for assistance in development financing to Republic, payable solely from the business personal property ad valorem tax increment generated and collected within Increment District No. 3, in annual payments during Years 6 through 25 of Increment District No. 3, subject to Republic’s satisfaction of specified employment, payroll, investment, and valuation performance obligations, all as more particularly set forth in the Agreement; and

WHEREAS, the Agreement further authorizes LEDA to determine whether Republic has satisfied such performance obligations based on evidence and certifications submitted by Republic in accordance with the terms of the Agreement; and

WHEREAS, Republic has submitted employment certifications, payroll documentation, investment, and valuation information, and related materials as required under the Agreement; and

WHEREAS, LEDA's Executive Director and legal counsel have reviewed Republic's submissions and supporting documentation; and

WHEREAS, LEDA's legal counsel prepared a memorandum dated December 15, 2025, analyzing Republic's compliance with the employment, payroll, investment, and valuation requirements of the Agreement (the "Compliance Memorandum"); and

WHEREAS, based on the information and analysis set forth in the Compliance Memorandum, including consideration of Unavoidable Delay as defined in the Agreement, Republic has met or exceeded the performance obligations required under the Agreement; and

WHEREAS, the Board of Trustees of the Lawton Economic Development Authority finds that Republic has satisfied all applicable conditions precedent to LEDA's obligation to provide assistance in development financing under the Agreement and that it is appropriate, desirable, and in the public interest to authorize such assistance in accordance with the terms of the Agreement;

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Lawton Economic Development Authority, as follows:

1. The Board of Trustees hereby finds and determines that Republic Paperboard Company, LLC has satisfied the employment, payroll, capital investment, and valuation performance obligations required under the Economic Development Agreement dated December 1, 2019.
2. The Board of Trustees hereby determines that Republic is eligible to receive assistance in development financing in an amount up to \$4,320,240.00, payable in accordance with the terms and conditions of the Agreement.
3. LEDA is hereby authorized to provide assistance in development financing to Republic in accordance with Section 3.2 and related provisions of the Agreement, payable solely from the business personal property ad valorem tax increment generated by and collected from Increment District No. 3, in annual payments during Years 6 through 25 of Increment District No. 3, in such amounts as may be determined by LEDA from time to time in accordance with the Agreement.
4. The Chairman, Executive Director, Secretary, and legal counsel of LEDA are authorized and directed to take such actions, approve such documentation, and execute such instruments as may be necessary or appropriate to implement this Resolution and to administer the assistance authorized hereby in accordance with the Agreement.
5. This Resolution does not amend, modify, or waive any provision of the Economic Development Agreement or the Project Plan, all of which shall remain in full force and effect.

ADOPTED and APPROVED this ___ day of _____, 2025.

Chairman

ATTEST:

Secretary

Item Title:

Consider approving an amendment to the STEM Funding Agreement and budget between the Lawton Economic Development Authority and the Friends of the Library.

Initiator: Tammy Branstetter, Senior Deputy City Clerk

Information Source: Kristin Herr, Director, Richard Rogalski - LEDA Executive Director

Background:

On September 18, 2025, the Lawton Economic Development Authority (LEDA) approved a STEM Funding Agreement and budget with the Friends of the Library to support STEM-related programming.

Minor labeling and clarifying language updates have been incorporated to improve overall clarity without changing the substance of the agreement. A budget amendment is also proposed to better align the approved funding with the specific program activities being supported.

Correlation to the True North Statement:

Transparency and Trust

Exhibit:

- 2nd Amended Funding Agreement
- Exhibit A - Funding Application
- Exhibit B - Revised Project Budget

Key Issues:

N/A

Funding Source:

STEDI TIF Funds

Recommended Action:

Approve the amendment to the STEM Funding Agreement and budget between the Lawton Economic Development Authority and the Friends of the Library.

ATTACHMENTS:

1. Friends of the Library- 2nd Amended Draft RL
2. Friends of the Library- 2nd Amended Draft (Clean)
3. Friends of Library STEM Funding Agreement - Exhibit A
4. Exhibit B - 12.15.25 Revised Project Budget

Lawton Community STEM Program FUNDING AGREEMENT

Second Amended

This Funding Agreement (this “Agreement”) is made by and between Lawton Economic Development Authority, a public trust (“LEDA” or “Grantor”) and Friends of the Lawton Public Library (“Grantee”). Funding has been approved to provide financial support to the Grantee for the implementation and operation of the Lawton Community STEM Program (the “Program”), which shall consist of activities designed to assist students in developing STEM-related skills and career opportunities in the amount listed below for use during the period beginning on July 18, 2025, and ending December 31, 2025.

A. Funding Conditions.

1. Execution of this Agreement by the Grantee and LEDA.
2. By execution of this Agreement, Grantee acknowledges and agrees that receipt of funds hereunder is conditioned upon Grantee’s performance of the terms of this Agreement. The Grantor shall provide financial support to the Grantee for the implementation and operation of the Program that aims to assist students in developing STEM-related skills and career opportunities. The primary focus of the Program is on academic and hands-on learning activities related to science, technology, engineering, and mathematics. The funding of this Program by LEDA is explicitly recognized as a contribution to the betterment of the community, and the activities supported by this funding are hereby acknowledged to serve a public purpose and provide significant benefits to the citizens of Lawton.
3. LEDA agrees to provide funds to Grantee in an amount not to exceed Twelve Thousand Dollars (\$12,000.00), consistent with the approved budget (Exhibit B) in exchange for the services to be performed under this Agreement and as indicated in the attached STEM Funding Request Form (Exhibit A). Payment to Grantee will be on a reimbursement basis and is subject to LEDA’s receipt of the designated STEM funding authorized by the Skills Training, Education, Development and Investment (STEDI) Project Plan adopted by the City Council of the City Lawton on December 10, 2019, as thereafter amended from time to time (“STEDI Project Plan”). All claims submitted to LEDA must be presented in writing. No account or claim may be paid by LEDA unless it has been reviewed and approved by LEDA’s Executive Director and properly recorded in LEDA’s financial records. Only expenditures included in the approved budget will be paid, and only upon submission of properly documented claims. Funds shall be used solely for the purposes and activities described in Scope of

- Work (Exhibits A) and Budget (Exhibit B) and shall not be expended for any other purpose.
4. The Executive Director will be responsible for monitoring compliance with the requirements for claims for payment submitted under this Agreement and will promptly report in writing possible non-compliance to the Grantee.
 5. Grantee shall submit a ~~Monthly Report report~~ to the Executive ~~Director~~ ~~Director~~ ~~together with an invoice for services rendered during the prior month with each invoice~~. The Executive Director shall forthwith review the ~~Monthly R~~report and invoice to verify work performed and activities set forth therein meet the requirements of this Agreement. The Executive Director may request any additional information needed to fully document Grantee's work in furtherance of the objectives set forth in this Agreement and the Scope of Work (as described in Exhibits A and B). The Executive Director shall complete his or her review within ten (10) business days of the submission of the ~~Monthly R~~report and invoice by Grantee and, if found to be satisfactory, shall submit the ~~Monthly R~~report to LEDA and the invoice will be processed for payment; provided, if the Executive Director reasonably finds that the ~~Monthly R~~report or invoice are not satisfactory, he or she may withhold such notification until any deficiencies in the ~~Monthly R~~report or invoice have been corrected by Grantee.
 6. The Grantee understands and agrees that the payment of funds by LEDA to Grantee under this Agreement shall be limited to the amount of funds specified in this Agreement.
 7. Upon the expiration or termination of this Agreement, any portion of the approved budget that remains unused will remain with LEDA. LEDA reserves the right to reallocate any unused funds to other projects or initiatives that align with its objectives, and the Grantee shall have no claim or entitlement to any portion of said funds.
- B. Alignment with STEM Strategic Plan (Council Policy 0-3). The Grantee's implementation of the Program shall align with the STEM Strategic Plan (Council Policy 0-3) by:
1. Creating a thriving hub for STEM education, innovation, and economic growth, setting the standard for excellence in these crucial fields and uplifting the community's economic status.
 2. Fostering a collaborative and inclusive ecosystem that harnesses the collective efforts of community-based initiatives, organizations, and industry partners, with goals that

include: advancing STEM education, increasing high school graduation rates, promoting post-secondary STEM training, growing the STEM workforce, and driving economic development in Lawton, OK and the broader Southwest region, including Comanche County.

C. Council Policy 0-3: Innovation Nexus STEM Strategic Plan Requirements. The Grantee's implementation of the Program shall:

1. Focus on STEM education and career readiness.
2. Provide opportunities for hands-on and experiential learning.
3. Demonstrate how the Grantee's implementation of the Program will help youth succeed by: a. Increasing student proficiency in STEM subjects. b. Increasing participation in STEM-related extracurricular activities and mentorship programs. c. Providing career exploration opportunities in STEM fields.
4. Include measurable criteria and provide measurable results.

D. Reporting Requirements. Grantee shall maintain specific data and provide a detailed report to LEDA and the STEM Board established under the STEM Strategic Plan, as follows:

1. Annual-Final Report. Grantee shall submit an annual report to LEDA and the STEM Board ~~by December 31, 2025~~ no later than 30 days after the grant period ends. The report shall include data reflecting how funds were used, the results, the numbers served, and the outcomes achieved.

E. Financial Audits. LEDA reserves the right to conduct a financial audit at any time during the term of this Agreement and for a period of five (5) years thereafter to ensure compliance. The audit may include an examination of financial records, statements, reports, contracts, receipts, and invoices. The Grantee agrees to maintain records for five (5) years and to cooperate fully with the audit process.

F. Annual Application. Funds must be applied for annually. Continued funding is contingent upon approval by LEDA, the STEM Board, and availability of funds. This Agreement does not obligate LEDA to provide funding beyond the term specified. Grantee may apply for future funding through the annual application process.

G. Additional Requirements. LEDA may impose additional requirements, including revisions to measurement methods or incremental funding based on progress.

H. Termination. LEDA reserves the right to terminate this Agreement and require the return of any unexpended funds if Grantee fails to comply with the terms of this Agreement.

Lawton Community STEM Program FUNDING AGREEMENT Second Amended

This Funding Agreement (this “Agreement”) is made by and between Lawton Economic Development Authority, a public trust (“LEDA” or “Grantor”) and Friends of the Lawton Public Library (“Grantee”). Funding has been approved to provide financial support to the Grantee for the implementation and operation of the Lawton Community STEM Program (the “Program”), which shall consist of activities designed to assist students in developing STEM-related skills and career opportunities in the amount listed below for use during the period beginning on July 18, 2025, and ending December 31, 2025.

A. Funding Conditions.

1. Execution of this Agreement by the Grantee and LEDA.
2. By execution of this Agreement, Grantee acknowledges and agrees that receipt of funds hereunder is conditioned upon Grantee’s performance of the terms of this Agreement. The Grantor shall provide financial support to the Grantee for the implementation and operation of the Program that aims to assist students in developing STEM-related skills and career opportunities. The primary focus of the Program is on academic and hands-on learning activities related to science, technology, engineering, and mathematics. The funding of this Program by LEDA is explicitly recognized as a contribution to the betterment of the community, and the activities supported by this funding are hereby acknowledged to serve a public purpose and provide significant benefits to the citizens of Lawton.
3. LEDA agrees to provide funds to Grantee in an amount not to exceed Twelve Thousand Dollars (\$12,000.00), consistent with the approved budget (Exhibit B) in exchange for the services to be performed under this Agreement and as indicated in the attached STEM Funding Request Form (Exhibit A). Payment to Grantee will be on a reimbursement basis and is subject to LEDA’s receipt of the designated STEM funding authorized by the Skills Training, Education, Development and Investment (STEDI) Project Plan adopted by the City Council of the City Lawton on December 10, 2019, as thereafter amended from time to time (“STEDI Project Plan”). All claims submitted to LEDA must be presented in writing. No account or claim may be paid by LEDA unless it has been reviewed and approved by LEDA’s Executive Director and properly recorded in LEDA’s financial records. Only expenditures included in the approved budget will be paid, and only upon submission of properly documented claims. Funds shall be used solely for the purposes and activities described in Scope of

Work (Exhibits A) and Budget (Exhibit B) and shall not be expended for any other purpose.

4. The Executive Director will be responsible for monitoring compliance with the requirements for claims for payment submitted under this Agreement and will promptly report in writing possible non-compliance to the Grantee.
 5. Grantee shall submit a report to the Executive Director with each invoice. The Executive Director shall forthwith review the report and invoice to verify work performed and activities set forth therein meet the requirements of this Agreement. The Executive Director may request any additional information needed to fully document Grantee's work in furtherance of the objectives set forth in this Agreement and the Scope of Work (as described in Exhibits A and B). The Executive Director shall complete his or her review within ten (10) business days of the submission of the report and invoice by Grantee and, if found to be satisfactory, shall submit the report to LEDA and the invoice will be processed for payment; provided, if the Executive Director reasonably finds that the report or invoice are not satisfactory, he or she may withhold such notification until any deficiencies in the report or invoice have been corrected by Grantee.
 6. The Grantee understands and agrees that the payment of funds by LEDA to Grantee under this Agreement shall be limited to the amount of funds specified in this Agreement.
 7. Upon the expiration or termination of this Agreement, any portion of the approved budget that remains unused will remain with LEDA. LEDA reserves the right to reallocate any unused funds to other projects or initiatives that align with its objectives, and the Grantee shall have no claim or entitlement to any portion of said funds.
- B. Alignment with STEM Strategic Plan (Council Policy 0-3). The Grantee's implementation of the Program shall align with the STEM Strategic Plan (Council Policy 0-3) by:
1. Creating a thriving hub for STEM education, innovation, and economic growth, setting the standard for excellence in these crucial fields and uplifting the community's economic status.
 2. Fostering a collaborative and inclusive ecosystem that harnesses the collective efforts of community-based initiatives, organizations, and industry partners, with goals that include: advancing STEM education, increasing high school graduation rates, promoting post-secondary STEM training, growing the STEM workforce, and driving

economic development in Lawton, OK and the broader Southwest region, including Comanche County.

- C. Council Policy 0-3: Innovation Nexus STEM Strategic Plan Requirements. The Grantee's implementation of the Program shall:
1. Focus on STEM education and career readiness.
 2. Provide opportunities for hands-on and experiential learning.
 3. Demonstrate how the Grantee's implementation of the Program will help youth succeed by: a. Increasing student proficiency in STEM subjects. b. Increasing participation in STEM-related extracurricular activities and mentorship programs. c. Providing career exploration opportunities in STEM fields.
 4. Include measurable criteria and provide measurable results.
- D. Reporting Requirements. Grantee shall maintain specific data and provide a detailed report to LEDA and the STEM Board established under the STEM Strategic Plan, as follows:
1. Final Report. Grantee shall submit an annual report to LEDA and the STEM Board no later than 30 days after the grant period ends. The report shall include data reflecting how funds were used, the results, the numbers served, and the outcomes achieved.
- E. Financial Audits. LEDA reserves the right to conduct a financial audit at any time during the term of this Agreement and for a period of five (5) years thereafter to ensure compliance. The audit may include an examination of financial records, statements, reports, contracts, receipts, and invoices. The Grantee agrees to maintain records for five (5) years and to cooperate fully with the audit process.
- F. Annual Application. Funds must be applied for annually. Continued funding is contingent upon approval by LEDA, the STEM Board, and availability of funds. This Agreement does not obligate LEDA to provide funding beyond the term specified. Grantee may apply for future funding through the annual application process.
- G. Additional Requirements. LEDA may impose additional requirements, including revisions to measurement methods or incremental funding based on progress.
- H. Termination. LEDA reserves the right to terminate this Agreement and require the return of any unexpended funds if Grantee fails to comply with the terms of this Agreement.

Dated this ____ day of _____, 2025.

Lawton Economic Development Authority

Chairman

APPROVED as to form and legality this ____ day of _____, 2025.

CITY ATTORNEY

GRANTEE APPROVAL:

Name and Title of Authorized Representative (Please Print)

Signature of Authorized Representative

Date Signed

Attachments:
Exhibit A- Scope of Work
Exhibit B- Budget

Exhibit A

STEM FUNDING REQUEST FORM

Submitted to the Lawton/Fort Sill STEM Board

SECTION 1: APPLICANT INFORMATION

Applicant Name / Organization Name:

Point of Contact: Kristin Herr, Friends of the Lawton Public Library

Mailing Address: 110 SW 4th Street, Lawton, OK 73501

Email Address: kristin.herr@lawtonok.gov

Phone Number: 580-581-3450 ext. 1710

Type of Applicant (check one): Nonprofit Organization

SECTION 2: PROJECT INFORMATION

Project Title: FIRST LEGO robotics

Project Summary (briefly describe your project): This funding request is to support the creation of a LEGO robotics team at the Lawton Public Library. This initiative aims to provide an enriching STEM opportunity for year in our community, supplementing the existing school-based robotics programs. By hosting this team at the Lawton Public Library, this team will have a broader demographic of students who may not have access to similar programs through their schools.

Target Audience (e.g., K-12 students, teachers, veterans, workforce development):

Children aged 9 to 14

Geographic Area Served: Comanche County

Project Timeline (start and end date): August 2025 to May 2026

Total Amount Requested: \$15,000.00

Total Amount Approved by STEM Board on July 18, 2025: \$12,000.00

Total Project Budget: \$15,000.00

Other Funding Sources (if any): The Friends of the Library support several STEM-related events and resources totally about \$10,000.00 annually. This LEGO team is an initiative above and beyond the Friends' support.

SECTION 3: PROJECT IMPACT

Describe how this project promotes STEM education, workforce development, or innovation:

Expected Outcomes (quantifiable, if possible):

1. **Increased STEM Engagement:** Participants will show a notable improvement in their understanding of basic coding and robotics concepts. We expect to see a **25% increase** in their demonstrated proficiency, evidenced by successful completion of coding challenges and robot missions throughout the season.
2. **Enhanced 21st-Century Skills:** The program will significantly boost participants' teamwork, communication, and critical thinking abilities. We anticipate a **40% improvement** in these collaborative skills, as observed and rated by coaches and through peer evaluations during team activities.
3. **Expanded Library Reach:** Offering FLL will draw new patrons to the library. We aim to attract **15-20 new families** who actively engage with the library beyond the FLL program, which we'll track through new library card registrations and sign-ups for other library events.
4. **Improved Problem-Solving:** Participants will develop stronger analytical and troubleshooting skills. Our goal is for teams to demonstrate a **50% increase** in their ability to independently identify and resolve robot malfunctions and adapt their strategies during practice sessions.

How will success be measured and reported?:

Success for each of these outcomes will be measured through a combination of qualitative and quantitative methods. **Coding and robotics proficiency** will be assessed by coaches using a rubric tied to project milestones and robot performance. **Teamwork and communication skills** will be evaluated through coach observations, a simple peer assessment rubric, and team project presentations. **Library reach** will be tracked by monitoring new library card registrations directly linked to FLL participants and their families, as well as cross-promotion sign-ups for other library programs. **Problem-solving abilities** will be gauged by coaches noting the frequency and independence of student-led troubleshooting during practice.

SECTION 4: ATTACHMENTS (REQUIRED)

- ✓ Project Budget (itemized)
- ✓ Timeline and Milestones
- ✓ IRS 501(c)(3) Determination Letter (if applicable)
- ✓ Letters of Support (optional)
- ✓ Additional Supporting Materials (optional)

SECTION 5: AUTHORIZATION

I certify that the information provided is accurate and complete to the best of my knowledge. I understand that submission of this form does not guarantee funding.

Name: Kristin Herr

Title: Library Director

Signature: Kristin S. Herr

Date: July 1, 2025

SUBMISSION INSTRUCTIONS:

Submit completed forms and attachments to: donalynn.blazek-scherler@lawtonok.gov and kobe.humble@lawtonok.gov

Questions may be directed to:

City Clerk's Office- City of Lawton

Phone: 580-581-3305 EXT 1033

212 SW 9th Street, Lawton, OK 73501

Exhibit B



Friends of the Lawton Public Library

Project Budget - Revised 12/15/25

Budget

We are requesting \$4,743.37 to cover the expenses of establishing and operating a FIRST LEGO League Challenge Team (ages 9 – 14). This funding will directly enable us to purchase necessary equipment, cover registration fees, and participate in competitive events.

LEGO League Expenses	\$4,743.37
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Expenses

Registrations	\$359.00
Classroom Packs w/Spike Prime Kits	\$3,563.09
LEGO Tournament Table	\$329.97
Supplies	\$299.55
Food during two competitions & team wrap-up/party	\$191.76
Total	\$4,743.37