

AGENDA
Lawton Economic Development Authority
Special Meeting
April 25, 2024—2:00 PM
3rd Floor Conference Room
City Hall - 212 SW 9th Street
Lawton, Oklahoma 73501

MEETING CALLED TO ORDER

ROLL CALL

STATEMENT OF COMPLIANCE WITH OKLAHOMA OPEN MEETING ACT, 25 O.S. § 301-314

BUSINESS ITEMS

1. Consider approving the minutes of the January 18, February 26, and March 21, 2024, meetings.
2. Consider adopting a logo for the Lawton Economic Development Authority and take action as deemed necessary.
3. Consider approving a Redevelopment Agreement by and among the City of Lawton, the Lawton Economic Development Authority, the Lawton/Fort Sill Economic Development Corporation, and Fischer59 Properties, LLC, for the development of a distribution center within the Airport Industrial Park.
4. Receive a report W. Rusty Whisenhunt, Director of Public Utilities for the City of Lawton, and consider approving Draw Request #2 from Westwin Elements for certain hard construction costs related to the Pilot Facility in accordance with the Loan Agreement between LEDA and Westwin Elements, Inc, approved on December 9, 2023.

REPORTS

1. Receive a report from the LEDA Executive Director

ADJOURNMENT

**Minutes
Lawton Economic Development Authority
Regular Meeting
January 18, 2024—2:00 PM
City Hall
3rd Floor Conference Room
212 SW 9th Street
Lawton, Oklahoma 73501**

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

STATEMENT OF COMPLIANCE WITH OKLAHOMA OPEN MEETING ACT, 25 O.S. 301-314

Meeting notice and agenda were posted by the City Clerk's Office as required by State Law.

ROLL CALL:

PRESENT: Fred Fitch, David Means*, Larry Neal*, Randy Warren, David Madigan, Ron Nance, George Gill, Ernest Sheppard

ABSENT: Jason Hensley (excused)

OTHERS PRESENT: Richard Rogalski, LEDA Executive Director; Susan Schlecht, Finance; Greg Gibson, City Attorney's Office; Tammy Branstetter, City Clerk's Office; Charlotte Brown, Planning Division; Kim McConnell, Lawton Constitution

*Left at 2:45PM

INTRODUCTION OF GUESTS

Chairman Fitch said Richard Rogalski has begun his new position as Executive Director for the Authority, and so far, it is working out well.

REPORTS

1. Receive a report from the LEDA Executive Director:

Rogalski thanked the Authority for bringing him back. He said he is happy to be here.

Rogalski said a lot has happened in the year he was gone. Currently, he has been working on getting a distribution system in place for incoming TIF district tax revenue.

- ❖ Provide a Westwin project update

Rogalski said the rezoning process was halted because of the ownership change from CCIDA to the Authority. Rogalski said he has now filed an application for rezoning on behalf of the Authority. Rogalski noted that the Agreement with Westwin specifies that this rezoning will be done. Two public hearings will be held regarding the rezoning request – one at the City Planning Commission meeting and one at the City Council meeting.

Rogalski said construction of the pilot plant is currently underway. Approximately 100 feet of concrete has been installed. Rogalski said he is working with Westwin to finalize the process of addressing draw requests. He noted that the project Agreement between the Authority and Westwin provides \$3 million in construction draws as a loan - CCIDA contributed \$2 million, and the City of Lawton contributed \$1 million. Rogalski said this \$3 million hasn't been transferred to the Authority yet, but this will soon be done. Rogalski said staff will be meeting with Westwin on a monthly basis to review their latest construction report(s). He noted that staff will also be conducting on-site inspections to ensure the work has been completed satisfactorily before any draw requests submitted by Westwin may be fulfilled.

With regards to the draw request(s), Madigan said he recalls prior discussion about engaging with Allred LLC, Edmond OK, to do construction inspections for Westwin.

Chairman Fitch said Allred LLC will be assisting Rogalski with construction inspections as needed. He noted how quickly this project is moving.

Rogalski said the Authority will need to dedicate right of way at their next meeting. The City will need a 60-foot half right of way, which is another 27 feet along 112th Street. He noted this will likely need to be done alongside Bishop Road as well. These easements are particularly urgent primarily because PSO needs access to the property. Rogalski said PSO will be coming down the east side of 112th Street, as they have a transmission line on the west side of the roadway. Placing the easement on the east side of the roadway will allow for as large a corridor as possible. Rogalski said the City will also be requesting the same right of way from the Goodyear property to the north. He believes this will be a voluntary dedication from Goodyear.

Chairman Fitch noted that the sewer line will be installed alongside 112th Street, as to not cut through the middle of the property. He said the final plans for the commercial plant have yet to be rendered, so they wish to keep the property as whole as possible for the time being. Chairman Fitch said they do, however, have an idea of where things need to be placed, and it's been determined that a lagoon will need to be installed for the pump station.

Rogalski said the sewer lift station will require approximately 3 acres, and this is primarily because it requires an overflow lagoon. This will be built at the lowest point of the 160-acre parcel of land nestled against a pond.

Gill said he is unclear of the location in which this will be built.

Rogalski said the sewer lift station and lagoon will likely be built on the 160 acres being sold to Westwin.

Gill said the process would be much cleaner if the sewer lift station is built on the 160 acres being sold to Westwin rather than having to acquire additional property.

Rogalski said he has reached out to Summit Utilities to collect a cost estimate for utility installation, but they were unable to provide a quote until they see the final construction plans for the commercial plant.

❖ Discuss a major amendment to the STEDI Project Plan

Rogalski noted that the 160-acre parcel of land being sold to Westwin was recently annexed into the City of Lawton. He said that in order for the property to generate TIF revenue, an amendment to the STEDI Project Plan must be done to add these 160 acres to the TIF district. Rogalski said he has been working on this amendment with Dan Batchelor and Lisa Harden, Center for Economic

Development Law. Rogalski noted that they are taking the time to review the STEDI Project Plan to ensure all necessary updates are included in final version of the amendment.

Rogalski said he spoke with the LEDC Land Committee today to discuss what their plans are for industrial development in the area.

Nance asked if there are deadlines set in the STEDI Project Plan.

Rogalski said the only TIF districts that were activated with the implementation of the STEDI Project Plan were TIF District 3 and TIF District 4. The remaining TIF districts that were established with the Project Plan must be activated within ten years. Once a TIF district has been activated, it generates TIF revenue for 25 years.

Nance asked if a TIF district is not activated within the specified 10-year period, would it be possible to establish a TIF district in the same area in the future.

Rogalski said if a TIF district is approaching the 10-year deadline of inactivity, the Authority and staff will need to reevaluate the vision for that property. Once it's been determined how the property will best be used going forward, an amendment can be made to the Project Plan to ensure the proper adjustments are made. Rogalski noted it may even be decided that certain TIF districts are no longer needed because they no longer make sense for the area.

Nance asked what year the STEDI Project Plan was enacted.

Rogalski said 2019.

Rogalski noted that TIF district budgets as specified in the STEDI Project Plan cannot be exceeded. Because of this, Rogalski said they are in the process of reviewing the budgets as defined in the current Project Plan to determine if changes need to be made.

Gill asked if a budget can be changed after the project has begun.

Rogalski said he's not sure if the budget can be changed for projects that have already started. He said he will ask Dan and Lisa when he meets with them tomorrow.

- ❖ Discuss an amendment to the Downtown Lawton Project Plan – to include the FISTA and a possible project to develop Affordable Workforce Housing in the TIF 1 area north of Gore Blvd

Rogalski said staff has been asked to explore amending the Downtown Lawton Project Plan to allow for the FISTA to break off from TIF 1 and become its own TIF district.

Rogalski said staff is also exploring options for things to do with the Authority's property at the Lawton Town Center. This includes 10 acres of undeveloped land, as well as an additional two acres behind the hotel. Rogalski emphasized that this area has been established as a TIF district for approximately 13 years.

Rogalski said the Chamber recently put out a Downtown Redevelopment Plan that talks about the importance of housing in the downtown area. He said he's been asked to look at ways to incorporate Affordable Workforce Housing in the downtown area. Rogalski said he will also be looking into grant funding opportunities regarding this project.

Gill said the theory behind this initiative is to acquire the properties that have old and run down structures on them, which are found between 2nd Street and Fort Still Blvd and between Ferris Avenue and Gore Boulevard and allow for private investors to take over these properties. He believes there may be grants available to help accomplish this.

Rogalski said this would be a very inciting place to reside if it weren't for some of the blighted structures in the area – Elmer Thomas Park, the Great Plains Museum, the McMahon Auditorium, the recently developed 2nd Street and the Farmer's Market are all in close proximity.

Rogalski said there has also been discussion about an additional project plan to develop executive style housing within the Lawton city limits.

❖ Discuss the disposition of TIF 3 funds

Rogalski provided the Authority with an update regarding the current standing of TIF 3 funds. Rogalski noted that the percentage of revenue due to each taxing entity (i.e. Cache Public Schools, Comanche County Health Department and Great Plains Vo-Tech) can vary from year to year due to fluctuating millage rates, which can make the distribution process a bit tricky. Rogalski said staff will be following this closely each year as to ensure distributions are made correctly.

Rogalski noted that project support and public improvements encompasses the largest portion of TIF 3 funding at 78%.

Rogalski said he will be working with the City of Lawton to obtain further direction on what they wish to do with some of this funding. Rogalski said he plans to first pay back the City of Lawton for the hotel motel tax funds that were used towards TIF project(s), as required by MOU.

❖ Discuss the continuing management of LEDA financials

Chairman Fitch said the Authority's financials are becoming more and more complex with the implementation of TIF districts. Because of this, the Authority is now considering pulling the management of its financials from the City of Lawton and placing them in the care of Scott Hatch, Hatch Croke & Associates, P.C.

Chairman Fitch said Scott Hatch will be submitting a term sheet soon, and this will be brought before the Authority for approval.

Madigan noted that Hatch, Croke & Associates handles financials for the FISTA, the Chamber, the Airport Authority and the LEDC.

Warren said Susan Schlecht has done a great job handling the Authority's financial statements.

BUSINESS ITEMS

1. Consider approving the minutes of the September 21, 2023 meeting.

Motion by Warren, Second by Gill, to approve the minutes of the September 21, 2023 meeting.
AYE: Gill, Warren, Madigan, Nance, Sheppard, Fitch. **NAY:** None. ***MOTION PASSED.***

2. Consider approving invoices, requisitions, and all other submitted materials for payment and take action as deemed necessary.

Schlecht presented the following invoices for the period of September 22, 2023 through January 18, 2024:

- Publication of the TIF 1 & TIF 2 FY23 Annual Report (Invoice dated 9/27/2023)- \$251.84 to the Lawton Constitution
- Publication of the TIF 1 & TIF 2 FY23 Annual Report (Invoice dated 9/27/2023)- \$141.90 to the Lawton Constitution
- Publication of the TIF 1 & TIF 2 FY23 Annual Report (Invoice dated 9/27/2023)- \$141.90 to the Lawton Constitution
- Publication of the TIF 1 & TIF 2 FY23 Annual Report (Invoice dated 9/27/2023)- \$141.90 to the Lawton Constitution
- Mowing of LEDA Property (Invoice dated 10/23/2023)- \$1,380.00 to Lawn Wizards
- Legal Expense (Invoice dated 10/11/2023)- \$1,997.50 to Center for Economic Development Law
- Legal Expense (Invoice dated 11/10/2023)- \$3,630.00 to Center for Economic Development Law

Motion by Madigan, Second by Gill, to approve the expenses from September 22, 2023 to January 18, 2024 as presented. **AYE:** Gill, Warren, Madigan, Nance, Sheppard, Fitch. **NAY:** None. **MOTION PASSED.**

3. Receive Financial Report(s) and take action as deemed necessary.

Schlecht presented the Balance Sheet for July 2023 – December 2023, the Income and Expense Activity Report for July 2023 – December 2023 and the LEDA Loan Statement for the time period of September 2, 2023 through August 31, 2024. The Financial Report may be obtained from the City Clerk's Office upon request.

Schlecht said she has been working with the TIF districts since 2009, and she has really enjoyed working with the Authority. She said while she will miss working with them, she will now have more time to dedicate to working with other entities.

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

4. Consider approving a Basic Term Sheet for Project Fisher⁵⁹ located on a 15.71-acre parcel located southerly of the extension of SW Gilbert Gibson Road in the Airport Industrial Park.

Rogalski reviewed the Basic Term Sheet for Project Fisher⁵⁹. A copy of the Basic Term Sheet for Project Fisher⁵⁹ may be obtained from the City Clerk's Office upon request.

Rogalski said this, in essence, is a larger version of the Pepsi Co project – it's a distribution center, it's saving locals jobs as well as adding additional jobs in the future, they are purchasing the property from the LEDC, and they are asking the City of Lawton to install the off-site public utilities that are necessary for them to complete the project.

Gill asked for clarification on what the Authority is being asked to approve today.

Rogalski noted that all final improvement plans will have to go before City Council for final approval, but he said we're looking at extending Gilbert Gibson Road, solely on north part of this property.

Rogalski said the minimum amount of public utilities required to make the project work will be installed, but this will still cost approximately \$1.6 million. Rogalski said this is a very conservative estimate – the forthcoming agreement will determine and specify the exact cost of public utility installation.

Rogalski said the first step in implementing a redevelopment agreement is to ensure all parties agree to the basic project terms. This is done in the form of a Basic Term Sheet. Once the basic terms are agreed upon, staff will begin working with Dan and Lisa, Center for Economic Development Law, to draft a final Redevelopment Agreement. The Agreement will be brought to the Authority for approval once it's been completed.

Rogalski said the LEDC's obligation will be to sell the property to the developer and then provide the net proceeds of the sale to the City of Lawton to be used for public improvements. The City of Lawton's obligation will be to review and approve the plan, activate the TIF district and reimburse the developer for their improvements, contingent upon the improvements passing inspection. The Authority's obligation will be to distribute the TIF funds once they become available.

Chairman Fitch noted that Lawton Public Schools would receive tax revenue from this project.

Motion by Gill, Second by Warren, to approve the Basic Term Sheet for Project Fisher59 located on a 15.71-acre parcel located southerly of the extension of SW Gilbert Gibson Road in the Airport Industrial Park. **AYE:** Gill, Warren, Madigan, Nance, Sheppard, Fitch. **NAY:** None. ***MOTION PASSED.***

ADJOURNMENT

There being no further business, the meeting adjourned at 3:23 PM.

MINUTES
Lawton Economic Development Authority
Special Meeting
February 26, 2024—2:00 PM
2nd Floor Conference Room
City Hall - 212 SW 9th Street
Lawton, Oklahoma 73501

Fred Fitch, Chair, called the meeting to order at 2:00 PM. in the 2nd floor conference room of City Hall.

STATEMENT OF COMPLIANCE WITH OKLAHOMA OPEN MEETING ACT, 25 O.S. 301-314

Meeting notice and agenda were posted by the City Clerk's Office as required by State Law.

ROLL CALL:

PRESENT: Fred Fitch, David Means, Larry Neal, Randy Warren*, David Madigan, Ron Nance, George Gill, Ernest Sheppard, Jason Hensley

ABSENT: None

OTHERS PRESENT: Richard Rogalski, LEDA Executive Director; Susan Schlecht, Finance; Tim Wilson, Acting City Attorney; Tammy Branstetter, City Clerk's Office; Rusty Whisenhunt, Public Utilities Director; Mitchell Dooley, Parks & Recreation Deputy Director; Kim McConnell, Lawton Constitution; Seth Marsicano, KSWO 7 News

*Arrived at 2:02PM

INTRODUCTION OF GUESTS

None.

BUSINESS ITEMS

1. Consider approving the minutes of the October 10, 2023, meeting.

Motion by Madigan, Second by Gill, to approve the minutes of the October 10, 2023 meeting.

AYE: Gill, Warren, Madigan, Nance, Sheppard, Fitch, Neal, Hensley, Means. **NAY:** None.

MOTION PASSED.

2. Consider approving invoices, requisitions, and all other submitted materials for payment and take action as deemed necessary.

Schlecht presented the following invoices for the period of January 19 – February 26, 2024:

- February 2024 Cash Transfer (Transferred on 2/7/2024)- \$285,225.00 transferred from TIF 2 to apportionment fund
- Consultant Fee (Invoice dated 1/01/2024)- \$4,141.94 to Richard Rogalski Consulting
- Consultant Fee (Invoice dated 1/31/2024)- \$6,420.00 to Richard Rogalski Consulting

- TIF 2 January 2024 Legal Expense (Invoice dated 2/13/2024)- \$1,020.00 to Center for Economic Development Law
- Bank Trust Fee (Invoice dated 12/22/2023)- \$2,500.00 to Bank of Oklahoma

Motion by Madigan, Second by Hensley, to approve the expenses from January 19 – February 26, 2024 as presented. **AYE:** Gill, Warren, Madigan, Nance, Sheppard, Fitch, Neal, Hensley, Means. **NAY:** None. **MOTION PASSED.**

3. Receive Financial Report(s) and take action as deemed necessary.

Schlecht presented the Balance Sheet for January 2024, the Income and Expense Activity Report for January 2024 and the LEDA Loan Statement for the time period of September 2, 2023 through August 31, 2024. A copy of the Financial Report may be obtained from the City Clerk's Office upon request.

Madigan noted that the property tax income came in earlier than it did last year.

Rogalski said much of this incoming revenue is from the Republic TIF district. He noted that this income comes from the State, and they're a notoriously slow payer.

With regards to the Authority's long-term liabilities, Madigan asked what the \$160,000 due to the LEDC is for.

Rogalski said this is repayment for roadway installation at the new Pepsi Co plant in TIF District 4 – it will be paid back with incoming tax revenue generated by TIF District 4.

Motion by Sheppard, Second by Means, to approve the Financial Report as presented as presented. **AYE:** Gill, Warren, Madigan, Nance, Sheppard, Fitch, Neal, Hensley, Means. **NAY:** None. **MOTION PASSED.**

4. Consider approving an engagement letter with Hatch, Croke & Associates, P.C. for bookkeeping services, preparation of financial statements, and compilation services for the year ending June 30, 2024, and take action as deemed necessary.

Chairman Fitch thanked Schlecht for the great job she has done. He noted that because the Authority's financials are becoming so complex, it's time to start looking for some outside assistance.

Chairman Fitch said this engagement letter does not provide a dollar amount. Scott Hatch has advised he would not be able to give a dollar amount before knowing what all he will be dealing with.

Chairman Fitch noted that both CCIDA and the LEDC use Scott Hatch for their financials.

Rogalski said the FISTA uses Scott Hatch.

Madigan said the FISTA, the Chamber of Commerce and the Airport Authority use Scott Hatch.

Hensley said the United Way also uses Scott Hatch.

Madigan said hiring an outside agency to handle the Authority's financials is a good separation of powers.

Rogalski said that managing the Authority's financials was a lot of work when they had only TIF 1 and TIF 2 as active districts. He noted that it's gotten even more complex with the activation of additional TIF districts.

Sheppard asked if Scott Hatch will be attending meetings on a monthly basis.

Rogalski said it's not likely to be Scott Hatch, but rather a financial advisor from his office that will attend Authority meetings on a monthly basis.

Chairman Fitch noted that Scott Hatch's office would first begin by compiling and reviewing the Authority's financial data. This would take place over the next few months. Once all the data has been reviewed, Scott Hatch's office would be able to provide a more concrete dollar value for a contract. The proposed contract would come back to the Authority for final approval.

Motion by Warren, Second by Gill, to approve the engagement letter with Hatch, Croke & Associates, P.C. for bookkeeping services, preparation of financial statements, and compilation services for the year ending June 30, 2024. **AYE:** Gill, Warren, Madigan, Nance, Sheppard, Fitch, Neal, Hensley, Means. **NAY:** None. **MOTION PASSED.**

5. Discuss a request from Lawton Lodging, LLC, to extend the term of the Amended Function Space License Agreement, which provides for the rebate of the Hotel Occupancy taxes collected at the Hotel-Conference Center located at 135 NW 2nd Street.

Chairman Fitch said this Agreement is due to expire in March of this year.

Rogalski noted that the TIF 2 District was activated in June of 2010, and it's a 25-year TIF. However, the occupancy tax increment was only set up for 12 years. Therefore, TIF 2 is no longer collecting occupancy tax revenue. Because of this, Rogalski said the Authority no longer has the means to give Lawton Lodging this rebate. Rogalski said if the Authority wishes to extend this rebate, they will not need City Council's approval. However, Rogalski said it's important to note that the City no longer gets the state match for these taxes. As the downtown TIF 2 District is reviewed and amended going forward, the City may or may not wish to extend the hotel occupancy tax increment, at which point they would begin receiving State matching funds again.

Madigan asked if this issue would be handled by the Authority or the City Council.

Rogalski said this would be a City Council business item, and their decision will direct the Authority on how to move forward.

Chairman Fitch said he and Richard will be meeting with City staff regarding this issue.

Madigan asked how much money Lawton Lodging has received over the specified 10 year period.

Rogalski said they've received \$2.01 million thus far.

No action was taken on this item.

6. Consider dedicating a Right of Way Easement to the City of Lawton for future roadway and utility installation along SW 112th Street and take action as deemed necessary.

Rogalski said this property is now in the Authority's name. He said the Authority now needs to dedicate the 60 foot right of way to the City to allow for utility installation.

Chairman Fitch noted that CCIDA is aware of the need for this utility installation.

Rogalski said that per the Agreement, both the Authority and CCIDA have agreed to dedicating easements as necessary for utility installation.

Motion by Gill, Second by Hensley, to dedicate a Right of Way Easement to the City of Lawton for future roadway and utility installation along SW 112th Street. **AYE:** Gill, Warren, Madigan, Nance, Sheppard, Fitch, Neal, Hensley, Means. **NAY:** None. ***MOTION PASSED.***

7. Discuss and receive an update on the resolution approved during the October 19th, 2023, LEDA meeting which authorized the preparation of bid packets related to certain capital improvement projects and take action as deemed necessary.

Wilson provided background information regarding this item. He said Resolution 23-04 authorized the preparation of bid packets related to certain capital improvement projects, specifically the McMahon Auditorium renovation project and a landfill expansion project. A copy of Resolution 23-04 may be obtained from the City Clerk's Office upon request.

Wilson said that initially the City's bond counsel thought these projects would be handled through the Authority. Wilson noted that the Authority passed the Resolution with wanting some clarification from bond counsel regarding the Authority not being held liable for any incurred debt.

Wilson said City staff worked with the City's bond counsel to look closely at some of the previous financing that had been done on the CIP, and it was determined that the Lawton Industrial Development Authority (LIDA) currently has two outstanding notes on the CIP. They have an issuance from 2019 that will expire later this year for approximately \$7.6 million, and they also have a 2017 issuance for \$31 million that will mature in 2026. Wilson said the City's bond counsel believes that LIDA would be in a better position to finance this money better than LEDA, and it would cause all three debts to be on parity together.

Wilson said that staff is recommending the CIP projects be handled through LIDA instead of LEDA. He said LIDA will vote to approve going out for bids for these projects at a future meeting.

Wilson said no action needs to be taken at this time. He said based on what happens with LIDA, staff may be bringing back a resolution to resend Resolution 23-04.

8. Review and discuss Draw Request #1 from Westwin Elements in the amount of \$593,366.69 and take action as deemed necessary.

Rogalski provided background information on this item. A copy of Draw Request #1 from Westwin Elements may be obtained from the City Clerk's Office upon request.

Gill asked if City inspectors should be signing off on draw requests.

Rogalski said not at this point. He noted that the Authority does not need to take action on this item today, but rather review the draw request and provide staff with further direction on how they would like to proceed. He said staff does not yet have all the required documentation for this item to be approved today.

With regards to retainage, Gill said it's normal to require a 5-10% retainage. He asked why the contractor working for Westwin has listed zero retainage. He asked if this is because the contractor is not owned by Westwin.

Rogalski said Westwin is acting as the general manager for the project. He said there are two contractors who have done work specifically for this draw request – T & G Construction and Elite Star Construction.

Gill said we still have inspections that should be signed off on. He was told there would be three inspectors that would inspect Westwin construction.

Rogalski said there are multiple inspectors who will be inspecting the construction. He said there are City inspectors who are ensuring all building code requirements are being met.

Gill asked if there is a specific inspector assigned to the completion process.

Rogalski said the Authority members will get a final inspection report. He said Rusty Whisenhunt, Public Utilities Director and graduate construction manager from Oklahoma State University, will be conducting inspections. Mr. Whisenhunt has 40 years of experience in construction management. Rogalski said he will also be assisting with inspections. Rogalski said he, Whisenhunt and a few other City staff members have a monthly project status meeting with Westwin.

Gill asked if the final version of Draw Request #1 will be presented to the Authority for approval.

Rogalski said yes – once the inspections have been completed and all required documentation has been submitted, the Authority will vote to approve or disapprove the request. Once the Authority receives the final request, they have 15 days to respond. To meet this deadline, the Authority may have to call a special meeting here and there.

Chairman Fitch noted that the idea of hiring an outside agency to assist with construction inspections was brought up, but ultimately it was decided that Richard and Rusty's experience would be sufficient.

Gill said he is comfortable with Richard and Rusty overseeing inspections, but he asked if a 5-10% retainage should be added to each pay estimate.

Rogalski said our contract with Westwin states we retain 10%, regardless of what Westwin's agreement may be with their contractor.

Rogalski noted that while he and Rusty may be suitable to oversee project construction of the pilot plant, the Authority may want to look at hiring a full-time inspector to oversee project construction for the full-scale commercial plant if it is indeed built in Lawton.

Madigan said that whatever process the Authority ultimately decides upon to approve these draw requests needs to remain consistent. He said that the Authority, CCIDA and the City of Lawton promised that a third-party inspector would be hired for Westwin construction inspections. He said it's critical that one be hired if the commercial plant is built here.

Gill said he would like for Westwin to have future draw request submissions timed to where they coincide with the Authority's monthly meeting if possible. He also said the draw requests should notate the City's 10% retainage requirement.

Whisenhunt noted that the waterline has been installed and Westwin now has water on site.

No action was taken on this item.

9. Consider approving a Redevelopment Agreement by and among the City of Lawton, the Lawton Economic Development Authority, the Lawton/Fort Sill Economic Development Corporation, and Fischer59 Properties, LLC, for the development of a distribution center within the Airport Industrial Park.

Rogalski noted that staff had anticipated this Agreement being ready before the meeting today, but it's currently still going through the process of revisions. The final version will be brought before the Authority for approval at a future meeting.

No action was taken on this item.

REPORTS

1. Receive a report from the LEDA Executive Director.

Rogalski said the TIF 3 revenue is starting to flow in. Staff has been making distributions to the eligible taxing entities as specified in the Agreement. He said it's also time to start paying the City of Lawton back for their infrastructure investments.

Rogalski said there were multiple notice issues with the rezoning of the property that Westwin is located on. To avoid any further confusion, Rogalski said staff is going to hold off a while on conducting this public hearing.

ADJOURNMENT

Motion by Gill, Second by Warren, to adjourn the February 26, 2024 meeting. **AYE:** Gill, Warren, Madigan, Nance, Sheppard, Fitch, Neal, Hensley, Means. **NAY:** None. ***MOTION PASSED.***

There being no further business, the meeting adjourned at 3:01 PM.

MINUTES
Lawton Economic Development Authority
Regular Meeting
March 21, 2024—2:00 PM
3rd Floor Conference Room
City Hall - 212 SW 9th Street
Lawton, Oklahoma 73501

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

STATEMENT OF COMPLIANCE WITH OKLAHOMA OPEN MEETING ACT, 25 O.S. 301-314

Meeting notice and agenda were posted by the City Clerk's Office as required by State Law.

ROLL CALL:

PRESENT: Fred Fitch, David Means, David Madigan, George Gill, Ernest Sheppard, Jason Hensley

ABSENT: Randy Warren, Ron Nance, Larry Neal

OTHERS PRESENT: Richard Rogalski, LEDA Executive Director; Tim Wilson, Acting City Attorney; Tammy Branstetter, City Clerk's Office; Rusty Whisenhunt, Public Utilities Director; Larry Parks, Parks & Recreation Director; Charlotte Brown, Community Services Director; Tiffany Bechtel, City Manager's Office; Ward 7 Councilwoman Sherene L. Williams; Brad Cooksey, LEDC President; AJ Arends, VP of Project Management for Westwin Elements

INTRODUCTION OF GUESTS

None.

BUSINESS ITEMS

1. Consider approving the minutes of the October 19, November 9 and December 12, 2023 meetings.

Motion by Hensley, Second by Gill, to approve the minutes of the October 19, November 9 and December 12, 2023 meetings. **AYE:** Sheppard, Hensley, Fitch, Gill, Madigan, Means. **NAY:** None. **MOTION PASSED.**

2. Receive the January 2024 Financial Report from Hatch Croke & Associates, P.C., and take action as deemed necessary. – **STRICKEN**

Chairman Fitch said that he and Richard met with Hatch yesterday, and it was determined that the financials are not quite ready to be presented. He noted that their office is in the process of making some formatting changes, but the financials should be ready for presentation soon.

Chairman Fitch said he and Richard are very pleased so far with the services being provided by Hatch Croke & Associates. He noted how extensive the Authority's bookkeeping is becoming, and Hatch's office is working to ensure the financial statements are completely accurate before presenting them to the Authority.

Rogalski noted that the Authority recently received their first check for TIF 4.

3. Consider approving a Redevelopment Agreement by and among the City of Lawton, the Lawton Economic Development Authority, the Lawton/Fort Sill Economic Development Corporation, and Fischer59 Properties, LLC, for the development of a distribution center within the Airport Industrial Park.

Rogalski provided background information on this item. A copy of the Redevelopment Agreement by and among the City of Lawton, the Lawton Economic Development Authority, the Lawton/Fort Sill Economic Development Corporation, and Fischer59 Properties, LLC may be obtained from the City Clerk's Office upon request.

Rogalski said Brad Cooksey, LEDC President, has been working on this project for a little over a year. Rogalski said this is an important project because it both retains an existing industry as well as helping it expand.

Rogalski said that every item specified in the Agreement also appeared on the Term Sheet that has previously been approved by the Authority. He noted that the Agreement went through several revisions as staff worked with the attorneys for Fischer59 Properties, and the LEDC approved the final version of the Agreement at their board meeting on Monday. However, Rogalski said staff is still waiting for Fischer59 Properties to approve the final version of Agreement. He said he anticipates that Fischer59 Properties will approve this version.

Rogalski said this Agreement is exactly parallel to the Pepsi Co. Agreement. The Agreement anticipates that the Redeveloper purchase 15.71 acres of property (as outlined in Exhibit A of the Agreement) from the LEDC for \$260,000. The net proceeds of this sale would be provided to the City of Lawton. The Redeveloper will also design and construct the off-site public improvements, to include a roadway extension and a water and sewer line. Rogalski said he worked with Whisenhunt to determine a rough cost estimate for this project, and they believe it will cost around \$1.6 million – this will be the maximum amount.

According to the Agreement, Rogalski said the City of Lawton will hold the LEDC's funding and the remaining portion of the \$1.6 million allowed for public improvements until the improvements are completed. Rogalski said the construction plans for the public improvements will go to City Council for approval before construction is allowed to begin. Once the improvements are completed, Rogalski said the City will conduct inspections. A 100% maintenance bond will be required with the final inspection. Rogalski said once the final improvements (and required inspections) and maintenance bond are approved by Council, the City would then release the money to the Redeveloper for the actual cost of the off-site public improvements. The City would also activate the TIF District at this time.

Rogalski said as the money comes in through the TIF District, the Authority would reimburse both the City and the LEDC for the cost of the public improvements.

Motion by Gill, Second by Madigan, to approve a Redevelopment Agreement by and among the City of Lawton, the Lawton Economic Development Authority, the Lawton/Fort Sill Economic Development Corporation, and Fischer59 Properties, LLC, for the development of a distribution

center within the Airport Industrial Park. **AYE:** Sheppard, Hensley, Fitch, Gill, Madigan, Means. **NAY:** None. **MOTION PASSED.**

4. Consider approving Draw Request #1 from Westwin Elements.

Rogalski and Rusty Whisenhunt, Public Utilities Director, provided background information on this item. A copy of Draw Request #1 from Westwin Elements may be obtained from the City Clerk's Office upon request.

Whisenhunt said he and Rogalski both have completed inspections. He noted there are three items with this Draw Request, including site clearing as well as site grading and compacting. Whisenhunt said this work was inspected by License and Permits, and lab testing has confirmed the work has met density and gradation requirements for the specific material(s) used.

Whisenhunt said Draw Request #1 also includes work that was done for the foundation as well as the metal iron work done for the building. Whisenhunt said this work was inspected on February 26th, and it met all requirements.

Whisenhunt said the Draw Request includes paid invoices as well as lien releases from the appropriate vendors. He said the Draw Request does hold a 10% retainage. The pay request was for a total of \$534,030.02, or \$593,366.69 with the 10% retainage.

Madigan noted that the documentation is exceptional, and he appreciates the inclusion of lien waivers.

Motion by Gill, Second by Hensley, to approve Draw Request #1 from Westwin Elements. **AYE:** Sheppard, Hensley, Fitch, Gill, Madigan, Means. **NAY:** None. **MOTION PASSED.**

5. Discuss a proposal from Retail Attraction LLC for economic development consulting and provide staff with direction from the Authority regarding their desire to further pursue this proposal.

Chairman Fitch provided background information on this item. A copy of the proposal from Retail Attraction LLC may be obtained from the City Clerk's Office upon request.

Chairman Fitch said the Authority has hired a similar company in the past, the Retail Coach, and he said he cannot recall getting much out of it. Now Brent Kisling, owner of Retail Attraction, LLC, has approached the Authority asking if we'd be interested in his economic development consulting services.

Chairman Fitch said Brent is very knowledgeable in retail economic development.

Rogalski said Brent's company has been around for a very long time. Rogalski noted that this is a discussion item only – the Authority is not expected to take action at this time.

Rogalski said he has mixed feelings regarding this proposal. He noted it would be great if it works well, but it could be a waste of money if there is no success.

Madigan said he's not necessarily opposed to the proposal, but he would like to see changes made to the current fee structure. He said he would prefer to see a percentage incentive instead.

Chairman Fitch said he agrees with this idea. However, the consultant would also have to agree.

Rogalski said this is a great idea, but he's skeptical that the consultant would be open to altering the current fee schedule.

Brad Cooksey, LEDC, said Brent asked to meet with him and Mayor Booker to discuss this possibility. However, Cooksey said it would not be appropriate for the LEDC to hire Brent. Cooksey said he then approached Rogalski asking if this is something the Authority may be interested in pursuing. Cooksey noted that Brent brings an interesting perspective because he's very well respected throughout the entire State of Oklahoma. Cooksey said it's also important to keep in mind that retail development comes after economic development. Retailers often look at household income when deciding where to expand.

Chairman Fitch said he likes the idea of restructuring the fee schedule to where the consultant is paid based on performance. He asked Rogalski to discuss this possibility with Brent.

Rogalski said he will start putting something together and then discuss it with Brent.

Hensley asked if a market study could be dropped before the Authority has any additional discussion about this proposal.

Rogalski said yes.

Means said he does not like the idea of hiring a consultant to do this sort of work when there are already local businesses doing this sort of work.

Gill said he is not excited at all about this proposal.

No action was taken on this item.

REPORTS

1. Receive a report from the LEDA Executive Director
 - a. Westwin Elements

Rogalski introduced AJ Arends, Project Manager for the Westwin pilot plant construction. Arends reviewed a presentation of the Weekly Construction Report as of March 15, 2024. A copy of this presentation may be obtained from the City Clerk's Office upon request.

Chairman Fitch said he believes Summit Utilities will possibly share some of the expenses for the installation of the gas line – he advised Arends to investigate this. He also noted he's glad to see that an emergency generator has been installed.

Chairman Fitch asked if a concrete pad will be installed underneath the fence line so that weeds do not grow up through the fence.

Arends said they hadn't planned on installing a concrete curb along the fence line, but they will look into this.

Madigan asked how long the pilot plant would need to be in operation before the next step can be taken to build the full-scale refinery.

Arends said there is a bankable feasibility study that is ongoing, and Westwin also has a DOE grant application that has been submitted. With regards to the first commercial scale facility, the design has to get to an appropriate degree of completion before the next steps can be taken.

Sheppard asked who does the bankable feasibility study.

Arends said Westwin has contracted with AtkinsRéalis out of Canada. He said this is global company that is heavily involved in the mining and refining business.

Chairman Fitch asked when the pilot plant is slated to go into production.

Arends said Westwin is hoping to have the pilot plant mechanically complete towards the end of May or early June. At this point, dry commissioning will begin, which tests all the different nodes of the process without pushing product through to make sure they're functioning properly. After that, they will begin wet commissioning, which involves running product. Arends said Westwin hopes to have product produced around the August time frame.

Chairman Fitch asked when Westwin anticipates getting clearance to move forward with construction of the commercial plant.

Arends said the goal is for Westwin to obtain clearance to move forward with construction of the commercial plant mid to late 2025.

Cooksey noted that Westwin has not yet committed to having the commercial plant built here. He emphasized how important obtaining state support will be for this project. Cooksey said he has met with the Governor and other elected officials regarding a letter of support for Westwin – the Governor has signed the letter, but there are other officials who haven't. Cooksey said Westwin could easily decide to build the full-scale refinery in a different state in which it receives better support. He said a few weeks ago he was in Florida with officials from Westwin at a very high-level meeting with very prominent people, to include investors and members of the DOD. Cooksey said the City of Lawton has done what they need to do, but there is a need to recruit additional support from the State of Oklahoma.

Rogalski said the LEDC is contracting with a third-party environmental consultant, Blackshare Environmental, to do a third-party evaluation of the permit documents and present them in a way that is understandable. He noted that Blackshare Environmental is also the environmental consultant for the Lawton Airport Authority. Rogalski said the proposed refining process is a very clean process. He noted that the first commercial carbonyl plant, Vale Europe in the United Kingdom, was established in 1890 by the guy who invented the carbonyl process. He said there is an entire neighborhood built around this refinery, and there is an operating yoga studio across the street from the refinery.

Rogalski noted there was an error on the deed for the 40 acres from CCIDA to LEDA. Staff has corrected the deed and associated documents. He noted the Authority passed a Resolution authorizing the Chairman to execute all corrective documents. Rogalski said he will have Chairman Fitch sign the corrected documents after the meeting.

b. Lawton Lodging

Rogalski said that Lawton Lodging has requested that the Authority extend the hotel motel tax rebate Agreement. The current Agreement expired today. Per the Agreement, Lawton Lodging was eligible to receive a hotel motel tax rebate for a duration of 10 years.

Rogalski said the Authority is not required to take any action on this today.

c. STEDI Amendment

Rogalski said staff will be amending the STEDI Project Plan to add a few areas - specifically the Westwin project, which was in the county until the City of Lawton annexed in the property. He said staff will also be adjusting the size of TIF 4 and TIF 5 (Fischer59 Project).

ADJOURNMENT

Motion by Gill, Second by Means, to adjourn the March 21, 2024 meeting. **AYE:** Sheppard, Hensley, Fitch, Gill, Madigan, Means. **NAY:** None. ***MOTION PASSED.***

There being no further business, the meeting adjourned at 3:00 PM.



REDEVELOPMENT AGREEMENT

BY AND AMONG

THE CITY OF LAWTON,

THE LAWTON ECONOMIC DEVELOPMENT AUTHORITY,

**THE LAWTON/FT SILL ECONOMIC DEVELOPMENT
CORPORATION,**

AND

FISHER59 PROPERTIES, L.L.C.

_____, 2024

REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT (this "Agreement") is made as of the ____ day of ____, 2024 ("Effective Date"), by and among the City of Lawton, a municipal corporation ("City"), the Lawton Economic Development Authority ("LEDA"), a public trust having as its beneficiary the City of Lawton, the Lawton/Fort Sill Economic Development Corporation, a private not-for-profit corporation ("LEDC"), and Fisher59 Properties, L.L.C., a Texas limited liability company, duly authorized to conduct business in the State of Oklahoma ("Redeveloper").

RECITALS

A. On November 26, 2019, the City Council of the City of Lawton ("City Council") adopted the Non-Retail Business Economic Development Assistance Policy, Council Policy 1-11, as amended ("Policy") for the attraction, evaluation, and public support for investment and development of non-retail businesses in the community.

B. As authorized by the Oklahoma Local Development Act, Title 62, Oklahoma Statutes, Section 850, *et seq.*, as amended ("Local Development Act"), City Council adopted the Skills Training, Education, Development and Investment (STEDI) Project Plan ("Project Plan") on December 10, 2019, as thereafter amended, in order to provide legal authorization and potential financial support for approved public and private expenditures in connection with the City's approved Policy.

C. The Project Plan furthers the City's desire to promote economic development by creating competitive industrial development opportunities within the City of Lawton as a method of retaining and expanding employment in the area, attracting major investment, enhancing the tax base, stimulating economic growth, improving the community's quality of life, and otherwise strengthening the community.

D. Subject to the terms and conditions of this Agreement, the Redeveloper proposes to develop approximately 15.71 acres of real property located in the Airport Industrial Park, in Lawton, Oklahoma as more particularly described on Exhibit A attached hereto ("Property"), to construct a new warehouse and distribution center, with a minimum capital investment of \$16 million, to design and construct the offsite public sewer, water, and roadway improvements necessary to serve the new development.

E. Redeveloper requests assistance in development financing to reimburse it for the costs to be incurred in providing the public improvements, in an amount not to exceed \$1.6 million or such greater maximum amount approved by City Council, in accordance with Section 1.2 of this Agreement.

AGREEMENTS

NOW, THEREFORE, in consideration of the promises and mutual obligations herein set forth, the parties hereby covenant and agree with each other as follows:

1. SCOPE OF AGREEMENT.

1.1. Overview of the Redevelopment. This Agreement imposes the following redevelopment obligations on the Redeveloper, all subject to the terms and conditions herein provided: (a) to acquire the Property and make a minimum capital investment in the amount of \$16 million ("Minimum Investment") in developing and constructing approximately 100,000 square foot of improvements on the Property, which will primarily consist of a warehouse and distribution center (the "Distribution Center"), and related parking and other site improvements on the Property (collectively, the "Distribution Center Improvements"), (b) to provide the design and cause the construction of the offsite public sewer, water, and roadway improvements required to serve the Property and Distribution Center Improvements ("Public Improvements" and together with the Distribution Center Improvements, collectively, the "Redevelopment").

1.2. Public Assistance. In consideration of the public benefit the Redevelopment will bring to the community, the City agrees to provide assistance in development financing to Redeveloper by reimbursing Redeveloper an amount equal to the actual out-of-pocket costs and expenses (including all hard and soft costs and all bonding costs, including maintenance bonds) incurred by Redeveloper in connection with the design and construction of the Public Improvements, which in no event shall exceed \$1.6 million (the "Initial Cap") or such greater maximum amount approved by City Council ("Assistance in Development Financing"), subject to and in accordance with the terms of this Agreement.

- (a) By its execution of this Agreement, the City approves the Assistance in Development Financing in an amount not to exceed the Initial Cap.
- (b) Prior to commencing construction of the Public Improvements, Redeveloper will submit an engineer's detailed cost estimate, or the construction contract with Redeveloper's contractor, specifying the costs of the Public Improvements, including, without limitation, a contingency and any soft costs. Should this documentation indicate that the cost of the Public Improvements will exceed the Initial Cap, City staff will within fourteen (14) days of notification present the updated cost estimate to City Council for consideration. If the City Council approves the updated cost, the Initial Cap shall be increased accordingly (the "Adjusted Cap") and the Adjusted Cap will be established as the approved amount of Assistance in Development Financing for disbursement to the Redeveloper pursuant to this Agreement.
- (c) In addition, if after construction begins on the Public Improvements unforeseeable events increase Redeveloper's costs above the Initial Cap or the Adjusted Cap, as applicable, and the increase is not caused by the negligence or wrongful acts of Redeveloper, City staff will within fourteen (14) days of notification present the cost increase to City Council for consideration and approval; said consideration by City Council will be reasonable and made in good faith without delay. If the City Council approves the increased cost, the Initial Cap or Adjusted Cap shall be increased accordingly to include these cost overruns.
- (d) This consideration will coincide with the City Council's acceptance of the dedication of the Public Improvements.

1.3. Public Benefit. Redeveloper proposes the use of public assistance as a part of the overall development financing of the Redevelopment. In exchange for the public assistance requested in support of the Redevelopment, Redeveloper agrees to perform certain obligations and satisfy certain requirements to ensure a definite and measurable public benefit, including developing the Distribution Center Improvements at a cost of not less than the Minimum Investment, constructing the Public Improvements, commencing and completing the Distribution Center Improvements within specified time frames, through Redeveloper's parent company or affiliates, using good faith efforts to create thirty (30) new quality jobs within the community, all as more particularly described herein. The Redeveloper's performance of these obligations will support the objectives of the Project Plan and the City's desire to attract major investment with new non-retail business, expand employment, and enhance the City's tax base.

2. CONDITIONS PRECEDENT.

2.1. Conditions Precedent to the City's and LEDA's Obligations. The City and LEDA shall have no obligation to perform their respective obligations under Section 5.3 or Section 6 hereof, until all the following conditions have been satisfied:

- (a) All parties have executed this Agreement.
- (b) The Redeveloper has acquired the Property pursuant to the terms of the Purchase Agreement (defined in Section 3.1) between Redeveloper and LEDC, and LEDC has delivered the Net Proceeds (defined in Section 3.1) to the City.
- (c) The Redeveloper has submitted, and the City has approved (i) the Design Development Documents and Construction Documents (defined in Section 4.5) for the Distribution Center Improvements, and (ii) the Plans (defined in Section 4.3) for the Public Improvements.
- (d) The Redeveloper has obtained all applicable permits and approvals necessary to construct the Public Improvements and Distribution Center Improvements, including, without limitation, City approval of the Plans for the Public Improvements pursuant to Section 4.3 hereof and City and LEDA approval of the Design Development Documents and Construction Documents for the Distribution Center Improvements pursuant to Section 4.5 hereof.
- (e) Intentionally Omitted.
- (f) The Redeveloper has provided the City with a Maintenance Bond equal to one hundred percent (100%) of the entire cost of materials, equipment, and labor for the Public Improvements, which shall be enforceable by the City, indicating the contractor will be responsible for any defects in the Public Improvements due to faulty materials and/or workmanship for a period of two (2) years from date of final acceptance ("Maintenance Bond").

(g) The Public Improvements have been dedicated to and accepted by the City. For the purposes of this Section 2.1(g) and Section 5.3(d) below, the City agrees to accept the Public Improvements provided the same have been designed and constructed in accordance with the Plans and the Standards (as defined in Section 4.3 below).

2.2 Conditions Precedent to Redeveloper's Obligations. Redeveloper shall have no obligation to perform its obligations hereunder, until the Redeveloper has acquired the Property pursuant to the terms of the Purchase Agreement (as defined in Section 3.1) and the conditions set forth in the following sentence have been satisfied. Further, Redeveloper and LEDC hereby agree that each party's obligation to consummate the transaction contemplated by the Purchase Agreement is subject to the satisfaction of the conditions precedent set forth in Section 2.1(a), Section 2.1(c) and Section 2.1(d). Redeveloper's obligations to perform hereunder and to consummate the transaction contemplated by the Purchase Agreement are conditioned upon the satisfaction of either of the following conditions precedent: (A) Redeveloper shall have received bids for the construction of the Public Improvements such that the expected total costs of the Public Improvements does not exceed the Initial Cap based upon such bids and other reasonable Redeveloper cost estimates; or (B) if the expected total costs of the Public Improvements exceed the Initial Cap based upon such bids and other reasonable Redeveloper cost estimates, City Council of the City shall have approved the Adjusted Cap reflecting an increase of the maximum Assistance of Development Financing to match or exceed such updated cost estimates at its next regularly scheduled meeting after the City's receipt of such updated cost estimates. If neither of the foregoing conditions precedent in (A) or (B) above are satisfied, Redeveloper shall have the right to terminate this Agreement and the Purchase Agreement, in which event any earnest money under the Purchase Agreement shall be returned to Redeveloper and none of the parties shall have any further obligations under this Agreement or the Purchase Agreement other than those that expressly survive a termination thereof.

3. LEDC OBLIGATIONS.

3.1. Sale of Property. LEDC currently owns the Property upon which the Redevelopment is to be constructed by Redeveloper. LEDC and Redeveloper have executed a Purchase and Sale Agreement dated April 20, 2023, as amended ("Purchase Agreement"), pursuant to which LEDC has agreed to sell the Property to Redeveloper. Provided that the conditions precedent in Section 2.2 hereof have been satisfied, LEDC will sell and convey fee simple title to the Property to the Redeveloper, all in accordance with and subject to the terms and conditions of the Purchase Agreement.

3.2. Delivery of Sales Proceeds to City. Within fourteen (14) days of the closing on the sale of the Property to the Redeveloper, LEDC shall deliver or transfer to the City all the Net Proceeds from the sale of the Property to the Redeveloper for the City's use in providing Redeveloper with the Assistance in Development Financing, pursuant to Section 5.3 of this Agreement, provided that if for any reason, the Public Improvements are not completed and the Net Proceeds are not reimbursed to the Redeveloper pursuant to Section 5.3, the City will return the Net proceeds to LEDC. As used herein, "Net Proceeds" means the purchase price of the Property, as set forth in the Purchase Agreement, less expenses incurred by LEDC directly related to the sale of the Property (i.e.,

closing costs and broker's fees), as reflected in the settlement statement executed by LEDC to consummate the closing.

4. REDEVELOPER OBLIGATIONS.

4.1. Property. Provided that the conditions precedent in Section 2.2 hereof have been satisfied, Redeveloper hereby agrees to acquire fee simple title to the Property from LEDC, all in accordance with and subject to the terms and conditions of the Purchase Agreement.

4.2. Distribution Center Improvements. Subject to the terms and conditions herein provided, including, without limitation, the compliance by the City of its obligations hereunder, Redeveloper shall cause the Distribution Center Improvements to be constructed on the Property in accordance with the terms of this Agreement and shall invest no less than the Minimum Investment in connection with the development and construction of the Distribution Center Improvements.

4.3. Public Improvements. Redeveloper shall comply with all applicable provisions of Chapter 21, Article 21-8 of the City of Lawton's Code of Ordinances, with respect to the Public Improvements. Without limiting the foregoing, Redeveloper shall submit to the City for its review and approval, the plans and specifications for the Public Improvements prepared by a professional engineer (the "Plans") in compliance with all applicable standards, ordinances, and code requirements of the City, including without limitation Article 21-8 of the City of Lawton's Code of Ordinances (collectively, the "Standards"). A summary listing of the Plans to be provided being set forth on **Exhibit B** attached hereto. Each sheet comprising the Plans shall be submitted on or before May 15, 2024. The Plans shall be subject to review and approval by the City, which shall not be unreasonably withheld, conditioned or delayed. The Redeveloper shall be obligated to modify the Plans if the City reasonably deems it necessary and appropriate to comply with the City's Standards; provided, if any modifications to the Plans result in an increase to the cost of the Public Improvements, such increased costs shall – subject to the limitations of Section 1.2 herein - be included as part of the actual amount of the Assistance in Development Financing; provided further, no modifications to the Plans to expand the scope of the Public Improvements (as opposed to modifications required to comply with City Standards) will be required without the prior consent of the Redeveloper. Redeveloper shall provide the City and LEDA with copies of the contracts executed by Redeveloper and its contractors for the construction of the Public Improvements, its performance and payment bonds and other pertinent matters concerning the Public Improvements, all in accordance with applicable City Standards. Upon completion of the Public Improvements, Redeveloper shall provide City with evidence of full and complete payment to its contractors and lien waivers executed by contractors and subcontractors. Further, upon completion of the Public Improvements, Redeveloper shall submit to the City as-built construction plans and the Maintenance Bond for acceptance by the City Council. Redeveloper agrees to deliver to the City clear and unencumbered title to all Public Improvements. Upon City Council acceptance, title to all Public Improvements shall be vested in the City and Redeveloper relinquishes any right, title or interest in and to such Public Improvements or any part thereof. It is understood and agreed that the City shall have no liability or responsibility in connection with such Public Improvements until acceptance by City Council.

4.4. Financing. Redeveloper hereby represents and warrants that it has sufficient financing that, together with the Assistance in Development Financing being provided hereunder, will enable Redeveloper to complete the Redevelopment, in accordance with the terms of this Agreement.

4.5. Design Documents; Construction Documents. Redeveloper shall submit to the City and LEDA for review and approval the design development documents for the Distribution Center Improvements which shall consist of schematic drawings, design documents and other documents to fix and describe the design, scale, size and character of the Redevelopment, including, without limitation, materials, colors and other such information and details as may be requested by the City or LEDA in accordance with the City's Standards ("Design Development Documents"), and the construction documents submitted in conformance therewith ("Construction Documents"). Redeveloper shall not commence any site work or construction activities for the Distribution Center Improvements on any portion of the Property until the City has issued building permits for the Distribution Center Improvements in accordance with the approved Construction Documents. The City's issuance of building permits will be based on the City's Standards and shall not be interpreted as expressing any opinion, making any representation or granting any approval with respect to the structural integrity or construction quality of the Redevelopment. The City shall not unreasonably withhold or delay the issuance of any building permits, certificates of occupancy or any other City approvals relating to the Redevelopment.

4.6. Commencement and Completion Dates. Subject to the City timely approving the Design Development Documents and Construction Documents and timely issuing building permits for the Distribution Center Improvements, Redeveloper shall commence construction of the Distribution Center Improvements within sixty (60) days after receipt of the foregoing approvals and building permits ("Commencement Date") and shall use commercially reasonable efforts to ensure that the Distribution Center Improvements are operational within twenty four (24) months after commencement of construction of the Distribution Center Improvements ("Completion Date"), subject to extension pursuant to Section 10.13 below.

4.7. Employment Obligations. Upon completion of the Distribution Center Improvements, Redeveloper, or its parent company or affiliates, shall use commercially reasonable efforts, taking into account then current financial, economic, industry and business conditions, to initially employ no less than sixty (60) of its existing employees at the Distribution Center upon the completion of construction thereof, at an average annual salary of \$48,000, exclusive of benefits. Thereafter, Redeveloper, or its parent company or affiliates, shall, over a period of ten (10) years from completion of the Distribution Center Improvements, use commercially reasonable efforts, taking into account then current financial, economic, industry and business conditions, to add thirty (30) more employees at the Distribution Center, with ninety (90) of the employees working at the Distribution Center being compensated at an average annual salary of \$48,000, exclusive of benefits (collectively, the "Minimum Employment Obligations"). To evidence compliance with the Minimum Employment Obligations, upon the written request of the City or LEDA, Redeveloper shall provide to LEDA and the City, certified copies of the Redeveloper's, or its parent company's or affiliate's, quarterly reports it submits to the Oklahoma Employment Security Commission (OESC) with social security numbers omitted including the name and number of full-time and part-time employees employed at the Distribution Center and

shall provide the total and average annual employee compensation, separating wages and employee benefits.

4.8. Intentionally Omitted.

4.9. Intentionally Omitted.

4.10. Antidiscrimination During Construction. Redeveloper, for itself, its successors and assigns, agrees that in the construction of the Redevelopment, the Redeveloper shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, handicap, national origin or ancestry.

4.11. Other Requirements Applicable to Construction. Redeveloper, its successors and assigns, shall use commercially reasonable efforts to request that its contractors and vendors engaged in connection with the construction and development of the Redevelopment purchase all building items, construction materials, and personal property for delivery to the construction site using Redeveloper's street address in Lawton, Oklahoma or any Lawton street address, for such purchases and deliveries in such a manner that Oklahoma and Lawton sales and/or use taxes shall be applicable to each purchase that exceeds \$10,000. Redeveloper shall not be liable to the City, LEDA or LEDC for any violations of the provisions of this Section 4.11.

4.12. Local, State and Federal Laws. Redeveloper shall carry out the provisions of this Agreement in conformity with all applicable local, state, and federal laws and regulations.

4.13. Indemnification. Redeveloper shall defend, indemnify, assume all responsibility for, and hold LEDA, LEDC and the City and their respective elected and appointed officers, trustees, employees and agents, harmless from, all costs (including reasonable attorney's fees and costs), claims, demands, liabilities or judgments (except those which have arisen from the willful misconduct or negligence of LEDA, LEDC, or the City, and their respective officers, trustees, employees and agents) for injury or damage to property and injuries to persons, including death, to the extent determined to be caused directly or indirectly by any of the Redeveloper's activities under this Agreement, whether such activities or performance thereof be by the Redeveloper or anyone directly or indirectly contracted with or employed by the Redeveloper and whether such damage shall accrue or be discovered before or after termination of this Agreement. This indemnity includes, but is not limited to, any repair, cleanup, remediation, detoxification, or preparation and implementation of any removal, remediation, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes including petroleum and its fractions as defined in the Comprehensive Environmental Response, Compensation and Liability Act; codified at Title 42, Sections 9601, et seq., of the United States Code (hereinafter, "CERCLA"), and all amendments thereto, at any place where Redeveloper owns or has control of real property pursuant to any of Redeveloper's activities under this Agreement, but excludes Redeveloper's liability for any conditions of the Property that existed prior to Redeveloper's acquisition of the Property from LEDC or those conditions caused by any party not under Redeveloper's control. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of CERCLA to assure, protect, hold harmless and indemnify the City, LEDC, and LEDA from liability. This indemnification shall survive the execution of this Agreement as set forth in Section 10.12. LEDA shall defend, indemnify, assume all responsibility

for, and hold Redeveloper and its affiliates and their respective officers, managers, members, employees and agents, harmless from, all costs (including reasonable attorney's fees and costs), claims, demands, liabilities or judgments arising out of the breach of this Agreement by LEDA or for injury or damage to property and injuries to persons, including death, to the extent determined to be caused by the willful misconduct or negligence of LEDA. LEDC shall defend, indemnify, assume all responsibility for, and hold Redeveloper and its affiliates and their respective officers, managers, members, employees and agents, harmless from, all costs (including reasonable attorney's fees and costs), claims, demands, liabilities or judgments resulting from the breach of this Agreement by LEDC or for injury or damage to property and injuries to persons, including death, to the extent determined to be caused by the willful misconduct or negligence of LEDC.

4.14. Liability Insurance.

4.14.1 In addition to the indemnification of LEDA, LEDC, and the City required in Section 4.13 hereof, Redeveloper shall take out and maintain, or cause the general contractor(s) for the Redevelopment to take out and maintain, during the period set forth in subsection 4.14.4, a commercial general liability policy in the amount of at least \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate.

4.14.2 Redeveloper shall furnish or cause to be furnished a certificate of insurance signed by an authorized agent of the insurance carrier setting forth the general provisions of the insurance coverage. This certificate of insurance shall name the City, LEDC, and LEDA as additional insureds under the policy. The certificate of insurance shall contain a statement of obligation on the part of the carrier to notify the City, LEDC, and LEDA by certified mail of any modification, cancellation or termination of the coverage at least 30 days in advance of the effective date of any such modification, cancellation or termination. Coverage provided hereunder by the Redeveloper shall be primary insurance and not contributing with any insurance maintained by LEDA, LEDC, or the City, and the policy shall contain such an endorsement. The required certificate shall be delivered to the City, LEDC and LEDA prior to commencement of construction.

4.14.3 Redeveloper shall also furnish or cause to be furnished to the City, LEDC, and LEDA evidence satisfactory to the City, LEDC and LEDA that any contractor with whom it has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law.

4.14.4 The insurance obligations set forth in this Section shall remain in effect until issuance of a final certificate of occupancy for the Redevelopment.

4.15. Taxes Assessments, Encumbrances and Liens. Redeveloper covenants to the City and LEDA that it shall pay, or cause to be paid, when due all sales taxes, business personal property and real estate taxes and assessments on the Property which the Redeveloper is responsible to pay. Nothing herein shall be deemed to prohibit Redeveloper from contesting the validity or amounts of any tax assessment, encumbrance or lien, or to limit the remedies available to Redeveloper with respect thereto.

4.16. Other Actions. Redeveloper agrees to take such other reasonable actions as may be appropriate or desirable to support the implementation of the Redevelopment including, by way of

example, executing such supplemental agreements and covenants, if any, (including covenants running with the Property) as may be reasonably necessary or appropriate to implement this Agreement, for the financing of project costs pursuant to the Project Plan, for furnishing information reasonably requested by the City, LEDA, or LEDC, and in other matters that may be of benefit to the Redevelopment.

5. CITY OBLIGATIONS.

5.1. Activation of Increment District, City of Lawton. The City shall take such actions required pursuant to the Project Plan and the Oklahoma Local Development Act, 62 O.S. § 850, *et seq.*, to either amend the Project Plan to create the increment district for the Property or adopt a resolution activating an existing Increment District for the Property under the Project Plan.

5.2. Public Improvements. The City shall provide and obtain such easements and rights of way as are necessary to permit the construction and operation of the Public Improvements. The Plans for the Public Improvements shall be subject to review and approval by the City. Any such approval shall not be deemed an assumption of responsibility or liability by the City of any negligent act, or omission in the performance of the Redeveloper's engineer or in his or her preparation of such Plans. The City will inspect the Public Improvements during construction for conformance with the City's Standards. Following construction, as-built construction plans and the Maintenance Bond shall be submitted to the City for acceptance by the City Council. Except as provided by said Maintenance Bond, the City will maintain and operate all Public Improvements.

5.3. Assistance in Development Financing. Provided Redeveloper's and LEDC's obligations under this Agreement have been satisfied, and upon: (a) the City's receipt from Redeveloper of the contracts executed by Redeveloper and its contractors for the construction of the Public Improvements, its payment and performance bonds, along with evidence of complete payment made to said contractors, lien waivers, and other information as may be reasonably required by the City, (b) completion of construction of the Public Improvements, (c) inspection of the Public Improvements by the City for the purpose of confirming that the construction is in compliance with the Standards and the Plans, and (d) acceptance by the City Council of the Public Improvements, the City, using its funds together with the funds provided by LEDC pursuant to Section 3.2 above, will disburse the Assistance in Development Financing to the Redeveloper, as determined pursuant to Section 1.2 of this Agreement. The Assistance in Development Financing will be payable to the Redeveloper within sixty (60) days of the date of the City Council's acceptance of the Public Improvements in accordance with this Section 5.3. If the Assistance in Development Financing has not been paid to Redeveloper within thirty days of the date payment is due, then the City shall be in default and the unpaid amount shall accrue interest at a rate of 5% per year until the entire amount of the Assistance in Development Financing (and accrued interest) is paid to Redeveloper. The City's obligations to reimburse Redeveloper as provided in this Section shall not be affected by the provisions of Section 6.1 below or the failure of the parties to comply therewith, it being understood that the reimbursement obligations of the City to Redeveloper are not conditioned in any manner on Section 6.1 or the parties' compliance therewith. Simultaneously with the execution of this Agreement, the City shall provide Redeveloper with an opinion of counsel from its counsel, i.e. an attorney from the Center for Economic Development Law, in a form approved by Redeveloper (the "Opinion of Counsel") that provides the following opinions:

(i) the obligations of the City to pay the Assistance in Development Financing to Redeveloper pursuant to this Section 5.3 are binding upon the City and are enforceable by Redeveloper against the City; (ii) the City has specifically appropriated an amount equal to the Initial Cap, in present funds in its capital improvement account for purposes of paying the Assistance in Development Financing to Redeveloper; and (iii) the City's obligations to pay the Assistance in Development Financing to Redeveloper do not violate any applicable laws or constitutional provisions that prohibit or otherwise limit the City from incurring indebtedness. The Opinion of Counsel shall be updated to opine as to the enforceability of the City's actions in agreeing to the Adjusted Cap, if applicable.

6. LEDA OBLIGATIONS.

6.1 Provided the City's obligations under Section 5.1 of this Agreement have been completed, LEDA will manage all increment generated from the Redevelopment, including disbursing reimbursing payments to the City and LEDC for amounts contributed by each entity toward the Assistance in Development Financing in support of the Redevelopment. LEDA will reimburse the City and LEDC in the respective amounts that each contributed toward the Assistance in Development Financing provided to the Redeveloper in support of the Redevelopment in accordance with Section 5.3 of this Agreement, which will be payable solely from (a) the available real property and business personal property increment generated by and collected from the Increment District, as authorized Project Costs under the Project Plan. LEDA may disburse a portion of the available increment collected from the Increment District to make installment payments toward the total amounts owed to the City and LEDC. Said payments will commence in the first year that increment from the Increment District is collected and will continue thereafter through the expiration or termination of the Increment District, or when the City and LEDC have each been fully reimbursed, whichever is sooner.

7. [RESERVED]

8. REPRESENTATIONS AND WARRANTIES

8.1. Redeveloper Representations and Warranties. The Redeveloper represents and warrants that:

A. The Redeveloper is a limited liability company duly organized and existing under the laws of the State of Texas. Redeveloper is authorized to conduct business in the State of Oklahoma. Redeveloper is not in violation of any provisions of its operating agreement, articles of organization, and any other agreement governing the Redeveloper, or any law of the State of Oklahoma affecting Redeveloper's ability to perform under this Agreement.

B. The Redeveloper has the full power and authority to execute this Agreement and this Agreement shall constitute a legal, valid and binding obligation of the Redeveloper in accordance with its terms, and the consent of no other party is required for the execution and delivery of this Agreement by such Redeveloper or the consummation of the transactions contemplated hereby, subject to laws relating to bankruptcy, moratorium, insolvency, or other laws affecting creditor's rights generally and subject to general principles of equity.

C. The execution and delivery of this Agreement, the consummation of the transactions contemplated herein, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented or limited by or in conflict with, and will not result in a breach of, other provisions of its operating agreement, articles of organization, and any other agreement governing the Redeveloper or with any evidence of indebtedness, mortgages, agreements, or instruments of whatever nature to which the Redeveloper is a party or by which it may be bound, and will not constitute a default under any of the foregoing.

D. To the knowledge of the undersigned representative of the Redeveloper (without personal liability for such undersigned representative of the Redeveloper), there is not currently pending any action, suit, proceeding or investigation, nor, is any such action threatened which, if adversely determined, would materially adversely affect the Redeveloper or the Redevelopment, or impair the ability of the Redeveloper to carry on its business substantially as now conducted or result in any substantial liability not adequately covered by insurance.

E. The Redeveloper has not paid or given and will not pay or give any officer, employee, or agent of the City, LEDC, or LEDA any money or other consideration for obtaining this Agreement. The Redeveloper further represents that, to its actual knowledge and belief, no officer, employee or agent of the City, LEDC, or LEDA who exercises or has exercised any functions or responsibilities with respect to the Redevelopment during his or her tenure, or who is in a position to participate in a decision making process with regard to the Redevelopment, has or will have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Redevelopment, or in any activity, or benefit therefrom, during or after the term of this Agreement.

8.2 Representations and Warranties of City, LEDA and LEDC. The City, LEDA and LEDC represent and warrant that:

A. The City, LEDA and LEDC have the full power and authority to execute this Agreement and this Agreement shall constitute a legal, valid and binding obligation of the City, LEDA and LEDC in accordance with its terms, and the consent of no other party is required for the execution and delivery of this Agreement by the City, LEDA and LEDC or the consummation of the transactions contemplated hereby, subject to laws relating to bankruptcy, moratorium, insolvency, or other laws affecting creditor's rights generally and subject to general principles of equity.

B. All requisite action has been taken by the City, LEDA and LEDC regarding the authorization, execution and performance of this Agreement, subject to the terms and conditions herein provided. No further consent, approval or authorization is required with respect to the execution, delivery and performance of this Agreement by the City, LEDA and LEDC, except for any such consents, approvals and authorizations expressly provided herein.

9 DEFAULT; REMEDIES.

9.1 Events of Default. The following shall constitute Events of Default hereunder and under each of the instruments executed pursuant to this Agreement:

A. A material default by a party in the performance or observance of any covenant or condition contained in this Agreement, any instrument executed pursuant to this Agreement, or under the terms of any other instrument delivered in connection with this Agreement;

B. Any representation, statement, certificate, schedule or report made or furnished by a party to another party with respect to the matters and transactions covered by this Agreement which proves to be false or erroneous in any material respect at the time of its making or any warranty of a continuing nature which ceases to be complied with in any material respect and the breaching party fails to take or cause to be taken corrective measures satisfactory to the non-breaching party within 30 days after written notice; or

C. The initiation of bankruptcy or receivership proceedings by or against the Redeveloper and the pendency of such proceedings for 60 days.

9.2 Remedies; Termination. The non-breaching party will provide the breaching party with notice and 30 days opportunity to cure any Event of Default described in Section 9.1; *provided*, that, if such Event of Default is not reasonably capable of being cured within such 30-day period and the breaching party promptly begins undertaking actions to cure its default or breach and thereafter pursues such cure with reasonable diligence, then the breaching party's time period to cure such default shall continue until such Event of Default is cured or the breaching party is no longer pursuing such cure with reasonable diligence. The non-breaching party will provide written notice to breaching party identifying all specific action(s) or omission(s) of breaching party constituting a default. In the event Redeveloper fails to promptly begin undertaking actions to cure its default or breach and thereafter pursue such cure with reasonable diligence, this Agreement may be terminated. Upon the occurrence of an Event of Default, and after passage of applicable cure periods hereunder, any party may exercise any and all available remedies at law and in equity.

9.3 Rights and Remedies Cumulative; Liability Cap. The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by any party, or any successor in interest, of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by any other party. No waiver made by any such party with respect to the performance, or manner or time thereof, or any obligation of any other party or any condition to its own obligations under this Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of any other party or condition to its own obligations beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the party. Notwithstanding anything herein to the contrary, provided that Redeveloper has completed construction of the Public Improvements, in accordance with the terms hereof, excluding Redeveloper's obligations under Section 4.13 hereof and absent fraud on the part of Redeveloper, the maximum aggregate amount of liability that Redeveloper shall have to the City, LEDA and LEDC for any Redeveloper default under this Agreement shall be an amount equal to \$100,000.00. Notwithstanding anything herein to the contrary, provided that the City has paid the Redeveloper the Assistance in Development Financing

in accordance with the terms hereof, the maximum aggregate amount of liability that the City, LEDA, and LEDC shall have to the Redeveloper for a default under this Agreement shall be an amount equal to \$100,000.00, excluding any obligations under Section 4.13 hereof and absent fraud on the part of the City, LEDA, and LEDC. The foregoing amounts are presumed to be the amount of damage sustained by a breach of this Agreement by the respective parties and the parties agree that from the nature of the case, it would be impracticable and extremely difficult to fix the actual damage resulting from a breach or default hereunder. Notwithstanding anything herein contained to the contrary, if Redeveloper has constructed the Public Improvements in accordance with this Agreement and thereafter defaults under this Agreement, the same shall not affect the City's obligation to disburse the Assistance in Development Financing to the Redeveloper. Further, and notwithstanding anything herein to the contrary, in no event shall the remedy of specific performance be applicable to require Redeveloper to construct the Public Improvements if it defaults hereunder by failing to construct the Distribution Center Improvements.

10. GENERAL PROVISIONS.

10.1 Rights of Access. For the purpose of ensuring compliance with this Agreement, prior to issuance of the certificate of occupancy for the Redevelopment, representatives of the City, LEDC, and LEDA shall have the right of access to the Property, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing, renovating, improving, equipping, repairing and installing the Public Improvements and all other improvements comprising the Redevelopment, so long as they comply with applicable safety rules and do not unreasonably interfere with the activities of the Redeveloper. Except in the case of an emergency, prior to any such access, such representatives of the City, LEDC, and LEDA will coordinate the inspection with the on-site manager. All such representatives of the City, LEDC, and LEDA shall carry proper identification, shall ensure their own safety, assuming the risk of injury, and shall not interfere with the construction activity. The City, LEDC, and LEDA agree to cooperate with the Redeveloper in facilitating access by the Redeveloper to the Property for construction purposes, provided that the City, LEDC, and LEDA shall incur no financial obligations therefor.

10.2 Conflict of Interest; Representatives of the City, LEDA, and LEDC Not Individually Liable. No official or employee of the City, LEDA, or LEDC shall have any personal interest in this Agreement, nor shall any such person voluntarily acquire any ownership interest, direct or indirect, in the legal entities which are parties to this Agreement. No official or employee of any of the City, LEDA, or LEDC shall be personally liable to Redeveloper or any assignee or successor in interest in the event of any default or breach by the City, LEDA, or LEDC, or for any amount which becomes due to Redeveloper under this Agreement.

10.3 Applicable Law; Submission to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma governing agreements made and fully performed in Oklahoma. Any action or proceeding arising out of or relating to this Agreement or any transaction contemplated hereby shall be brought in the Comanche County District Court or the United States District Court for the Western District of Oklahoma, as applicable, and each of the parties irrevocably submits to the exclusive jurisdiction of such courts in any such action or proceeding, waives any objection it may now or hereafter have to venue or

to convenience of forum, agrees that all claims in respect of the action or proceeding shall be heard and determined only in such court and agrees not to bring any action or proceeding arising out of or relating to this Agreement or any transaction contemplated hereby in any other court. The parties agree that any party may file a copy of this Section with such court as written evidence of the knowing, voluntary and bargained agreement among the parties irrevocably to waive any objections to venue or to convenience of forum.

10.4 Relationship of the Parties. The undertaking of this Agreement is a complex process which will require the mutual agreement of the parties and their timely actions on matters appropriate or necessary to implementation. The parties hereto shall use commercially reasonable efforts to perform their respective obligations in accordance with this Agreement. This Agreement specifically does not create any partnership or joint venture between the parties hereto or render any party liable for any of the debts or obligations of any other party.

10.5 Severability; Entire Agreement. If any provisions of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement or the application of such provision, or portion thereof, and each other provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement sets forth the entire understanding between the parties hereto with respect to its subject matter, there being no terms, conditions, warranties or representations with respect to its subject matter other than as contained herein.

10.6 Assignment. Except as otherwise provided below, Redeveloper may not assign this Agreement without the prior written approval of LEDA, LEDC, and the City, such approval not to be unreasonably withheld, delayed or conditioned. Redeveloper shall be permitted to collaterally assign its rights and obligations under this Agreement as security for a mortgage loan from a bank or institutional lender that is secured by the Property. Further, Redeveloper shall have the right to assign this Agreement, in whole or in part, as applicable, to an assignee that has purchased or otherwise acquired the Property provided that such assignee assumes the obligations of Redeveloper hereunder.

10.7 Modification; Amendment. This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such executory agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought. This Agreement may only be amended by written approval of LEDA, the City, LEDC, and Redeveloper.

10.8 Third Parties. Except as expressly provided otherwise in this Agreement, the provisions of this Agreement are for the exclusive benefit of the parties hereto and not for the benefit of any other persons or entities, as third-party beneficiaries or otherwise, and this Agreement shall not be deemed to have conferred any rights, express or implied, upon any other person or entity.

10.9 Time is of the Essence. The parties understand and agree that time is of the essence with regard to all the terms and provisions of this Agreement.

10.10 Authority; Headings. The parties hereto represent and warrant that they are validly existing and lawful entities with the power and authorization to execute and perform this Agreement. The headings set forth in this Agreement are for convenience and reference only, and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

10.11 Notices and Demands. Any notice, demand, or other communication under this Agreement shall be sufficiently given or delivered when it is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, or delivered personally by a nationally recognized overnight carrier, to:

If to the City:

City of Lawton
212 S.W. 9th Street
Lawton, OK 73501
Attention: City Manager

If to LEDA:

Lawton Economic Development Authority
212 S.W. 9th Street
Lawton, OK 73501
Attention: Chairman

With a copy to:

Center for Economic Development Law
301 N. Harvey Ave., Suite 100
Oklahoma City, OK 73102
Attention: Dan Batchelor and Lisa Harden

If to LEDC:

Lawton Fort-Sill Economic Development Corporation
P.O. Box 1376
Lawton, OK 73502
Attn: Brad Cooksey, President

If to Redeveloper:

Fisher59 Properties, L.L.C.
5050 West University Drive
Denton, TX 76207
Attn: Brett Walford, President

With a copy to:

Eller and Detrich
2727 E. 21st St., Suite 200
Tulsa, OK 74114
Attn: Philip J. Eller and Daniel C. Cupps

or to such other address, within the United States, with respect to a party as that party may from time to time designate in writing and forward to the others as provided in this Section. A copy of any notice, demand or other communication under this Agreement given by a party under this Agreement to any other party under this Section shall be given to each other party to this Agreement.

10.12 Binding Effect; Survival. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. The representations, warranties, covenants and undertakings of the parties set forth in this Agreement shall survive the execution and delivery of this Agreement and continue in full force and effect until the later of (a) the date on which this Agreement has been fully performed in accordance with its terms and (b) the date on which the Increment District is terminated.

10.13 Extension of Times for Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended (except with respect to the provisions regarding the timing of payment of money), where the party seeking the extension has acted diligently and delays or defaults are due to events beyond the reasonable control of the party such as but not limited to: delays attributable to acts of God, any other party to this Agreement (for example, a delay in transfer of possession), strikes, labor disputes, governmental restrictions, court injunctions, riot, civil commotion, acts of public enemy, casualty, epidemics and pandemics, including COVID-19, and quarantine restrictions, but shall not include delays attributable to financial difficulties of such party. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the parties to this Agreement.

10.14 Further Assurances. Each party agrees that it will, without further consideration, execute and deliver such other documents and take such other action, whether prior or subsequent to the execution of this Agreement, as may be reasonably requested by any other party to consummate more effectively the purposes or subject matter of this Agreement.

10.15 Attorneys' Fees. In the event of any controversy, claim or dispute between the parties affecting or relating to the subject matter or performance of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all of its reasonable expenses, including reasonable attorneys' and accountants' fees.

10.16 Counterparts. This Agreement may be executed in several counterparts, and all such executed counterparts shall constitute the same Agreement. It shall be necessary to account for only one such counterpart in proving this Agreement. Facsimile or e-mailed .pdf copies of this Agreement shall be valid for all purposes.

10.17 Construction of this Agreement. Each of the parties acknowledges that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGES FOLLOW]

I:\19.0135.0011\C - Agreement\Fisher59 Redevelopment Agreement (2024.04.16)-1.docx .

This Redevelopment Agreement is hereby approved by the City as of the Effective Date.

CITY: **CITY OF LAWTON,**
a municipal corporation

Mayor

Attest:

City Clerk

APPROVED as to form and legality this ____ day of _____, 2024.

City Attorney

This Redevelopment Agreement is hereby approved by LEDA as of the Effective Date.

LEDA:

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

Attest:

Secretary

By: _____
Fred L. Fitch, Chairman

This Redevelopment Agreement is hereby approved by LEDC as of the Effective Date.

LEDC:

**LAWTON/FORT SILL ECONOMIC
DEVELOPMENT CORPORATION,**
an Oklahoma not-for-profit corporation

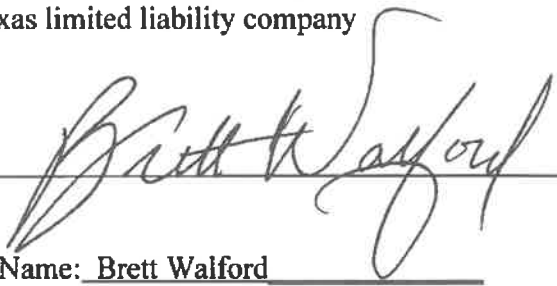
By: _____
Brad Cooksey, President

This Redevelopment Agreement is hereby approved by the Redeveloper as of the Effective Date.

REDEVELOPER:

FISHER59 PROPERTIES, L.L.C.,
a Texas limited liability company

By: _____

A handwritten signature in black ink, appearing to read "Brett Walford", is written over a horizontal line. The signature is fluid and cursive.

Name: Brett Walford

Title: President Fisher59 Properties

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

That certain 15.71-acre parcel of real property, more or less, located southerly of the extension of SW Gilbert Gibson Road, in Section 13, T-1-N, R-12-W, I.M., more specifically described as follows:

Situated in the City of Lawton, County of Comanche and State of Oklahoma being a part of the NE 1/4 and the SE1/4 of the SE 1/4 of Section 13, Township 1 North, Range 12 West and known as a part of parcel of land conveyed to Lawton - Fort Sill Economic Development by deed recorded in Deed Book 1924, Page 296 in the Comanche County Clerk's office and is further bounded and described as follows; Commencing at a broken 3" steel survey marker lying at the Northeast corner of the NE 1/4 of the se 1/4 of said section 13; thence along the northerly line of said NE 1/4 of the SE 1/4 North 89°32'23" West a distance of 866.70 feet to 5/8" iron rebar found, I.D. Seiger RLS 1281; thence South 00°28'33" west a distance of 60.00 feet to a 5/8" iron rebar found at a Northwesterly corner of land conveyed to Fisher59 Properties, LLC series Comanche by deed recorded in Deed Book 8044, page 57 in the Comanche County Clerk's office and being the Place of Beginning of the premises herein intended to be described; Thence along a Westerly line of land so conveyed to Fisher59 Properties, LLC series Comanche, South 00°10'20" West a distance of 611.43 feet to a 5/8" iron rebar found, I.D. Seiger RLS 1281, at a Southwesterly corner of land so conveyed to Fishers59 also being a Northwesterly corner of land conveyed to Anheuser-Busch, LLC by deed recorded in Deed Book 6582, page 296 in the Comanche County Clerk's office; thence North 89°30'18" West a distance of 1120.00 feet to a 5/8" iron rebar set, I.D. Thomas Catlett RPLS No. 1692; thence North 00°10'19" East a distance of 610.75 feet to a 5/8" iron rebar set, I.D. Thomas Catlett RPLS No. 1692 said iron rebar being 60' South of the North line of said SE 1/4 Section 13; thence running 60' South and parallel of 1/4 Section line South 89°32'23" East a distance of 1120.00 feet to the Place of Beginning, containing 684,409 sq. Ft. or 15.71 acres (more or less) of land.

EXHIBIT B

LISTING OF PLANS FOR THE PUBLIC IMPROVEMENTS

- Title Sheet
- Erosion & Sedimentation Control Plans
- Erosion Control Details
- Road Plan & Profile
- Grading Plan
- Sewer Plan & Profile
- Water Plan & Profile
- Details
- Road Cross Sections
- ODEQ Engineering Report
- Filled out ODEQ application
- Surveyed As-Built drawings DWG format [to be submitted as part of the as-built construction plans upon completion of the Public Improvements].



City of Lawton

Public Utilities Department

E-mail: publicutilities@lawtonok.gov
Telephone 580-581-3405
Fax 580-581-3407

Mailing Address: 212 Southwest 9th Street
Shipping Address: 2100 South 6th Street
Lawton, Oklahoma 73501

April 22, 2024

Mr. Richard Rogalski, PE
LEDA Executive Director

RE: Westwin Elements Inc Pay Application 002

Dear Mr. Rogalski:

All materials referenced in this pay request were confirmed to be on site. All work referenced in this pay request was completed prior to the inspection by Rusty Whisenhunt, City of Lawton Director of Public Utilities; Charlotte Brown, City of Lawton Director of Community Services; Richard Rogalski, LEDA Executive Director; and AJ Arends Westwin Elements VP of Project Management, that occurred on April 19, 2024. During the inspection, it was noted that some nuts on anchor bolts were still needing to be installed. License and Permits will thoroughly inspect this installation at a later date. All code inspections have been performed and cleared by Building Safety. Attached are all documents for Pay Application 002 in the amount of **\$657,069.01**.

If you have any questions, please contact my office at (580) 581-3405.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rusty Whisenhunt", is written over a horizontal line.

Rusty Whisenhunt
Director of Public Utilities
City of Lawton

Westwin Pay Request Evaluation

CLAIM NO: 2

DATE: 4/22/2024

ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE		BALANCE TO FINISH	RETAINAGE (IF VARIABLE RATE)	INVOICE PROVIDED	INVOICE AMOUNT	INVOICE PAID	LIEN RELEASE PROVIDED
			FROM PREVIOUS APPLICATION	THIS PERIOD		%	%						
A	B	C	D	E	F	G	H	I	J	K	L	M	N
100a	PB - Building Supply	320,753.00	314,337.94	0.00	0.00	314,337.94	98.00%	6,415.06	0.00				
100b	PB - Building Erection	124,809.00	0.00	0.00	0.00	0.00	0.00%	124,809.00	0.00				
101	PB - Foundation Excavation	131,100.00	126,464.60	4,032.40	0.00	130,497.00	99.54%	603.00	0.00	Y	\$ 4,032.40	Y	Y
102	Site Fencing	37,225.00	0.00	0.00	0.00	0.00	0.00%	37,225.00	0.00				
103	PB - Concrete Foundation	325,929.00	94,500.00	94,500.00	0.00	189,000.00	57.99%	136,929.00	0.00	Y	\$ 94,500.00	Y	Y
104	Site Work / Grading	547,906.00	58,064.15	162,720.80	0.00	220,784.95	40.30%	327,121.05	0.00	Y	\$ 162,720.80	Y	Y
105	Site Utilities	217,920.00	0.00	0.00	0.00	0.00	0.00%	217,920.00	0.00				
106	Site Electrical	86,589.00	0.00	15,587.64	0.00	15,587.64	18.00%	71,001.36	0.00	Y	\$ 15,587.64	Y	Y
107	PB - Plumbing	35,000.00	0.00	0.00	0.00	0.00	0.00%	35,000.00	0.00				
108	PB - Electrical	126,000.00	0.00	0.00	0.00	0.00	0.00%	126,000.00	0.00				
110	Crane/Mezz Steel - Supply & Install	671,343.00	0.00	453,238.00	0.00	453,238.00	67.51%	218,105.00	0.00	Y	\$ 453,235.84	Y	Y
111	Bridge Crane	76,550.00	0.00	0.00	0.00	0.00	0.00%	76,550.00	0.00				
112	Control Room Structure	41,700.00	0.00	0.00	0.00	0.00	0.00%	41,700.00	0.00				
113	Lab Structure	26,480.00	0.00	0.00	0.00	0.00	0.00%	26,480.00	0.00				
114	Generator	135,011.00	0.00	0.00	0.00	0.00	0.00%	135,011.00	0.00				
115	Transformer	44,600.00	0.00	0.00	0.00	0.00	0.00%	44,600.00	0.00				
116	HVAC Equipment	51,085.00	0.00	0.00	0.00	0.00	0.00%	51,085.00	0.00				
109	Site Paving	0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00				
	TOTALS	\$3,000,000.00	\$593,366.69	\$730,078.84	\$0.00	\$1,323,445.53	44.11%	\$ 1,676,554.47	\$0.00				
	10% Retainage		534,030.02	657,070.96									

YES/NO		
TOTAL INVOICES FOR THIS PAY REQUEST PAID?		
DOES THIS CORRESPOND TO PAY REQUEST		
DOES PAYMENT CALCULATE CORRECTLY?		
TOTAL AMOUNT OWED		
PREVIOUS REQUEST	10% RETAINAGE	AMOUNT TO BE PAID
1 \$593,366.69	\$59,336.67	\$534,030.02
2 \$730,076.68	\$73,007.67	\$657,069.01

Rusty Whisenhunt 4/22/2024
Rusty Whisenhunt Date

Director of Public Utilities
City of Lawton

AIA® Document G702® – 1992

Application and Certificate for Payment

TO OWNER: City of Lawton PROJECT: 23PP01 APPLICATION NO: 002 Distribution to:
 PERIOD TO: February 29, 2024 OWNER: ☒
 CONTRACT FOR: Pilot Plant Construction ARCHITECT: ☐
 CONTRACT DATE: December 12, 2023 CONTRACTOR: ☐
 PROJECT NOS: 23 : PP 01 FIELD: ☐
 OTHER: ☐

FROM: Westwin Elements Inc
 CONTRACTOR: Westwin Elements Inc VIA ARCHITECT: Ambler Architects

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract, AIA Document G701® Continuation Sheet, is attached

1 ORIGINAL CONTRACT SUM \$3,000,000.00
 2 NET CHANGE BY CHANGE ORDERS \$0.00
 3 CONTRACT SUM TO DATE (Line 1 + 2) \$3,000,000.00
 4 TOTAL COMPLETED & STORED TO DATE (Column G on G703) \$1,323,443.37
 5 RETAINAGE
 a. 10% of Completed Work
 (Column D on G703) \$132,344.34
 b. 5% of Stored Material
 (Column F on G703) \$0.00
 Total Retainage (Lines 5a + 5b or Total in Column I of G703) \$132,344.34
 6 TOTAL EARNED LESS RETAINAGE \$1,191,099.03
 (Line 4 less Line 5 Total)
 7 LESS PREVIOUS CERTIFICATES FOR PAYMENT \$534,030.02
 (Line 6 from prior Certificate)
 8 CURRENT PAYMENT DUE \$657,069.01
 9 BALANCE TO FINISH INCLUDING RETAINAGE
 (Line 3 less Line 6) \$1,808,900.97

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total approved this Month	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
NET CHANGES by Change Order		\$0.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:
 By: Ronald J. Huenda
 State of: Oklahoma
 County of: Comanche
 Subscribed and sworn to before
 me this 5th day of April 2024
 Notary Public: Dakoda Buehl
 My Commission expires: Sept 30 2025

Date: 04/05/24

DAKODA BUEHL
 Notary Public - State of Oklahoma
 Commission Number 21012920
 My Commission Expires Sep 30, 2025

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED

AMOUNT CERTIFIED \$657,069.01
 (Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:
 By: [Signature] Date: 04/11/2024

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract

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User Notes:

(389ADA52)

DRAFT AIA® Document G703® - 1992

Continuation Sheet

AIA Document G702®, Application and Certification for Payment, or G732™, Application and Certificate for Payment, Construction Manager as Adviser Edition, containing Contractor's signed certification is attached.
Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO:

002

APPLICATION DATE:

PERIOD TO:

ARCHITECT'S PROJECT NO:

23PP01

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		E THIS PERIOD	F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G		H BALANCE TO FINISH (C - G)	I RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)				TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G ÷ C)		
100a	PB - Building Supply	320,753.00	314,337.94		0.00	0.00	314,337.94	98.00%	6,415.06	0.00
100b	PB - Building Erection	124,809.00	0.00		0.00	0.00	0.00	0.00%	124,809.00	0.00
	PB - Foundation									
101	Excavation	131,100.00	126,464.60		4,032.40	0.00	130,497.00	99.54%	603.00	0.00
102	Site Fencing	37,225.00	0.00		0.00	0.00	0.00	0.00%	37,225.00	0.00
	PB - Concrete									
103	Foundation	325,929.00	94,500.00		94,500.00	0.00	189,000.00	57.99%	136,929.00	0.00
104	Site Work / Grading	547,906.00	58,064.15		162,720.80	0.00	220,784.95	40.30%	327,121.05	0.00
105	Site Utilities	217,920.00	0.00		0.00	0.00	0.00	0.00%	217,920.00	0.00
106	Site Electrical	86,589.00	0.00		15,587.64	0.00	15,587.64	18.00%	71,001.36	0.00
107	PB - Plumbing	35,000.00	0.00		0.00	0.00	0.00	0.00%	35,000.00	0.00
108	PB - Electrical	126,000.00	0.00		0.00	0.00	0.00	0.00%	126,000.00	0.00
	Crane/Mezz Steel -									
110	Supply & Install	671,343.00	0.00		453,235.84	0.00	453,235.84	67.51%	218,107.16	0.00
111	Bridge Crane	76,550.00	0.00		0.00	0.00	0.00	0.00%	76,550.00	0.00
112	Control Room Structure	41,700.00	0.00		0.00	0.00	0.00	0.00%	41,700.00	0.00
113	Lab Structure	26,480.00	0.00		0.00	0.00	0.00	0.00%	26,480.00	0.00
114	Generator	135,011.00	0.00		0.00	0.00	0.00	0.00%	135,011.00	0.00
115	Transformer	44,600.00	0.00		0.00	0.00	0.00	0.00%	44,600.00	0.00
116	HVAC Equipment	51,085.00	0.00		0.00	0.00	0.00	0.00%	51,085.00	0.00
109	Site Paving	0.00	0.00		0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00		0.00	0.00	0.00	0.00%	0.00	0.00
	GRAND TOTAL	\$3,000,000.00	\$593,366.69		\$730,076.68	\$0.00	\$1,323,443.37	44.11%	\$1,676,556.63	\$0.00

Pilot Plant Budget Report

		<u>Budget</u>	<u>Committed</u>	<u>Expended to Date</u>	<u>% Committed</u>
Engineering					
	Capital Projects	\$1,364,015.00	\$1,129,313.00	\$906,320.00	83%
	Ambler & Commercial Team	\$260,038.00	\$231,150.00	\$198,200.00	89%
	Subtotal	\$1,624,053.00	\$1,360,463.00	\$1,104,520.00	84%
Procurement					
	Structural	\$708,161.00	\$794,031.18	\$412,111	112%
	Tagged Process Equipment	\$1,998,227.00	\$2,074,428.08	\$1,053,699.10	104%
	Valves & Specialties	\$947,810.00	\$355,498.33	\$186,273	38%
	Tagged Instruments	\$671,100.00	\$566,032.78	\$167,828.50	84%
	Electrical Equipment	\$401,800.00	\$280,862.32	\$141,592.79	70%
	Controls	\$607,920.00	\$575,320.00	\$325,113.46	95%
	Design Allowance	\$187,637.00			
	Subtotal	\$5,522,655.00	\$4,646,172.69	\$2,286,617.87	84%
Construction					
	Site Work	\$2,022,479.00	\$932,042.43	\$391,602.72	46%
	Concrete	\$551,450.00	\$457,864.18	\$287,537.54	83%
	Structural	\$124,809.00	\$124,809.00	\$-	100%
	Electrical	\$105,000.00	\$107,953.00	\$15,587.64	103%
	PCE Contract	\$3,458,629.00	\$3,764,337.00	\$513,700.34	109%
	Subtotal	\$6,262,367.00	\$5,387,005.61	\$694,727.90	86%
Out of Estimate			\$324,931.00	\$20,346	
Budgeted Contingency		\$580,019.00			
Total		\$13,989,094.00	\$11,718,572.30	\$4,106,212.03	84%

T & G Construction, Inc.
 800 SE 1st Street
 PO Box 1557
 Lawton, OK 73502
 Phone: (580) 248-4430
 Fax: (580) 248-4431

INVOICE

INVOICE NO
 19654

SOLD TO Westwin Elements, Inc.
 7 NE Sixth Street
 Unit 100
 Oklahoma City, OK 73104

SHIP TO Misc Site Work (Pad)
 10925 SW Bishop Rd
 Lawton, OK 73505

ACCOUNT NO	PO NUMBER	SHIP VIA	DATE SHIPPED	TERMS	INVOICE DATE	PAGE
WESTWIN	2023110702PP4101			Net 30	2/2/2024	1

ITEM NO	QUANTITY	DESCRIPTION	UNIT PRICE	EXTENDED
	0.22	Erosion & Sediment Control - Total Billed to date 100%	8,970.00	1,973.40
	0	Clearing & Grubbing - Total billed to date 100%	26,825.00	0.00
	0	Excavation - Total billed to date 100%	12,333.00	0.00
	0	Compacted Fill - Total billed to date 100%	71,736.00	0.00
	0.25	Construction Entrance - Total billed to date 100%	8,236.00	2,059.00
	0	Mobilization - Total billed to date 100%	1,500.00	0.00
	0	Demobilization - Total billed to date 0%	1,500.00	0.00
	0	Total Contract Amount	131,100.00	0.00

TOTAL AMOUNT 4,032.40

T & G Construction, Inc.
800 SE 1st Street
PO Box 1557
Lawton, OK 73502
Phone: (580) 248-4430
Fax: (580) 248-4431



INVOICE NO
19654

SOLD TO Westwin Elements, Inc.
7 NE Sixth Street
Unit 100
Oklahoma City, OK 73104

SHIP TO Misc Site Work (Pad)
10925 SW Bishop Rd
Lawton, OK 73505

ACCOUNT NO	PO NUMBER	SHIP VIA	DATE SHIPPED	TERMS	INVOICE DATE	PAGE
WESTWIN	2023110702PP4101			Net 30	2/2/2024	1

ITEM NO	QUANTITY	DESCRIPTION	UNIT PRICE	EXTENDED
	0.22	Erosion & Sediment Control - Total Billed to date 100%	8,970.00	1,973.40
	0	Clearing & Grubbing - Total billed to date 100%	26,825.00	0.00
	0	Excavation - Total billed to date 100%	12,333.00	0.00
	0	Compacted Fill - Total billed to date 100%	71,736.00	0.00
	0.25	Construction Entrance - Total billed to date 100%	8,236.00	2,059.00
	0	Mobilization - Total billed to date 100%	1,500.00	0.00

Bill header

Payee name	T&G Construction Inc. (20)
Invoice number	19654
Invoice date	Feb 02, 2024
Invoice Due date	Mar 03, 2024
Description	
AP account	20000 - Accounts Payable (A/P)
Total Amount	USD 4,032.40

Bill approvers

- 1

Ashlea Sartin

Feb 08, 2024
- 2

Nathan Shibler

Feb 08, 2024

Related payments

Transaction Type	Payment date	Payment refcode	Paid amount	Status	Scheduled date
Payment	Feb 08, 2024	bc18bc7608a24ff2	USD 4,032.40	Paid	Mar 03, 2024



T & G Construction, Inc.
800 SE 1st Street
PO Box 1557
Lawton, OK 73502
Phone: (580) 248-4430
Fax: (580) 248-4431

INVOICE

INVOICE NO
19656

SOLD TO Westwin Elements, Inc.
7 NE Sixth Street
Unit 100
Oklahoma City, OK 73104

SHIP TO Site Work - Floor
10925 SW Bishop Rd
Lawton, OK 73505

ACCOUNT NO	PO NUMBER	SHIP VIA	DATE SHIPPED	TERMS	INVOICE DATE	PAGE
WESTWIN	2023121201PP4101			Net 30	2/2/2024	1

ITEM NO	QUANTITY	DESCRIPTION	UNIT PRICE	EXTENDED
	0.45	Floor & Foundation - Total billed to date 90%	210,000.00	94,500.00

TOTAL AMOUNT 94,500.00

T & G Construction, Inc.
800 SE 1st Street
PO Box 1557
Lawton, OK 73502
Phone: (580) 248-4430
Fax: (580) 248-4431

104%

INVOICE

INVOICE NO
19656

SOLD TO Westwin Elements, Inc.
7 NE Sixth Street
Unit 100
Oklahoma City, OK 73104

SHIP TO Site Work - Floor
10925 SW Bishop Rd
Lawton, OK 73505

ACCOUNT NO	PO NUMBER	SHIP VIA	DATE SHIPPED	TERMS	INVOICE DATE	PAGE
WESTWIN	2023121201PP4101			Net 30	2/2/2024	1

ITEM NO	QUANTITY	DESCRIPTION	UNIT PRICE	EXTENDED
	0.45	Floor & Foundation - Total billed to date 90%	210,000.00	94,500.00

TOTAL AMOUNT 94,500.00

Bill header

Payee name T&G Construction Inc. (20

Invoice number 19656

Invoice date Feb 02, 2024

Invoice Due date Mar 03, 2024

Description

AP account 20000 - Accounts Payable

Total Amount USD 94,500.00

Bill approvers

Ashlea Sartin Feb 08, 2024

Nathan Shibley Feb 08, 2024

Related payments

Transaction Type	Payment date	Payment refcode	Paid amount	Status	Scheduled date
Payment	Feb 08, 2024	bc18bc7608a24ff2	USD 94,500.00	Paid	Mar 03, 2024

31



T & G Construction, Inc.
 800 SE 1st Street
 PO Box 1557
 Lawton, OK 73502
 Phone: (580) 248-4430
 Fax: (580) 248-4431

INVOICE

INVOICE NO
 19655

SOLD TO Westwin Elements, Inc.
 7 NE Sixth Street
 Unit 100
 Oklahoma City, OK 73104

SHIP TO Site Work - Grading
 10925 SW Bishop Rd
 Lawton, OK 73505

ACCOUNT NO	PO NUMBER	SHIP VIA	DATE SHIPPED	TERMS	INVOICE DATE	PAGE
WESTWIN	2023121801PP4101			Net 30	2/2/2024	1

ITEM NO	QUANTITY	DESCRIPTION	UNIT PRICE	EXTENDED
	0.65	Excavation - Total billed to date - 75%	19,092.00	12,409.80
	0.6	Compacted Fill - Total billed to date - 75%	222,255.00	133,353.00
	0	Grading - Total billed to date - 10%	210,917.00	0.00
	0.5	Culverts & Inlets-Total billed to date - 50%	33,916.00	16,958.00
	0	Drain Piping	10,879.00	0.00
	0	Erosion Protection	17,897.00	0.00
	0	Sodding	29,000.00	0.00
	0	Mobilization - Total billed to date - 100%	1,725.00	0.00
	0	Demobilization	1,725.00	0.00
	0	As Built Drawings	500.00	0.00
	0	Total Contract Amount	547,906.00	0.00

TOTAL AMOUNT 162,720.80

T & G Construction, Inc.
800 SE 1st Street
PO Box 1557
Lawton, OK 73502
Phone: (580) 248-4430
Fax: (580) 248-4431

104%

INVOICE

INVOICE NO
19655

SOLD TO Westwin Elements, Inc.
7 NE Sixth Street
Unit 100
Oklahoma City, OK 73104

SHIP TO Site Work - Grading
10925 SW Bishop Rd
Lawton, OK 73505

ACCOUNT NO	PO NUMBER	SHIP VIA	DATE SHIPPED	TERMS	INVOICE DATE	PAGE
WESTWIN	2023121801PP4101			Net 30	2/2/2024	1

ITEM NO	QUANTITY	DESCRIPTION	UNIT PRICE	EXTENDED
	0.65	Excavation - Total billed to date - 75%	19,092.00	12,409.80
	0.6	Compacted Fill - Total billed to date - 75%	222,255.00	133,353.00
	0	Grading - Total billed to date - 10%	210,917.00	0.00
	0.5	Culverts & Inlets-Total billed to date - 50%	33,916.00	16,958.00
	0	Drain Piping	10,879.00	0.00
	0	Erosion Protection	17,807.00	0.00

Bill header

Payee name T&G Construction Inc. (2)

Invoice number 19655

Invoice date Feb 02, 2024

Invoice Due date Mar 03, 2024

Description

AP account 20000 - Accounts Payab

Total Amount USD 162,720.80

Bill approvers

1 Ashlea Sartin Feb 08, 2024

2 Nathan Shibler Feb 08, 2024

Related payments

Transaction Type	Payment date	Payment refcode	Paid amount	Status	Scheduled date
Payment	Feb 08, 2024	bc18bc7608a24ff2	USD 162,720.80	Paid	Mar 03, 2024



T & G Construction, Inc.
800 SE 1st Street
PO Box 1557
Lawton, OK 73502
Phone: (580) 248-4430
Fax: (580) 248-4431

INVOICE

INVOICE NO
19653

SOLD TO Westwin Elements, Inc.
7 NE Sixth Street
Unit 100
Oklahoma City, OK 73104

SHIP TO Electrical Site Work
10925 SW Bishop Rd
Lawton, OK 73505

ACCOUNT NO	PO NUMBER	SHIP VIA	DATE SHIPPED	TERMS	INVOICE DATE	PAGE
WESTWIN	2024010501PP4101			Net 30	2/2/2024	1

ITEM NO	QUANTITY	DESCRIPTION	CONTRACT PRICE	EXTENDED
	0.18	Electrical Site Work	86,598.00	15,587.64

TOTAL AMOUNT 15,587.64

T & G Construction, Inc.
800 SE 1st Street
PO Box 1557
Lawton, OK 73502
Phone: (580) 248-4430
Fax: (580) 248-4431

104%

INVOICE

INVOICE NO
19653

SOLD TO Westwin Elements, Inc.
7 NE Sixth Street
Unit 100
Oklahoma City, OK 73104

SHIP TO Electrical Site Work
10925 SW Bishop Rd
Lawton, OK 73505

ACCOUNT NO	PO NUMBER	SHIP VIA	DATE SHIPPED	TERMS	INVOICE DATE	PAGE
WESTWIN	2024010501PP4101			Net 30	2/2/2024	1

ITEM NO	QUANTITY	DESCRIPTION	CONTRACT PRICE	EXTENDED
	0.18	Electrical Site Work	86,598.00	15,587.64

TOTAL AMOUNT 15,587.64

Bill header

Payee name	T&G Construction Inc. (20)
Invoice number	19653
Invoice date	Feb 02, 2024
Invoice Due date	Mar 03, 2024
Description	
AP account	20000 - Accounts Payable (A/P)
Total Amount	USD 15,587.64

Bill approvers

1 Ashlea Sartin	Feb 08, 2024
2 Nathan Shibley	Feb 08, 2024

Related payments

Transaction Type	Payment date	Payment refcode	Paid amount	Status	Scheduled date
Payment	Feb 08, 2024	bc18bc7608a24ff2	USD 15,587.64	Paid	Mar 03, 2024



**WAIVER OF LIEN
MATERIAL OR LABOR**

STATE OF Oklahoma
COUNTY OF Comanche

April 4 2024

To All Whom It May Concern:

Whereas the undersigned T&G Construction, Inc.
has been employed by Westwin Elements Plant
to furnish labor and/or materials for _____

General Contractor/Owner

Nature of the Work

for the Building and Premises known as _____

At 10925 SW Bishop Rd. In Lawton, OK Comanche County
Address City, County, State

Lot No. SW 3/4 of Section 1 Township T1N Range R13W1M.

Now, Therefore, Know Ye, That T&G Construction, Inc. the undersigned
for and in consideration of the sum of material & labor from December 1, 2023 to February 29, 2024 Dollars
and other good and valuable considerations, the receipt whereof is hereby acknowledged, do hereby waive and release any and
all lien, or claim or right to lien on said above described building and premises under the Statutes of the State of Oklahoma
relating to Mechanics' Liens, on account of labor or materials, or both, furnished or which may be furnished, by the undersigned
to or on account of the said firm or individual therein named for said building or premises.

Given under _____ hand _____ and seal this 4th day of April A.D. 2024

Witness: _____ (SEAL)

Witness: _____ (SEAL)

By Brentin Beamer

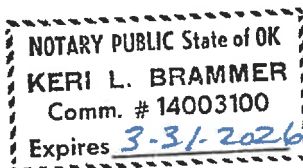
Title Estimator

Subscribed and sworn to before me this

4th day of April 2024

My commission expires 3-31-2026

Keri L. Brammer
Notary Public





CONSTRUCTORS, INC.

13544 Eads Road, Prairieville, LA 70769 – PO Box 1582, Prairieville, LA 70769-1582
(P) 225-677-9100 (F) 225-677-9153

Date:	February 7, 2024
Ref.:	WESTWIN ELEMENTS, INC.
	Pilot Plant - Lawton, OK
	Contract # 2023101002PP4101
	Project No. 23PP01
	Lawton, OK
	PCE Job No. 7180

WESTWIN ELEMENTS, INC.
7 NE Sixth Street Unit 100
Oklahoma City, OK 73104

Attn: Ashlea Sartin
ashlea@westwinelements.com
Attn: Mike Thompson
mthompson@capitalepc.com

We are sending you herewith:

No. of	Description
--------	-------------

Bill header

Payee name	PCE Constructors, Inc. (R Gibson) (35)
Invoice number	7949-0224
Invoice date	Feb 07, 2024
Invoice Due date	Mar 05, 2024
Description	
AP account	20001 - Accounts Payabl Pilot Plant
Total Amount	USD 107,146.02

Bill approvers

1	Ashlea Sartin	Feb 17, 2024
2	Nathan Shibler	Feb 21, 2024

Related payments

Transaction Type	Payment date	Payment refcode	Paid amount	Status	Scheduled date
Payment	Feb 21, 2024	f980126df42b4144	USD 107,146.02 ⓘ	Paid	Mar 05, 2024





CONSTRUCTORS, INC.

13544 Eads Road, Prairieville, LA 70769 – PO Box 1582, Prairieville, LA 70769-1582

(P) 225-677-9100 (F) 225-677-9153

Date: February 7, 2024

Ref.: WESTWIN ELEMENTS, INC.

WESTWIN ELEMENTS, INC.

7 NE Sixth Street Unit 100

Oklahoma City, OK 73104

Pilot Plant - Lawton, OK

Contract # 2023101002PP4101

Project No. 23PP01

Lawton, OK

PCE Job No. 7180

Attn: Ashlea Sartin

ashlea@westwinelements.com

Attn: Mike Thompson

mthompson@capitalepc.com

We are sending you herewith:

No. of

Copies

Description

1 set

Invoice number 7949-0224

9 pages

With Backup

1 ea

Lien Release - Progress Payment

1 page

Billing No. 02

REMARKS:

Billing Number 02 - MISCELLANEOUS

> SUBCONTRACTS, MATERIAL, THIRD PARTY EQUIPMENT, RENTALS AND OTHER COST

Period: FROM 1-Jan-24 INVOICE ENTRY DATE

Period: TO 31-Jan-24 INVOICE ENTRY DATE

Thank You

PCE CONSTRUCTORS, INC.

Mike Cook



PCE CONSTRUCTORS, INC.

13544 Eads Road - P.O. Box 1582, Prairieville, LA 70769
Phone (225) 677-9100 Fax (225) 677-9152

INVOICE

SOLD TO: WESTWIN ELEMENTS, INC.
7 NE Sixth Street Unit 100
Oklahoma City, OK 73104

DATE: 07-Feb-24

INVOICE: 7949-0224

CUST. NO.: 30-7835

Contract No 2023101002PP4101

P.O. No. 23PP01

Project Desc. Net 20

ATTN: Ashlea Sartin
ashlea@westwinelements.com
Mike Thompson
mthompson@capitalepc.com

TERMS:

JOB NO: 7180

Billing Number 01 - MISCELLANEOUS

I Material/Subcontracts/Third Party Rentals/Other

Period From Invoice "Entry" Date 1/1/2024
Period: To: Invoice "Entry" Date 1/31/2024

\$ 107,146.02

*** Schedule A - attached ****

II Company Owned Equipment

Period: Month of XXX2024

\$ -

AMOUNT DUE THIS INVOICE

\$ 107,146.02

REMIT TO: Wiring/ACH Instructions

Bank Name: Hancock Whitney Bank
Bank Address: City Plaza First Floor
445 North Blvd
Baton Rouge, Louisiana 70802
ABA/Routing: 065400153
Account Number: 16386954
Account Name: PCE Constructors, Inc. - Special Account
Account Address: P. O. Box 1582
Prairieville, Louisiana 70769

PCE CONSTRUCTORS, INC. JOB 7180
 WESTWIN ELEMENTS, INC.
 BILLING NO 01 - MISCELLANEOUS
 PCE Invoice Number: 7949-0224
 SCHEDULE A
 Contract No. 2023101002PP4101
 Project No. 23PP01
 Pilot Plant -Lawton, OK

Vendor Name	Cost Code	Category	Transaction Typ	PO	Amount	Vendor No	Invoice No	Invoice Date	Accounting Date	Check No	Bill No
Blum Enterprises	99-200-200-201	MAT	Dollars paid	7180-HO-001	44,550.00	17640	23-1109B	1/8/2024	1/24/2024	59184	02
Blum Enterprises	99-200-200-201	MAT	Dollars paid	7180-HO-001	48,402.00	17640	24-0103	1/12/2024	1/24/2024	59184	02
Hilti, Inc.	99-200-200-201	MAT	Dollars paid	7180-HO-003	1,539.29	39820	4622269649	1/12/2024	1/24/2024	59197	02
Madden Bolt Corp	99-260-260-201	MAT	Dollars paid	7180-HO-002	1,174.80	55660	147752	1/18/2024	1/24/2024	59205	02
SUBTOTAL					95,666.09						
MARK-UP (12%)					11,479.93						
TOTAL					107,146.02						

Vendor: Blum Enterprises, Inc.

17640

Check Date: January 26, 2024 **59184**

INVOICE DATE	INVOICE NO	DESCRIPTION	INV. AMOUNT	DISCNT TAKEN	BALANCE
1-08-24	23-1109B	7180-HO-001	44550.00	.00	44550.00
1-12-24	24-0103	7180-HO-001	48402.00	.00	48402.00

Chk. Date	1-26-24	Chk. No.	59184	Totals	92952.00	.00	92952.00
-----------	---------	----------	-------	--------	----------	-----	----------

PLEASE DETACH AND RETAIN FOR YOUR RECORDS

Hancock Whitney Bank
BATON ROUGE, LA 7080284-15
654**59184**

DATE 01/26/2024

PAY ONLY 92,952.00

\$*****92,952.00

PAY *****Ninety-Two Thousand Nine Hundred Fifty-Two and 00/100 Dollars

TO
THE
ORDER
OF
Blum Enterprises, Inc.
5655 Adams Avenue
Baton Rouge, LA 70806

COPY

Vendor: Blum Enterprises, Inc.

17640

Check Date: January 26, 2024 **59184**

INVOICE DATE	INVOICE NO	DESCRIPTION	INV. AMOUNT	DISCNT TAKEN	BALANCE
1-08-24	23-1109B	7180-HO-001	44550.00	.00	44550.00
1-12-24	24-0103	7180-HO-001	48402.00	.00	48402.00

Chk. Date	1-26-24	Chk. No.	59184	Totals	92952.00	.00	92952.00
-----------	---------	----------	-------	--------	----------	-----	----------

PLEASE DETACH AND RETAIN FOR YOUR RECORDS

Hancock Whitney Bank
BATON ROUGE, LA 7080284-15
654**59184**

DATE 01/26/2024

PAY ONLY 92,952.00

\$*****92,952.00

PAY *****Ninety-Two Thousand Nine Hundred Fifty-Two and 00/100 Dollars

TO
THE
ORDER
OF
Blum Enterprises, Inc.
5655 Adams Avenue
Baton Rouge, LA 70806

COPY

BLUM ENTERPRISES, INC.

**5655 ADAMS AVENUE
BATON ROUGE, LA 70806**

ORIGINAL INVOICE

Date	Invoice #
1/8/2024	23-1109B

Bill To PCE CONSTRUCTORS INC 13544 EADS ROAD PRAIRIEVILLE LA 70769-1582	RECEIVED JAN 22 2024 ACCT DEPT	Ship To PCE CONSTRUCTORS C/O WESTWIN ELEMENTS 10925 SW BISHOP ROAD LAWTON, OK 73505	BILLABLE
---	---	--	-----------------

P.O. Number		Terms	Rep	Ship	Via
7180-HO-001		Due on receipt		1/8/2024	
Quantity	Item Code	Description	Price Each	Amount	
0.3	LOT	% OF PURCHASE ORDER IN THE AMOUNT OF: FOR CRANE STRUCTURE @NICKEL DEMO PLANT.	148,500.00	44,550.00	
Vendor <u>17640</u> Inv No <u>23-1109B</u> Date <u>1.8.24</u> Amt <u>44,550.00</u> Desc <u>7180-140-001</u> Acct Date <u>Jan 24</u> Commit _____ Job _____ Extra _____ CC <u>200 201</u> Cat <u>Mat</u> Acct <u>30105000</u> Amt <u>44,550.00</u> Approval _____ ENTERED JAN 24 2024 KSC					

Thank you for your business.			Total	\$44,550.00
			Payments/Credits	\$0.00
Phone #	Fax #		Balance Due	\$44,550.00
225-357-2736	225-357-2783			

BLUM ENTERPRISES, INC.

5655 ADAMS AVENUE

BATON ROUGE, LA 70806

ORIGINAL INVOICE

Date	Invoice #
1/12/2024	24-0103

Bill To	Ship To
PCE CONSTRUCTORS INC 13544 EADS ROAD PRAIRIEVILLE LA 70769-1582	PCE CONSTRUCTORS INC WESTWIN ELEMENTS 10925 SW BISHOP ROADLAWTON, OK 73505
RECEIVED JAN 22 2024 ACCT DEPT	BILLABLE

P.O. Number		Terms	Rep	Ship	Via
7180-H0-001 REV 1		Due on receipt		1/12/2024	
Quantity	Item Code	Description	Price Each	Amount	
0.3	LOT	% OF ITEM 2- FABRICATE STEEL/SHOP DRAWINGS FOR BLUM PROPOSAL NO. 23-1888r1 (MEZZANINE STEEL):	161,340.00	48,402.00	
Vendor <u>17640</u> Inv No <u>24-0103</u>					
Date <u>1.12.24</u> Amt <u>48,402.00</u>					
Desc <u>7180-H0-001</u> Acct Date <u>Jan 24</u>					
Commit _____ Job _____ Extra _____					
CC <u>200 201</u>					
Cat <u>Mat</u>					
Acct <u>30 10 5000</u>					
Amt <u>48,402.00</u>					
Approval _____					
I ENTERED JAN 2 2024 					

Thank you for your business.		Total	\$48,402.00
		Payments/Credits	\$0.00
Phone #	Fax #	Balance Due	\$48,402.00
225-357-2736	225-357-2783		

Vendor: Hilti, Inc.

38820

Check Date: January 26, 2024 **59197**

INVOICE DATE	INVOICE NO	DESCRIPTION	INV. AMOUNT	DISCNT TAKEN	BALANCE
1-12-24	4622269649	7180-HO-003	2335.93	.00	2335.93

Chk. Date	1-26-24	Chk. No.	59197	Totals	2335.93	.00	2335.93
-----------	---------	----------	-------	--------	---------	-----	---------

PLEASE DETACH AND RETAIN FOR YOUR RECORDS

Hancock Whitney Bank
BATON ROUGE, LA 7080284-15
654**59197**

DATE 01/26/2024

PAY ONLY 2335.93

\$*****2,335.93

PAY *****Two Thousand Three Hundred Thirty-Five and 93/100 Dollars

 TO THE ORDER OF
 Hilti, Inc.
 P O Box 650756
 Dallas, TX 75265-0756
**** COPY ****

Vendor: Hilti, Inc.

39820

Check Date: January 26, 2024 **59197**

INVOICE DATE	INVOICE NO	DESCRIPTION	INV. AMOUNT	DISCNT TAKEN	BALANCE
1-12-24	4622269649	7180-HO-003	2335.93	.00	2335.93

Chk. Date	1-26-24	Chk. No.	59197	Totals	2335.93	.00	2335.93
-----------	---------	----------	-------	--------	---------	-----	---------

PLEASE DETACH AND RETAIN FOR YOUR RECORDS

Hancock Whitney Bank
BATON ROUGE, LA 7080284-15
654**59197**

DATE 01/26/2024

PAY ONLY 2335.93

\$*****2,335.93

PAY *****Two Thousand Three Hundred Thirty-Five and 93/100 Dollars

 TO THE ORDER OF
 Hilti, Inc.
 P O Box 650756
 Dallas, TX 75265-0756
COPY



RECEIVED

JAN 15 2024

ACCT DEPT

BILLABLE

Hilti Inc.
PO Box 21448
Tulsa, OK 74121-1148

Customer Service
800-879-8000
www.hilti.com

Credit Dept
800 950-6196

Days: 00-117-3525
Federal ID: 06-0732334

INVOICE 4622269649

CONSTRUCTORS INC
D B A PCE CONSTRUCTORS INC
PO Box 1582
Prairieville LA 70769-1582

Invoice date: 01/12/2024
Invoice due date: 02/11/2024
Cust. P.O. number: 7180-HO-003
Customer account: 10821192

Page 1 (1)

Delivery Address: CONSTRUCTORS INC, CVR ENERGY WYNNEWOOD REFINERY, PTU PROJ, BRENT JOHNSON (830) 624-9662,
38255 HIGHWAY 17A, WYNNEWOOD OK 73098-9033 ATTN: BROCK DELOACH 02253571288

Hilti sales rep: JACOB LECOMPTE, TUS0890206

Order number: 585512568

Date: 01/12/2024

Terms of payment: 30 days net

Location ID: 29391514

SHIPMENT NUMBER APPEARS ON PACKING SLIP(S). USE TO MATCH ALL DOCUMENTS AND CONFIRM RECEIPT.

Material Number	Material Description	Quantity Invoiced	Quantity Shipped	Sell Price	Amount Due *
SHIPMENT NUMBER: 349463816					
2165918	HAMMER DRILL BIT TE-YX 1 3/8"-23"	3 EA	3 EA	252.30	756.90 A
3537460	RE 500 V3 11.1OZ/330ML MC	1 EA		1,480.29	1,480.29 B
2123401	EPOXY ADH RE 500-V3 11.1OZ/330ML		25 EA		

Items Total 2,237.19

Freight 59.00

Total net value 2,296.19

Total Tax 5.25 39.74

Total amount USD 2,335.93

Taxes: State: OK 4.5 % \$ 34.06 County: 0.75 % \$ 5.68 City: 0 % \$ 0.00

* In-Domestic Source NATO Exception

Mal
Che
Sta

Vendor 39820 Inv No 4622269649

Date 1.12.24 Amt 2335.93

Cu

Desc 7180-HO-003 Acct Date 1/24

108

Contract Job Extra

Bil

CO 260 201 260 260 201

Cat Mat Mat

Acct 30,105,000 30,105,000

Amt 1539.29 796.64

Pic
A
En

Approval

ENTERED JAN 24 2024

KSC

Amount due (USD) Payment enclosed
\$2,335.93

INC
WYNEWOOD REFINERY
(830) 624-9662
17A
73098-9033
HILTI INC.
PO BOX 650756
DALLAS TX 75265-0756

2 10821192 4622269649 01122024 0000233593

Vendor: Madden Bolt Corp.

55660

Check Date: January 26, 2024 **59205**

INVOICE DATE	INVOICE NO	DESCRIPTION	INV. AMOUNT	DISCNT TAKEN	BALANCE
1-18-24	147752	7180-HO-002	1174.80	.00	1174.80

Chk. Date	1-26-24	Chk. No.	59205	Totals	1174.80	.00	1174.80
-----------	---------	----------	-------	--------	---------	-----	---------

PLEASE DETACH AND RETAIN FOR YOUR RECORDS

Hancock Whitney Bank.
BATON ROUGE, LA 7080284-15
654**59205**

DATE 01/26/2024

PAY ONLY **1174.80** CENTS

\$*****1,174.80

PAY *****One Thousand One Hundred Seventy-Four and 80/100 Dollars

TO
THE
ORDER
OF
Madden Bolt Corp.
13420 Hempstead Rd.
Houston, TX 77040

COPY

Vendor: Madden Bolt Corp.

55660

Check Date: January 26, 2024 **59205**

INVOICE DATE	INVOICE NO	DESCRIPTION	INV. AMOUNT	DISCNT TAKEN	BALANCE
1-18-24	147752	7180-HO-002	1174.80	.00	1174.80

Chk. Date	1-26-24	Chk. No.	59205	Totals	1174.80	.00	1174.80
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PLEASE DETACH AND RETAIN FOR YOUR RECORDS

Hancock Whitney Bank
BATON ROUGE, LA 7080284-15
654**59205**

DATE 01/26/2024

PAY ONLY **1174.80** CENTS

\$*****1,174.80

PAY *****One Thousand One Hundred Seventy-Four and 80/100 Dollars

TO
THE
ORDER
OF
Madden Bolt Corp.
13420 Hempstead Rd.
Houston, TX 77040

COPY



MADDEN BOLT CORPORATION
13420 Hempstead Road
Houston, TX 77040

RECEIVED

JAN 18 2024

ACCT DEPT

Invoice

Date	Invoice #
1/18/2024	147752

Bill To
PCE CONSTRUCTORS INC PO BOX 1582 PRAIRIEVILLE, LA 70769 TAXABLE UNLESS SOOS acct_payable@pceci.com

Ship To
PCE CONSTRUCTORS, INC CVR ENERGY WYNNEWOOD REFINERY-PTU 38255 HWY 17A, TEXOMA GATE WYNNEWOOD, OK 73098 BRENT JOHNSON 830-624-9662

BILLABLE

P.O. No.		S.O. No.	Terms	Due Date	REP	Ship Date	Ship Via	FOB
7180-HO-002		140550	NET 30	2/17/2024	AK	1/17/2024	SEFL	JOBSITE ...
LI	Item	Description	Ordered	Inv'd	Rate	Amount		
1	ATR	1-1/4 X 22-1/2" ATR F1554 GR 55 BLK W/ (2) HHN & (2) F436 F/W	32	32	17.65	564.80		
2	RUSH	RUSH FEE	1	1	250.00	250.00		
3	FREIGHT ...	SHIPPING AND HANDLING CHARGES	1	1	360.00	360.00		
		1 PALLAT AT 303 LBS						
		TRACKING/BOL # 23707849-0						

Vendor 55660 Inv No 147752
Date 1.18.24 Amt 1174.80
D 7180-HO-002 Acct Date 1/24
C 200 201 Job Extra
P Nat
A 30,050.00
B 1174.80
R

ENTERED JAN 2 2024



YOU WILL NEVER RECEIVE ANY CHANGES TO OUR COMPANY
INFORMATION, ADDRESS, REMITTANCE, OR BANK INFORMATION BY
EMAIL NOTIFICATION.

Phone #	Fax #	E-mail	(8.25%)	\$0.00
713-939-9999	713-939-7200	sales@maddenbolt.com		\$1,174.80

CONDITIONAL AND FINAL WAIVER AND RELEASE OF LIEN

WAIVER AND RELEASE OF LIEN

UPON PROGRESS PAYMENT

WESTWIN ELEMENTS, INC.

PCE JOB 7180 -Invoice No. 7949-0224 Billing No. 02-MISCELLANEOUS

WESTWIN ELEMENTS, INC. – Contract No. 2023101002PP4101

The undersigned has furnished or provided labor, equipment, services, or materials used or consumed for the improvement of the Westwin Elements Pilot Plant in or near Lawton, Comanche County, Oklahoma pursuant to the Purchase Order Number 2023101002PP4101, dated January 22, 2024, between the undersigned and Westwin Elements, Inc.. In consideration of progress payments made to the undersigned to the date hereof, the receipt and sufficiency of which are hereby acknowledged, the undersigned does hereby release and waive any and all liens for claims for payment and in any way relating to or arising out of labor, equipment, services, materials, work or operations of any kind (including but not limited to transportation) provided by, through or on behalf of the undersigned in connection with the Purchase Order up to and including 31JAN24 that could in any manner affect or encumber the real estate or other property of Westwin Elements, Inc., except for known claims for which undersigned has provided notice. The undersigned further certifies to Westwin Elements, Inc., under penalty of perjury, that the undersigned has paid all contracted and current approved change request amounts due for any labor, equipment, services, or materials furnished to or for the benefit of the undersigned by others in connection with the contract and land referred to in this Waiver and Release.

Any individual who signs this Waiver and Release in a representative capacity hereby warrants and represents that he or she has the authority to sign this Waiver and Release on behalf of the undersigned and to bind the undersigned.

Dated: 07FEB24

Company: PCE CONSTRUCTORS, INC

By: [Signature]

Printed Name & Title:

BOB N ROBARDS, President

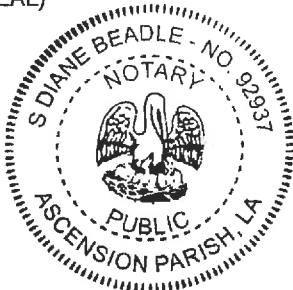
STATE OF LOUISIANA

) ss.

PARISH OF Ascension

This instrument was acknowledged before me on Feb. 7, 2024
by Bob N. Robards as President of PCE Constructors, Inc.

(SEAL)



Printed Name: _____

S. DIANE BEADLE
LOUISIANA 92937 - NOTARY PUBLIC
STATE OF LOUISIANA
PARISH OF ASCENSION
NOTARIAL COMMISSION IS FOR LIFE.

My Appointment Expires: _____



CONSTRUCTORS, INC.

13544 Eads Road, Prairieville, LA 70769 – PO Box 1582, Prairieville, LA 70769-1582

(P) 225-677-9100 (F) 225-677-9153

	Date:	February 16, 2024
	Ref.:	WESTWIN ELEMENTS, INC.
WESTWIN ELEMENTS, INC.		Pilot Plant - Lawton, OK
7 NE Sixth Street Unit 100	Contract #	2023101002PP4101
Oklahoma City, OK 73104	Project No.	23PP01
		Lawton, OK
		PCE Job No. 7180
Attn: Ashlea Sartin		
ashlea@westwinelements.com		
Attn: Mike Thompson		
mthompson@capitalepc.com		
We are sending you herewith:		

No. of	
Copies	Description

Bill header

Payee name	PCE Constructors, Inc. (R Gibson) (35)
Invoice number	7953-0224
Invoice date	Feb 16, 2024
Invoice Due date	Mar 07, 2024
Description	
AP account	20001 - Accounts Payable Pilot Plant
Total Amount	USD 118,418.50

Bill approvers

1	Ashlea Sartin	Feb 21, 2024
2	Nathan Shibler	Feb 29, 2024

Related payments

Transaction Type	Payment date	Payment refcode	Paid amount	Status	Scheduled date
Payment	Mar 05, 2024	2ccc9a2737c04869	USD 118,418.50 ⓘ	Paid	Mar 07, 2024





CONSTRUCTORS, INC.

13544 Eads Road, Prairieville, LA 70769 – PO Box 1582, Prairieville, LA 70769-1582
(P) 225-677-9100 (F) 225-677-9153

Date: February 16, 2024

Ref.: WESTWIN ELEMENTS, INC.

WESTWIN ELEMENTS, INC.

7 NE Sixth Street Unit 100

Oklahoma City, OK 73104

Pilot Plant - Lawton, OK

Contract # 2023101002PP4101

Project No. 23PP01

Lawton, OK

PCE Job No. 7180

Attn: Ashlea Sartin

ashlea@westwinelements.com

Attn: Mike Thompson

mthompson@capitalepc.com

We are sending you herewith:

No. of

Copies

Description

1 set

Invoice number 7953-0224

5 pages

1 ea

Lien Release - Progress Payment

1 page

Billing No. 03

REMARKS:

> Billing Number 03 - LABOR for WE 11FEB24

> Billing Number 03 - MISCELLANEOUS (Subcontracts,Material,Third Party Equip,Other)

Period: FROM 1-Feb-24 INVOICE ENTRY DATE

Period: TO 16-Feb-24 INVOICE ENTRY DATE

Thank You

PCE CONSTRUCTORS, INC.

Mike Cook



13544 Eads Road - P.O. Box 1582, Prairieville, LA 70769
Phone (225) 677-9100 Fax (225) 677-9152

INVOICE

SOLD TO: WESTWIN ELEMENTS, INC.
7 NE Sixth Street Unit 100
Oklahoma City, OK 73104

DATE: 16-Feb-24

INVOICE: 7953-0224

CUST. NO.: 30-7835

Contract # 2023101002PP4101
Project No. 23PP01

ATTN.: Ashlea Sartin
ashlea@westwinelements.com
Mike Thompson
mthompson@capitalepc.com

TERMS: Net 20

JOB NO: 7180

Billing Number 3

I Labor

Payroll Period Ended: WE 11FEB24 \$ 1,994.50

II Material/Subcontracts/Third Party Rentals/Other

Period From Invoice "Entry" Date 2/1/2024 \$ 116,424.00
Period: To: Invoice "Entry" Date 2/16/2024

*** Schedule A - attached ****

AMOUNT DUE THIS INVOICE

\$ 118,418.50

REMIT TO: Wiring/ACH Instructions

Bank Name: Hancock Whitney Bank
Bank Address: City Plaza First Floor
445 North Blvd
Baton Rouge, Louisiana 70802
ABA/Routing: 065400153
Account Number: 16386954
Account Name: PCE Constructors, Inc. - Special Account
Account Address: P. O. Box 1582
Prairieville, Louisiana 70769



PCE CONSTRUCTORS, INC. Job No. 7180
LABOR-Weekly Time Report
Bill 01-Labor; Inv 7953
Payroll WE 02/11/2024
Client: WESTWIN ELEMENTS, INC

Contract No. 2023101002PP4101

Job	Employee No.	Employee Name	Craft Desc	Craft	Period End Date	Cost code	Pay ID	Units	Billing Rate	ST Billed Units	OT Billed Units	Total Billed Units	ST Bill Rate	OT Bill Rate	ST Billed Amount	OT Billed Amount	Total Billed Amount
7180	14869	Barnes;Clinton E.	Rigger Structural Supt.	RS5	2/11/2024	99-101-001-010	REG	8.5	101.00	8.50	-	8.50	101.00	-	858.50	-	858.50
7180	12343	Barnes;Tony Logan	Rigger Structural Journeyman	RSJ	2/11/2024	99-101-001-010	REG	8	71.00	8.00	-	8.00	71.00	-	568.00	-	568.00
7180	15000	Garcia Baeza;Saul	Rigger Journeyman	RSJ	2/11/2024	99-101-001-010	REG	8	71.00	8.00	-	8.00	71.00	-	568.00	-	568.00
			TOTALS							24.50	-	24.50		-	1,994.50	-	1,994.50

Approved by: Mike A. Cook
PCE CONSTRUCTORS, INC.
Date: 16FEB24

Approved by: [Signature]
WESTWIN ELEMENTS, INC.
Date: 2/14/2024

PCE CONSTRUCTORS, INC. JOB 7180
 WESTWIN ELEMENTS, INC.
 BILLING NO 03 - MISCELLANEOUS
 PCE Invoice Number: 7953-0224
 SCHEDULE A
 Contract No. 2023101002PP4101
 Project No. 23PP01
 Pilot Plant -Lawton, OK

Vendor Name	Cost Code	Category	Transaction Type	PO	Amount	Vendor No	Invoice No	Invoice Date	Accounting Date	Check No	Bill No
Vendor Name	Cost Code	Category	Transaction Type	PO	Amount	Vendor No	Invoice No	Invoice Date	Accounting Date	Check No	Bill No
Bium Enterprises	99-200-200-201	MAT	Dollars paid	7180-HO-001	103,950.00	17640	23-1109C	2/1/2024	2/5/2024	59277	03
SUBTOTAL					103,950.00						
MARK-UP (12%)					12,474.00						
TOTAL					116,424.00						

Vendor: Blum Enterprises, Inc.

17640

Check Date: February 9, 2024

59277

INVOICE DATE	INVOICE NO	DESCRIPTION	INV. AMOUNT	DISCNT TAKEN	BALANCE
2-01-24	23-1109C	7180-HO-001	103950.00	.00	103950.00
Chk. Date	2-09-24	Chk. No.	59277	Totals	103950.00
PLEASE DETACH AND RETAIN FOR YOUR RECORDS					.00
					103950.00

Hancock Whitney Bank
BATON ROUGE, LA 7080284-15
654

59277

DATE 02/09/2024

PAY ONLY 103,950.00

\$****103,950.00

PAY *****One Hundred Three Thousand Nine Hundred Fifty and 00/100 Dollars

TO
THE
ORDER
OF
Blum Enterprises, Inc.
5655 Adams Avenue
Baton Rouge, LA 70806

COPY

Vendor: Blum Enterprises, Inc.

17640

Check Date: February 9, 2024

59277

INVOICE DATE	INVOICE NO	DESCRIPTION	INV. AMOUNT	DISCNT TAKEN	BALANCE
2-01-24	23-1109C	7180-HO-001	103950.00	.00	103950.00
Chk. Date	2-09-24	Chk. No.	59277	Totals	103950.00
PLEASE DETACH AND RETAIN FOR YOUR RECORDS					.00
					103950.00

Hancock Whitney Bank
BATON ROUGE, LA 7080284-15
654

59277

DATE 02/09/2024

PAY ONLY 103,950.00

\$****103,950.00

PAY *****One Hundred Three Thousand Nine Hundred Fifty and 00/100 Dollars

TO
THE
ORDER
OF
Blum Enterprises, Inc.
5655 Adams Avenue
Baton Rouge, LA 70806

COPY

BLUM ENTERPRISES, INC. **BILLABLE** **ORIGINAL INVOICE**
 5655 ADAMS AVENUE
 BATON ROUGE, LA 70806

Date	Invoice #
2/1/2024	23-1109C

Bill To	Ship To
PCE CONSTRUCTORS INC 13544 EADS ROAD PRAIRIEVILLE LA 70769-1582	PCE CONSTRUCTORS C/O WESTWIN ELEMENTS 10925 SW BISHOP ROAD LAWTON, OK 73505 MIKE COOK

P.O. Number	Terms	Rep	Ship	Via
7180-HO-001	Net 30		2/1/2024	
Quantity	Item Code	Description	Price Each	Amount
0.7	LOT	% OF PURCHASE ORDER IN THE AMOUNT OF: FOR CRANE STRUCTURE @ NICKEL DEMO PLANT.	148,500.00	103,950.00

Vendor 17640 Inv No 23-1109C
 Date 2-1-24 Amt 103,950.00
 P.O. # 7180-HO-001 Acct Date Feb 24
 Job 200 201 Extra _____
Mal
30105000
103,950.00
 ENTERED FEB 05 2024

Thank you for your business.		Total	\$103,950.00
		Payments/Credits	\$0.00
Phone #	Fax #	Balance Due	\$103,950.00
225-357-2736	225-357-2783		

CONDITIONAL AND FINAL WAIVER AND RELEASE OF LIEN

WAIVER AND RELEASE OF LIEN

UPON PROGRESS PAYMENT

WESTWIN ELEMENTS, INC.

PCE JOB 7180 -Invoice No. 7953-0224 Billing No. 03-LABOR

WESTWIN ELEMENTS, INC. – Contract No. 2023101002PP4101

The undersigned has furnished or provided labor, equipment, services, or materials used or consumed for the improvement of the Westwin Elements Pilot Plant in or near Lawton, Comanche County, Oklahoma pursuant to the Purchase Order Number 2023101002PP4101, dated January 22, 2024, between the undersigned and Westwin Elements, Inc. In consideration of progress payments made to the undersigned to the date hereof, the receipt and sufficiency of which are hereby acknowledged, the undersigned does hereby release and waive any and all liens for claims for payment and in any way relating to or arising out of labor, equipment, services, materials, work or operations of any kind (including but not limited to transportation) provided by, through or on behalf of the undersigned in connection with the Purchase Order up to and including 11FEB24 that could in any manner affect or encumber the real estate or other property of Westwin Elements, Inc., except for known claims for which undersigned has provided notice. The undersigned further certifies to Westwin Elements, Inc., under penalty of perjury, that the undersigned has paid all contracted and current approved change request amounts due for any labor, equipment, services, or materials furnished to or for the benefit of the undersigned by others in connection with the contract and land referred to in this Waiver and Release.

Any individual who signs this Waiver and Release in a representative capacity hereby warrants and represents that he or she has the authority to sign this Waiver and Release on behalf of the undersigned and to bind the undersigned.

Dated: 16FEB24

Company: PCE CONSTRUCTORS, INC

By: [Signature]

Printed Name & Title:

BOB N ROBARDS, President

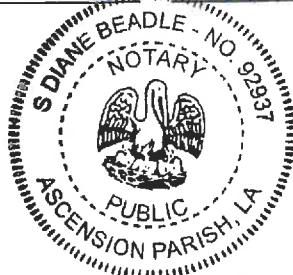
STATE OF LOUISIANA

) ss.

PARISH OF Ascension

This instrument was acknowledged before me on Feb. 16, 2024
by Bob N. Robards as President of PCE Constructors Inc

(SEAL)



Printed Name: [Signature]

Notary Public
DIANE BEADLE
LSNID # 92937 - NOTARY PUBLIC
STATE OF LOUISIANA
PARISH OF ASCENSION
NOTARIAL COMMISSION IS FOR LIFE.

My Appointment Expires: _____

PCE

CONSTRUCTORS, INC.

13544 Eads Road, Prairieville, LA 70769 – PO Box 1582, Prairieville, LA 70769-1582
(P) 225-677-9100 (F) 225-677-9153

	Date:	February 28, 2024
	Ref.:	WESTWIN ELEMENTS, INC.
WESTWIN ELEMENTS, INC.		Pilot Plant - Lawton, OK
7 NE Sixth Street Unit 100	Contract #	2023101002PP4101
Oklahoma City, OK 73104	Project No.	23PP01
		Lawton, OK
		PCE Job No. 7180
Attn: Ashlea Sartin		
ashlea@westwinelements.com		
Attn: Mike Thompson		
mthompson@capitalepc.com		
We are sending you herewith:		

No. of	
Copies	Description

Bill header	
Payee name	PCE Constructors, Inc. (R Gibson) (35)
Invoice number	7955-0224
Invoice date	Feb 28, 2024
Invoice Due date	Mar 19, 2024
Description	
AP account	20001 - Accounts Payable Pilot Plant
Total Amount	USD 227,689.32
Bill approvers	
1 Ashlea Sartin	Mar 01, 2024
2 Nathan Shibler	Mar 12, 2024

Related payments

Transaction Type	Payment date	Payment refcode	Paid amount	Status	Scheduled date
Payment	Mar 12, 2024	63912868f6c24ed8	USD 227,689.32 ⓘ	Paid	Mar 19, 2024





CONSTRUCTORS, INC.

13544 Eads Road, Prairieville, LA 70769 – PO Box 1582, Prairieville, LA 70769-1582

(P) 225-677-9100 (F) 225-677-9153

Date: February 28, 2024

Ref.: WESTWIN ELEMENTS, INC.

WESTWIN ELEMENTS, INC.

7 NE Sixth Street Unit 100

Oklahoma City, OK 73104

Pilot Plant - Lawton, OK

Contract # 2023101002PP4101

Project No. 23PP01

Lawton, OK

PCE Job No. 7180

Attn: Ashlea Sartin

ashlea@westwinelements.com

Attn: Mike Thompson

mthompson@capitalepc.com

We are sending you herewith:

No. of

Copies

Description

1 set

Invoice number 7955-0224

8 pages

1 ea

Lien Release - Progress Payment

1 page

Billing No. 05

REMARKS:

> Billing Number 05 - LABOR for WE 25FEB24

> Billing Number 05 - MISCELLANEOUS (Subcontracts,Material,Third Party Equip,Other)

Period: FROM 17-Feb-24 INVOICE ENTRY DATE

Period: TO 25-Feb-24 INVOICE ENTRY DATE

Thank You

PCE CONSTRUCTORS, INC.

Mike Cook



PCE CONSTRUCTORS, INC.

13544 Eads Road - P.O. Box 1582, Prairieville, LA 70769

Phone (225) 677-9100 Fax (225) 677-9152

INVOICE

SOLD TO: WESTWIN ELEMENTS, INC.
7 NE Sixth Street Unit 100
Oklahoma City, OK 73104

DATE: 28-Feb-24

INVOICE: 7955-0224

CUST. NO.: 30-7835

Contract # 2023101002PP4101

Project No. 23PP01

ATTN.: Ashlea Sartin
ashlea@westwinelements.com
Mike Thompson
mthompson@capitalepc.com

TERMS: Net 20

JOB NO: 7180

Billing Number 5

I Labor

Payroll Period Ended: WE 25FEB24 \$ 25,666.00

II Material/Subcontracts/Third Party Rentals/Other

Period From Invoice "Entry" Date 2/17/2024 \$ 202,023.32

Period: To: Invoice "Entry" Date 2/25/2024

*** Schedule A - attached ****

AMOUNT DUE THIS INVOICE

\$ 227,689.32

REMIT TO: Wiring/ACH Instructions

Bank Name: Hancock Whitney Bank
Bank Address: City Plaza First Floor
445 North Blvd
Baton Rouge, Louisiana 70802
ABA/Routing: 065400153
Account Number: 16386954
Account Name: PCE Constructors, Inc. - Special Account
Account Address: P. O. Box 1582
Prairieville, Louisiana 70769

Week Ending 25FEB24			MONDAY		TUESDAY		WEDNESDAY		THURSDAY		FRIDAY		SATURDAY		SUNDAY				Billing Rate	Billing Rate	Billing Amount	Billing Amount	
Craft Description	Employee NAME	Cost Code															Total Hours		ST	OT	ST	OT	
			S.T.	O.T.	S.T.	O.T.	S.T.	O.T.	S.T.	O.T.	S.T.	O.T.	S.T.	O.T.	S.T.	O.T.	S.T.	O.T.					
Site Manager	Allen Parvin	99-101-001-010															-	-	\$ 120.00	\$ 157.00	\$ -	\$ -	
Superintendent	Clint Barnes	99-101-001-010	10.50		10.50		10.50		8.50	2.00		10.50					40.00	12.50	\$ 101.00	\$ 131.00	\$ 4,040.00	\$ 1,637.50	
Safety Manager	Leah Draper	99-101-001-010	10.50		10.50		10.50		8.50	2.00		10.50					40.00	12.50	\$ 97.00	\$ 125.00	\$ 3,880.00	\$ 1,562.50	
QA/QC Manager		99-101-001-010															-	-	\$ 97.00	\$ 125.00	\$ -	\$ -	
Office Manager		99-101-001-010															-	-	\$ 66.00	\$ 91.00	\$ -	\$ -	
Clerk		99-101-001-010															-	-	\$ 44.00	\$ 62.00	\$ -	\$ -	
Composite Crew	Tony Barnes	99-101-001-010	10.00		10.00		10.00		10.00		10.00						40.00	10.00	\$ 71.00	\$ 98.00	\$ 2,840.00	\$ 980.00	
Composite Crew	Saul Garcia	99-101-001-010	5.00		10.00		10.00		10.00		5.00	5.00					40.00	5.00	\$ 71.00	\$ 98.00	\$ 2,840.00	\$ 490.00	
Composite Crew	Ronnie Hopkins	99-101-001-010					8.00		10.00			10.00			6.00		18.00	16.00	\$ 71.00	\$ 98.00	\$ 1,278.00	\$ 1,568.00	
Composite Crew	Robert Montague	99-101-001-010			4.00		8.00		10.00			10.00			6.00		22.00	16.00	\$ 71.00	\$ 98.00	\$ 1,562.00	\$ 1,568.00	
Composite Crew	Shannon Mahaffey	99-101-001-010							10.00		10.00						20.00	-	\$ 71.00	\$ 98.00	\$ 1,420.00	\$ -	
Composite Crew		99-101-001-010															-	-	\$ 71.00	\$ 98.00	\$ -	\$ -	
Composite Crew		99-101-001-010															-	-	\$ 71.00	\$ 98.00	\$ -	\$ -	
Composite Crew		99-101-001-010															-	-	\$ 71.00	\$ 98.00	\$ -	\$ -	
Composite Crew		99-101-001-010															-	-	\$ 71.00	\$ 98.00	\$ -	\$ -	
																	-	-	\$ 71.00	\$ 98.00	\$ -	\$ -	
Totals					36.00	-	45.00	-	57.00	-	67.00	4.00	15.00	56.00	-	12.00	-	-	220.00	72.00			
292.00																		Total		\$ 25,666.00			
																				\$ 17,860.00		\$ 7,806.00	

Signature

Date

Name and Title

PCE CONSTRUCTORS, INC. JOB 7180
WESTWIN ELEMENTS, INC.
BILLING NO 05 - MISCELLANEOUS
PCE Invoice Number: 7955-0224
SCHEDULE A
Contract No. 2023101002PP4101
Project No. 23PP01
Pilot Plant -Lawton, OK

Vendor Name	Cost Code	Category	Transaction Type	PO	Amount	Vendor No	Invoice No	Invoice Date	Accounting Date	Check No	Bill No
Vendor Name	Cost Code	Category	Transaction Type	PO	Amount	Vendor No	Invoice No	Invoice Date	Accounting Date	Check No	Bill No
Blum Enterprises	99-200-200-201	MAT	Dollars paid	7180-HO-001	112,938.00	17640	24-0103-2	2/20/2024	2/22/2024	59389	05
Blum Enterprises	99-200-200-201	MAT	Dollars paid	7180-HO-001	64,908.00	17640	24-0205-2	2/21/2024	2/22/2024	59389	05
Hilti, Inc.	99-200-200-201	MAT	Dollars paid	7180-HO-006	2,531.96	39820	4622419873	2/15/2024	2/22/2024	59405	05
SUBTOTAL					180,377.96						
MARK-UP (12%)					21,645.36						
TOTAL					202,023.32						

Vendor: Blum Enterprises, Inc. 17640 Check Date: February 23, 2024 59389

INVOICE DATE	INVOICE NO	DESCRIPTION	INV. AMOUNT	DISCNT TAKEN	BALANCE
2-20-24	24-0103-2	7180-HO-001	112938.00	.00	112938.00
2-21-24	24-0205-2	7180-HO-001	64908.00	.00	64908.00
Chk. Date 2-23-24 Chk. No. 59389 Totals			177846.00	.00	177846.00

PLEASE DETACH AND RETAIN FOR YOUR RECORDS

Hancock Whitney Bank 84-15 59389
BATON ROUGE, LA 70802 654

DATE 02/23/2024

PAY ONLY 177846.00 \$****177,846.00

PAY *****One Hundred Seventy-Seven Thousand Eight Hundred Forty-Six and 00/100 Dollars

TO Blum Enterprises, Inc.
THE 5655 Adams Avenue
ORDER Baton Rouge, LA 70806
OF

*** COPY ***

Vendor: Blum Enterprises, Inc. 17640 Check Date: February 23, 2024 59389

INVOICE DATE	INVOICE NO	DESCRIPTION	INV. AMOUNT	DISCNT TAKEN	BALANCE
2-20-24	24-0103-2	7180-HO-001	112938.00	.00	112938.00
2-21-24	24-0205-2	7180-HO-001	64908.00	.00	64908.00
Chk. Date 2-23-24 Chk. No. 59389 Totals			177846.00	.00	177846.00

PLEASE DETACH AND RETAIN FOR YOUR RECORDS

Hancock Whitney Bank 84-15 59389
BATON ROUGE, LA 70802 654

DATE 02/23/2024

PAY ONLY 177846.00 \$****177,846.00

PAY *****One Hundred Seventy-Seven Thousand Eight Hundred Forty-Six and 00/100 Dollars

TO Blum Enterprises, Inc.
THE 5655 Adams Avenue
ORDER Baton Rouge, LA 70806
OF

COPY

BLUM ENTERPRISES, INC.
5655 ADAMS AVENUE
BATON ROUGE, LA 70806

RECEIVED
FEB 22 2024
ACCT DEPT

ORIGINAL INVOICE

Date	Invoice #
2/20/2024	24-0103-2

Bill To	Ship To
PCE CONSTRUCTORS INC 13544 EADS ROAD PRAIRIEVILLE LA 70769-1582	PCE CONSTRUCTORS INC WESTWIN ELEMENTS 10925 SW BISHOP RD LAWTON, OK 73505

BILLABLE

P.O. Number		Terms	Rep	Ship	Via
7180-HO-001- REV 1		NET 10		2/20/2024	
Quantity	Item Code	Description	Price Each	Amount	
0.7	LOT	% OF ITEM 2 - FABRICATE STEEL/SHOP DRAWINGS FOR BLUM PROPOSAL NO. 23-188r1 (MEZZANINE STEEL):	161,340.00	112,938.00	
Vendor <u>17640</u> Inv No <u>24-0103-2</u>					
Date <u>2-20-24</u> Amt <u>112,938.00</u>					
Desc <u>7180-HO-001</u> Acct Date <u>Feb 24</u>					
Commit _____ Job <u>Extra</u>					
CC <u>200201</u>					
Cat <u>Mat</u>					
Acct <u>30105000</u>					
Amt <u>112,938.00</u>					
Approval _____					
ENTERED FEB 22 2024					

KSC

		Total	\$112,938.00
		Payments/Credits	\$0.00
Phone #	Fax #	Balance Due	\$112,938.00
225-357-2736	225-357-2783		

BLUM ENTERPRISES, INC.

5655 ADAMS AVENUE
BATON ROUGE, LA 70806

RECEIVED

FEB 22 2024

ACCT DEPT

ORIGINAL INVOICE

Date	Invoice #
2/21/2024	24-0205-2

Bill To	Ship To
PCE CONSTRUCTORS INC 13544 EADS ROAD PRAIRIEVILLE LA 70769-1582	PCE CONSTRUCTORS C/O WESTWIN ELEMENTS 10925 SW BISHOP RD LAWTON, OK 73505

BILLABLE

P.O. Number	Terms	Rep	Ship	Via
7180-HO-001-RE 2	NET 10		2/21/2024	
Quantity	Item Code	Description	Price Each	Amount
0.3	LOT	% OF PURCHASE ORDER IN THE AMOUNT OF: FOR ITEM 3: FAB STEEL/SHOP DWGS FOR BLUM PROPOSAL NO. 24-030. 24-030 INCLUDES FREIGHT TO SITE (balance of mezzanine steel, grating and treads)	216,360.00	64,908.00
Vendor <u>17640</u> Inv No <u>24-0205-2</u> Date <u>2.21.24</u> Amt <u>64,908.00</u> Desc <u>7180-170-001</u> Acct Date <u>2/24</u> Commit _____ Job _____ Extra _____ CC <u>206201</u> Cat <u>Mat</u> Acct <u>30105000</u> Amt <u>64,908.00</u> Approval _____				

KSC

Thank you for your business.

ENTERED FEB 22 2024

Total		\$64,908.00
Payments/Credits		\$0.00
Balance Due		\$64,908.00
Phone #	Fax #	
225-357-2736	225-357-2783	

Vendor: Hilti, Inc. 39820 Check Date: February 23, 2024 59405

INVOICE DATE	INVOICE NO	DESCRIPTION	INV. AMOUNT	DISCNT TAKEN	BALANCE
2-14-24	4622412969	7179-JS-171	879.76	.00	879.76
2-15-24	4622419873	7180-HO-006	2531.96	.00	2531.96

Chk. Date	2-23-24	Chk. No.	59405	Totals	3411.72	.00	3411.72
-----------	---------	----------	-------	--------	---------	-----	---------

PLEASE DETACH AND RETAIN FOR YOUR RECORDS

Hancock Whitney Bank 84-15 654 59405
BATON ROUGE, LA 70802
DATE 02/23/2024
PAY ONLY 3411.72 \$*****3,411.72
PAY *****Three Thousand Four Hundred Eleven and 72/100 Dollars
TO Hilti, Inc.
THE P O Box 650756
ORDER Dallas, TX 75265-0756
OF
COPY

Vendor: Hilti, Inc. 39820 Check Date: February 23, 2024 59405

INVOICE DATE	INVOICE NO	DESCRIPTION	INV. AMOUNT	DISCNT TAKEN	BALANCE
2-14-24	4622412969	7179-JS-171	879.76	.00	879.76
2-15-24	4622419873	7180-HO-006	2531.96	.00	2531.96

Chk. Date	2-23-24	Chk. No.	59405	Totals	3411.72	.00	3411.72
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PLEASE DETACH AND RETAIN FOR YOUR RECORDS

Hancock Whitney Bank 84-15 654 59405
BATON ROUGE, LA 70802
DATE 02/23/2024
PAY ONLY 3411.72 \$*****3,411.72
PAY *****Three Thousand Four Hundred Eleven and 72/100 Dollars
TO Hilti, Inc.
THE P O Box 650756
ORDER Dallas, TX 75265-0756
OF
COPY



BILLABLE

INVOICE 4622419873

RECEIVED

FEB 16 2024

ACCT DEPT

PCE CONSTRUCTORS INC
PO Box 1582
PRAIRIEVILLE LA 70769

Hilti Inc.
PO Box 21448
Tulsa, OK 74121-1148

Customer Service
800-879-8000
www.hilti.com

Credit Dept
800 950-6196

Duns: 00-117-3525
Federal ID: 06-0732334

Invoice date: 02/15/2024
Invoice due date: 03/16/2024
Cust. P.O. number: 7180-HO-006
Customer account: 18801391

Page 1 (1)

Delivery Address: PCE CONSTRUCTORS INC, 10925 SW BISHOP RD, LAWTON OK 73505-0876 ATTN: BROCK DELOACH 02256779100

Hilti sales rep: YANCY BLANCHARD, TUS0871406
Terms of payment: 30 days net

Order number: 585590512
Location ID: 30755766

Date: 02/14/2024

SHIPMENT NUMBER APPEARS ON PACKING SLIP(S). USE TO MATCH ALL DOCUMENTS AND CONFIRM RECEIPT.

Material Number	Material Description	Quantity Invoiced	Quantity Shipped	Sell Price	Amount Due *
3595797	ANCH ROD HAS-V-36 3/4"X16" MC/30	5 EA		502.42	2,512.10 A
2198032	ANCHOR ROD HAS-V-36 3/4"X16"		15 ZPX of 10 EA = 150 EA		

Items Total 2,512.10

Freight 19.86

Total net value 2,531.96

Total Tax ~~228.09~~

Total amount USD ~~2,758.05~~

2531.96

Taxes: State: OK 4.5 % \$ 113.05 County: 0.375 % \$ 9.42 City: 4.125 % \$ 103.62

* A - Taxable B - Non-Taxable C - Limited Shelf Life D - Non-Domestic Source E - Non-Domestic Source NATO Exception

Material returns after 90 days are subject to a \$ 125 restocking fee.

Chemicals returnable within 14 days by the case only.

Standard Hilti terms and conditions apply. Visit www.us.hilti.com/terms for full terms.

Vendor 39820 Inv No 4622419873
Date 2-15-24 Amt 2531.96
Desc 7180-HO-006 Acct Date
Commit Job Extra
CC 200201
Cal Net
Acct 30105000
Amt 2531.96
Approval

Amount due (USD) Payment enclosed
\$2,758.05

PCE CONSTRUCTORS INC
10925 SW BISHOP RD
LAWTON OK 73505-0876

Remit to: HILTI INC.
PO BOX 650756
DALLAS TX 75265-0756



CONDITIONAL AND FINAL WAIVER AND RELEASE OF LIEN

WAIVER AND RELEASE OF LIEN

UPON PROGRESS PAYMENT

WESTWIN ELEMENTS, INC.

PCE JOB 7180 -Invoice No. 7955-0224 Billing No. 05-LABOR and MISCELLANEOUS

WESTWIN ELEMENTS, INC. – Contract No. 2023101002PP4101

The undersigned has furnished or provided labor, equipment, services, or materials used or consumed for the improvement of the Westwin Elements Pilot Plant in or near Lawton, Comanche County, Oklahoma pursuant to the Purchase Order Number 2023101002PP4101, dated January 22, 2024, between the undersigned and Westwin Elements, Inc.. In consideration of progress payments made to the undersigned to the date hereof, the receipt and sufficiency of which are hereby acknowledged, the undersigned does hereby release and waive any and all liens for claims for payment and in any way relating to or arising out of labor, equipment, services, materials, work or operations of any kind (including but not limited to transportation) provided by, through or on behalf of the undersigned in connection with the Purchase Order up to and including 25FEB24 that could in any manner affect or encumber the real estate or other property of Westwin Elements, Inc., except for known claims for which undersigned has provided notice. The undersigned further certifies to Westwin Elements, Inc., under penalty of perjury, that the undersigned has paid all contracted and current approved change request amounts due for any labor, equipment, services, or materials furnished to or for the benefit of the undersigned by others in connection with the contract and land referred to in this Waiver and Release.

Any individual who signs this Waiver and Release in a representative capacity hereby warrants and represents that he or she has the authority to sign this Waiver and Release on behalf of the undersigned and to bind the undersigned.

Dated: 28FEB24

Company: PCE CONSTRUCTORS, INC

By: [Signature]

Printed Name & Title:

BOB N ROBARDS, President

STATE OF LOUISIANA

) ss.

PARISH OF Ascension

This instrument was acknowledged before me on Feb 28, 2024
by Bob N. Robards as President of PCE Constructors, Inc.

(SEAL)



Printed Name: [Signature]

S. DIANE BEADLE
LOUID # 92937 - NOTARY PUBLIC
Notary Public OF LOUISIANA
PARISH OF ASCENSION
NOTARIAL COMMISSION IS FOR LIFE.

My Appointment Expires: _____

CONDITIONAL AND FINAL WAIVER AND RELEASE OF LIEN

WAIVER AND RELEASE OF LIEN

UPON PROGRESS PAYMENT

WESTWIN ELEMENTS, INC.

PCE JOB 7180 -Invoice No. 7969-0424 Billing No. 10-LABOR AND COE

WESTWIN ELEMENTS, INC. – Contract No. 2023101002PP4101

The undersigned has furnished or provided labor, equipment, services, or materials used or consumed for the improvement of the Westwin Elements Pilot Plant in or near Lawton, Comanche County, Oklahoma pursuant to the Purchase Order Number 2023101002PP4101, dated January 22, 2024, between the undersigned and Westwin Elements, Inc.. In consideration of progress payments made to the undersigned to the date hereof, the receipt and sufficiency of which are hereby acknowledged, the undersigned does hereby release and waive any and all liens for claims for payment and in any way relating to or arising out of labor, equipment, services, materials, work or operations of any kind (including but not limited to transportation) provided by, through or on behalf of the undersigned in connection with the Purchase Order up to and including 31MAR24 that could in any manner affect or encumber the real estate or other property of Westwin Elements, Inc., except for known claims for which undersigned has provided notice. The undersigned further certifies to Westwin Elements, Inc., under penalty of perjury, that the undersigned has paid all contracted and current approved change request amounts due for any labor, equipment, services, or materials furnished to or for the benefit of the undersigned by others in connection with the contract and land referred to in this Waiver and Release.

Any individual who signs this Waiver and Release in a representative capacity hereby warrants and represents that he or she has the authority to sign this Waiver and Release on behalf of the undersigned and to bind the undersigned.

Dated: 03APR24

Company: PCE CONSTRUCTORS, INC

By: [Signature]

Printed Name & Title:

BOB N ROBARDS, President

STATE OF LOUISIANA

) ss.

PARISH OF Ascension

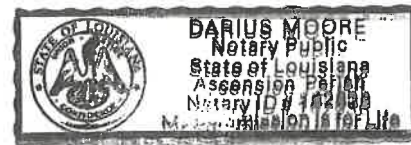
This instrument was acknowledged before me on Apr. 1 3rd, 2024

by Bob N. Robards as President of PCE Constructors Inc.

(SEAL)

[Signature]
Printed Name: DARIUS MOORE
Notary Public

My Appointment Expires: AT DEATH



CONDITIONAL AND FINAL WAIVER AND RELEASE OF LIEN

WAIVER AND RELEASE OF LIEN

UPON PROGRESS PAYMENT

WESTWIN ELEMENTS, INC.

PCE JOB 7180 -Invoice No. 7966-0324 Billing No. 09-LABOR WE24MAR24 and MISCELLANEOUS

WESTWIN ELEMENTS, INC. – Contract No. 2023101002PP4101

The undersigned has furnished or provided labor, equipment, services, or materials used or consumed for the improvement of the Westwin Elements Pilot Plant in or near Lawton, Comanche County, Oklahoma pursuant to the Purchase Order Number 2023101002PP4101, dated January 22, 2024, between the undersigned and Westwin Elements, Inc. In consideration of progress payments made to the undersigned to the date hereof, the receipt and sufficiency of which are hereby acknowledged, the undersigned does hereby release and waive any and all liens for claims for payment and in any way relating to or arising out of labor, equipment, services, materials, work or operations of any kind (including but not limited to transportation) provided by, through or on behalf of the undersigned in connection with the Purchase Order up to and including 24MAR2024 that could in any manner affect or encumber the real estate or other property of Westwin Elements, Inc., except for known claims for which undersigned has provided notice. The undersigned further certifies to Westwin Elements, Inc., under penalty of perjury, that the undersigned has paid all contracted and current approved change request amounts due for any labor, equipment, services, or materials furnished to or for the benefit of the undersigned by others in connection with the contract and land referred to in this Waiver and Release.

Any individual who signs this Waiver and Release in a representative capacity hereby warrants and represents that he or she has the authority to sign this Waiver and Release on behalf of the undersigned and to bind the undersigned.

Dated: 28MAR24

Company: PCE CONSTRUCTORS, INC.

By: [Signature]

Printed Name & Title:

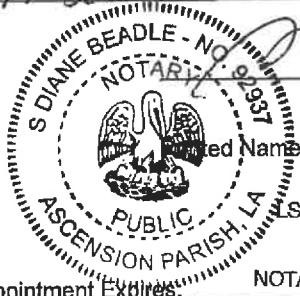
BOB N ROBARDS, President

STATE OF LOUISIANA

) ss.

PARISH OF Ascension

This instrument was acknowledged before me on March 28, 2024
by Bob N. Robards as President of PCE Constructors Inc.
(SEAL)



Notary Name: S. Diane Beadle

Notary Public
S. DIANE BEADLE
LSNID # 92337 - NOTARY PUBLIC
STATE OF LOUISIANA
PARISH OF ASCENSION
NOTARIAL COMMISSION IS FOR LIFE.

My Appointment Expires: _____

CONDITIONAL AND FINAL WAIVER AND RELEASE OF LIEN

WAIVER AND RELEASE OF LIEN

UPON PROGRESS PAYMENT

WESTWIN ELEMENTS, INC.

PCE JOB 7180 -Invoice No. 7965-0324 Billing No. 08-LABOR

WESTWIN ELEMENTS, INC. – Contract No. 2023101002PP4101

The undersigned has furnished or provided labor, equipment, services, or materials used or consumed for the improvement of the Westwin Elements Pilot Plant in or near Lawton, Comanche County, Oklahoma pursuant to the Purchase Order Number 2023101002PP4101, dated January 22, 2024, between the undersigned and Westwin Elements, Inc. In consideration of progress payments made to the undersigned to the date hereof, the receipt and sufficiency of which are hereby acknowledged, the undersigned does hereby release and waive any and all liens for claims for payment and in any way relating to or arising out of labor, equipment, services, materials, work or operations of any kind (including but not limited to transportation) provided by, through or on behalf of the undersigned in connection with the Purchase Order up to and including 17MAR24 that could in any manner affect or encumber the real estate or other property of Westwin Elements, Inc., except for known claims for which undersigned has provided notice. The undersigned further certifies to Westwin Elements, Inc., under penalty of perjury, that the undersigned has paid all contracted and current approved change request amounts due for any labor, equipment, services, or materials furnished to or for the benefit of the undersigned by others in connection with the contract and land referred to in this Waiver and Release.

Any individual who signs this Waiver and Release in a representative capacity hereby warrants and represents that he or she has the authority to sign this Waiver and Release on behalf of the undersigned and to bind the undersigned.

Dated: 19MAR24

Company: PCE CONSTRUCTORS, INC

By: [Signature]

Printed Name & Title:

BOB N ROBARDS, President

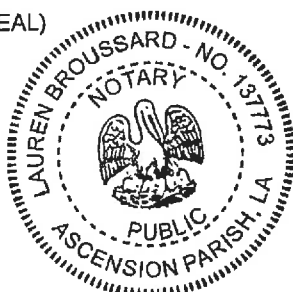
STATE OF LOUISIANA

) ss.

PARISH OF Ascension

This instrument was acknowledged before me on March 19, 2024
by Bob N Robards as President of PCE Constructors Inc.

(SEAL)



[Signature]
Printed Name: LAUREN BROUSSARD - LSNIN #13773
Notary Public

My Appointment Expires: At Death

CONDITIONAL AND FINAL WAIVER AND RELEASE OF LIEN

WAIVER AND RELEASE OF LIEN

UPON PROGRESS PAYMENT

WESTWIN ELEMENTS, INC.

PCE JOB 7180 -Invoice No. 7962-0324 Billing No. 07-LABOR WE10MAR24 and MISCELLANEOUS

WESTWIN ELEMENTS, INC. -- Contract No. 2023101002PP4101

The undersigned has furnished or provided labor, equipment, services, or materials used or consumed for the improvement of the Westwin Elements Pilot Plant in or near Lawton, Comanche County, Oklahoma pursuant to the Purchase Order Number 2023101002PP4101, dated January 22, 2024, between the undersigned and Westwin Elements, Inc. In consideration of progress payments made to the undersigned to the date hereof, the receipt and sufficiency of which are hereby acknowledged, the undersigned does hereby release and waive any and all liens for claims for payment and in any way relating to or arising out of labor, equipment, services, materials, work or operations of any kind (including but not limited to transportation) provided by, through or on behalf of the undersigned in connection with the Purchase Order up to and including 10MAR2024 that could in any manner affect or encumber the real estate or other property of Westwin Elements, Inc., except for known claims for which undersigned has provided notice. The undersigned further certifies to Westwin Elements, Inc., under penalty of perjury, that the undersigned has paid all contracted and current approved change request amounts due for any labor, equipment, services, or materials furnished to or for the benefit of the undersigned by others in connection with the contract and land referred to in this Waiver and Release.

Any individual who signs this Waiver and Release in a representative capacity hereby warrants and represents that he or she has the authority to sign this Waiver and Release on behalf of the undersigned and to bind the undersigned.

Dated: 13MAR24

Company: PCE CONSTRUCTORS, INC

By: [Signature]

Printed Name & Title:

BOB N ROBARDS, President

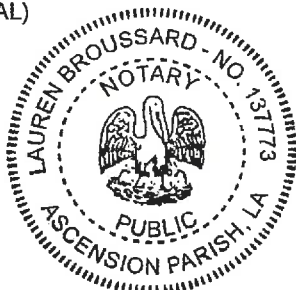
STATE OF LOUISIANA

) ss.

PARISH OF Ascension

This instrument was acknowledged before me on March 13, 2024,
by Bob N Robards as President of PCE Constructors Inc.

(SEAL)



[Signature]
Printed Name: LAUREN BROUSSARD - LSNID #137779
Notary Public

My Appointment Expires: At Death

CONDITIONAL AND FINAL WAIVER AND RELEASE OF LIEN

WAIVER AND RELEASE OF LIEN

UPON PROGRESS PAYMENT

WESTWIN ELEMENTS, INC.

PCE JOB 7180 -Invoice No. 7957-0324 Billing No. 06-LABOR

WESTWIN ELEMENTS, INC. – Contract No. 2023101002PP4101

The undersigned has furnished or provided labor, equipment, services, or materials used or consumed for the improvement of the Westwin Elements Pilot Plant in or near Lawton, Comanche County, Oklahoma pursuant to the Purchase Order Number 2023101002PP4101, dated January 22, 2024, between the undersigned and Westwin Elements, Inc.. In consideration of progress payments made to the undersigned to the date hereof, the receipt and sufficiency of which are hereby acknowledged, the undersigned does hereby release and waive any and all liens for claims for payment and in any way relating to or arising out of labor, equipment, services, materials, work or operations of any kind (including but not limited to transportation) provided by, through or on behalf of the undersigned in connection with the Purchase Order up to and including 03MAR24 that could in any manner affect or encumber the real estate or other property of Westwin Elements, Inc., except for known claims for which undersigned has provided notice. The undersigned further certifies to Westwin Elements, Inc., under penalty of perjury, that the undersigned has paid all contracted and current approved change request amounts due for any labor, equipment, services, or materials furnished to or for the benefit of the undersigned by others in connection with the contract and land referred to in this Waiver and Release.

Any individual who signs this Waiver and Release in a representative capacity hereby warrants and represents that he or she has the authority to sign this Waiver and Release on behalf of the undersigned and to bind the undersigned.

Dated: 06MAR24

Company: PCE CONSTRUCTORS, INC

By: 

Printed Name & Title:

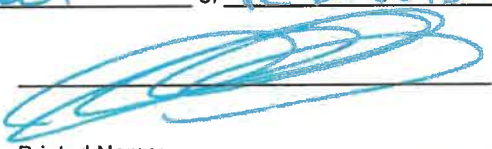
BOB N ROBARDS, President

STATE OF LOUISIANA

) ss.

PARISH OF Ascension

This instrument was acknowledged before me on March 6, 2024
by Bob N Robards as President of PCE Constructors, Inc.
(SEAL)


Printed Name: _____

PAMELA M ALONSO
LA Notary ID # 85498
Commission Is For Life

My Appointment Expires: _____

CONDITIONAL AND FINAL WAIVER AND RELEASE OF LIEN

WAIVER AND RELEASE OF LIEN

UPON PROGRESS PAYMENT

WESTWIN ELEMENTS, INC.

PCE JOB 7180 -Invoice No. 7955-0224 Billing No. 05-LABOR and MISCELLANEOUS

WESTWIN ELEMENTS, INC. – Contract No. 2023101002PP4101

The undersigned has furnished or provided labor, equipment, services, or materials used or consumed for the improvement of the Westwin Elements Pilot Plant in or near Lawton, Comanche County, Oklahoma pursuant to the Purchase Order Number 2023101002PP4101, dated January 22, 2024, between the undersigned and Westwin Elements, Inc.. In consideration of progress payments made to the undersigned to the date hereof, the receipt and sufficiency of which are hereby acknowledged, the undersigned does hereby release and waive any and all liens for claims for payment and in any way relating to or arising out of labor, equipment, services, materials, work or operations of any kind (including but not limited to transportation) provided by, through or on behalf of the undersigned in connection with the Purchase Order up to and including 25FEB24 that could in any manner affect or encumber the real estate or other property of Westwin Elements, Inc., except for known claims for which undersigned has provided notice. The undersigned further certifies to Westwin Elements, Inc., under penalty of perjury, that the undersigned has paid all contracted and current approved change request amounts due for any labor, equipment, services, or materials furnished to or for the benefit of the undersigned by others in connection with the contract and land referred to in this Waiver and Release.

Any individual who signs this Waiver and Release in a representative capacity hereby warrants and represents that he or she has the authority to sign this Waiver and Release on behalf of the undersigned and to bind the undersigned.

Dated: 28FEB24

Company: PCE CONSTRUCTORS, INC

By: [Signature]

Printed Name & Title:

BOB N ROBARDS, President

STATE OF LOUISIANA

) ss.

PARISH OF Ascension

This instrument was acknowledged before me on Feb. 28, 2024
by Bob N. Robards as President of PCE Constructors, Inc.

(SEAL)



Printed Name: [Signature]

S. DIANE BEADLE
LOUID # 92937 - NOTARY PUBLIC
Notary Public
STATE OF LOUISIANA
PARISH OF ASCENSION
NOTARIAL COMMISSION IS FOR 1 YEAR

My Appointment Expires: _____

CONDITIONAL AND FINAL WAIVER AND RELEASE OF LIEN

WAIVER AND RELEASE OF LIEN

UPON PROGRESS PAYMENT

WESTWIN ELEMENTS, INC.

PCE JOB 7180 -Invoice No. 7954-0224 Billing No. 04-LABOR

WESTWIN ELEMENTS, INC. – Contract No. 2023101002PP4101

The undersigned has furnished or provided labor, equipment, services, or materials used or consumed for the improvement of the Westwin Elements Pilot Plant in or near Lawton, Comanche County, Oklahoma pursuant to the Purchase Order Number 2023101002PP4101, dated January 22, 2024, between the undersigned and Westwin Elements, Inc.. In consideration of progress payments made to the undersigned to the date hereof, the receipt and sufficiency of which are hereby acknowledged, the undersigned does hereby release and waive any and all liens for claims for payment and in any way relating to or arising out of labor, equipment, services, materials, work or operations of any kind (including but not limited to transportation) provided by, through or on behalf of the undersigned in connection with the Purchase Order up to and including 18FEB24 that could in any manner affect or encumber the real estate or other property of Westwin Elements, Inc., except for known claims for which undersigned has provided notice. The undersigned further certifies to Westwin Elements, Inc., under penalty of perjury, that the undersigned has paid all contracted and current approved change request amounts due for any labor, equipment, services, or materials furnished to or for the benefit of the undersigned by others in connection with the contract and land referred to in this Waiver and Release.

Any individual who signs this Waiver and Release in a representative capacity hereby warrants and represents that he or she has the authority to sign this Waiver and Release on behalf of the undersigned and to bind the undersigned.

Dated: 21FEB24

Company: PCE CONSTRUCTORS, INC

By: 

Printed Name & Title:

BOB N ROBARDS, President

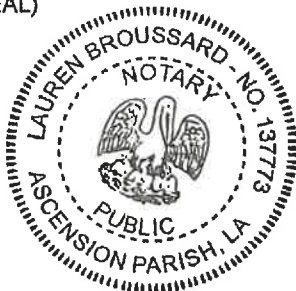
STATE OF LOUISIANA

) ss.

PARISH OF Ascension

This instrument was acknowledged before me on February 21, 2024,
by Bob N. Robards as President of PCE Constructors Inc.

(SEAL)



Printed Name: _____

Notary Public



My Appointment Expires: _____

LAUREN BROUSSARD
STATE OF LOUISIANA
PARISH OF ASCENSION
LSNID # 137773 - NOTARY PUBLIC
NOTARIAL COMMISSION IS FOR LIFE

CONDITIONAL AND FINAL WAIVER AND RELEASE OF LIEN

WAIVER AND RELEASE OF LIEN

UPON PROGRESS PAYMENT

WESTWIN ELEMENTS, INC.

PCE JOB 7180 -Invoice No. 7948-0224 Billing No. 01-LABOR

WESTWIN ELEMENTS, INC. – Contract No. 2023101002PP4101

The undersigned has furnished or provided labor, equipment, services, or materials used or consumed for the improvement of the Westwin Elements Pilot Plant in or near Lawton, Comanche County, Oklahoma pursuant to the Purchase Order Number 2023101002PP4101, dated January 22, 2024, between the undersigned and Westwin Elements, Inc. In consideration of progress payments made to the undersigned to the date hereof, the receipt and sufficiency of which are hereby acknowledged, the undersigned does hereby release and waive any and all liens for claims for payment and in any way relating to or arising out of labor, equipment, services, materials, work or operations of any kind (including but not limited to transportation) provided by, through or on behalf of the undersigned in connection with the Purchase Order up to and including 04FEB24 that could in any manner affect or encumber the real estate or other property of Westwin Elements, Inc., except for known claims for which undersigned has provided notice. The undersigned further certifies to Westwin Elements, Inc., under penalty of perjury, that the undersigned has paid all contracted and current approved change request amounts due for any labor, equipment, services, or materials furnished to or for the benefit of the undersigned by others in connection with the contract and land referred to in this Waiver and Release.

Any individual who signs this Waiver and Release in a representative capacity hereby warrants and represents that he or she has the authority to sign this Waiver and Release on behalf of the undersigned and to bind the undersigned.

Dated: 07FEB24

Company: PCE CONSTRUCTORS, INC

By: [Signature]

Printed Name & Title:

BOB N ROBARDS, President

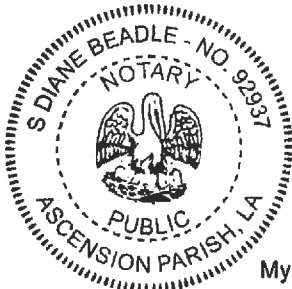
STATE OF LOUISIANA

) ss.

PARISH OF Ascension

This instrument was acknowledged before me on Feb. 7, 2024
by Bob N. Robards as President of PCE Constructors Inc.

(SEAL)



[Signature]
Printed Name: S. DIANE BEADLE
Notary Public
JAN 15, 2015 - NOTARY PUBLIC
STATE OF LOUISIANA
PARISH OF ASCENSION
NOTARIAL COMMISSION IS FOR LIFE.

My Appointment Expires: _____

CONDITIONAL AND FINAL WAIVER AND RELEASE OF LIEN

WAIVER AND RELEASE OF LIEN
UPON PROGRESS PAYMENT
WESTWIN ELEMENTS, INC.

PCE JOB 7180 -Invoice No. 7949-0224 Billing No. 02-MISCELLANEOUS
WESTWIN ELEMENTS, INC. – Contract No. 2023101002PP4101

The undersigned has furnished or provided labor, equipment, services, or materials used or consumed for the improvement of the Westwin Elements Pilot Plant in or near Lawton, Comanche County, Oklahoma pursuant to the Purchase Order Number 2023101002PP4101, dated January 22, 2024, between the undersigned and Westwin Elements, Inc. In consideration of progress payments made to the undersigned to the date hereof, the receipt and sufficiency of which are hereby acknowledged, the undersigned does hereby release and waive any and all liens for claims for payment and in any way relating to or arising out of labor, equipment, services, materials, work or operations of any kind (including but not limited to transportation) provided by, through or on behalf of the undersigned in connection with the Purchase Order up to and including 31JAN24 that could in any manner affect or encumber the real estate or other property of Westwin Elements, Inc., except for known claims for which undersigned has provided notice. The undersigned further certifies to Westwin Elements, Inc., under penalty of perjury, that the undersigned has paid all contracted and current approved change request amounts due for any labor, equipment, services, or materials furnished to or for the benefit of the undersigned by others in connection with the contract and land referred to in this Waiver and Release.

Any individual who signs this Waiver and Release in a representative capacity hereby warrants and represents that he or she has the authority to sign this Waiver and Release on behalf of the undersigned and to bind the undersigned.

Dated: 07FEB24

Company: PCE CONSTRUCTORS, INC

By: [Signature]

Printed Name & Title:

BOB N ROBARDS, President

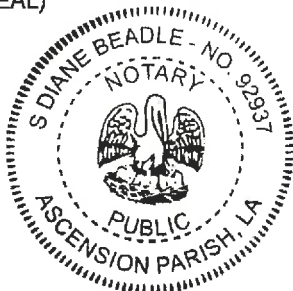
STATE OF LOUISIANA

) ss.

PARISH OF Ascension

This instrument was acknowledged before me on Feb. 7, 2024
by Bob N. Robards as President of PCE Constructors, Inc.

(SEAL)



[Signature]
Printed Name: S. DIANE BEADLE
Notary Public
LOUISIANA - NOTARY PUBLIC
STATE OF LOUISIANA
PARISH OF ASCENSION
NOTARIAL COMMISSION IS FOR LIFE.

My Appointment Expires: _____

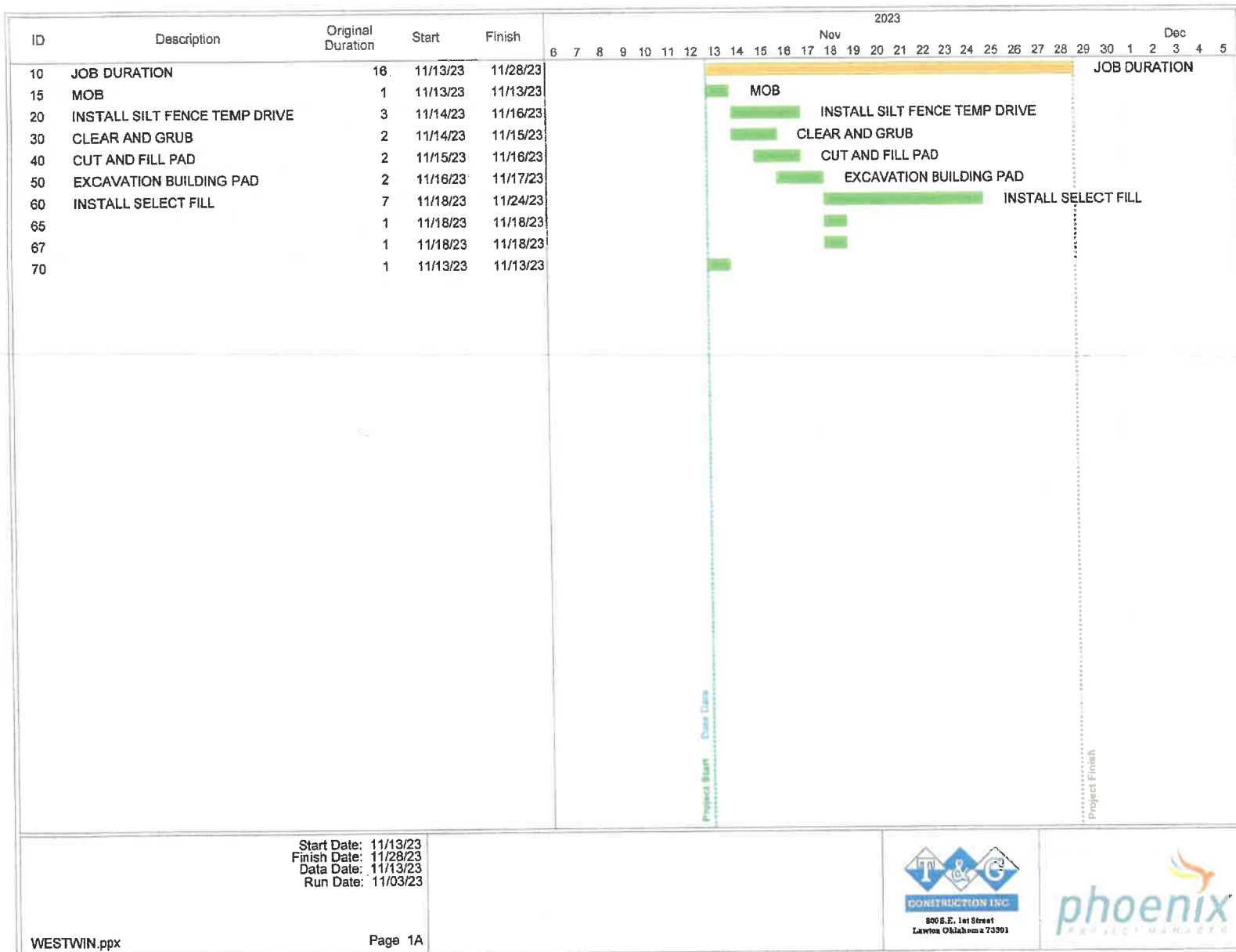


Exhibit C

EXHIBIT D
to LEDA-Westwin Loan Agreement

FORM OF REQUEST FOR ADVANCE

(to be attached to the Application in the form of AIA G702/703)

TO: LAWTON ECONOMIC DEVELOPMENT AUTHORITY ("Lender")

Lender is requested to disburse an Advance in the amount(s), to the person(s) and for the purpose(s) set forth in this Request. The terms used in this Request shall have the meanings ascribed to them in the Loan Agreement dated December 12, 2023 between Borrower and Lender ("Loan Agreement").

1. **REQUEST NO:** 002

2. The name and address of the person, firm or corporation to whom each such payment is due and the purpose of such payment are (SEE ATTACHED INVOICES) (or, if such payment has been made by the Borrower, Lender is hereby requested to reimburse the Borrower directly for such payment as indicated below (check or wire instructions).

3. **AMOUNT OF ADVANCE REQUESTED:** \$657,069.01

4. In connection with this Request, Borrower hereby represents, warrants and certifies to Lender that:

(a) the total amount of the Advance set forth in line 3 above represents costs that were made or incurred and were necessary for the development and construction of the Pilot Facility and were made or incurred in substantial accordance with the Construction Contracts and the Plans and Specifications heretofore in effect;

(b) the amount paid or to be paid, as set forth in this Request, represents a part of the amount due and payable for actual hard construction costs of the Pilot Facility and such payment was not paid in advance of the time, if any, fixed for payment and is being made in accordance with the terms of any contracts applicable to the Pilot Facility and in accordance with usual and customary practice under existing conditions;

(c) no part of the amount set forth in line 3 above has been included within the costs referred to in any Request previously submitted to Lender (which has been paid) under the provisions of the Loan Agreement;

(d) the total amount of the Advance requested in line 3 above is a proper charge against and properly payable from the Loan Proceeds pursuant to the Loan Agreement;

(e) the amount of Loan Proceeds remaining, together with Borrower's cash funds on hand and other funds available to the Borrower (including subordinate financing and capital contributions to be made by the Borrower's partners), after payment of the amount requested in this Request, will be sufficient to pay the entire costs of completing and commissioning the Pilot

Facility in accordance with the Construction Contracts, the Plans and Specifications and building permits therefor;

(f) the attached Construction Report, as required by Section 4.02(d) of the Loan Agreement, and the attached Budget Report, as required by Section 4.02(e), are true and accurate;

(g) all bills are paid for which previous Requests were funded;

(h) all labor, services, and/or materials reflected in the attached invoices have been performed or furnished. Any materials not incorporated into the Pilot Facility have been suitably stored and safeguarded and are insured.

(i) all construction to date has been performed in accordance with the Plans and Specifications;

(m) there have been no changes in the Plans and Specifications or the Construction Contracts, except as previously approved by Lender in writing;

(n) there have been no changes in the time schedule within which the construction of the Improvements is to be complete, as previously approved in writing by Lender;

(o) there is no extra work, labor or materials ordered or contracted for in excess of items and amounts reflected in the approved Budget, except a previously approved in writing by Lender;

(p) all conditions to the disbursement of an Advance as set forth in the Loan Agreement have been fulfilled;

(q) no Event of Default has occurred and is continuing under the Loan Documents and nothing has occurred to the knowledge of the Borrower that would prevent the performance of its Obligations under the Loan Documents;

(r) the representations and warranties of the Borrower set forth in Article 5 of the Loan Agreement remain true and accurate; and

(s) no material breach of the covenants contained in Article 6 of the Loan Agreement has occurred.

Westwin Elements, Inc. hereby agrees to indemnify and hold harmless the Lawton Economic Development Authority, a public trust, for any and all damages which it may sustain on account of being compelled to pay or defend against the claim or lien of any laborer, materialman, contractor or subcontractor, which may hereafter be filed against the Property or Improvements for labor or materials furnished in connection with the development of the Pilot Facility, including attorney's fees and court costs expended in the defense of any such claim.

[Remainder of Page Intentionally Left Blank]



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/11/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Bowen, Miclette & Britt of Florida, LLC 1020 N. Orlando Avenue Suite #200 Maitland FL 32751		CONTACT NAME: Tayley Abrahams PHONE (A/C, No, Ext): 407-647-1616 FAX (A/C, No): 407-628-1635 E-MAIL ADDRESS: tabrahams@bmbinc.com	
		INSURER(S) AFFORDING COVERAGE	NAIC #
		INSURER A : Illinois Union Insurance Co.	27960
		INSURER B : Charter Oak Fire Ins. Co.	25615
		INSURER C : Travelers Property Casualty Co of Amer	25674
		INSURER D : Travelers Indemnity Company	25658
		INSURER E :	
		INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** 1637679023 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☒ LOC OTHER:	Y Y	DT-CO-7R376306-COF-23	2/1/2023	2/1/2024	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	Y Y	810-7R562140-23-26-G	2/1/2023	2/1/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	☒ UMBRELLA LIAB ☒ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000		CUP9S540363-23-NF	2/1/2023	2/1/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	UB7R572587-23-26-G	2/1/2023	2/1/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Pollution Liability		CPMG28116251004	6/1/2022	6/1/2024	Per Occurrence Aggregate 1,000,000 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The following policy provisions and/or endorsements form part of the policies of insurance represented by this certificate of insurance. The terms contained in the policies and/or endorsements supersede the representations made herein. Electronic copies of the policy provisions and/or endorsements listed below are available by emailing: Contact Person Shown Above.

General Liability:
 Blanket additional insured Ongoing Operations per form #CG D2 46 04 19
 Blanket additional insured Completed Operations per form #CG D2 46 04 19
 Blanket waiver of subrogation per form #CG D3 1602 19
 See Attached...

CERTIFICATE HOLDER

Westwin Elements Inc. 7 NE Sixth Street, Unit 100 Oklahoma City OK 73104	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
--	--

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ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY Bowen, Miclette & Britt of Florida, LLC		NAMED INSURED T & G Construction, Inc 800 SE 1st Street Lawton OK 73501	
POLICY NUMBER			
CARRIER	NAIC CODE	EFFECTIVE DATE:	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

Blanket primary/non-contributory per form #CGT100 02/19

Automobile:

Blanket additional insured per form #CA F13 35 02 15
 Blanket waiver of subrogation per form #CA F13 50 02 15
 Blanket primary/non-contributory per form #CA T4 99 02 16

Worker's Compensation:

Blanket waiver of subrogation per form #WC 00 03 13

Umbrella:

Blanket additional insured per form #EU00010716
 Blanket waiver of subrogation per form #EU00010716
 Blanket primary/non-contributory per form #EU 00 01 07 16

Project No. 23PP01

Lawton Economic Development Authority, a public trust, its board members, officers, employees, and agents 212 S.W. 9th Street Lawton, OK 73501, City of Lawton, a municipal corporation, its elected officials, officers, employees, and agents 212 S.W. 9th Street Lawton, OK 73501, and Comanche County Industrial Development Authority, a public trust, its board members, officers, employees, and agents P.O. Box 2334 Lawton, OK 73502 are included as additional insured only when required by written contract.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED
(Includes Products-Completed Operations If Required By Contract)

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

PROVISIONS

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that you agree in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only:

- a. With respect to liability for "bodily injury" or "property damage" that occurs, or for "personal injury" caused by an offense that is committed, subsequent to the signing of that contract or agreement and while that part of the contract or agreement is in effect; and
- b. If, and only to the extent that, such injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the written contract or agreement applies. Such person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

The insurance provided to such additional insured is subject to the following provisions:

- a. If the Limits of Insurance of this Coverage Part shown in the Declarations exceed the minimum limits required by the written contract or agreement, the insurance provided to the additional insured will be limited to such minimum required limits. For the purposes of determining whether this limitation applies, the minimum limits required by the written contract or agreement will be considered to include the minimum limits of any Umbrella or Excess liability coverage required for the additional insured by that written contract or agreement. This provision will not increase the limits of insurance described in Section III – Limits Of Insurance.
- b. The insurance provided to such additional insured does not apply to:

(1) Any "bodily injury", "property damage" or "personal injury" arising out of the providing, or failure to provide, any professional architectural, engineering or surveying services, including:

- (a) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or the preparing, approving, or failing to prepare or approve, drawings and specifications; and
- (b) Supervisory, inspection, architectural or engineering activities.

(2) Any "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the written contract or agreement specifically requires you to provide such coverage for that additional insured during the policy period.

c. The additional insured must comply with the following duties:

(1) Give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:

- (a) How, when and where the "occurrence" or offense took place;
- (b) The names and addresses of any injured persons and witnesses; and
- (c) The nature and location of any injury or damage arising out of the "occurrence" or offense.

(2) If a claim is made or "suit" is brought against the additional insured:

COMMERCIAL GENERAL LIABILITY

- (a) Immediately record the specifics of the claim or "suit" and the date received; and
 - (b) Notify us as soon as practicable and see to it that we receive written notice of the claim or "suit" as soon as practicable.
- (3) Immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
- (4) Tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover such additional insured for a loss we cover. However, this condition does not affect whether the insurance provided to such additional insured is primary to other insurance available to such additional insured which covers that person or organization as a named insured as described in Paragraph 4., Other Insurance, of Section IV – Commercial General Liability Conditions.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED ENTITY - NOTICE OF CANCELLATION PROVIDED BY US
(IL T4 05 05 19)

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:
ALL COVERAGE PARTS INCLUDED IN THIS POLICY

SCHEDULE

PERSON OR ORGANIZATION:

ANY PERSON OR ORGANIZATION TO WHOM YOU HAVE AGREED IN A WRITTEN CONTRACT THAT
NOTICE OF CANCELLATION OF THIS POLICY WILL BE GIVEN, BUT ONLY IF:

1. YOU SEND US A WRITTEN REQUEST TO PROVIDE SUCH NOTICE, INCLUDING THE NAME
AND ADDRESS OF SUCH PERSON OR ORGANIZATION, AFTER THE FIRST NAMED INSURED
RECEIVES NOTICE FROM US OF THE CANCELLATION OF THIS POLICY; AND

2. WE RECEIVE SUCH WRITTEN REQUEST AT LEAST 14 DAYS BEFORE THE BEGINNING OF
THE APPLICABLE NUMBER OF DAYS SHOWN IN THIS ENDORSEMENT.

ADDRESS:

THE ADDRESS FOR THAT PERSON OR ORGANIZATION INCLUDED IN SUCH WRITTEN REQUEST
FROM YOU TO US.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED PERSON OR ORGANIZATION – NOTICE OF CANCELLATION PROVIDED BY US

This endorsement modifies insurance provided under the following:

ALL COVERAGE PARTS INCLUDED IN THIS POLICY

SCHEDULE

CANCELLATION:

Number of Days Notice:

30

PERSON OR

ORGANIZATION: ANY PERSON OR ORGANIZATION TO WHOM YOU HAVE AGREED IN A WRITTEN CONTRACT THAT NOTICE OF CANCELLATION OF THIS POLICY WILL BE GIVEN, BUT ONLY IF:

1. YOU SEND US A WRITTEN REQUEST TO PROVIDE SUCH NOTICE, INCLUDING THE NAME AND ADDRESS OF SUCH PERSON OR ORGANIZATION, AFTER THE FIRST NAMED INSURED RECEIVES NOTICE FROM US OF THE CANCELLATION OF THIS POLICY; AND
2. WE RECEIVE SUCH WRITTEN REQUEST AT LEAST 14 DAYS BEFORE THE BEGINNING OF THE APPLICABLE NUMBER OF DAYS SHOWN IN THIS SCHEDULE.

ADDRESS:

THE ADDRESS FOR THAT PERSON OR ORGANIZATION INCLUDED IN SUCH WRITTEN REQUEST FROM YOU TO US.

PROVISIONS

If we cancel this policy for any legally permitted reason other than nonpayment of premium, and a number of days is shown for Cancellation in the Schedule above, we will mail notice of cancellation to the person or organization shown in such Schedule. We will mail such notice to the address shown in the Schedule above at least the number of days shown for Cancellation in such Schedule before the effective date of cancellation.



PCEGROU-01

MRVANNACK

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/31/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Alliant Insurance Services, Inc. 3850 N Causeway Blvd Suite 1150 Metairie, LA 70002	CONTACT NAME: Melissa Ravannack		
	PHONE (A/C, No, Ext): (504) 435-1106	FAX (A/C, No):	
	E-MAIL ADDRESS: melissa.ravannack@alliant.com		
INSURED PCE Constructors, Inc. 13544 Eads Rd. P.O. Box 1582 Prairieville, LA 70769	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Gray Insurance Company		36307
	INSURER B: HDI Global Insurance Company		41343
	INSURER C:		
	INSURER D:		
	INSURER E:		
		INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC ☐ OTHER:	X	X	XSGL100001	1/1/2023	1/1/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	X	X	XSAL100001	1/1/2023	1/1/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$	X	X	GXS100210	1/1/2023	1/1/2024	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000
A	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	X N/A	XSWC100001 - CA GWC10001 - LA, TX, OK and other states	1/1/2023	1/1/2024	☒ PER STATUTE ☐ OTH-ER E.I. EACH ACCIDENT \$ 1,000,000 E.I. DISEASE - EA EMPLOYEE \$ 1,000,000 E.I. DISEASE - POLICY LIMIT \$ 1,000,000
B	☒ Commercial Umbrella	X	X	CLXD5922800S	1/1/2023	1/1/2024	Each Occ/Agg \$ 6,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, maybe attached if more space is required)

It is hereby understood and agreed Westwin Elements, Inc. and Capital Projects is named Additional Insured as respects General Liability, Auto Liability and Umbrella Liability coverages in regards to work performed by the insured. Worker's Compensation contains a Waiver of Subrogation in favor of Westwin Elements, Inc. and Capital Projects. PCE Constructors, Inc. is primary and noncontributing to any insurance maintained by Westwin Elements, Inc. and Capital Projects.

NOTE: The Umbrella policies are excess over the General Liability (including the Sudden & Accidental Pollution), Auto and Employers Liability policies. They provide a total of \$11,000,000 limits on each policy.

CERTIFICATE HOLDER

CANCELLATION

Westwin Elements, Inc.
7 NE Sixth Street Unit 100
Oklahoma City, Oklahoma 73104

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

Westwin Elements, Inc.
401 South Dewey Avenue
Bartlesville, Oklahoma 74003

AUTHORIZED REPRESENTATIVE

Janis Nowak

ACORD 25 (2016/03)

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ENDORSEMENT

In the event of cancellation by the Company THIRTY (30) days written notice will be given to the scheduled certificate holders. This notice in no way changes the notice of cancellation that is required to be given to the insured by any state law:

Schedule

Any person, organization or company as required by written contract.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED—DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

Name of Person or Organization:

When required by written contract, any person, firm or organization.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule as an insured but only with respect to liability arising out of your operations or premises owned or rented to you.

BUSINESS AUTOMOBILE COVERAGE

ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

BUSINESS AUTOMOBILE COVERAGE

SCHEDULE

NAME OF PERSON OR ORGANIZATION:

When required by written contract, any person, firm or organization.

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule as an insured but only with respect to liability arising out of your operations of "autos".

Contains Material.
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GIC 00 29 04/98

Request for Taxpayer Identification Number and Certification

Give Form to the
requester. Do not
send to the IRS.

► Go to www.irs.gov/FormW9 for instructions and the latest information.

Print or type. See Specific Instructions on page 3.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. PCE Constructors, Inc.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. ☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☒ S Corporation ☐ Partnership ☐ Trust/estate ☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. ☐ Other (see instructions) ►	
	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) <u>5</u> Exemption from FATCA reporting code (if any) _____ (Applies to accounts maintained outside the U.S.)	
	5 Address (number, street, and apt. or suite no.) See instructions. 13544 Eads Road	Requester's name and address (optional)
	6 City, state, and ZIP code Prairieville, Louisiana 70769	
	7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

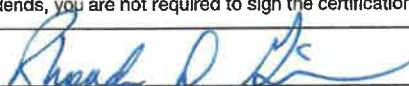
Social security number								
			-				-	
or								
Employer identification number								
0	1		-	0	5	7	2	1 9 1

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ► 	Date ► <u>10/31/2023</u>
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

NOTICE TO PROCEED

Mr. JC Grayson
President
T&G Construction Inc.
800 SE 1st Street
Lawton, OK, 73501
580-355-6655

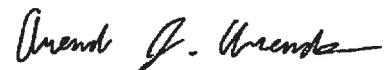
Mr. Grayson:

The attached Contract # 2023110702PP4101 having been approved, notice is hereby given to **T&G Construction Inc.** that work may commence effective after the receipt of this notice, on the Contract for Project 23PP01: Package #101 for Miscellaneous Site Work in the amount quoted at bid.

Thus, you shall be responsible for performing the services under the terms and conditions of the Contract and in accordance with its provisions.

Please acknowledge receipt and acceptance of this notice by signing in the space provided below and returning to the undersigned at aj@westwinelements.com.

Very Respectfully,

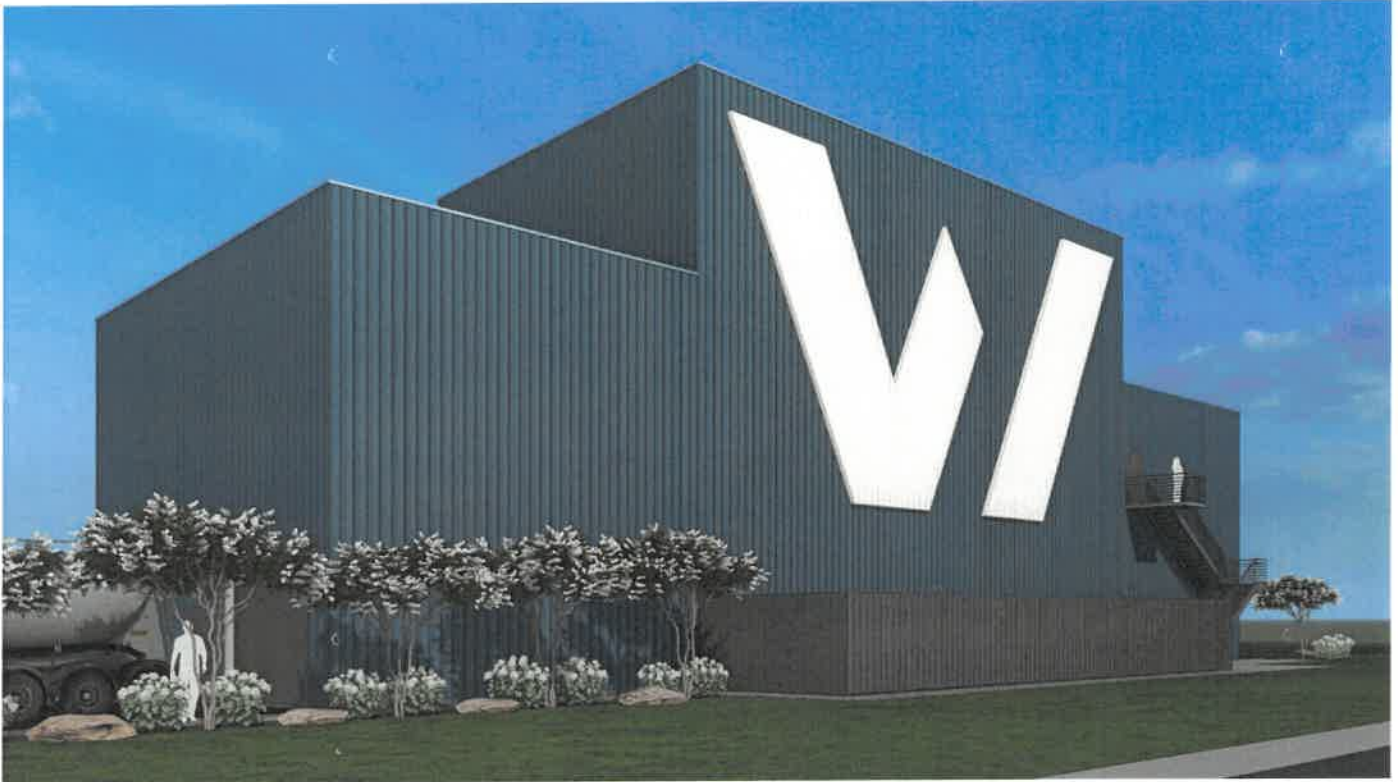


AJ Arends
Vice President

I acknowledge receipt of this notice on: 11-21-2023

Name of Representative of the Bidder: Prentiss Swann

Authorized Signature:  _____



101 – Miscellaneous Site Work

Scope of Work

Westwin Elements Lawton, Oklahoma

Created by:	Date	Revision	Rev. Date	Modification
MT	10/10/2023	a		

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WESTWIN ELEMENTS – Nickel Carbonyl Facility
STATEMENT OF WORK - Scope

Rev. 00

Issued for Bid

October 10, 2023

1. GENERAL

Furnish, deliver, install misc. site work including installation of silt fence, installation of temporary construction entrance, excavate and backfill process building area. The installation will be located on the Westwin Elements Pilot Plant Site, 10925 SW Bishop Road, Lawton, OK, 73505

This solicitation is for all work and miscellaneous materials required to complete the installation of misc. site work identified in this document such that said will perform its intended functions.

- 1.1. General Conditions of Contract (Construction) shall apply and take precedence for all activities that may be awarded and/or performed as a result of this solicitation.
- 1.2. Award is anticipated to be a firm fixed price contract for performance of the labor, provision of any tools, equipment, and miscellaneous materials necessary to complete Installation. Contractor will be responsible for any minor consumables required for said tasks.
- 1.3. Westwin Elements Inc. reserves the right to cancel this project without cause, to reject any and all proposals, modify or vary any aspect of the technical, commercial or contractual requirements for this project, obtain additional proposals, negotiate with one or more bidders regarding any aspect of this proposal, modify any aspect of this request for quote in respect of any bidder, and award based on any criteria, including, but not limited to, past performance, price, knowledge of plant operations and confidence in the proposal submitted by the bidder.
- 1.4. Until a formal purchase order or other contractual document is finalized and accepted by both the successful bidder and Westwin Elements Inc., Westwin Elements Inc. does not intend to create any contractual relationship, either expressed or implied, with any bidder submitting a proposal or other response to this Request for Quotation. As a result, Bidders are free to modify or withdraw their proposal, as they deem appropriate.

- 1.5. The Contractor shall abide by all referenced and included specifications in addition to those mandated by federal, state and local agencies, including abiding by all Westwin Elements, local, state and federal regulations pertaining to construction of this nature, to include environmental control requirements.
- 1.6. Access to the site will be coordinated as per the site access policy.
- 1.7. All work on site shall be conducted in strict compliance with the Westwin Elements safety policy provided. Many parts of which must be satisfied prior to being permitted site access.
- 1.8. Any work including, but not limited to, labor, equipment, tools, supervision, miscellaneous materials, and services that may be reasonably inferred as being required to produce the intended results are the sole responsibility of the bidder. The contractor is responsible for the complete mechanical installation, alignment, and adjustment as required to safely and effectively operate the equipment.
- 1.9. Before on-site work may commence, contractor shall become registered and compliant with Westwin Elements procurement and safety systems.

2. CONTRACTOR RESPONSIBILITIES

- 2.1. Contractor shall have a current State of Oklahoma Contractor's License.
- 2.2. Contractor is responsible for the supply of all: appropriately trained and equipped personnel, including supervision, crafts and labor; equipment; tools; safety equipment; personal protective equipment; materials, such as nuts, bolts, washers, shim stock, Hilti anchor bolts, etc.; consumables, such as welding rods, rags, thread lubricants, etc.; required to complete the scope of work. Westwin Elements Inc. reserves the right to provide said materials at no reimbursement to the contractor.
- 2.3. Contractor is to provide a Full time Safety Manager on site when contractors total manning reaches 20 or more employees on site.
- 2.4. Contractor is responsible for ensuring that every individual employee performs Lock-Out/Tag-Out of all equipment/utilities in this contract including, but not limited to, the items listed in this document. Each contractor employee will have their own individual lock out lock available.
- 2.5. Contractor shall comply with soil erosion requirements as dictated by governing agencies, including Best Practices Management Plan, latest edition.
- 2.6. The Contractor is responsible for complying with all Westwin Elements, local, state and federal regulations pertaining to construction of this nature, to include environmental control requirements.
- 2.7. The Contractor shall satisfy Westwin Elements site safety requirements prior to mobilization.
- 2.8. For bid purposes, the Contractor shall assume that Contractor will apply for all required permits.
- 2.9. The Contractor is responsible for all shoring and dewatering necessary for the safe installation and construction of the components identified in the scope of this project.
- 2.10. Contractor will be allowed to place a temporary mobile construction office on site within reasonable distance of the actual installation site. Contractor is responsible for the delivery, set-up, and upkeep of the facility. No electric service, phone lines, potable water, or sanitary will be provided by Westwin Elements.
- 2.11. Contractor is responsible for coordinating work areas with the other contractors on site and Westwin Elements production operations as necessary. Priority for construction activities will be resolved by Westwin Elements personnel as needed.
- 2.12. Contractor is responsible for providing sanitary, lunch/break area, and wash facilities for its employees. These facilities will be placed outside of the existing operating department buildings in an area approved by Westwin Elements construction manager.

- 2.13. Contractor will at all times maintain a neat and orderly worksite including any and all support facilities used by its employees.
- 2.14. This project will be adjacent to an operating plant. Contractor shall not impact production/use through their work. Coordination necessary to accommodate production/use shall not be cause for claims involving schedule or cost.
- 2.15. Please note that all items of work involving working roads within the Westwin Elements plant will require close coordination with plant personnel. Under no circumstances will total road closures be allowed. Contractor shall plan work so to keep a minimum of one full lane open at all times and provide for flagmen as necessary to direct traffic safely through the construction areas.
- 2.16. The contractor must restore any disturbed areas to their original condition or better unless otherwise specified in the drawings. This includes but is not limited to roadway sections, aggregate surfacing sections and areas of grass.
- 2.17. Contractor will provide access to dumpsters for disposal of lunch and office materials as well as for construction. Contractor will maintain areas in a neat and orderly/policed manner at no additional cost to Westwin Elements.

3. WESTWIN ELEMENTS INC. RESPONSIBILITIES

- 3.1. Westwin Elements Inc. will provide a job safety orientation for the contractor's job site supervision and safety representatives. Westwin Elements will train the Contractor's supervisors and the Contractor's supervisors will train the workers. Any worker who does not know basic safety rules will be escorted off site at no expense to Westwin Elements.
- 3.2. Westwin Elements Inc. will provide information and drawings to the contractor for use on the job.
- 3.3. Westwin Elements Inc. will provide a location within reasonable distance of the job site, outside the existing buildings for placement of the contractor's mobile site office, lunch, sanitary, and wash areas.

4. ITEMS OF WORK

4.1. General

- Phasing and Coordination: All work and installations will have to be closely coordinated with the Westwin Elements Project Manager and Contractors working on other portions of the project. Some work areas will not be available immediately and work in these areas may be delayed. Contractor to allow for phasing and coordination in the bid price.
- Installation: The Contractor shall provide all labor, equipment, material and supervision required to install the components described in this section and indicated on the provided documents.
- Horizontal and vertical control has been provided on site. The Contractor shall use the provided control to layout and construct the work to the lines and grades as shown on the drawings specified herein.
- Construction Observation Requirements: The site plan approval from Commanche County required the Engineer of Record to certify that all site work would be performed in accordance with the plans submitted to the County Engineer. This requires construction observation during the installation of the site work improvements by the Engineer of Record.

4.2. Mobilization of all necessary people, equipment, office facilities, safety equipment, etc.

4.3. Erosion and Sediment Control Installation and Maintenance:

- Contractor is required to maintain erosion and sediment control measures and BMPs throughout construction in accordance with permit and Federal and State regulations. Contractor to provide all material, labor and equipment for any intermediate erosion and sediment control plans and/or measures as necessary during construction. Current measures include, but are not limited to, sediment barriers (silt fences), sediment basins, grass swales and riprap check dams.
- Stabilization: Contractor shall provide all material, labor and equipment to provide seed and mulch or sodding as necessary to stabilize all disturbed areas that do not receive another type of stabilizing material.

4.4. Site Work

- Site Work: Contractor to provide all material, labor and equipment to install silt fence and construction entrance as shown on drawing C-300
- Clearing and Grubbing: Contractor to provide all material, labor and equipment to clear and grub areas as necessary for the installation of the building structural fill. Topsoil may be stockpiled onsite for future use. Location of this stockpile will be determined by Westwin Elements Construction Manager.

- Excavation: Contractor shall provide all material, labor and equipment to provide excavation to a minimum depth of 5 feet below existing grade per the specifications, site surfacing cross sections and as defined in the geotechnical report for the specified Building area. The excavated area shall extend 5 feet outside the building perimeter as shown on drawing C-400
- Compacted Fill: Contractor shall provide all material, labor and equipment to provide compacted fill to an elevation of 1205 feet per the specifications, site surfacing cross sections and as defined in the geotechnical report for the specified Building area.

4.5. As-Built Documentation

- Contractor to provide as-built drawings and documentation for all installed items within the following disciplines:
 - Civil
-

4.6. Close-Out Documents

4.7. Demobilization and Clean Up complete.

5. BID PREPARATION

5.1. The bid preparation shall strictly adhere to the following:

- Questions will be taken until the cut-off date. Any questions submitted after the close of business (defined as 5:00 PM, Central Time) will be returned unanswered. All questions received and associated answers will be distributed to all bidders.
 - Cut-Off Date: October 13, 2023
 - Bid Due Date October 16, 2023
- Submit bids to:
AJ Arends aj@westwinelements.com
Mike Thompson mthompson@capitalepc.com

BIDS SHALL BE SUBMITTED TO AJ AND MIKE ONLY

5.2. The Contractor shall prepare a comprehensive proposal addressing items as specified in Section 4: Items of Work.

5.3. The Contractor shall submit a job schedule showing manpower loading and anticipated work schedule for the duration of the job for both the normal and accelerated schedules.

5.4. Cost of all materials required to complete the work is to be quoted as a lump sum for this project, broken down by Bid Breakdown category.

5.5. The Contractor will provide a labor schedule and estimate for each category of labor to be used in satisfying the requirements of this project.

5.6. The Contractor shall provide a schedule and price for each type of equipment (rental or owned) to be used to perform the work under this project.

5.7. The Contractor shall provide unit cost for all items specified above, in case extra work should be required.

5.8. The cost-plus percentage mark up for miscellaneous materials that may be required is 10%.

5.9. Bid Form – 101 Misc. Sitework Package

Item	Labor Cost	Equipment Cost	Material Cost	Subcontractor Cost	Subtotal
Base Bid					
Erosion and Sediment Control	4994.00	2560.00	1416.00		8970.00
Clearing and Grubbing	6345.00	20480.00			26,825.00
Excavation	3117.00	9216.00			12,333.00
Compacted Fill	6304.00	24,576.00	11,556.00	29,300.00	71,736.00
Grading					
Construction Entrance	4995.00	2560.00	681.00		8236.00
Mobilization	500.00	1000.00			1500.00
Demobilization	500.00	1000.00			1500.00
As-Built Drawings					
Total Base Bid	26,755.00	61932.00	13653.00	29,300.00	131,100.00

6. SUBMITTALS

6.1. The Owner's Engineer must receive and approve all required submittals prior to purchase or fabrication.

- Proposed structural fill must be approved before use.

6.2. As-Built Drawings. The contractor is required to submit As-Built drawings for all disciplines described in Section 4 Items of Work.

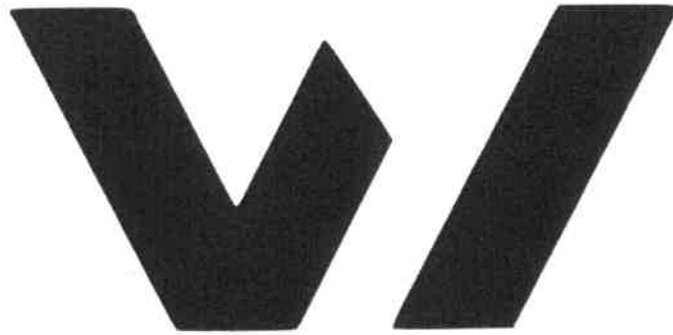
6.3. Close-Out Documents

7. UNIT PRICING

7.1. It is understood that the Owner reserves the right to alter work without invalidating or canceling the contract. The Contractor shall provide the following Unit Prices for Additions or Deductions to the work:

7.2. Unit Price Form

Item Number	Unit	Item Description	Unit Price
1	CY	Unclassified Excavation	17.00
2	CY	Borrow Excavation (Loose Truckbed Measurement)	14.00
3	CY	Imported Sand (Loose Truck Bed Measurement)	24.78
4	SY	Clearing & Grubbing	36.60
5	TON	Aggregate Surfacing	42.38
6	TON	Loose Rip Rap, Class 1	65.00
7	TON	Loose Rip Rap, Class 2	
8	SY	Non-Woven Geotextile	2.29
9	SY	Grading	4.39
10	LF	Silt Fence, Type A	5.44



WESTWIN
ELEMENTS

103 – Process Building Concrete

Scope of Work

Westwin Elements Lawton, Oklahoma

Created by:	Date	Revision	Rev. Date	Modification
MT	10/17/2023	a		

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WESTWIN ELEMENTS – Nickel Carbonyl Facility

STATEMENT OF WORK - Scope

Rev. 00

Issued for Bid

October 17, 2023

1. GENERAL

Furnish, deliver, install Process Building Foundations. The installation will be located on the Westwin Elements Pilot Plant Site, 10925 SW Bishop Road, Lawton, OK, 73505

This solicitation is for all work and miscellaneous materials required to complete the installation of Process Building Foundations identified in this document such that said will perform its intended functions.

- 1.1. General Conditions of Contract (Construction) shall apply and take precedence for all activities that may be awarded and/or performed as a result of this solicitation.
- 1.2. Award is anticipated to be a firm fixed price contract for performance of the labor, provision of any tools, equipment, and miscellaneous materials necessary to complete Installation. Contractor will be responsible for any minor consumables required for said tasks.
- 1.3. Westwin Elements Inc. reserves the right to cancel this project without cause, to reject any and all proposals, modify or vary any aspect of the technical, commercial or contractual requirements for this project, obtain additional proposals, negotiate with one or more bidders regarding any aspect of this proposal, modify any aspect of this request for quote in respect of any bidder, and award based on any criteria, including, but not limited to, past performance, price, knowledge of plant operations and confidence in the proposal submitted by the bidder.
- 1.4. Until a formal purchase order or other contractual document is finalized and accepted by both the successful bidder and Westwin Elements Inc., Westwin Elements Inc. does not intend to create any contractual relationship, either expressed or implied, with any bidder submitting a proposal or other response to this Request for Quotation. As a result, Bidders are free to modify or withdraw their proposal, as they deem appropriate.

- 1.5. The Contractor shall abide by all referenced and included specifications in addition to those mandated by federal, state and local agencies, including abiding by all Westwin Elements, local, state and federal regulations pertaining to construction of this nature, to include environmental control requirements.
- 1.6. Access to the site will be coordinated as per the site access policy.
- 1.7. All work on site shall be conducted in strict compliance with the Westwin Elements safety policy provided. Many parts of which must be satisfied prior to being permitted site access.
- 1.8. Any work including, but not limited to, labor, equipment, tools, supervision, miscellaneous materials, and services that may be reasonably inferred as being required to produce the intended results are the sole responsibility of the bidder. The contractor is responsible for the complete mechanical installation, alignment, and adjustment as required to safely and effectively operate the equipment.
- 1.9. Before on-site work may commence, contractor shall become registered and compliant with Westwin Elements procurement and safety systems.

2. CONTRACTOR RESPONSIBILITIES

- 2.1. Contractor shall have a current State of Oklahoma Contractor's License.
- 2.2. Contractor is responsible for the supply of all: appropriately trained and equipped personnel, including supervision, crafts and labor; equipment; tools; safety equipment; personal protective equipment; materials, such as nuts, bolts, washers, shim stock, Hilti anchor bolts, etc.; consumables, such as welding rods, rags, thread lubricants, etc.; required to complete the scope of work. Westwin Elements Inc. reserves the right to provide said materials at no reimbursement to the contractor.
- 2.3. Contractor is to provide a Full-time Safety Manager on site when contractors total manning reaches 20 or more employees on site.
- 2.4. Contractor is responsible for ensuring that every individual employee performs Lock-Out/Tag-Out of all equipment/utilities in this contract including, but not limited to, the items listed in this document. Each contractor employee will have their own individual lock out lock available.
- 2.5. Contractor shall comply with soil erosion requirements as dictated by governing agencies, including Best Practices Management Plan, latest edition.
- 2.6. The Contractor is responsible for complying with all Westwin Elements, local, state and federal regulations pertaining to construction of this nature, to include environmental control requirements.
- 2.7. The Contractor shall satisfy Westwin Elements site safety requirements prior to mobilization.
- 2.8. For bid purposes, the Contractor shall assume that Contractor will apply for all required permits.
- 2.9. The Contractor is responsible for all shoring and dewatering necessary for the safe installation and construction of the components identified in the scope of this project.
- 2.10. Contractor will be allowed to place a temporary mobile construction office on site within reasonable distance of the actual installation site. Contractor is responsible for the delivery, set-up, and upkeep of the facility. No electric service, phone lines, potable water, or sanitary will be provided by Westwin Elements.
- 2.11. Contractor is responsible for coordinating work areas with the other contractors on site and Westwin Elements production operations as necessary. Priority for construction activities will be resolved by Westwin Elements personnel as needed.
- 2.12. Contractor is responsible for providing sanitary, lunch/break area, and wash facilities for its employees. These facilities will be placed in an area approved by Westwin Elements Construction Manager.

- 2.13. Contractor will at all times maintain a neat and orderly worksite including any and all support facilities used by its employees.
- 2.14. This project will be adjacent to an operating plant. Contractor shall not impact production/use through their work. Coordination necessary to accommodate production/use shall not be cause for claims involving schedule or cost.
- 2.15. Please note that all items of work involving working roads within the Westwin Elements plant will require close coordination with plant personnel. Under no circumstances will total road closures be allowed. Contractor shall plan work so to keep a minimum of one full lane open at all times and provide for flagmen as necessary to direct traffic safely through the construction areas.
- 2.16. The contractor must restore any disturbed areas to their original condition or better unless otherwise specified in the drawings. This includes but is not limited to roadway sections, aggregate surfacing sections and areas of grass.
- 2.17. Contractor will provide access to dumpsters for disposal of lunch and office materials as well as for construction. Contractor will maintain areas in a neat and orderly/policed manner at no additional cost to Westwin Elements.

3. WESTWIN ELEMENTS INC. RESPONSIBILITIES

- 3.1. Westwin Elements Inc. will provide a job safety orientation for the contractor's job site supervision and safety representatives. Westwin Elements will train the Contractor's supervisors and the Contractor's supervisors will train the workers. Any worker who does not know basic safety rules will be escorted off site at no expense to Westwin Elements.
- 3.2. Westwin Elements Inc. will provide information and drawings to the contractor for use on the job.
- 3.3. Westwin Elements Inc. will provide a location within reasonable distance of the job site, outside the existing buildings for placement of the contractor's mobile site office, lunch, sanitary, and wash areas.

4. ITEMS OF WORK

4.1. General

- Phasing and Coordination: All work and installations will have to be closely coordinated with the Westwin Elements Project Manager and Contractors working on other portions of the project. Some work areas will not be available immediately and work in these areas may be delayed. Contractor to allow for phasing and coordination in the bid price.
- Installation: The Contractor shall provide all labor, equipment, material and supervision required to install the components described in this section and indicated on the provided documents.
- Horizontal and vertical control has been provided on site. The Contractor shall use the provided control to layout and construct the work to the lines and grades as shown on the drawings specified herein.
- Construction Observation Requirements: The site plan approval from Commanche County required the Engineer of Record to certify that all site work would be performed in accordance with the plans submitted to the County Engineer. This requires construction observation during the installation of the site work improvements by the Engineer of Record.

4.2. Mobilization of all necessary people, equipment, office facilities, safety equipment, etc.

4.3. Erosion and Sediment Control Installation and Maintenance:

- Contractor is required to maintain erosion and sediment control measures and BMPs throughout construction in accordance with permit and Federal and State regulations. Contractor to provide all material, labor and equipment for any intermediate erosion and sediment control plans and/or measures as necessary during construction. Current measures include, but are not limited to, sediment barriers (silt fences), sediment basins, grass swales and riprap check dams.
- Stabilization: Contractor shall provide all material, labor and equipment to provide seed and mulch or sodding as necessary to stabilize all disturbed areas that do not receive another type of stabilizing material.

4.4. Site Work

- Site Existing Conditions: Compacted fill will be installed to an elevation of 1 foot below finished floor by others.

Excavation: Contractor to provide all material, labor, and equipment to excavate footers and grade beams to the depth required per drawings.

- Compacted Fill: Contractor shall provide all material, labor, and equipment to provide required compacted fill to achieve the required elevation for granular subbase or concrete placement.

- Granular Subbase: Contractor shall provide all material, labor, and equipment to provide granular subbase per plans and drawings.
- Reinforcing Contractor shall provide all material, labor, and equipment to provide reinforcing per plans and drawings.
- Concrete Forms Contractor shall provide all material, labor, and equipment to provide forming system required to install concrete per plans and drawings. Forms shall be stripped and disposed of in Westwin provided dumpster.
- Concrete - Contractor shall provide all material, labor and equipment as required to place and finish concrete per plans and drawings.

4.5. As-Built Documentation

- Contractor to provide as-built drawings and documentation for all installed items within the following disciplines:
 - Concrete
-

4.6. Close-Out Documents

4.7. Demobilization and Clean Up complete.

5. BID PREPARATION

5.1. The bid preparation shall strictly adhere to the following:

- Questions will be taken until the cut-off date. Any questions submitted after the close of business (defined as 5:00 PM, Central Time) will be returned unanswered. All questions received and associated answers will be distributed to all bidders.
 - Cut-Off Date: October 23, 2023
 - Bid Due Date October 25, 2023
- Submit bids to:
 - AJ Arends aj@westwinelements.com
 - Mike Thompson mthompson@capitalepc.com

BIDS SHALL BE SUBMITTED TO AJ AND MIKE ONLY

5.2. The Contractor shall prepare a comprehensive proposal addressing items as specified in Section 4: Items of Work.

5.3. The Contractor shall submit a job schedule showing manpower loading and anticipated work schedule for the duration of the job for both the normal and accelerated schedules.

5.4. Cost of all materials required to complete the work is to be quoted as a lump sum for this project, broken down by Bid Breakdown category.

5.5. The Contractor will provide a labor schedule and estimate for each category of labor to be used in satisfying the requirements of this project.

5.6. The Contractor shall provide a schedule and price for each type of equipment (rental or owned) to be used to perform the work under this project.

5.7. The Contractor shall provide unit cost for all items specified above, in case extra work should be required.

5.8. The cost-plus percentage mark up for miscellaneous materials that may be required is 9%.

5.9. Bid Form – 103 Process Building Concrete Package

Item	Labor Cost	Equipment Cost	Material Cost	Subcontractor Cost	Subtotal
Base Bid					
Excavation					
Compacted Fill					
Grading					
Reinforcement					
Concrete					
Mobilization					
Demobilization					
As Built Drawings					
Total Base Bid					

6. SUBMITTALS

6.1. The Owner's Engineer must receive and approve all required submittals prior to purchase or fabrication.

- Concrete Mix Design
- Any embedded materials

6.2. As-Built Drawings. The contractor is required to submit As-Built drawings for all disciplines described in Section 4 Items of Work.

6.3. Close-Out Documents

7. UNIT PRICING

7.1. It is understood that the Owner reserves the right to alter work without invalidating or canceling the contract. The Contractor shall provide the following Unit Prices for Additions or Deductions to the work:

7.2. Unit Price Form

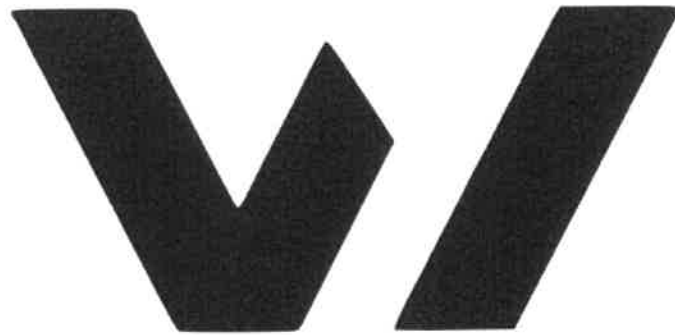
Item Number	Unit	Item Description	Unit Price
1	CY	Unclassified Excavation	
2	CY	Footer Excavation	
3	CY	Compacted Structural Fill	
4	CY	Compacted Structural Aggregate	
5	CY	Concrete Forms	
6	SY	Vapor Barrier	
7	TON	Reinforcement	
8	CY	Concrete - Footers	
9	SF	Concrete – Finished Slab 6" Thick	

8. DRAWING LIST

8.1. The following drawings are included as part of this contract and shall be used in conjunction with the latest code requirements to define the overall scope of work. In the event of a conflict between the drawings and code requirements, the Contractor shall notify the engineer to determine precedent.

8.2. Drawing List

[illegible]



WESTWIN
ELEMENTS

104 – Site Grading

Scope of Work

Westwin Elements Lawton, Oklahoma

Created by:	Date	Revision	Rev. Date	Modification
MT	11/20/2023	a		

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WESTWIN ELEMENTS – Nickel Carbonyl Facility

STATEMENT OF WORK - Scope

Rev. 00

Issued for Bid

November 22, 2023

1. GENERAL

Furnish, deliver Site Grading and Drainage. The installation will be located on the Westwin Elements Pilot Plant Site, 10925 SW Bishop Road, Lawton, OK, 73505

This solicitation is for all work and miscellaneous materials required to complete the installation of Site Grading and Drainage identified in this document such that said will perform its intended functions.

- 1.1. General Conditions of Contract (Construction) shall apply and take precedence for all activities that may be awarded and/or performed as a result of this solicitation.
- 1.2. Award is anticipated to be a firm fixed price contract for performance of the labor, provision of any tools, equipment, and miscellaneous materials necessary to complete Installation. Contractor will be responsible for any minor consumables required for said tasks.
- 1.3. Westwin Elements Inc. reserves the right to cancel this project without cause, to reject any and all proposals, modify or vary any aspect of the technical, commercial or contractual requirements for this project, obtain additional proposals, negotiate with one or more bidders regarding any aspect of this proposal, modify any aspect of this request for quote in respect of any bidder, and award based on any criteria, including, but not limited to, past performance, price, knowledge of plant operations and confidence in the proposal submitted by the bidder.
- 1.4. Until a formal purchase order or other contractual document is finalized and accepted by both the successful bidder and Westwin Elements Inc., Westwin Elements Inc. does not intend to create any contractual relationship, either expressed or implied, with any bidder submitting a proposal or other response to this Request for Quotation. As a result, Bidders are free to modify or withdraw their proposal, as they deem appropriate.

- 1.5. The Contractor shall abide by all referenced and included specifications in addition to those mandated by federal, state and local agencies, including abiding by all Westwin Elements, local, state and federal regulations pertaining to construction of this nature, to include environmental control requirements.
- 1.6. Access to the site will be coordinated as per the site access policy.
- 1.7. All work on site shall be conducted in strict compliance with the Westwin Elements safety policy provided. Many parts of which must be satisfied prior to being permitted site access.
- 1.8. Any work including, but not limited to, labor, equipment, tools, supervision, miscellaneous materials, and services that may be reasonably inferred as being required to produce the intended results are the sole responsibility of the bidder. The contractor is responsible for the complete mechanical installation, alignment, and adjustment as required to safely and effectively operate the equipment.
- 1.9. Before on-site work may commence, contractor shall become registered and compliant with Westwin Elements procurement and safety systems.

2. CONTRACTOR RESPONSIBILITIES

- 2.1. Contractor shall have a current State of Oklahoma Contractor's License.
- 2.2. Contractor is responsible for the supply of all: appropriately trained and equipped personnel, including supervision, crafts and labor; equipment; tools; safety equipment; personal protective equipment; materials, such as nuts, bolts, washers, shim stock, Hilti anchor bolts, etc.; consumables, such as welding rods, rags, thread lubricants, etc.; required to complete the scope of work. Westwin Elements Inc. reserves the right to provide said materials at no reimbursement to the contractor.
- 2.3. Contractor is to provide a Full-time Safety Manager on site when contractors total manning reaches 20 or more employees on site.
- 2.4. Contractor is responsible for ensuring that every individual employee performs Lock-Out/Tag-Out of all equipment/utilities in this contract including, but not limited to, the items listed in this document. Each contractor employee will have their own individual lock out lock available.
- 2.5. Contractor shall comply with soil erosion requirements as dictated by governing agencies, including Best Practices Management Plan, latest edition.
- 2.6. The Contractor is responsible for complying with all Westwin Elements, local, state and federal regulations pertaining to construction of this nature, to include environmental control requirements.
- 2.7. The Contractor shall satisfy Westwin Elements site safety requirements prior to mobilization.
- 2.8. For bid purposes, the Contractor shall assume that Contractor will apply for all required permits.
- 2.9. The Contractor is responsible for all shoring and dewatering necessary for the safe installation and construction of the components identified in the scope of this project.
- 2.10. Contractor will be allowed to place a temporary mobile construction office on site within reasonable distance of the actual installation site. Contractor is responsible for the delivery, set-up, and upkeep of the facility. No electric service, phone lines, potable water, or sanitary will be provided by Westwin Elements.
- 2.11. Contractor is responsible for coordinating work areas with the other contractors on site and Westwin Elements production operations as necessary. Priority for construction activities will be resolved by Westwin Elements personnel as needed.
- 2.12. Contractor is responsible for providing sanitary, lunch/break area, and wash facilities for its employees. These facilities will be located in an area approved by Westwin Elements Construction Manager.

- 2.13. Contractor will at all times maintain a neat and orderly worksite including any and all support facilities used by its employees.
- 2.14. This project will be adjacent to an operating plant. Contractor shall not impact production/use through their work. Coordination necessary to accommodate production/use shall not be cause for claims involving schedule or cost.
- 2.15. Please note that all items of work involving working roads within the Westwin Elements plant will require close coordination with plant personnel. Under no circumstances will total road closures be allowed. Contractor shall plan work so to keep a minimum of one full lane open at all times and provide for flagmen as necessary to direct traffic safely through the construction areas.
- 2.16. The contractor must restore any disturbed areas to their original condition or better unless otherwise specified in the drawings. This includes but is not limited to roadway sections, aggregate surfacing sections and areas of grass.
- 2.17. Contractor will provide access to dumpsters for disposal of lunch and office materials as well as for construction. Contractor will maintain areas in a neat and orderly/policed manner at no additional cost to Westwin Elements.

3. WESTWIN ELEMENTS INC. RESPONSIBILITIES

- 3.1. Westwin Elements Inc. will provide a job safety orientation for the contractor's job site supervision and safety representatives. Westwin Elements will train the Contractor's supervisors and the Contractor's supervisors will train the workers. Any worker who does not know basic safety rules will be escorted off site at no expense to Westwin Elements.
- 3.2. Westwin Elements Inc. will provide information and drawings to the contractor for use on the job.
- 3.3. Westwin Elements Inc. will provide a location within reasonable distance of the job site, outside the existing buildings for placement of the contractor's mobile site office, lunch, sanitary, and wash areas.

4. ITEMS OF WORK

4.1. General

- Phasing and Coordination: All work and installations will have to be closely coordinated with the Westwin Elements Project Manager and Contractors working on other portions of the project. Some work areas will not be available immediately and work in these areas may be delayed. Contractor to allow for phasing and coordination in the bid price.
- Installation: The Contractor shall provide all labor, equipment, material and supervision required to install the components described in this section and indicated on the provided documents.
- Horizontal and vertical control has been provided on site. The Contractor shall use the provided control to layout and construct the work to the lines and grades as shown on the drawings specified herein.
- Construction Observation Requirements: The site plan approval from Commanche County required the Engineer of Record to certify that all site work would be performed in accordance with the plans submitted to the County Engineer. This requires construction observation during the installation of the site work improvements by the Engineer of Record.

4.2. Mobilization of all necessary people, equipment, office facilities, safety equipment, etc.

4.3. Erosion and Sediment Control Installation and Maintenance:

- Contractor is required to maintain erosion and sediment control measures and BMPs throughout construction in accordance with permit and Federal and State regulations. Contractor to provide all material, labor and equipment for any intermediate erosion and sediment control plans and/or measures as necessary during construction. Current measures include, but are not limited to, sediment barriers (silt fences), sediment basins, grass swales and riprap check dams.
- Stabilization: Contractor shall provide all material, labor and equipment to provide seed and mulch or sodding as necessary to stabilize all disturbed areas that do not receive another type of stabilizing material.

4.4. Site Work

- Site Existing Conditions: Current elevations shown on drawing C-500.

Excavation: Contractor to provide all material, labor, and equipment to excavate as needed to achieve required soil elevations as shown on drawings

- Compacted Fill: Contractor shall provide all material, labor, and equipment to provide required compacted fill to achieve the required elevation for granular subbase where concrete paving is shown on drawing C401 or finish elevation in areas not covered by area paving as shown on drawing C500. Approximately 2,000 cubic yards of suitable fill will be available onsite for contractor use.

- Geotech Fabric: Contractor shall provide all material, labor, and equipment to install a heavy duty Geotech fabric under all aggregate subbase.

Aggregate Subbase: Contractor shall provide all material, labor, and equipment to provide 6" ODOT Type A aggregate subbase in areas shown as concrete paving on drawing C-401. Aggregate will be installed at an elevation to the bottom of area concrete paving elevation as shown on drawing C500 and detail 3 on drawing C800.

- RCP Piping Contractor shall provide all material, labor, and equipment to install RCP pipe culverts and prefabricated end sections as shown on drawing C600.
- HDPE Piping Contractor shall provide all material, labor, and equipment to install HDPE drains and prefabricated end sections for Pond A and Pond B as shown on drawing C502
- Sodding- Contractor shall provide all material, labor and equipment as required to place sodding on slopes of retention ponds.

4.5. Demobilization and Clean Up complete.

5. BID PREPARATION

5.1. The bid preparation shall strictly adhere to the following:

- Questions will be taken until the cut-off date. Any questions submitted after the close of business (defined as 5:00 PM, Central Time) will be returned unanswered. All questions received and associated answers will be distributed to all bidders.
 - Cut-Off Date: November 28, 2023
 - Bid Due Date December 1, 2023
- Submit bids to:

AJ Arends	aj@westwinelements.com
Mike Thompson	mthompson@capitalepc.com

BIDS SHALL BE SUBMITTED TO AJ AND MIKE ONLY

5.2. The Contractor shall prepare a comprehensive proposal addressing items as specified in Section 4: Items of Work.

5.3. The Contractor shall submit a job schedule showing manpower loading and anticipated work schedule for the duration of the job for both the normal and accelerated schedules.

5.4. Cost of all materials required to complete the work is to be quoted as a lump sum for this project, broken down by Bid Breakdown category.

5.5. The Contractor will provide a labor schedule and estimate for each category of labor to be used in satisfying the requirements of this project.

5.6. The Contractor shall provide a schedule and price for each type of equipment (rental or owned) to be used to perform the work under this project.

5.7. The Contractor shall provide unit cost for all items specified in case extra work should be required.

5.8. The cost-plus percentage mark up for miscellaneous materials that may be required is 10%.

5.9. Bid Form – 104 Site Grading Package

Item	Labor Cost	Equipment Cost	Material Cost	Subcontractor Cost	Subtotal
Base Bid					
Excavation					
Compacted Fill					
Grading					
Culverts & Inlets					
Drain Piping					
Erosion Protection					
Sodding					
Mobilization					
Demobilization					
As Built Drawings					
Total Base Bid					

6. SUBMITTALS

6.1. The Owner's Engineer must receive and approve all required submittals prior to purchase or fabrication.

- Prefabricated End Sections
- RCP Pipe
- HDPE Pipe
- Geotech Fabric
- Pit for anticipated imported fill.

6.2. As-Built Drawings. The contractor is required to submit As-Built drawings for all disciplines described in Section 4 Items of Work.

6.3. Close-Out Documents

7. UNIT PRICING

7.1. It is understood that the Owner reserves the right to alter work without invalidating or canceling the contract. The Contractor shall provide the following Unit Prices for Additions or Deductions to the work:

7.2. Unit Price Form

Item Number	Unit	Item Description	Unit Price
1	sy	Clear & Grubb	
2	cy	Unclassified Excavation	
3	cy	Compacted Fill	
4	cy	Compacted Aggregate	
5	lf	8" SDR 11 HDPE Pipe	
6	lf	12" SDR 11 HDPE Pipe	
7	lf	15" RCP Pipe	
8	lf	18" RCP Pipe	
9	sy	Geotech Fabric	
10	sy	Sodding	

8. DRAWING LIST

8.1. The following drawings are included as part of this contract and shall be used in conjunction with the latest code requirements to define the overall scope of work. In the event of a conflict between the drawings and code requirements, the Contractor shall notify the engineer to determine precedent.

8.2. Drawing List

WESTWIN Document Number	Document Revision Number	Description
C100		Cover Sheet
C200		Survey
C300		Demolition & Erosion Control (For Reference)
C400		Site Plan
C401		Horizontal Control Plan
C500		Grading Plan
C501		Existing Drainage Map
C502		Proposed Drainage Map
C600		Utility Plan (For Reference)
C800		Details
C801		Details
C802		Details

This Project-Specific Subcontractor Services Agreement ("Agreement") is made and entered into this 5th day of January, 2024 by and between WESTWIN ELEMENTS INC., a Delaware corporation registered to do business in Oklahoma, with offices at 7 NE Sixth Street Unit 100 Oklahoma City, OK 73104 (hereinafter referred to as "Westwin") and,

T&G Construction Inc., a Oklahoma corporation,
with offices at 800 SE 1st Street, Lawton, OK 73501 (hereinafter referred to as "Contractor") for Work (as defined below) on Project No. 23PP01: Package 106 - Site Electrical.

In consideration of the mutual covenants of the parties, it is hereby agreed as follows:

1. THE WORK Contractor shall use its diligent efforts to perform the "Work," as described in Exhibit A, in an expeditious manner consistent with the Contract Documents. Contractor shall provide all labor, materials, equipment, and services necessary to complete the Work, and in full accord with and reasonably inferable from the Contract Documents. The Work shall be completed in accordance with Exhibit E, "Estimated Budget and Schedule of the Work." The time allotted in Exhibit E shall define the "Contract Time."

2. COMPENSATION Westwin shall compensate Contractor for Work performed on the following basis:

Contractor costs are reimbursable on a Time and Material arrangement in accordance with Exhibit D.

3. EXHIBITS The following attached exhibits are made part of this Agreement:

EXHIBIT A: General Description of the Work, [1] page/s.

EXHIBIT B: Contract Documents, [] page/s.

EXHIBIT C: Progress Schedule, [] page/s.

EXHIBIT D: Contractor's Rate Sheet.

EXHIBIT E: Contractor's Billing Process

EXHIBIT F: Contractor's Certificate of Liability Insurance.

4. PARTIES' RELATIONSHIP AND ETHICS Each Party agrees to proceed on the basis of mutual trust, good faith, and fair dealing. Each shall perform its obligations with integrity. Each shall (a) avoid any conflicts of interest; (b) promptly disclose to the other Party any that may arise; and (c) warrant that it has not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including its agents, officers, and employees, subcontractors, or others to secure preferential treatment. Nothing in this Agreement will create a fiduciary relationship.

5. CONTRACTOR'S RESPONSIBILITIES Contractor shall be responsible for supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized, unless the Contract Documents give other specific instructions.

5.1. Except for permits and fees that are the responsibility of Westwin pursuant to this Agreement, Contractor shall obtain and pay for all necessary Oklahoma Contractor licenses, and renewals pertaining to the Work.

5.2. Contractor shall pay all applicable taxes for the Work provided by Contractor.

5.3. If Westwin elects to perform work at the geographical area of the Project ("Worksite") directly or by others retained by Westwin, the Parties shall coordinate the activities of all forces at the Worksite and shall agree upon fair and reasonable schedules and operational procedures for Worksite activities. Westwin shall require each separate contractor to cooperate with and to assist with the coordination of activities and the review of construction schedules and operations.

5.4. In order to facilitate its responsibilities, before starting the Work, Contractor shall examine and compare the drawings and specifications with information furnished by Westwin pursuant to §6.1; relevant field measurements made by Contractor; and any visible conditions at the Worksite affecting the Work.

5.5. COMPLIANCE WITH LAWS Contractor shall comply with all laws. Contractor shall be liable to Westwin for all loss, cost, or expense, attributable to any negligent acts or omissions by Contractor, its employees, subcontractors, suppliers, and agents for failure to comply with laws, including fines, penalties, or corrective measures. The estimated Cost of the Work and Contractor's Fee, shall be equitably adjusted for laws, including taxes, impacting cost or time, enacted after bids are received or negotiations concluded.

5.6. WARRANTY

5.6.1. Contractor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. Contractor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by Westwin or others retained by Westwin, or abuse.

5.6.2. If, before the Date of Substantial Completion and within one year after the Date of Substantial Completion of the Work, any portion of the Work is found to be not in conformance with the Contract Documents ("Defective Work"), Westwin shall promptly notify Contractor in writing. Unless Westwin provides written acceptance of the condition, Contractor shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible.

5.7. SAFETY Contractor shall have overall responsibility for safety precautions and programs in the performance of the Work, except that Contractor's subcontractors shall also be responsible for the safety of persons or property in the performance of their work, and for compliance with the provisions of laws. Contractor shall prevent against injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite; materials and equipment stored at on-site or off-site locations for use in the Work; and property located at the Worksite and adjacent to Work areas, whether or not the property is part of the Work.

5.8. HAZARDOUS MATERIALS A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or clean-up. Contractor shall not be obligated to commence or continue work until any Hazardous Material discovered at the Worksite has been removed, or rendered or determined to be harmless by Westwin as certified by an independent testing laboratory and approved by the appropriate government agency. Westwin shall be deemed the generator of all preexisting Hazardous Material and shall indemnify, defend, and hold harmless Contractor from all cost, liability, and damages arising from or related thereto. If Contractor incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, Contractor shall be entitled to an equitable adjustment in the Contract Price and Contract Time.

5.9. MATERIALS BROUGHT TO THE WORKSITE Contractor shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Contractor in accordance with the Contract Documents and used or consumed in the performance of the Work.

5.10. SUBMITTALS Contractor shall submit to Westwin and Design Professional for review and approval all shop drawings, samples, product data, and similar submittals required by the Contract Documents. Submittals may be submitted in electronic form. Contractor shall be responsible to Westwin for the accuracy and conformity of its submittals to the Contract Documents. Contractor shall prepare and deliver its submittals to Westwin and Design Professional in a manner consistent with the Schedule of the Work and in such time and sequence so as not to delay the performance of the Work or the work of Westwin and others retained by Westwin. Contractor submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. An approval of a Contractor submittal conforms the Contract Documents including any deviation, substitution, or change. To the extent a change, deviation, or substitution causes an impact to the compensation or Contract Time, such approval shall be memorialized in a Change Order no later than seven (7) Days following approval. Westwin shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay. Contractor shall perform all Work strictly in accordance with approved submittals. Westwin's approval does not relieve Contractor from responsibility for Defective Work resulting from errors or omissions in not following the approved shop drawings.

- 5.11. **CONCEALED OR UNKNOWN SITE CONDITIONS** If a condition encountered at the Worksite is (a) a subsurface or other physical condition which is materially different from those indicated in the Contract Documents, or (b) an unusual and unknown physical condition which is materially different from conditions ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents, Contractor shall stop Work and give prompt written notice of the condition to Westwin and Design Professional. Westwin shall investigate and then issue an Interim Directive specifying the extent to which Westwin agrees that a concealed or unknown condition exists and directing how Contractor is to proceed. Contractor shall not be required to perform any Work relating to the condition without the written mutual agreement of the Parties.
- 5.12. **CUTTING, FITTING, AND PATCHING** Contractor shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of Westwin or others retained by Westwin.
- 5.13. **CLEANING UP** Contractor shall regularly remove debris and waste materials at the Worksite resulting from the Work. Before discontinuing Work in an area, Contractor shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Contractor shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Contractor shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.
6. **WESTWIN'S RESPONSIBILITIES** Any information or services to be provided by Westwin shall be provided in a timely manner.
- 6.1. Not used.
- 6.2. **WORKSITE INFORMATION** To the extent Westwin has obtained, or is required to obtain the following Worksite information, then Westwin shall provide Contractor the following:
- 6.2.1. information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data, or drawings depicting existing conditions, subsurface, and environmental studies, reports, and investigations;
- 6.2.2. tests, inspections, and other reports dealing with environmental matters, hazardous material and other existing conditions, including structural, mechanical, and chemical tests required by the Contract Documents or by law;
- 6.2.3. the limits of Pollution Liability Insurance covering the Worksite held by Westwin; and
- 6.2.4. any other information or services requested in writing by Contractor that are relevant to Contractor's performance of the Work and under Westwin's control.
- 6.3. **MECHANICS AND CONSTRUCTION LIEN INFORMATION** Within seven (7) Days after receiving Contractor's written request, Westwin shall provide Contractor with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include Westwin's interest in the real property on which the Project is located and the record legal title.
- 6.4. **BUILDING PERMIT, FEES, AND APPROVALS** Except for Oklahoma Contractor's licenses required of Contractor pursuant to this Agreement, Westwin shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the development, construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.
- 6.5. **ELECTRONIC DOCUMENTS** If Westwin requires that Westwin, Design Professional, and Contractor exchange documents and data in electronic or digital form, before any such exchange, the Parties and Design Professional shall agree on and follow a written protocol governing all exchanges in accordance with Contractor's project controls and administration processes.
7. **SUBCONTRACTS** Contractor agrees to bind every subcontractor and supplier (and require every subcontractor to so bind its subcontractors and suppliers) to this Agreement and the Contract Documents as they apply to the subcontractor's and supplier's portions of the Work.

8. COST OF THE WORK

Westwin agrees to pay Contractor as defined in this article.

- 8.1. Labor wages directly employed by Contractor in the performing of the Work;
- 8.2. Salaries of Contractor's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and supervisory employees from the principal or branch office as mutually agreed by the Parties in writing;
- 8.3. Employee benefits and taxes including but not limited to workers' compensation, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by law, labor agreements, or paid under Contractor's standard personnel policy, insofar as such costs are paid to employees of Contractor who are included in the Cost of the Work, above;
- 8.4. Reasonable transportation, travel, hotel, of Contractor's personnel incurred in connection with the work when preapproved in advance by Westwin Elements Construction Manager;
- 8.5. All materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by Westwin, transportation, storage, and handling;
- 8.6. Payments made by Contractor to subcontractors for performed Work;
- 8.7. Transportation and maintenance of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers that are used or consumed in the performance of the Work.
- 8.8. Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from Contractor or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed in accordance with Exhibit D. Rentals from Contractor or its affiliates, subsidiaries, or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to the value of the piece of equipment;
- 8.9. The Cost to cover the premiums for all insurance and surety bonds which Contractor is required to procure or deems necessary, and approved by Westwin, including any additional premium incurred as a result of any increase in the Cost of the Work;
- 8.10. Sales, use, gross receipts, or other taxes, tariffs, or duties related to the Work for which Contractor is liable;
- 8.11. Permits, fees, licenses, tests, and royalties;
- 8.12. Losses, expenses, or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work before expiration of the one-year period following the Date of Substantial Completion, provided that such losses, expenses, damages, or corrective work did not arise from Contractor's gross negligence;
- 8.13. Equipping, operating, maintaining, and demobilizing the field office; including temporary shut down and remobilizing costs.
- 8.14. Water, power, and fuel costs necessary for the Work;
- 8.15. Removal of all non-hazardous substances, debris, and waste materials;
- 8.16. Costs incurred due to an emergency affecting the safety of persons or property;
- 8.17. Legal, mediation, and arbitration fees and costs, other than those arising from disputes between the Parties, reasonably and properly resulting from Contractor's performance of the Work.

9. PAYMENT

9.1. **PROGRESS PAYMENTS** Contractor shall submit to Westwin application for payments in accordance with Exhibit "E".

9.2. **ADJUSTMENT OF CONTRACTOR'S PAYMENT APPLICATION** Westwin may adjust or reject a payment application, in whole or in part, as may reasonably be necessary to protect Westwin from loss or damage based upon the following, to the extent that Contractor is responsible for such under this Agreement:

9.2.1. Contractor's repeated failure to perform the Work as required by the Contract Documents;

9.2.2. loss or damage for which Westwin may be liable arising out of or relating to this Agreement and caused by Contractor to Westwin or to others retained by Westwin to whom Westwin may be liable;

9.2.3. Contractor's failure to properly pay subcontractors or suppliers in connection with the Work following receipt of such payment from Westwin, for that portion of the Work or for supplies, provided that Westwin is making payments to Contractor in accordance with this Agreement;

9.2.4. rejected or Defective Work not corrected in a timely fashion; and

9.2.5. unless arising from Westwin's non-payment for the performance of the Work, uninsured third party claims involving Contractor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Contractor furnishes Westwin with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment which is sufficient to discharge such claims if established.

No later than three (3) Days after receipt of an application for payment, Westwin shall give written notice to Contractor disapproving or nullifying it or a portion of it, specifying the reasons for the disapproval or nullification.

9.3. **PAYMENT DELAY** If for any reason not the fault of Contractor, Contractor does not receive a progress payment from Westwin within seven (7) Days after the time such payment is due, Contractor, upon giving seven (7) Days' written notice to Westwin, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to Contractor has been received, including interest for late payment.

9.4. **SUBSTANTIAL COMPLETION** When Substantial Completion of the Work or a designated portion has been achieved, Contractor shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, and the respective responsibilities of the Parties for interim items such as security, maintenance, utilities, insurance, and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by Contractor to Westwin for written acceptance of responsibilities assigned in the Certificate. Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion. For this industrial project, Substantial Completion shall occur on mechanical completion of the Work.

9.5. **FINAL COMPLETION** When final completion has been achieved, Contractor shall prepare for Westwin's acceptance a final application for payment stating that to the best of Contractor's knowledge, and based on Westwin's inspections, the Work has reached final completion in accordance with the Contract Documents.

9.5.1. Final payment shall be made to Contractor within fifteen (15) Days after Contractor has submitted a complete and accurate application for final payment and the following submissions:

9.5.1.1. an affidavit declaring any indebtedness connected with the Work, to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber Westwin's property;

9.5.1.2. as-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents;

9.5.1.3. release of any liens, conditioned on final payment being received;

9.5.1.4. consent of any surety, if applicable; and

9.5.1.5. any outstanding known and unreported accidents or injuries experienced by Contractor or its subcontractors at the Worksite.

9.6. Claims not reserved by Westwin in writing with the making of final payment shall be waived except for claims relating to liens or similar encumbrances, warranties, Defective Work, and latent defects. Unless Contractor

provides written identification of unsettled claims known to Contractor at the time of making application for final payment, acceptance of final payment constitutes a waiver of such claims.

9.7. LATE PAYMENT Payments due but unpaid shall bear interest at the statutory rate prevailing at the place of the Project from the date payment is due.

10. INDEMNITY

10.1. To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Westwin, Westwin's officers, directors, members, consultants, agents, and employees ("Indemnitees") from all claims for bodily injury and property damage, other than to the Work itself and other property insured under §11.3, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of the Work but only to the extent caused by the negligent or intentional wrongful acts or omissions of Contractor, subcontractors, suppliers, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Contractor shall be entitled to reimbursement of any defense costs paid above Contractor's percentage of liability for the underlying claim to the extent provided in the section immediately below.

10.2. To the fullest extent permitted by law, Westwin shall indemnify and hold harmless Contractor, its officers, directors, or members, subcontractors, suppliers, or anyone employed directly or indirectly by any of them, or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured under §11.3, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of work by Westwin, Design Professional, or others retained by Westwin, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Westwin, Design Professional, or others retained by Westwin. Westwin shall be entitled to reimbursement of any defense costs paid above Westwin's percentage of liability for the underlying claim to the extent provided in the section immediately above.

10.3. In any and all claims against the Indemnitees by any employee of Contractor, anyone directly or indirectly employed by Contractor, or anyone for whose acts Contractor may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor under workers' compensation acts, disability benefit acts, or other employment benefit acts.

10.4. As part of the consideration for entering this Agreement, the parties agree that Contractor must have a hard dollar stop-loss on liability. Therefore, in addition to any funds actually received from insurance, Contractor may never be liable to Westwin or any other party claiming hereunder or based on this Agreement for more than 25% of the Contract Price, regardless of the theory of law pleaded or the type of damages claimed, for claims known or unknown, past, present, or future, accrued or unaccrued, of any sort whatsoever.

11. INSURANCE

11.1. Before commencing the Work and as a condition precedent to payment, Contractor shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, Commercial General Liability Insurance (CGL), and an Umbrella Insurance Policy. If applicable, Contractor shall also procure and maintain in force Pollution Liability Insurance or Professional Liability Insurance. The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. Contractor shall maintain completed operations liability insurance for one year after Substantial Completion or as required by the Contract Documents, whichever is longer. Contractor's Employers' Liability, Business Automobile Liability, and CGL policies shall be written with at least the following limits of liability:

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11.1.1. Employers' Liability Insurance:

- a. \$1,000,000 bodily injury by accident per accident;
- b. \$1,000,000 bodily injury by disease policy limit;
- c. \$1,000,000 bodily injury by disease per employee.

11.1.2. Business Automobile Liability Insurance: \$1,000,000 per accident.

11.1.3. CGL Insurance:

- a. \$1,000,000 per occurrence;
- b. \$3,000,000 general aggregate;
- c. \$1,000,000 products/completed operations aggregate;
- d. \$1,000,000 personal and advertising injury limit.

11.1.4. Umbrella Policy: in the amount of \$5,000,000

11.2. Employers' Liability, Business Automobile Liability, and CGL coverage required under this article may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella liability policies. Contractor shall maintain in effect all insurance coverage required in this article with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If Contractor fails to obtain or maintain any insurance coverage required under this Agreement, Westwin may purchase such coverage and charge the expense to Contractor, or terminate this Agreement.

To the extent commercially available to Contractor and its current insurance company, insurance policies required under §11.1 shall contain a provision that the insurance company or its designee must give Westwin written notice transmitted in paper or electronic format: (a) 30 Days before coverage is nonrenewed by the insurance company, and (b) within 10 Business Days after cancelation of coverage by the insurance company. Before commencing the Work and upon renewal or replacement of the insurance policies, Contractor shall furnish Westwin with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under §11.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Contractor shall give Westwin prompt written notice upon actual or constructive knowledge of such condition.

11.3. PROPERTY INSURANCE

Westwin shall obtain and maintain a Builder's Risk Policy, with a maximum deductible of \$25,000.00 per occurrence, upon the entire Project for the full cost of replacement at the time of loss, including existing structures. This insurance shall also: (a) name Contractor, subcontractors, sub-subcontractors, and suppliers as insureds; (b) be written in such form as to cover all risks of physical loss except those specifically excluded by the policy. In addition, this insurance shall insure at least against and not exclude:

11.3.1. the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of the Contractor) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse however caused;

11.3.2. damage resulting from defective design, workmanship, or material;

11.3.3. coverage extension for damage to existing buildings, plant, or other structures at the Worksite, when the Project is contained within or attached to such existing buildings, plant or structures. Coverage shall be to the extent loss or damage arises out of Contractor's activities or operations at the Project;

11.3.4. equipment breakdown, including mechanical breakdown, electrical injury to electrical devices, explosion of steam equipment, and damage to steam equipment caused by a condition within the equipment;

11.3.5. testing coverage for running newly installed machinery and equipment at or beyond the specified limits of their capacity to determine whether they are fit for their intended use; and

11.3.6. physical loss resulting from terrorism.

11.3.7. The Party that is the primary cause of a Builder's Risk Policy claim shall be responsible for any deductible amounts or coinsurance payments. If no Party is the primary cause of a claim, then the Party responsible to obtain and maintain the Builder's Risk Policy shall be responsible for the deductible amounts or coinsurance payments. This policy shall provide for a waiver of subrogation. This insurance shall remain in effect until final payment has been made or until no person or entity other than Westwin has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until Contractor has secured the consent of the insurance company or companies providing the coverage required in this subsection. Before commencing the Work, Westwin shall provide a copy of the property policy or policies obtained in compliance with §11.3.

11.3.8. Westwin shall give written notice to Contractor and Design Professional before the Work is commenced and provide a copy of the property policy or policies obtained in compliance with §11.3. Westwin shall then provide insurance to protect its interests and the interests of Contractor, subcontractors, suppliers, and sub-subcontractors. If Westwin gives written notice of its intent to purchase property insurance required by this Agreement and fails to purchase or maintain such insurance, Westwin shall be responsible for costs reasonably attributed to such failure.

- 11.3.9. The Parties waive all rights against each other and their respective employees, agents, contractors, subcontractors and sub-subcontractors, suppliers, and design professionals for damages caused by risks covered by the property insurance except such rights as they may have to the proceeds of the insurance.
- 11.3.10. To the extent of the limits of Contractor's CGL specified in §11.1, Contractor shall indemnify and hold harmless Westwin against any and all liability, claims, demands, damages, losses, and expenses, including reasonable attorneys' fees, in connection with or arising out of any damage or alleged damage to any of Westwin's existing adjacent property that may arise from the performance of the Work, to the extent caused by the negligent or intentionally wrongful acts or omissions of Contractor, subcontractor, supplier, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.
- 11.3.11. POLLUTION LIABILITY INSURANCE Contractor is not required to maintain pollution liability insurance. Contractor's general liability policy shall include an endorsement to cover accidental spills.
- 11.4. ADDITIONAL LIABILITY COVERAGE Westwin ☐ shall/ ☐ shall not require Contractor to purchase and maintain liability coverage. If required, Contractor will provide:
- 11.4.1. ADDITIONAL INSURED. Westwin shall be named as an additional insured on Contractor's CGL insurance specified, for on-going operations and completed operations, excess/umbrella liability, commercial automobile liability, and any required pollution liability, but only with respect to liability for bodily injury, property damage, or personal and advertising injury to the extent caused by the negligent acts or omissions of Contractor, or those acting on Contractor's behalf, in the performance of the Work for Westwin at the Worksite. Contractor's insurance shall be primary and non-contributory to any insurance available to the Additional Insureds. Any insurance available to the Additional Insured shall be excess and non-contributory.
- 11.4.2. OCP. Contractor shall provide an Westwins' and Contractors' Protective Liability Insurance ("OCP") policy with limits equal to the limits on CGL insurance specified, or limits as otherwise required by Westwin. Any documented additional cost in the form of a surcharge associated with procuring and maintaining coverage in accordance with this subsection shall be paid by Westwin directly, or as a Cost of the Work. Before commencing the Work, Contractor shall provide either a copy of the OCP policy, or a certificate and endorsement evidencing that Westwin has been named as an additional insured, as applicable.
12. BONDS Performance and Payment Bonds ☐ are/ ☐ are not required of Contractor.
13. MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for losses covered by insurance required by the Contract Documents, the Parties agree to waive all claims against each other for any consequential, special, or punitive damages that may arise out of or relate to this Agreement.
- 13.1. This article shall also apply to the termination of this Agreement and shall survive such termination. The Parties shall each require similar waivers in contracts with subcontractors and others retained for the project.
14. TERMINATION
- 14.1. NOTICE TO CURE A DEFAULT If Contractor persistently fails to supply enough qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work or fails to make prompt payment to its workers, subcontractors, or suppliers, disregards law or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, Contractor may be deemed in default. If Contractor fails to commence and to continue satisfactory correction of such default with diligence and promptness within seven (7) Days after written notification, then Westwin shall give Contractor a second written notice to correct the default within a three (3) Business Day period. If Contractor fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, Westwin, without prejudice to any other rights or remedies, shall have the right to take reasonable steps it deems necessary to correct deficiencies and charge the cost to Contractor, who shall be liable for such payments including attorneys' fees.
- 14.2. TERMINATION BY WESTWIN Upon expiration of the second notice for default period, Westwin may terminate this Agreement by written notice absent appropriate corrective action. Termination for default is in addition to any other remedies available to Westwin. Westwin shall make reasonable efforts to mitigate damages arising from Contractor default and shall promptly invoice Contractor for all amounts due.
- 14.3. TERMINATION BY CONTRACTOR Upon seven (7) Days' written notice to Westwin, Contractor may terminate this Agreement if the Work has been stopped for a thirty (30) Day period through no fault of Contractor.
- 14.3.1. In addition, upon seven (7) Days' written notice to Westwin, Contractor may terminate the Agreement if Westwin does any of the following: (a) assigns this Agreement over Contractor's reasonable objection; (b) fails to

pay Contractor in accordance with this Agreement and Contractor has stopped Work in compliance with this Agreement; or (c) otherwise materially breaches this Agreement.

14.3.2. Upon termination by Contractor pursuant to this Agreement, Contractor shall be entitled to recover from Westwin payment for all Work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs plus reasonable overhead and profit.

14.4. OBLIGATIONS ARISING BEFORE TERMINATION Even after termination, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred, or obligations arising before the termination date.

15. DISPUTE MITIGATION AND RESOLUTION

15.1. ADDITIONAL COST OR TIME Contractor shall give Westwin prompt written notice if the Estimated Budget or Contract Time is estimated to be exceeded.

15.2. WORK CONTINUANCE AND PAYMENT Contractor shall continue the Work and maintain the Schedule of Work during any dispute resolution proceedings. If Contractor continues to perform, Westwin shall continue to make payments in accordance with the Agreement.

15.3. DISPUTE MITIGATION THROUGH DIRECT DISCUSSIONS If a dispute arises out of or related to this Agreement or its breach, the Parties shall endeavor to settle the dispute through direct discussions. Within five (5) Business Days, the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions, shall conduct direct discussion and make a good faith effort to resolve such dispute.

15.4. BINDING DISPUTE RESOLUTION The Parties shall submit unresolved disputes to the binding dispute resolution procedure below:

ARBITRATION The Parties choose binding arbitration decided by arbitrator in accordance with the Construction Industry Arbitration Rules of the AAA then in effect. Arbitration will be used for any claim or dispute related to this Agreement. **EACH PARTY WAIVES THEIR RIGHT TO BE HEARD IN A COURT OF LAW**, with or without a jury. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. An arbitrator's award shall be final and binding upon the Parties, and judgment may be entered upon it in any court having jurisdiction.

15.5.1. COSTS The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

15.5.2. VENUE The Project location shall serve as the venue.

15.5.3. Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations. If, however, a state or federal court exercising jurisdiction over a timely filed claim or cause of action orders that the claim or cause of action be submitted to arbitration, the arbitration proceeding shall be deemed commenced as of the date the court action was filed, provided that the Party asserting the claim or cause of action files its demand for arbitration with the person or entity administering the arbitration within thirty (30) Days after the entry of such order.

16. MISCELLANEOUS

16.1. EXTENT OF AGREEMENT Except as expressly provided, this Agreement is for the exclusive benefit of the Parties and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

16.2. ASSIGNMENT Except as to the assignment of proceeds, neither Party shall assign its interest in this Agreement, in whole or in part, without the written consent of the other Party. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives.

16.3. GOVERNING LAW The law in effect at the location of the Project shall govern.

16.4. NOTICE Unless changed in writing, a Party's address indicated above ARTICLE 1 shall be used when delivering notice to a physical address. Except for Agreement termination and as otherwise specified in the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service.

16.5. JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms before execution. This Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

WESTWIN:

BY: Arend J. Arends NAME: AJ Arends TITLE: Vice President WITNESS:
Ashlea Sartin NAME: Ashlea Sartin TITLE: Engineering Project Manager

CONTRACTOR:

BY: JC Grayson NAME: JC Grayson TITLE: President WITNESS:
Keri Brammer NAME: Keri Brammer TITLE: Administrative Assistant

EXHIBIT A General Description of Work

Scope of Work

Complete electrical installation of all items specified on prints dated 12-08-2023. Inclusions

All excavation, screenings, and compaction.

Primary ditch to the utility pole.

Underground piping to the MDP.

Underground piping to the Generator, and stubs for future Generator. Pole lights (poles, fixtures ,piping, wiring And erection.)

Grounding.

Communication stubs out of building.

Pole light bases.

Exclusions

Utility surveys.

Communication piping to utility.

TOTAL PRICE **86,598.00**

EXHIBIT F



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/11/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Bowen, Miclette & Britt of Florida, LLC
1020 N. Orlando Avenue
Suite #200
Maitland FL 32751

CONTACT
NAME: Tayley Abrahams
PHONE
(A/C, No, Ext): 407-647-1616
FAX
(A/C, No): 407-628-1635
E-MAIL
ADDRESS: tabrahams@bmbinc.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Illinois Union Insurance Co.	27960
INSURER B : Charter Oak Fire Ins. Co.	25615
INSURER C : Travelers Property Casualty Co of Amer	25674
INSURER D : Travelers Indemnity Company	25658
INSURER E :	
INSURER F :	

INSURED
T & G Construction, Inc
800 SE 1st Street
Lawton OK 73501

TGCONSTRUC1

COVERAGES

CERTIFICATE NUMBER: 1637679023

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☒ LOC OTHER:	Y	Y	DT-CO-7R376306-COF-23	2/1/2023	2/1/2024	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS ONLY	Y	Y	810-7R562140-23-26-G	2/1/2023	2/1/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 10,000			CUP9S540363-23-NF	2/1/2023	2/1/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	UB7R572587-23-26-G	2/1/2023	2/1/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Pollution Liability			CPMG28116251004	6/1/2022	6/1/2024	Per Occurrence 1,000,000 Aggregate 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The following policy provisions and/or endorsements form part of the policies of insurance represented by this certificate of insurance. The terms contained in the policies and/or endorsements supersede the representations made herein. Electronic copies of the policy provisions and/or endorsements listed below are available by emailing: Contact Person Shown Above.

General Liability:

Blanket additional insured Ongoing Operations per form #CG D2 46 04 19

Blanket additional insured Completed Operations per form #CG D2 46 04 19

Blanket waiver of subrogation per form #CG D3 1602 19

See Attached...

CERTIFICATE HOLDER

Westwin Elements Inc.
7 NE Sixth Street, Unit 100
Oklahoma City OK 73104

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY Bowen, Miclette & Britt of Florida, LLC		NAMED INSURED T & G Construction, Inc 800 SE 1st Street Lawton OK 73501
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

Blanket primary/non-contributory per form #CGT100 02/19

Automobile:

Blanket additional insured per form #CA F13 35 02 15
 Blanket waiver of subrogation per form #CA F13 50 02 15
 Blanket primary/non-contributory per form #CA T4 99 02 16

Worker's Compensation:

Blanket waiver of subrogation per form #WC 00 03 13

Umbrella:

Blanket additional insured per form #EU00010716
 Blanket waiver of subrogation per form #EU00010716
 Blanket primary/non-contributory per form #EU 00 01 07 16

Project No. 23PP01

Lawton Economic Development Authority, a public trust, its board members, officers, employees, and agents 212 S.W. 9th Street Lawton, OK 73501, City of Lawton, a municipal corporation, its elected officials, officers, employees, and agents 212 S.W. 9th Street Lawton, OK 73501, and Comanche County Industrial Development Authority, a public trust, its board members, officers, employees, and agents P.O. Box 2334 Lawton, OK 73502 are included as additional insured only when required by written contract.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED
(Includes Products-Completed Operations If Required By Contract)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PROVISIONS

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that you agree in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only:

- a. With respect to liability for "bodily injury" or "property damage" that occurs, or for "personal injury" caused by an offense that is committed, subsequent to the signing of that contract or agreement and while that part of the contract or agreement is in effect; and
- b. If, and only to the extent that, such injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the written contract or agreement applies. Such person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

The insurance provided to such additional insured is subject to the following provisions:

- a. If the Limits of Insurance of this Coverage Part shown in the Declarations exceed the minimum limits required by the written contract or agreement, the insurance provided to the additional insured will be limited to such minimum required limits. For the purposes of determining whether this limitation applies, the minimum limits required by the written contract or agreement will be considered to include the minimum limits of any Umbrella or Excess liability coverage required for the additional insured by that written contract or agreement. This provision will not increase the limits of insurance described in Section III – Limits Of Insurance.
- b. The insurance provided to such additional insured does not apply to:

- (1) Any "bodily injury", "property damage" or "personal injury" arising out of the providing, or failure to provide, any professional architectural, engineering or surveying services, including:

- (a) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or the preparing, approving, or failing to prepare or approve, drawings and specifications; and

- (b) Supervisory, inspection, architectural or engineering activities.

- (2) Any "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the written contract or agreement specifically requires you to provide such coverage for that additional insured during the policy period.

- c. The additional insured must comply with the following duties:

- (1) Give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:

- (a) How, when and where the "occurrence" or offense took place;
- (b) The names and addresses of any injured persons and witnesses; and
- (c) The nature and location of any injury or damage arising out of the "occurrence" or offense.

- (2) If a claim is made or "suit" is brought against the additional insured:

COMMERCIAL GENERAL LIABILITY

- (a) Immediately record the specifics of the claim or "suit" and the date received; and
 - (b) Notify us as soon as practicable and see to it that we receive written notice of the claim or "suit" as soon as practicable.
- (3) Immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
- (4) Tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover such additional insured for a loss we cover. However, this condition does not affect whether the insurance provided to such additional insured is primary to other insurance available to such additional insured which covers that person or organization as a named insured as described in Paragraph 4., Other Insurance, of Section IV – Commercial General Liability Conditions.

GENERAL PURPOSE ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED ENTITY - NOTICE OF CANCELLATION PROVIDED BY US
(IL T4 05 05 19)

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:
ALL COVERAGE PARTS INCLUDED IN THIS POLICY

SCHEDULE

PERSON OR ORGANIZATION:

ANY PERSON OR ORGANIZATION TO WHOM YOU HAVE AGREED IN A WRITTEN CONTRACT THAT
NOTICE OF CANCELLATION OF THIS POLICY WILL BE GIVEN, BUT ONLY IF:

1. YOU SEND US A WRITTEN REQUEST TO PROVIDE SUCH NOTICE, INCLUDING THE NAME
AND ADDRESS OF SUCH PERSON OR ORGANIZATION, AFTER THE FIRST NAMED INSURED
RECEIVES NOTICE FROM US OF THE CANCELLATION OF THIS POLICY; AND
2. WE RECEIVE SUCH WRITTEN REQUEST AT LEAST 14 DAYS BEFORE THE BEGINNING OF
THE APPLICABLE NUMBER OF DAYS SHOWN IN THIS ENDORSEMENT.

ADDRESS:

THE ADDRESS FOR THAT PERSON OR ORGANIZATION INCLUDED IN SUCH WRITTEN REQUEST
FROM YOU TO US.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED PERSON OR ORGANIZATION – NOTICE OF CANCELLATION PROVIDED BY US

This endorsement modifies insurance provided under the following:

ALL COVERAGE PARTS INCLUDED IN THIS POLICY

SCHEDULE

CANCELLATION:

Number of Days Notice:

30

PERSON OR

ORGANIZATION: ANY PERSON OR ORGANIZATION TO WHOM YOU HAVE AGREED IN A WRITTEN CONTRACT THAT NOTICE OF CANCELLATION OF THIS POLICY WILL BE GIVEN, BUT ONLY IF:

1. YOU SEND US A WRITTEN REQUEST TO PROVIDE SUCH NOTICE, INCLUDING THE NAME AND ADDRESS OF SUCH PERSON OR ORGANIZATION, AFTER THE FIRST NAMED INSURED RECEIVES NOTICE FROM US OF THE CANCELLATION OF THIS POLICY; AND
2. WE RECEIVE SUCH WRITTEN REQUEST AT LEAST 14 DAYS BEFORE THE BEGINNING OF THE APPLICABLE NUMBER OF DAYS SHOWN IN THIS SCHEDULE.

ADDRESS:

THE ADDRESS FOR THAT PERSON OR ORGANIZATION INCLUDED IN SUCH WRITTEN REQUEST FROM YOU TO US.

PROVISIONS

If we cancel this policy for any legally permitted reason other than nonpayment of premium, and a number of days is shown for Cancellation in the Schedule above, we will mail notice of cancellation to the person or organization shown in such Schedule. We will mail such notice to the address shown in the Schedule above at least the number of days shown for Cancellation in such Schedule before the effective date of cancellation.

This Project-Specific Subcontractor Services Agreement ("Agreement") is made and entered into this 18th day of December, 2023 by and between WESTWIN ELEMENTS INC., a Delaware corporation registered to do business in Oklahoma, with offices at 7 NE Sixth Street Unit 100 Oklahoma City, OK 73104 (hereinafter referred to as "Westwin") and, T&G Construction Inc., a Oklahoma corporation, with offices at 800 SE 1st Street, Lawton, OK 73501 (hereinafter referred to as "Contractor") for Work (as defined below) on Project No. 23PP01.

In consideration of the mutual covenants of the parties, it is hereby agreed as follows:

1. THE WORK Contractor shall use its diligent efforts to perform the "Work," as described in Exhibit A, in an expeditious manner consistent with the Contract Documents. Contractor shall provide all labor, materials, equipment, and services necessary to complete the Work, and in full accord with and reasonably inferable from the Contract Documents. The Work shall be completed in accordance with Exhibit E, "Estimated Budget and Schedule of the Work." The time allotted in Exhibit E shall define the "Contract Time."

2. COMPENSATION Westwin shall compensate Contractor for Work performed on the following basis:

Contractor costs are reimbursable on a Time and Material arrangement in accordance with Exhibit D.

3. EXHIBITS The following attached exhibits are made part of this Agreement:

EXHIBIT A: General Description of the Work, [11] page/s.

EXHIBIT B: Contract Documents, [12] page/s.

EXHIBIT C: Progress Schedule, [] page/s.

EXHIBIT D: Contractor's Rate Sheet.

EXHIBIT E: Contractor's Billing Process

EXHIBIT F: Contractor's Certificate of Liability Insurance.

4. PARTIES' RELATIONSHIP AND ETHICS Each Party agrees to proceed on the basis of mutual trust, good faith, and fair dealing. Each shall perform its obligations with integrity. Each shall (a) avoid any conflicts of interest; (b) promptly disclose to the other Party any that may arise; and (c) warrant that it has not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including its agents, officers, and employees, subcontractors, or others to secure preferential treatment. Nothing in this Agreement will create a fiduciary relationship.

5. CONTRACTOR'S RESPONSIBILITIES Contractor shall be responsible for supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized, unless the Contract Documents give other specific instructions.

5.1. Except for permits and fees that are the responsibility of Westwin pursuant to this Agreement, Contractor shall obtain and pay for all necessary Oklahoma Contractor licenses, and renewals pertaining to the Work.

5.2. Contractor shall pay all applicable taxes for the Work provided by Contractor.

5.3. If Westwin elects to perform work at the geographical area of the Project ("Worksite") directly or by others retained by Westwin, the Parties shall coordinate the activities of all forces at the Worksite and shall agree upon fair and reasonable schedules and operational procedures for Worksite activities. Westwin shall require each separate contractor to cooperate with and to assist with the coordination of activities and the review of construction schedules and operations.

5.4. In order to facilitate its responsibilities, before starting the Work, Contractor shall examine and compare the drawings and specifications with information furnished by Westwin pursuant to §6.1; relevant field measurements made by Contractor; and any visible conditions at the Worksite affecting the Work.

5.5. COMPLIANCE WITH LAWS Contractor shall comply with all laws. Contractor shall be liable to Westwin for all loss, cost, or expense, attributable to any negligent acts or omissions by Contractor, its employees, subcontractors, suppliers, and agents for failure to comply with laws, including fines, penalties, or corrective measures. The estimated Cost of the Work and Contractor's Fee, shall be equitably adjusted for laws, including taxes, impacting cost or time, enacted after bids are received or negotiations concluded.

5.6. WARRANTY

5.6.1. Contractor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. Contractor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by Westwin or others retained by Westwin, or abuse.

5.6.2. If, before the Date of Substantial Completion and within one year after the Date of Substantial Completion of the Work, any portion of the Work is found to be not in conformance with the Contract Documents ("Defective Work"), Westwin shall promptly notify Contractor in writing. Unless Westwin provides written acceptance of the condition, Contractor shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible.

5.7. SAFETY Contractor shall have overall responsibility for safety precautions and programs in the performance of the Work, except that Contractor's subcontractors shall also be responsible for the safety of persons or property in the performance of their work, and for compliance with the provisions of laws. Contractor shall prevent against injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite; materials and equipment stored at on-site or off-site locations for use in the Work; and property located at the Worksite and adjacent to Work areas, whether or not the property is part of the Work.

5.8. HAZARDOUS MATERIALS A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or clean-up. Contractor shall not be obligated to commence or continue work until any Hazardous Material discovered at the Worksite has been removed, or rendered or determined to be harmless by Westwin as certified by an independent testing laboratory and approved by the appropriate government agency. Westwin shall be deemed the generator of all preexisting Hazardous Material and shall indemnify, defend, and hold harmless Contractor from all cost, liability, and damages arising from or related thereto. If Contractor incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, Contractor shall be entitled to an equitable adjustment in the Contract Price and Contract Time.

5.9. MATERIALS BROUGHT TO THE WORKSITE Contractor shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Contractor in accordance with the Contract Documents and used or consumed in the performance of the Work.

5.10. SUBMITTALS Contractor shall submit to Westwin and Design Professional for review and approval all shop drawings, samples, product data, and similar submittals required by the Contract Documents. Submittals may be submitted in electronic form. Contractor shall be responsible to Westwin for the accuracy and conformity of its submittals to the Contract Documents. Contractor shall prepare and deliver its submittals to Westwin and Design Professional in a manner consistent with the Schedule of the Work and in such time and sequence so as not to delay the performance of the Work or the work of Westwin and others retained by Westwin. Contractor submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. An approval of a Contractor submittal conforms the Contract Documents including any deviation, substitution, or change. To the extent a change, deviation, or substitution causes an impact to the compensation or Contract Time, such approval shall be memorialized in a Change Order no later than seven (7) Days following approval. Westwin shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay. Contractor shall perform all Work strictly in accordance with approved submittals. Westwin's approval does not relieve Contractor from responsibility for Defective Work resulting from errors or omissions in not following the approved shop drawings.

- 5.11. **CONCEALED OR UNKNOWN SITE CONDITIONS** If a condition encountered at the Worksite is (a) a subsurface or other physical condition which is materially different from those indicated in the Contract Documents, or (b) an unusual and unknown physical condition which is materially different from conditions ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents, Contractor shall stop Work and give prompt written notice of the condition to Westwin and Design Professional. Westwin shall investigate and then issue an Interim Directive specifying the extent to which Westwin agrees that a concealed or unknown condition exists and directing how Contractor is to proceed. Contractor shall not be required to perform any Work relating to the condition without the written mutual agreement of the Parties.
- 5.12. **CUTTING, FITTING, AND PATCHING** Contractor shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of Westwin or others retained by Westwin.
- 5.13. **CLEANING UP** Contractor shall regularly remove debris and waste materials at the Worksite resulting from the Work. Before discontinuing Work in an area, Contractor shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Contractor shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Contractor shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.
6. **WESTWIN'S RESPONSIBILITIES** Any information or services to be provided by Westwin shall be provided in a timely manner.
- 6.1. Not used.
- 6.2. **WORKSITE INFORMATION** To the extent Westwin has obtained, or is required to obtain the following Worksite information, then Westwin shall provide Contractor the following:
- 6.2.1. information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data, or drawings depicting existing conditions, subsurface, and environmental studies, reports, and investigations;
- 6.2.2. tests, inspections, and other reports dealing with environmental matters, hazardous material and other existing conditions, including structural, mechanical, and chemical tests required by the Contract Documents or by law;
- 6.2.3. the limits of Pollution Liability Insurance covering the Worksite held by Westwin; and
- 6.2.4. any other information or services requested in writing by Contractor that are relevant to Contractor's performance of the Work and under Westwin's control.
- 6.3. **MECHANICS AND CONSTRUCTION LIEN INFORMATION** Within seven (7) Days after receiving Contractor's written request, Westwin shall provide Contractor with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include Westwin's interest in the real property on which the Project is located and the record legal title.
- 6.4. **BUILDING PERMIT, FEES, AND APPROVALS** Except for Oklahoma Contractor's licenses required of Contractor pursuant to this Agreement, Westwin shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the development, construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.
- 6.5. **ELECTRONIC DOCUMENTS** If Westwin requires that Westwin, Design Professional, and Contractor exchange documents and data in electronic or digital form, before any such exchange, the Parties and Design Professional shall agree on and follow a written protocol governing all exchanges in accordance with Contractor's project controls and administration processes.
7. **SUBCONTRACTS** Contractor agrees to bind every subcontractor and supplier (and require every subcontractor to so bind its subcontractors and suppliers) to this Agreement and the Contract Documents as they apply to the subcontractor's and supplier's portions of the Work.

8. COST OF THE WORK

Westwin agrees to pay Contractor as defined in this article.

- 8.1. Labor wages directly employed by Contractor in the performing of the Work;
- 8.2. Salaries of Contractor's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and supervisory employees from the principal or branch office as mutually agreed by the Parties in writing;
- 8.3. Employee benefits and taxes including but not limited to workers' compensation, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by law, labor agreements, or paid under Contractor's standard personnel policy, insofar as such costs are paid to employees of Contractor who are included in the Cost of the Work, above;
- 8.4. Reasonable transportation, travel, hotel, of Contractor's personnel incurred in connection with the work when preapproved in advance by Westwin Elements Construction Manager;
- 8.5. All materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by Westwin, transportation, storage, and handling;
- 8.6. Payments made by Contractor to subcontractors for performed Work;
- 8.7. Transportation and maintenance of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers that are used or consumed in the performance of the Work.
- 8.8. Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from Contractor or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed in accordance with Exhibit D. Rentals from Contractor or its affiliates, subsidiaries, or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to the value of the piece of equipment;
- 8.9. The Cost to cover the premiums for all insurance and surety bonds which Contractor is required to procure or deems necessary, and approved by Westwin, including any additional premium incurred as a result of any increase in the Cost of the Work;
- 8.10. Sales, use, gross receipts, or other taxes, tariffs, or duties related to the Work for which Contractor is liable;
- 8.11. Permits, fees, licenses, tests, and royalties;
- 8.12. Losses, expenses, or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work before expiration of the one-year period following the Date of Substantial Completion, provided that such losses, expenses, damages, or corrective work did not arise from Contractor's gross negligence;
- 8.13. Equipping, operating, maintaining, and demobilizing the field office; including temporary shut down and remobilizing costs.
- 8.14. Water, power, and fuel costs necessary for the Work;
- 8.15. Removal of all non-hazardous substances, debris, and waste materials;
- 8.16. Costs incurred due to an emergency affecting the safety of persons or property;
- 8.17. Legal, mediation, and arbitration fees and costs, other than those arising from disputes between the Parties, reasonably and properly resulting from Contractor's performance of the Work.

9. PAYMENT

9.1. **PROGRESS PAYMENTS** Contractor shall submit to Westwin application for payments in accordance with Exhibit "E".

9.2. **ADJUSTMENT OF CONTRACTOR'S PAYMENT APPLICATION** Westwin may adjust or reject a payment application, in whole or in part, as may reasonably be necessary to protect Westwin from loss or damage based upon the following, to the extent that Contractor is responsible for such under this Agreement:

9.2.1. Contractor's repeated failure to perform the Work as required by the Contract Documents;

9.2.2. loss or damage for which Westwin may be liable arising out of or relating to this Agreement and caused by Contractor to Westwin or to others retained by Westwin to whom Westwin may be liable;

9.2.3. Contractor's failure to properly pay subcontractors or suppliers in connection with the Work following receipt of such payment from Westwin, for that portion of the Work or for supplies, provided that Westwin is making payments to Contractor in accordance with this Agreement;

9.2.4. rejected or Defective Work not corrected in a timely fashion; and

9.2.5. unless arising from Westwin's non-payment for the performance of the Work, uninsured third party claims involving Contractor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Contractor furnishes Westwin with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment which is sufficient to discharge such claims if established.

No later than three (3) Days after receipt of an application for payment, Westwin shall give written notice to Contractor disapproving or nullifying it or a portion of it, specifying the reasons for the disapproval or nullification.

9.3. **PAYMENT DELAY** If for any reason not the fault of Contractor, Contractor does not receive a progress payment from Westwin within seven (7) Days after the time such payment is due, Contractor, upon giving seven (7) Days' written notice to Westwin, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to Contractor has been received, including interest for late payment.

9.4. **SUBSTANTIAL COMPLETION** When Substantial Completion of the Work or a designated portion has been achieved, Contractor shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, and the respective responsibilities of the Parties for interim items such as security, maintenance, utilities, insurance, and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by Contractor to Westwin for written acceptance of responsibilities assigned in the Certificate. Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion. For this industrial project, Substantial Completion shall occur on mechanical completion of the Work.

9.5. **FINAL COMPLETION** When final completion has been achieved, Contractor shall prepare for Westwin's acceptance a final application for payment stating that to the best of Contractor's knowledge, and based on Westwin's inspections, the Work has reached final completion in accordance with the Contract Documents.

9.5.1. Final payment shall be made to Contractor within fifteen (15) Days after Contractor has submitted a complete and accurate application for final payment and the following submissions:

9.5.1.1. an affidavit declaring any indebtedness connected with the Work, to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber Westwin's property;

9.5.1.2. as-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents;

9.5.1.3. release of any liens, conditioned on final payment being received;

9.5.1.4. consent of any surety, if applicable; and

9.5.1.5. any outstanding known and unreported accidents or injuries experienced by Contractor or its subcontractors at the Worksite.

9.6. Claims not reserved by Westwin in writing with the making of final payment shall be waived except for claims relating to liens or similar encumbrances, warranties, Defective Work, and latent defects. Unless Contractor

provides written identification of unsettled claims known to Contractor at the time of making application for final payment, acceptance of final payment constitutes a waiver of such claims.

9.7. LATE PAYMENT Payments due but unpaid shall bear interest at the statutory rate prevailing at the place of the Project from the date payment is due.

10. INDEMNITY

10.1. To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Westwin, Westwin's officers, directors, members, consultants, agents, and employees ("Indemnitees") from all claims for bodily injury and property damage, other than to the Work itself and other property insured under §11.3, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of the Work but only to the extent caused by the negligent or intentional wrongful acts or omissions of Contractor, subcontractors, suppliers, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Contractor shall be entitled to reimbursement of any defense costs paid above Contractor's percentage of liability for the underlying claim to the extent provided in the section immediately below.

10.2. To the fullest extent permitted by law, Westwin shall indemnify and hold harmless Contractor, its officers, directors, or members, subcontractors, suppliers, or anyone employed directly or indirectly by any of them, or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured under §11.3, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of work by Westwin, Design Professional, or others retained by Westwin, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Westwin, Design Professional, or others retained by Westwin. Westwin shall be entitled to reimbursement of any defense costs paid above Westwin's percentage of liability for the underlying claim to the extent provided in the section immediately above.

10.3. In any and all claims against the Indemnitees by any employee of Contractor, anyone directly or indirectly employed by Contractor, or anyone for whose acts Contractor may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor under workers' compensation acts, disability benefit acts, or other employment benefit acts.

10.4. As part of the consideration for entering this Agreement, the parties agree that Contractor must have a hard dollar stop-loss on liability. Therefore, in addition to any funds actually received from insurance, Contractor may never be liable to Westwin or any other party claiming hereunder or based on this Agreement for more than 25% of the Contract Price, regardless of the theory of law pleaded or the type of damages claimed, for claims known or unknown, past, present, or future, accrued or unaccrued, of any sort whatsoever.

11. INSURANCE

11.1. Before commencing the Work and as a condition precedent to payment, Contractor shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, Commercial General Liability Insurance (CGL), and an Umbrella Insurance Policy. If applicable, Contractor shall also procure and maintain in force Pollution Liability Insurance or Professional Liability Insurance. The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. Contractor shall maintain completed operations liability insurance for one year after Substantial Completion or as required by the Contract Documents, whichever is longer. Contractor's Employers' Liability, Business Automobile Liability, and CGL policies shall be written with at least the following limits of liability:

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11.1.1. Employers' Liability Insurance:

- a. \$1,000,000 bodily injury by accident per accident;
- b. \$1,000,000 bodily injury by disease policy limit;
- c. \$1,000,000 bodily injury by disease per employee.

11.1.2. Business Automobile Liability Insurance: \$1,000,000 per accident.

11.1.3. CGL Insurance:

- a. \$1,000,000 per occurrence;
- b. \$3,000,000 general aggregate;
- c. \$1,000,000 products/completed operations aggregate;
- d. \$1,000,000 personal and advertising injury limit.

11.1.4. Umbrella Policy: in the amount of \$5,000,000.00.

11.2. Employers' Liability, Business Automobile Liability, and CGL coverage required under this article may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella liability policies. Contractor shall maintain in effect all insurance coverage required in this article with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If Contractor fails to obtain or maintain any insurance coverage required under this Agreement, Westwin may purchase such coverage and charge the expense to Contractor, or terminate this Agreement.

To the extent commercially available to Contractor and its current insurance company, insurance policies required under §11.1 shall contain a provision that the insurance company or its designee must give Westwin written notice transmitted in paper or electronic format: (a) 30 Days before coverage is nonrenewed by the insurance company, and (b) within 10 Business Days after cancelation of coverage by the insurance company. Before commencing the Work and upon renewal or replacement of the insurance policies, Contractor shall furnish Westwin with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under §11.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Contractor shall give Westwin prompt written notice upon actual or constructive knowledge of such condition.

11.3. PROPERTY INSURANCE

Westwin shall obtain and maintain a Builder's Risk Policy, with a maximum deductible of \$_____ per occurrence, upon the entire Project for the full cost of replacement at the time of loss, including existing structures. This insurance shall also: (a) name Contractor, subcontractors, sub-subcontractors, and suppliers as insureds; (b) be written in such form as to cover all risks of physical loss except those specifically excluded by the policy. In addition, this insurance shall insure at least against and not exclude:

11.3.1. the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of the Contractor) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse however caused;

11.3.2. damage resulting from defective design, workmanship, or material;

11.3.3. coverage extension for damage to existing buildings, plant, or other structures at the Worksite, when the Project is contained within or attached to such existing buildings, plant or structures. Coverage shall be to the extent loss or damage arises out of Contractor's activities or operations at the Project;

11.3.4. equipment breakdown, including mechanical breakdown, electrical injury to electrical devices, explosion of steam equipment, and damage to steam equipment caused by a condition within the equipment;

11.3.5. testing coverage for running newly installed machinery and equipment at or beyond the specified limits of their capacity to determine whether they are fit for their intended use; and

11.3.6. physical loss resulting from terrorism.

11.3.7. The Party that is the primary cause of a Builder's Risk Policy claim shall be responsible for any deductible amounts or coinsurance payments. If no Party is the primary cause of a claim, then the Party responsible to obtain and maintain the Builder's Risk Policy shall be responsible for the deductible amounts or coinsurance payments. This policy shall provide for a waiver of subrogation. This insurance shall remain in effect until final payment has been made or until no person or entity other than Westwin has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until Contractor has secured the consent of the insurance company or companies providing the coverage required in this subsection. Before commencing the Work, Westwin shall provide a copy of the property policy or policies obtained in compliance with §11.3.

11.3.8. Westwin shall give written notice to Contractor and Design Professional before the Work is commenced and provide a copy of the property policy or policies obtained in compliance with §11.3. Westwin shall then provide insurance to protect its interests and the interests of Contractor, subcontractors, suppliers, and sub-subcontractors. If Westwin gives written notice of its intent to purchase property insurance required by this Agreement and fails to purchase or maintain such insurance, Westwin shall be responsible for costs reasonably attributed to such failure.

- 11.3.9. The Parties waive all rights against each other and their respective employees, agents, contractors, subcontractors and sub-subcontractors, suppliers, and design professionals for damages caused by risks covered by the property insurance except such rights as they may have to the proceeds of the insurance.
- 11.3.10. To the extent of the limits of Contractor's CGL specified in §11.1, Contractor shall indemnify and hold harmless Westwin against any and all liability, claims, demands, damages, losses, and expenses, including reasonable attorneys' fees, in connection with or arising out of any damage or alleged damage to any of Westwin's existing adjacent property that may arise from the performance of the Work, to the extent caused by the negligent or intentionally wrongful acts or omissions of Contractor, subcontractor, supplier, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.
- 11.3.11. POLLUTION LIABILITY INSURANCE Contractor is not required to maintain pollution liability insurance. Contractor's general liability policy shall include an endorsement to cover accidental spills.
- 11.4. ADDITIONAL LIABILITY COVERAGE Westwin ☐ shall/ ☐ shall not require Contractor to purchase and maintain liability coverage. If required, Contractor will provide:
- 11.4.1. ADDITIONAL INSURED. Westwin shall be named as an additional insured on Contractor's CGL insurance specified, for on-going operations and completed operations, excess/umbrella liability, commercial automobile liability, and any required pollution liability, but only with respect to liability for bodily injury, property damage, or personal and advertising injury to the extent caused by the negligent acts or omissions of Contractor, or those acting on Contractor's behalf, in the performance of the Work for Westwin at the Worksite. Contractor's insurance shall be primary and non-contributory to any insurance available to the Additional Insureds. Any insurance available to the Additional Insured shall be excess and non-contributory.
- 11.4.2. OCP. Contractor shall provide an Westwins' and Contractors' Protective Liability Insurance ("OCP") policy with limits equal to the limits on CGL insurance specified, or limits as otherwise required by Westwin. Any documented additional cost in the form of a surcharge associated with procuring and maintaining coverage in accordance with this subsection shall be paid by Westwin directly, or as a Cost of the Work. Before commencing the Work, Contractor shall provide either a copy of the OCP policy, or a certificate and endorsement evidencing that Westwin has been named as an additional insured, as applicable.
12. BONDS Performance and Payment Bonds ☐ are/ ☐ are not required of Contractor.
13. MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for losses covered by insurance required by the Contract Documents, the Parties agree to waive all claims against each other for any consequential, special, or punitive damages that may arise out of or relate to this Agreement.
- 13.1. This article shall also apply to the termination of this Agreement and shall survive such termination. The Parties shall each require similar waivers in contracts with subcontractors and others retained for the project.
14. TERMINATION
- 14.1. NOTICE TO CURE A DEFAULT If Contractor persistently fails to supply enough qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work or fails to make prompt payment to its workers, subcontractors, or suppliers, disregards law or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, Contractor may be deemed in default. If Contractor fails to commence and to continue satisfactory correction of such default with diligence and promptness within seven (7) Days after written notification, then Westwin shall give Contractor a second written notice to correct the default within a three (3) Business Day period. If Contractor fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, Westwin, without prejudice to any other rights or remedies, shall have the right to take reasonable steps it deems necessary to correct deficiencies and charge the cost to Contractor, who shall be liable for such payments including attorneys' fees.
- 14.2. TERMINATION BY WESTWIN Upon expiration of the second notice for default period, Westwin may terminate this Agreement by written notice absent appropriate corrective action. Termination for default is in addition to any other remedies available to Westwin. Westwin shall make reasonable efforts to mitigate damages arising from Contractor default and shall promptly invoice Contractor for all amounts due.
- 14.3. TERMINATION BY CONTRACTOR Upon seven (7) Days' written notice to Westwin, Contractor may terminate this Agreement if the Work has been stopped for a thirty (30) Day period through no fault of Contractor.
- 14.3.1. In addition, upon seven (7) Days' written notice to Westwin, Contractor may terminate the Agreement if Westwin does any of the following: (a) assigns this Agreement over Contractor's reasonable objection; (b) fails to

pay Contractor in accordance with this Agreement and Contractor has stopped Work in compliance with this Agreement; or (c) otherwise materially breaches this Agreement.

14.3.2. Upon termination by Contractor pursuant to this Agreement, Contractor shall be entitled to recover from Westwin payment for all Work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs plus reasonable overhead and profit.

14.4. OBLIGATIONS ARISING BEFORE TERMINATION Even after termination, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred, or obligations arising before the termination date.

15. DISPUTE MITIGATION AND RESOLUTION

15.1. ADDITIONAL COST OR TIME Contractor shall give Westwin prompt written notice if the Estimated Budget or Contract Time is estimated to be exceeded.

15.2. WORK CONTINUANCE AND PAYMENT Contractor shall continue the Work and maintain the Schedule of Work during any dispute resolution proceedings. If Contractor continues to perform, Westwin shall continue to make payments in accordance with the Agreement.

15.3. DISPUTE MITIGATION THROUGH DIRECT DISCUSSIONS If a dispute arises out of or related to this Agreement or its breach, the Parties shall endeavor to settle the dispute through direct discussions. Within five (5) Business Days, the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions, shall conduct direct discussion and make a good faith effort to resolve such dispute.

15.4. BINDING DISPUTE RESOLUTION The Parties shall submit unresolved disputes to the binding dispute resolution procedure below:

ARBITRATION The Parties choose binding arbitration decided by arbitrator in accordance with the Construction Industry Arbitration Rules of the AAA then in effect. Arbitration will be used for any claim or dispute related to this Agreement. **EACH PARTY WAIVES THEIR RIGHT TO BE HEARD IN A COURT OF LAW**, with or without a jury. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. An arbitrator's award shall be final and binding upon the Parties, and judgment may be entered upon it in any court having jurisdiction.

15.5.1. COSTS The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

15.5.2. VENUE The Project location shall serve as the venue.

15.5.3. Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations. If, however, a state or federal court exercising jurisdiction over a timely filed claim or cause of action orders that the claim or cause of action be submitted to arbitration, the arbitration proceeding shall be deemed commenced as of the date the court action was filed, provided that the Party asserting the claim or cause of action files its demand for arbitration with the person or entity administering the arbitration within thirty (30) Days after the entry of such order.

16. MISCELLANEOUS

16.1. EXTENT OF AGREEMENT Except as expressly provided, this Agreement is for the exclusive benefit of the Parties and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

16.2. ASSIGNMENT Except as to the assignment of proceeds, neither Party shall assign its interest in this Agreement, in whole or in part, without the written consent of the other Party. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives.

16.3. GOVERNING LAW The law in effect at the location of the Project shall govern.

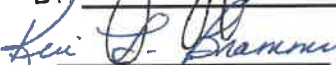
16.4. NOTICE Unless changed in writing, a Party's address indicated above ARTICLE 1 shall be used when delivering notice to a physical address. Except for Agreement termination and as otherwise specified in the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service.

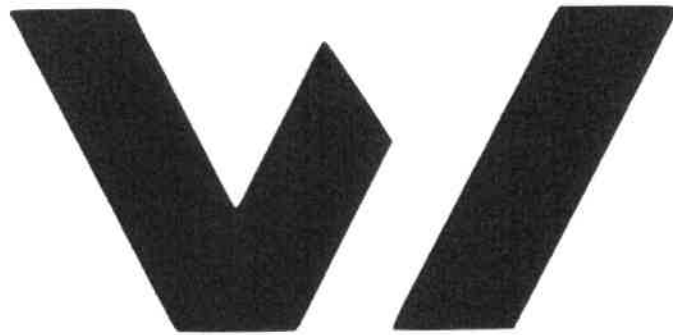
16.5. JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms before execution. This Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

WESTWIN:

BY:  NAME: AJ Arends TITLE: Vice President WITNESS:
Ashlea Sartin NAME: Ashlea Sartin TITLE: Engineering Project Manager

CONTRACTOR:

BY:  NAME: JC Grayson TITLE: President WITNESS:
 NAME: Keri Brammer TITLE: Admin Assistant



WESTWIN
ELEMENTS

104 – Site Grading

Scope of Work

Westwin Elements Lawton, Oklahoma

Created by:	Date	Revision	Rev. Date	Modification
MT	11/20/2023	a		

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WESTWIN ELEMENTS – Nickel Carbonyl Facility

STATEMENT OF WORK - Scope

Rev. 00

Issued for Bid

November 22, 2023

1. GENERAL

Furnish, deliver Site Grading and Drainage. The installation will be located on the Westwin Elements Pilot Plant Site, 10925 SW Bishop Road, Lawton, OK, 73505

This solicitation is for all work and miscellaneous materials required to complete the installation of Site Grading and Drainage identified in this document such that said will perform its intended functions.

- 1.1. General Conditions of Contract (Construction) shall apply and take precedence for all activities that may be awarded and/or performed as a result of this solicitation.
- 1.2. Award is anticipated to be a firm fixed price contract for performance of the labor, provision of any tools, equipment, and miscellaneous materials necessary to complete Installation. Contractor will be responsible for any minor consumables required for said tasks.
- 1.3. Westwin Elements Inc. reserves the right to cancel this project without cause, to reject any and all proposals, modify or vary any aspect of the technical, commercial or contractual requirements for this project, obtain additional proposals, negotiate with one or more bidders regarding any aspect of this proposal, modify any aspect of this request for quote in respect of any bidder, and award based on any criteria, including, but not limited to, past performance, price, knowledge of plant operations and confidence in the proposal submitted by the bidder.
- 1.4. Until a formal purchase order or other contractual document is finalized and accepted by both the successful bidder and Westwin Elements Inc., Westwin Elements Inc. does not intend to create any contractual relationship, either expressed or implied, with any bidder submitting a proposal or other response to this Request for Quotation. As a result, Bidders are free to modify or withdraw their proposal, as they deem appropriate.

- 1.5. The Contractor shall abide by all referenced and included specifications in addition to those mandated by federal, state and local agencies, including abiding by all Westwin Elements, local, state and federal regulations pertaining to construction of this nature, to include environmental control requirements.
- 1.6. Access to the site will be coordinated as per the site access policy.
- 1.7. All work on site shall be conducted in strict compliance with the Westwin Elements safety policy provided. Many parts of which must be satisfied prior to being permitted site access.
- 1.8. Any work including, but not limited to, labor, equipment, tools, supervision, miscellaneous materials, and services that may be reasonably inferred as being required to produce the intended results are the sole responsibility of the bidder. The contractor is responsible for the complete mechanical installation, alignment, and adjustment as required to safely and effectively operate the equipment.
- 1.9. Before on-site work may commence, contractor shall become registered and compliant with Westwin Elements procurement and safety systems.

2. CONTRACTOR RESPONSIBILITIES

- 2.1. Contractor shall have a current State of Oklahoma Contractor's License.
- 2.2. Contractor is responsible for the supply of all: appropriately trained and equipped personnel, including supervision, crafts and labor; equipment; tools; safety equipment; personal protective equipment; materials, such as nuts, bolts, washers, shim stock, Hilti anchor bolts, etc.; consumables, such as welding rods, rags, thread lubricants, etc.; required to complete the scope of work. Westwin Elements Inc. reserves the right to provide said materials at no reimbursement to the contractor.
- 2.3. Contractor is to provide a Full-time Safety Manager on site when contractors total manning reaches 20 or more employees on site.
- 2.4. Contractor is responsible for ensuring that every individual employee performs Lock-Out/Tag-Out of all equipment/utilities in this contract including, but not limited to, the items listed in this document. Each contractor employee will have their own individual lock out lock available.
- 2.5. Contractor shall comply with soil erosion requirements as dictated by governing agencies, including Best Practices Management Plan, latest edition.
- 2.6. The Contractor is responsible for complying with all Westwin Elements, local, state and federal regulations pertaining to construction of this nature, to include environmental control requirements.
- 2.7. The Contractor shall satisfy Westwin Elements site safety requirements prior to mobilization.
- 2.8. For bid purposes, the Contractor shall assume that Contractor will apply for all required permits.
- 2.9. The Contractor is responsible for all shoring and dewatering necessary for the safe installation and construction of the components identified in the scope of this project.
- 2.10. Contractor will be allowed to place a temporary mobile construction office on site within reasonable distance of the actual installation site. Contractor is responsible for the delivery, set-up, and upkeep of the facility. No electric service, phone lines, potable water, or sanitary will be provided by Westwin Elements.
- 2.11. Contractor is responsible for coordinating work areas with the other contractors on site and Westwin Elements production operations as necessary. Priority for construction activities will be resolved by Westwin Elements personnel as needed.
- 2.12. Contractor is responsible for providing sanitary, lunch/break area, and wash facilities for its employees. These facilities will be located in an area approved by Westwin Elements Construction Manager.

- 2.13. Contractor will at all times maintain a neat and orderly worksite including any and all support facilities used by its employees.
- 2.14. This project will be adjacent to an operating plant. Contractor shall not impact production/use through their work. Coordination necessary to accommodate production/use shall not be cause for claims involving schedule or cost.
- 2.15. Please note that all items of work involving working roads within the Westwin Elements plant will require close coordination with plant personnel. Under no circumstances will total road closures be allowed. Contractor shall plan work so to keep a minimum of one full lane open at all times and provide for flagmen as necessary to direct traffic safely through the construction areas.
- 2.16. The contractor must restore any disturbed areas to their original condition or better unless otherwise specified in the drawings. This includes but is not limited to roadway sections, aggregate surfacing sections and areas of grass.
- 2.17. Contractor will provide access to dumpsters for disposal of lunch and office materials as well as for construction. Contractor will maintain areas in a neat and orderly/policed manner at no additional cost to Westwin Elements.

3. WESTWIN ELEMENTS INC. RESPONSIBILITIES

- 3.1. Westwin Elements Inc. will provide a job safety orientation for the contractor's job site supervision and safety representatives. Westwin Elements will train the Contractor's supervisors and the Contractor's supervisors will train the workers. Any worker who does not know basic safety rules will be escorted off site at no expense to Westwin Elements.
- 3.2. Westwin Elements Inc. will provide information and drawings to the contractor for use on the job.
- 3.3. Westwin Elements Inc. will provide a location within reasonable distance of the job site, outside the existing buildings for placement of the contractor's mobile site office, lunch, sanitary, and wash areas.

4. ITEMS OF WORK

4.1. General

- Phasing and Coordination: All work and installations will have to be closely coordinated with the Westwin Elements Project Manager and Contractors working on other portions of the project. Some work areas will not be available immediately and work in these areas may be delayed. Contractor to allow for phasing and coordination in the bid price.
- Installation: The Contractor shall provide all labor, equipment, material and supervision required to install the components described in this section and indicated on the provided documents.
- Horizontal and vertical control has been provided on site. The Contractor shall use the provided control to layout and construct the work to the lines and grades as shown on the drawings specified herein.
- Construction Observation Requirements: The site plan approval from Commanche County required the Engineer of Record to certify that all site work would be performed in accordance with the plans submitted to the County Engineer. This requires construction observation during the installation of the site work improvements by the Engineer of Record.

4.2. Mobilization of all necessary people, equipment, office facilities, safety equipment, etc.

4.3. Erosion and Sediment Control Installation and Maintenance:

- Contractor is required to maintain erosion and sediment control measures and BMPs throughout construction in accordance with permit and Federal and State regulations. Contractor to provide all material, labor and equipment for any intermediate erosion and sediment control plans and/or measures as necessary during construction. Current measures include, but are not limited to, sediment barriers (silt fences), sediment basins, grass swales and riprap check dams.
- Stabilization: Contractor shall provide all material, labor and equipment to provide seed and mulch or sodding as necessary to stabilize all disturbed areas that do not receive another type of stabilizing material.

4.4. Site Work

- Site Existing Conditions: Current elevations shown on drawing C-500.

Excavation: Contractor to provide all material, labor, and equipment to excavate as needed to achieve required soil elevations as shown on drawings

- Compacted Fill: Contractor shall provide all material, labor, and equipment to provide required compacted fill to achieve the required elevation for granular subbase where concrete paving is shown on drawing C401 or finish elevation in areas not covered by area paving as shown on drawing C500. Approximately 2,000 cubic yards of suitable fill will be available onsite for contractor use.

- **Geotech Fabric:** Contractor shall provide all material, labor, and equipment to install a heavy duty Geotech fabric under all aggregate subbase.

Aggregate Subbase: Contractor shall provide all material, labor, and equipment to provide 6" ODOT Type A aggregate subbase in areas shown as concrete paving on drawing C-401. Aggregate will be installed at an elevation to the bottom of area concrete paving elevation as shown on drawing C500 and detail 3 on drawing C800.

- **RCP Piping** Contractor shall provide all material, labor, and equipment to install RCP pipe culverts and prefabricated end sections as shown on drawing C600.
- **HDPE Piping** Contractor shall provide all material, labor, and equipment to install HDPE drains and prefabricated end sections for Pond A and Pond B as shown on drawing C502
- **Sodding-** Contractor shall provide all material, labor and equipment as required to place sodding on slopes of retention ponds.

4.5. Demobilization and Clean Up complete.

5. BID PREPARATION

5.1. The bid preparation shall strictly adhere to the following:

- Questions will be taken until the cut-off date. Any questions submitted after the close of business (defined as 5:00 PM, Central Time) will be returned unanswered. All questions received and associated answers will be distributed to all bidders.
 - Cut-Off Date: November 28, 2023
 - Bid Due Date December 1, 2023
- Submit bids to:
 - AJ Arends aj@westwinelements.com
 - Mike Thompson mthompson@capitalepc.com

BIDS SHALL BE SUBMITTED TO AJ AND MIKE ONLY

5.2. The Contractor shall prepare a comprehensive proposal addressing items as specified in Section 4: Items of Work.

5.3. The Contractor shall submit a job schedule showing manpower loading and anticipated work schedule for the duration of the job for both the normal and accelerated schedules.

5.4. Cost of all materials required to complete the work is to be quoted as a lump sum for this project, broken down by Bid Breakdown category.

5.5. The Contractor will provide a labor schedule and estimate for each category of labor to be used in satisfying the requirements of this project.

5.6. The Contractor shall provide a schedule and price for each type of equipment (rental or owned) to be used to perform the work under this project.

5.7. The Contractor shall provide unit cost for all items specified in case extra work should be required.

5.8. The cost-plus percentage mark up for miscellaneous materials that may be required is 10%.

5.9. Bid Form -- 104 Site Grading Package

Item	Labor Cost	Equipment Cost	Material Cost	Subcontractor Cost	Subtotal
Base Bid					
Excavation	8372.00	10,720.00			19,092.00
Compacted Fill	35,087.00	120,000.00	67,168.00		222,255.00
Grading	48,000.00	110,917.00	52,000.00		210,917.00
Culverts & Inlets	9432.00	11,830.00	12,654.00		33,916.00
Drain Piping	3900.00	3020.00	3959.00		10,879.00
Erosion Protection	3151.00	2100.00	12,646.00		17,897.00
Sodding	1474.00	3621.00		23,905.00	29,000.00
Mobilization		1725.00			1725.00
Demobilization		1725.00			1725.00
As Built Drawings	500.00				500.00
Total Base Bid					547,906.00

6. SUBMITTALS

6.1. The Owner's Engineer must receive and approve all required submittals prior to purchase or fabrication.

- Prefabricated End Sections
- RCP Pipe
- HDPE Pipe
- Geotech Fabric
- Pit for anticipated imported fill.

6.2. As-Built Drawings. The contractor is required to submit As-Built drawings for all disciplines described in Section 4 Items of Work.

6.3. Close-Out Documents

7. UNIT PRICING

7.1. It is understood that the Owner reserves the right to alter work without invalidating or canceling the contract. The Contractor shall provide the following Unit Prices for Additions or Deductions to the work:

7.2. Unit Price Form

Item Number	Unit	Item Description	Unit Price
1	sy	Clear & Grubb	5.88
2	cy	Unclassified Excavation	12.54
3	cy	Compacted Fill	21.45
4	cy	Compacted Aggregate	98.44
5	lf	8" SDR 11 HDPE Pipe	145.52
6	lf	12" SDR 11 HDPE Pipe	94.78
7	lf	15" RCP Pipe	195.79
8	lf	18" RCP Pipe	223.73
9	sy	Geotech Fabric	1.83
10	sy	Sodding	4.29

8. DRAWING LIST

8.1. The following drawings are included as part of this contract and shall be used in conjunction with the latest code requirements to define the overall scope of work. In the event of a conflict between the drawings and code requirements, the Contractor shall notify the engineer to determine precedent.

8.2. Drawing List

WESTWIN Document Number	Document Revision Number	Description
C100		Cover Sheet
C200		Survey
C300		Demolition & Erosion Control (For Reference)
C400		Site Plan
C401		Horizontal Control Plan
C500		Grading Plan
C501		Existing Drainage Map
C502		Proposed Drainage Map
C600		Utility Plan (For Reference)
C800		Details
C801		Details
C802		Details

This Project-Specific Subcontractor Services Agreement ("Agreement") is made and entered into this 11th day of November, 20 23 by and between WESTWIN ELEMENTS INC., a Delaware corporation registered to do business in Oklahoma, with offices at 7 NE Sixth Street Unit 100 Oklahoma City, OK 73104 (hereinafter referred to as "Westwin") and,

T&G Construction, Inc., a Oklahoma corporation, with offices at 800 SE 1st Street, Lawton, OK 73501 (hereinafter referred to as "Contractor") for Work (as defined below) on Project No. 23PP01.

In consideration of the mutual covenants of the parties, it is hereby agreed as follows:

1. THE WORK Contractor shall use its diligent efforts to perform the "Work," as described in Exhibit A, in an expeditious manner consistent with the Contract Documents. Contractor shall provide all labor, materials, equipment, and services necessary to complete the Work, and in full accord with and reasonably inferable from the Contract Documents. The Work shall be completed in accordance with Exhibit E, "Estimated Budget and Schedule of the Work." The time allotted in Exhibit E shall define the "Contract Time."

2. COMPENSATION Westwin shall compensate Contractor for Work performed on the following basis:

Contractor costs are reimbursable on a Time and Material arrangement in accordance with Exhibit D.

3. EXHIBITS The following attached exhibits are made part of this Agreement:

EXHIBIT A: General Description of the Work, [] page/s.

EXHIBIT B: Contract Documents, [18] page/s.

EXHIBIT C: Progress Schedule, [] page/s.

EXHIBIT D: Contractor's Rate Sheet.

EXHIBIT E: Contractor's Billing Process

EXHIBIT F: Contractor's Certificate of Liability Insurance.

4. PARTIES' RELATIONSHIP AND ETHICS Each Party agrees to proceed on the basis of mutual trust, good faith, and fair dealing. Each shall perform its obligations with integrity. Each shall (a) avoid any conflicts of interest; (b) promptly disclose to the other Party any that may arise; and (c) warrant that it has not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including its agents, officers, and employees, subcontractors, or others to secure preferential treatment. Nothing in this Agreement will create a fiduciary relationship.

5. CONTRACTOR'S RESPONSIBILITIES Contractor shall be responsible for supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized, unless the Contract Documents give other specific instructions.

5.1. Except for permits and fees that are the responsibility of Westwin pursuant to this Agreement, Contractor shall obtain and pay for all necessary Oklahoma Contractor licenses, and renewals pertaining to the Work.

5.2. Contractor shall pay all applicable taxes for the Work provided by Contractor.

5.3. If Westwin elects to perform work at the geographical area of the Project ("Worksite") directly or by others retained by Westwin, the Parties shall coordinate the activities of all forces at the Worksite and shall agree upon fair and reasonable schedules and operational procedures for Worksite activities. Westwin shall require each separate contractor to cooperate with and to assist with the coordination of activities and the review of construction schedules and operations.

5.4. In order to facilitate its responsibilities, before starting the Work, Contractor shall examine and compare the drawings and specifications with information furnished by Westwin pursuant to §6.1; relevant field measurements made by Contractor; and any visible conditions at the Worksite affecting the Work.

5.5. COMPLIANCE WITH LAWS Contractor shall comply with all laws. Contractor shall be liable to Westwin for all loss, cost, or expense, attributable to any negligent acts or omissions by Contractor, its employees, subcontractors, suppliers, and agents for failure to comply with laws, including fines, penalties, or corrective measures. The estimated Cost of the Work and Contractor's Fee, shall be equitably adjusted for laws, including taxes, impacting cost or time, enacted after bids are received or negotiations concluded.

5.6. WARRANTY

5.6.1. Contractor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. Contractor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by Westwin or others retained by Westwin, or abuse.

5.6.2. If, before the Date of Substantial Completion and within one year after the Date of Substantial Completion of the Work, any portion of the Work is found to be not in conformance with the Contract Documents ("Defective Work"), Westwin shall promptly notify Contractor in writing. Unless Westwin provides written acceptance of the condition, Contractor shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible.

5.7. SAFETY Contractor shall have overall responsibility for safety precautions and programs in the performance of the Work, except that Contractor's subcontractors shall also be responsible for the safety of persons or property in the performance of their work, and for compliance with the provisions of laws. Contractor shall prevent against injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite; materials and equipment stored at on-site or off-site locations for use in the Work; and property located at the Worksite and adjacent to Work areas, whether or not the property is part of the Work.

5.8. HAZARDOUS MATERIALS A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or clean-up. Contractor shall not be obligated to commence or continue work until any Hazardous Material discovered at the Worksite has been removed, or rendered or determined to be harmless by Westwin as certified by an independent testing laboratory and approved by the appropriate government agency. Westwin shall be deemed the generator of all preexisting Hazardous Material and shall indemnify, defend, and hold harmless Contractor from all cost, liability, and damages arising from or related thereto. If Contractor incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, Contractor shall be entitled to an equitable adjustment in the Contract Price and Contract Time.

5.9. MATERIALS BROUGHT TO THE WORKSITE Contractor shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Contractor in accordance with the Contract Documents and used or consumed in the performance of the Work.

5.10. SUBMITTALS Contractor shall submit to Westwin and Design Professional for review and approval all shop drawings, samples, product data, and similar submittals required by the Contract Documents. Submittals may be submitted in electronic form. Contractor shall be responsible to Westwin for the accuracy and conformity of its submittals to the Contract Documents. Contractor shall prepare and deliver its submittals to Westwin and Design Professional in a manner consistent with the Schedule of the Work and in such time and sequence so as not to delay the performance of the Work or the work of Westwin and others retained by Westwin. Contractor submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. An approval of a Contractor submittal conforms the Contract Documents including any deviation, substitution, or change. To the extent a change, deviation, or substitution causes an impact to the compensation or Contract Time, such approval shall be memorialized in a Change Order no later than seven (7) Days following approval. Westwin shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay. Contractor shall perform all Work strictly in accordance with approved submittals. Westwin's approval does not relieve Contractor from responsibility for Defective Work resulting from errors or omissions in not following the approved shop drawings.

- 5.11. **CONCEALED OR UNKNOWN SITE CONDITIONS** If a condition encountered at the Worksite is (a) a subsurface or other physical condition which is materially different from those indicated in the Contract Documents, or (b) an unusual and unknown physical condition which is materially different from conditions ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents, Contractor shall stop Work and give prompt written notice of the condition to Westwin and Design Professional. Westwin shall investigate and then issue an Interim Directive specifying the extent to which Westwin agrees that a concealed or unknown condition exists and directing how Contractor is to proceed. Contractor shall not be required to perform any Work relating to the condition without the written mutual agreement of the Parties.
- 5.12. **CUTTING, FITTING, AND PATCHING** Contractor shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of Westwin or others retained by Westwin.
- 5.13. **CLEANING UP** Contractor shall regularly remove debris and waste materials at the Worksite resulting from the Work. Before discontinuing Work in an area, Contractor shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Contractor shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Contractor shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.
6. **WESTWIN'S RESPONSIBILITIES** Any information or services to be provided by Westwin shall be provided in a timely manner.
- 6.1. Not used.
- 6.2. **WORKSITE INFORMATION** To the extent Westwin has obtained, or is required to obtain the following Worksite information, then Westwin shall provide Contractor the following:
- 6.2.1. information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data, or drawings depicting existing conditions, subsurface, and environmental studies, reports, and investigations;
- 6.2.2. tests, inspections, and other reports dealing with environmental matters, hazardous material and other existing conditions, including structural, mechanical, and chemical tests required by the Contract Documents or by law;
- 6.2.3. the limits of Pollution Liability Insurance covering the Worksite held by Westwin; and
- 6.2.4. any other information or services requested in writing by Contractor that are relevant to Contractor's performance of the Work and under Westwin's control.
- 6.3. **MECHANICS AND CONSTRUCTION LIEN INFORMATION** Within seven (7) Days after receiving Contractor's written request, Westwin shall provide Contractor with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include Westwin's interest in the real property on which the Project is located and the record legal title.
- 6.4. **BUILDING PERMIT, FEES, AND APPROVALS** Except for Oklahoma Contractor's licenses required of Contractor pursuant to this Agreement, Westwin shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the development, construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.
- 6.5. **ELECTRONIC DOCUMENTS** If Westwin requires that Westwin, Design Professional, and Contractor exchange documents and data in electronic or digital form, before any such exchange, the Parties and Design Professional shall agree on and follow a written protocol governing all exchanges in accordance with Contractor's project controls and administration processes.
7. **SUBCONTRACTS** Contractor agrees to bind every subcontractor and supplier (and require every subcontractor to so bind its subcontractors and suppliers) to this Agreement and the Contract Documents as they apply to the subcontractor's and supplier's portions of the Work.

8. COST OF THE WORK

Westwin agrees to pay Contractor as defined in this article.

- 8.1. Labor wages directly employed by Contractor in the performing of the Work;
- 8.2. Salaries of Contractor's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and supervisory employees from the principal or branch office as mutually agreed by the Parties in writing;
- 8.3. Employee benefits and taxes including but not limited to workers' compensation, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by law, labor agreements, or paid under Contractor's standard personnel policy, insofar as such costs are paid to employees of Contractor who are included in the Cost of the Work, above;
- 8.4. Reasonable transportation, travel, hotel, of Contractor's personnel incurred in connection with the work when preapproved in advance by Westwin Elements Construction Manager;
- 8.5. All materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by Westwin, transportation, storage, and handling;
- 8.6. Payments made by Contractor to subcontractors for performed Work;
- 8.7. Transportation and maintenance of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers that are used or consumed in the performance of the Work.
- 8.8. Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from Contractor or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed in accordance with Exhibit D. Rentals from Contractor or its affiliates, subsidiaries, or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to the value of the piece of equipment;
- 8.9. The Cost to cover the premiums for all insurance and surety bonds which Contractor is required to procure or deems necessary, and approved by Westwin, including any additional premium incurred as a result of any increase in the Cost of the Work;
- 8.10. Sales, use, gross receipts, or other taxes, tariffs, or duties related to the Work for which Contractor is liable;
- 8.11. Permits, fees, licenses, tests, and royalties;
- 8.12. Losses, expenses, or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work before expiration of the one-year period following the Date of Substantial Completion, provided that such losses, expenses, damages, or corrective work did not arise from Contractor's gross negligence;
- 8.13. Equipping, operating, maintaining, and demobilizing the field office; including temporary shut down and remobilizing costs.
- 8.14. Water, power, and fuel costs necessary for the Work;
- 8.15. Removal of all non-hazardous substances, debris, and waste materials;
- 8.16. Costs incurred due to an emergency affecting the safety of persons or property;
- 8.17. Legal, mediation, and arbitration fees and costs, other than those arising from disputes between the Parties, reasonably and properly resulting from Contractor's performance of the Work.

9. PAYMENT

9.1. **PROGRESS PAYMENTS** Contractor shall submit to Westwin application for payments in accordance with Exhibit "E".

9.2. **ADJUSTMENT OF CONTRACTOR'S PAYMENT APPLICATION** Westwin may adjust or reject a payment application, in whole or in part, as may reasonably be necessary to protect Westwin from loss or damage based upon the following, to the extent that Contractor is responsible for such under this Agreement:

9.2.1. Contractor's repeated failure to perform the Work as required by the Contract Documents;

9.2.2. loss or damage for which Westwin may be liable arising out of or relating to this Agreement and caused by Contractor to Westwin or to others retained by Westwin to whom Westwin may be liable;

9.2.3. Contractor's failure to properly pay subcontractors or suppliers in connection with the Work following receipt of such payment from Westwin, for that portion of the Work or for supplies, provided that Westwin is making payments to Contractor in accordance with this Agreement;

9.2.4. rejected or Defective Work not corrected in a timely fashion; and

9.2.5. unless arising from Westwin's non-payment for the performance of the Work, uninsured third party claims involving Contractor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Contractor furnishes Westwin with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment which is sufficient to discharge such claims if established.

No later than three (3) Days after receipt of an application for payment, Westwin shall give written notice to Contractor disapproving or nullifying it or a portion of it, specifying the reasons for the disapproval or nullification.

9.3. **PAYMENT DELAY** If for any reason not the fault of Contractor, Contractor does not receive a progress payment from Westwin within seven (7) Days after the time such payment is due, Contractor, upon giving seven (7) Days' written notice to Westwin, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to Contractor has been received, including interest for late payment.

9.4. **SUBSTANTIAL COMPLETION** When Substantial Completion of the Work or a designated portion has been achieved, Contractor shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, and the respective responsibilities of the Parties for interim items such as security, maintenance, utilities, insurance, and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by Contractor to Westwin for written acceptance of responsibilities assigned in the Certificate. Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion. For this industrial project, Substantial Completion shall occur on mechanical completion of the Work.

9.5. **FINAL COMPLETION** When final completion has been achieved, Contractor shall prepare for Westwin's acceptance a final application for payment stating that to the best of Contractor's knowledge, and based on Westwin's inspections, the Work has reached final completion in accordance with the Contract Documents.

9.5.1. Final payment shall be made to Contractor within fifteen (15) Days after Contractor has submitted a complete and accurate application for final payment and the following submissions:

9.5.1.1. an affidavit declaring any indebtedness connected with the Work, to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber Westwin's property;

9.5.1.2. as-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents;

9.5.1.3. release of any liens, conditioned on final payment being received;

9.5.1.4. consent of any surety, if applicable; and

9.5.1.5. any outstanding known and unreported accidents or injuries experienced by Contractor or its subcontractors at the Worksite.

9.6. Claims not reserved by Westwin in writing with the making of final payment shall be waived except for claims relating to liens or similar encumbrances, warranties, Defective Work, and latent defects. Unless Contractor

provides written identification of unsettled claims known to Contractor at the time of making application for final payment, acceptance of final payment constitutes a waiver of such claims.

9.7. **LATE PAYMENT** Payments due but unpaid shall bear interest at the statutory rate prevailing at the place of the Project from the date payment is due.

10. INDEMNITY

10.1. To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Westwin, Westwin's officers, directors, members, consultants, agents, and employees ("Indemnitees") from all claims for bodily injury and property damage, other than to the Work itself and other property insured under §11.3, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of the Work but only to the extent caused by the negligent or intentional wrongful acts or omissions of Contractor, subcontractors, suppliers, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Contractor shall be entitled to reimbursement of any defense costs paid above Contractor's percentage of liability for the underlying claim to the extent provided in the section immediately below.

10.2. To the fullest extent permitted by law, Westwin shall indemnify and hold harmless Contractor, its officers, directors, or members, subcontractors, suppliers, or anyone employed directly or indirectly by any of them, or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured under §11.3, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of work by Westwin, Design Professional, or others retained by Westwin, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Westwin, Design Professional, or others retained by Westwin. Westwin shall be entitled to reimbursement of any defense costs paid above Westwin's percentage of liability for the underlying claim to the extent provided in the section immediately above.

10.3. In any and all claims against the Indemnitees by any employee of Contractor, anyone directly or indirectly employed by Contractor, or anyone for whose acts Contractor may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor under workers' compensation acts, disability benefit acts, or other employment benefit acts.

10.4. As part of the consideration for entering this Agreement, the parties agree that Contractor must have a hard dollar stop-loss on liability. Therefore, in addition to any funds actually received from insurance, Contractor may never be liable to Westwin or any other party claiming hereunder or based on this Agreement for more than 25% of the Contract Price, regardless of the theory of law pleaded or the type of damages claimed, for claims known or unknown, past, present, or future, accrued or unaccrued, of any sort whatsoever.

11. INSURANCE

11.1. Before commencing the Work and as a condition precedent to payment, Contractor shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, Commercial General Liability Insurance (CGL), and an Umbrella Insurance Policy. If applicable, Contractor shall also procure and maintain in force Pollution Liability Insurance or Professional Liability Insurance. The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. Contractor shall maintain completed operations liability insurance for one year after Substantial Completion or as required by the Contract Documents, whichever is longer. Contractor's Employers' Liability, Business Automobile Liability, and CGL policies shall be written with at least the following limits of liability:

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11.1.1. Employers' Liability Insurance:

- a. \$1,000,000 bodily injury by accident per accident;
- b. \$1,000,000 bodily injury by disease policy limit;
- c. \$1,000,000 bodily injury by disease per employee.

11.1.2. Business Automobile Liability Insurance: \$1,000,000 per accident.

11.1.3. CGL Insurance:

- a. \$1,000,000 per occurrence;
- b. \$3,000,000 general aggregate;
- c. \$1,000,000 products/completed operations aggregate;
- d. \$1,000,000 personal and advertising injury limit.

11.1.4. Umbrella Policy: in the amount of \$5,000,000.00

11.2. Employers' Liability, Business Automobile Liability, and CGL coverage required under this article may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella liability policies. Contractor shall maintain in effect all insurance coverage required in this article with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If Contractor fails to obtain or maintain any insurance coverage required under this Agreement, Westwin may purchase such coverage and charge the expense to Contractor, or terminate this Agreement.

To the extent commercially available to Contractor and its current insurance company, insurance policies required under §11.1 shall contain a provision that the insurance company or its designee must give Westwin written notice transmitted in paper or electronic format: (a) 30 Days before coverage is nonrenewed by the insurance company, and (b) within 10 Business Days after cancelation of coverage by the insurance company. Before commencing the Work and upon renewal or replacement of the insurance policies, Contractor shall furnish Westwin with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under §11.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Contractor shall give Westwin prompt written notice upon actual or constructive knowledge of such condition.

11.3. PROPERTY INSURANCE

Westwin shall obtain and maintain a Builder's Risk Policy, with a maximum deductible of \$ 0.00 per occurrence, upon the entire Project for the full cost of replacement at the time of loss, including existing structures. This insurance shall also: (a) name Contractor, subcontractors, sub-subcontractors, and suppliers as insureds; (b) be written in such form as to cover all risks of physical loss except those specifically excluded by the policy. In addition, this insurance shall insure at least against and not exclude:

11.3.1. the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of the Contractor) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse however caused;

11.3.2. damage resulting from defective design, workmanship, or material;

11.3.3. coverage extension for damage to existing buildings, plant, or other structures at the Worksite, when the Project is contained within or attached to such existing buildings, plant or structures. Coverage shall be to the extent loss or damage arises out of Contractor's activities or operations at the Project;

11.3.4. equipment breakdown, including mechanical breakdown, electrical injury to electrical devices, explosion of steam equipment, and damage to steam equipment caused by a condition within the equipment;

11.3.5. testing coverage for running newly installed machinery and equipment at or beyond the specified limits of their capacity to determine whether they are fit for their intended use; and

11.3.6. physical loss resulting from terrorism.

11.3.7. The Party that is the primary cause of a Builder's Risk Policy claim shall be responsible for any deductible amounts or coinsurance payments. If no Party is the primary cause of a claim, then the Party responsible to obtain and maintain the Builder's Risk Policy shall be responsible for the deductible amounts or coinsurance payments. This policy shall provide for a waiver of subrogation. This insurance shall remain in effect until final payment has been made or until no person or entity other than Westwin has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until Contractor has secured the consent of the insurance company or companies providing the coverage required in this subsection. Before commencing the Work, Westwin shall provide a copy of the property policy or policies obtained in compliance with §11.3.

11.3.8. Westwin shall give written notice to Contractor and Design Professional before the Work is commenced and provide a copy of the property policy or policies obtained in compliance with §11.3. Westwin shall then provide insurance to protect its interests and the interests of Contractor, subcontractors, suppliers, and sub-subcontractors. If Westwin gives written notice of its intent to purchase property insurance required by this Agreement and fails to purchase or maintain such insurance, Westwin shall be responsible for costs reasonably attributed to such failure.

- 11.3.9. The Parties waive all rights against each other and their respective employees, agents, contractors, subcontractors and sub-subcontractors, suppliers, and design professionals for damages caused by risks covered by the property insurance except such rights as they may have to the proceeds of the insurance.
- 11.3.10. To the extent of the limits of Contractor's CGL specified in §11.1, Contractor shall indemnify and hold harmless Westwin against any and all liability, claims, demands, damages, losses, and expenses, including reasonable attorneys' fees, in connection with or arising out of any damage or alleged damage to any of Westwin's existing adjacent property that may arise from the performance of the Work, to the extent caused by the negligent or intentionally wrongful acts or omissions of Contractor, subcontractor, supplier, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.
- 11.3.11. POLLUTION LIABILITY INSURANCE Contractor is not required to maintain pollution liability insurance. Contractor's general liability policy shall include an endorsement to cover accidental spills.
- 11.4. ADDITIONAL LIABILITY COVERAGE Westwin ☐ shall/ ☐ shall not require Contractor to purchase and maintain liability coverage. If required, Contractor will provide:
- 11.4.1. ADDITIONAL INSURED. Westwin shall be named as an additional insured on Contractor's CGL insurance specified, for on-going operations and completed operations, excess/umbrella liability, commercial automobile liability, and any required pollution liability, but only with respect to liability for bodily injury, property damage, or personal and advertising injury to the extent caused by the negligent acts or omissions of Contractor, or those acting on Contractor's behalf, in the performance of the Work for Westwin at the Worksite. Contractor's insurance shall be primary and non-contributory to any insurance available to the Additional Insureds. Any insurance available to the Additional Insured shall be excess and non-contributory.
- 11.4.2. OCP. Contractor shall provide an Westwins' and Contractors' Protective Liability Insurance ("OCP") policy with limits equal to the limits on CGL insurance specified, or limits as otherwise required by Westwin. Any documented additional cost in the form of a surcharge associated with procuring and maintaining coverage in accordance with this subsection shall be paid by Westwin directly, or as a Cost of the Work. Before commencing the Work, Contractor shall provide either a copy of the OCP policy, or a certificate and endorsement evidencing that Westwin has been named as an additional insured, as applicable.
12. BONDS Performance and Payment Bonds ☐ are/ ☐ are not required of Contractor.
13. MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for losses covered by insurance required by the Contract Documents, the Parties agree to waive all claims against each other for any consequential, special, or punitive damages that may arise out of or relate to this Agreement.
- 13.1. This article shall also apply to the termination of this Agreement and shall survive such termination. The Parties shall each require similar waivers in contracts with subcontractors and others retained for the project.
14. TERMINATION
- 14.1. NOTICE TO CURE A DEFAULT If Contractor persistently fails to supply enough qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work or fails to make prompt payment to its workers, subcontractors, or suppliers, disregards law or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, Contractor may be deemed in default. If Contractor fails to commence and to continue satisfactory correction of such default with diligence and promptness within seven (7) Days after written notification, then Westwin shall give Contractor a second written notice to correct the default within a three (3) Business Day period. If Contractor fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, Westwin, without prejudice to any other rights or remedies, shall have the right to take reasonable steps it deems necessary to correct deficiencies and charge the cost to Contractor, who shall be liable for such payments including attorneys' fees.
- 14.2. TERMINATION BY WESTWIN Upon expiration of the second notice for default period, Westwin may terminate this Agreement by written notice absent appropriate corrective action. Termination for default is in addition to any other remedies available to Westwin. Westwin shall make reasonable efforts to mitigate damages arising from Contractor default and shall promptly invoice Contractor for all amounts due.
- 14.3. TERMINATION BY CONTRACTOR Upon seven (7) Days' written notice to Westwin, Contractor may terminate this Agreement if the Work has been stopped for a thirty (30) Day period through no fault of Contractor.
- 14.3.1. In addition, upon seven (7) Days' written notice to Westwin, Contractor may terminate the Agreement if Westwin does any of the following: (a) assigns this Agreement over Contractor's reasonable objection; (b) fails to

pay Contractor in accordance with this Agreement and Contractor has stopped Work in compliance with this Agreement; or (c) otherwise materially breaches this Agreement.

14.3.2. Upon termination by Contractor pursuant to this Agreement, Contractor shall be entitled to recover from Westwin payment for all Work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs plus reasonable overhead and profit.

14.4. OBLIGATIONS ARISING BEFORE TERMINATION Even after termination, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred, or obligations arising before the termination date.

15. DISPUTE MITIGATION AND RESOLUTION

15.1. ADDITIONAL COST OR TIME Contractor shall give Westwin prompt written notice if the Estimated Budget or Contract Time is estimated to be exceeded.

15.2. WORK CONTINUANCE AND PAYMENT Contractor shall continue the Work and maintain the Schedule of Work during any dispute resolution proceedings. If Contractor continues to perform, Westwin shall continue to make payments in accordance with the Agreement.

15.3. DISPUTE MITIGATION THROUGH DIRECT DISCUSSIONS If a dispute arises out of or related to this Agreement or its breach, the Parties shall endeavor to settle the dispute through direct discussions. Within five (5) Business Days, the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions, shall conduct direct discussion and make a good faith effort to resolve such dispute.

15.4. BINDING DISPUTE RESOLUTION The Parties shall submit unresolved disputes to the binding dispute resolution procedure below:

ARBITRATION The Parties choose binding arbitration decided by arbitrator in accordance with the Construction Industry Arbitration Rules of the AAA then in effect. Arbitration will be used for any claim or dispute related to this Agreement. **EACH PARTY WAIVES THEIR RIGHT TO BE HEARD IN A COURT OF LAW**, with or without a jury. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. An arbitrator's award shall be final and binding upon the Parties, and judgment may be entered upon it in any court having jurisdiction.

15.5.1. COSTS The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

15.5.2. VENUE The Project location shall serve as the venue.

15.5.3. Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations. If, however, a state or federal court exercising jurisdiction over a timely filed claim or cause of action orders that the claim or cause of action be submitted to arbitration, the arbitration proceeding shall be deemed commenced as of the date the court action was filed, provided that the Party asserting the claim or cause of action files its demand for arbitration with the person or entity administering the arbitration within thirty (30) Days after the entry of such order.

16. MISCELLANEOUS

16.1. EXTENT OF AGREEMENT Except as expressly provided, this Agreement is for the exclusive benefit of the Parties and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

16.2. ASSIGNMENT Except as to the assignment of proceeds, neither Party shall assign its interest in this Agreement, in whole or in part, without the written consent of the other Party. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives.

16.3. GOVERNING LAW The law in effect at the location of the Project shall govern.

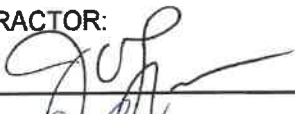
16.4. NOTICE Unless changed in writing, a Party's address indicated above ARTICLE 1 shall be used when delivering notice to a physical address. Except for Agreement termination and as otherwise specified in the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service.

16.5. JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms before execution. This Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

WESTWIN:

BY:  NAME: AJ Arends TITLE: Vice President WITNESS:
Ashlea Sartin NAME: Ashlea Sartin TITLE: Engineering Project Manager

CONTRACTOR:

BY:  NAME: JC Grayson TITLE: President WITNESS:
 NAME: Keri Brammer TITLE: Admin Assistant

ConsensusDocs 235 – Modified.

5.9. Bid Form – 103 Process Building Concrete Package Exhibit B

Item	Labor Cost	Equipment Cost	Material Cost	Subcontractor Cost	Subtotal
Base Bid					
Excavation					210,000.00
Compacted Fill					
Grading					
Reinforcement					
Concrete					
Mobilization					
Demobilization					
As Built Drawings					
Change Order 01 – Install 38' x 50' Bottle Storage Concrete					26,155.00
Change Order 02 - Install Utility Pads					89,774.00
Total Base Bid					325,929.00

6. SUBMITTALS

6.1. The Owner's Engineer must receive and approve all required submittals prior to purchase or fabrication.

- Concrete Mix Design
- Any embedded materials

6.2. As-Built Drawings. The contractor is required to submit As-Built drawings for all disciplines described in Section 4 Items of Work.

6.3. Close-Out Documents

7. UNIT PRICING

7.1. It is understood that the Owner reserves the right to alter work without invalidating or canceling the contract. The Contractor shall provide the following Unit Prices for Additions or Deductions to the work:

7.2. Unit Price Form

Item Number	Unit	Item Description	Unit Price
1	CY	Unclassified Excavation	
2	CY	Footer Excavation	
3	CY	Compacted Structural Fill	
4	CY	Compacted Structural Aggregate	
5	CY	Concrete Forms	
6	SY	Vapor Barrier	
7	TON	Reinforcement	
8	CY	Concrete - Footers	600.00
9	SF	Concrete – Finished Slab 6" Thick	19.66



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/11/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Bowen, Milette & Britt of Florida, LLC 1020 N. Orlando Avenue Suite #200 Maitland FL 32751	CONTACT NAME: Tayley Abrahams PHONE (A/C, No. Ext): 407-647-1616 E-MAIL ADDRESS: tabrahams@bmbinc.com FAX (A/C, No): 407-628-1635														
INSURED T & G Construction, Inc 800 SE 1st Street Lawton OK 73501	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Illinois Union Insurance Co.</td> <td>27960</td> </tr> <tr> <td>INSURER B : Charter Oak Fire Ins. Co.</td> <td>25615</td> </tr> <tr> <td>INSURER C : Travelers Property Casualty Co of Amer</td> <td>25674</td> </tr> <tr> <td>INSURER D : Travelers Indemnity Company</td> <td>25658</td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Illinois Union Insurance Co.	27960	INSURER B : Charter Oak Fire Ins. Co.	25615	INSURER C : Travelers Property Casualty Co of Amer	25674	INSURER D : Travelers Indemnity Company	25658	INSURER E :		INSURER F :	
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INSURER E :															
INSURER F :															

COVERAGES

CERTIFICATE NUMBER: 1637679023

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☒ LOC OTHER:	Y	Y	DT-CO-7R376306-COF-23	2/1/2023	2/1/2024	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COM/OP AGG \$ 4,000,000 \$
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	Y	Y	810-7R562140-23-26-G	2/1/2023	2/1/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 10,000			CUP9S540363-23-NF	2/1/2023	2/1/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y	N	UB7R572587-23-26-G	2/1/2023	2/1/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Pollution Liability			CPMG28116251004	6/1/2022	6/1/2024	Per Occurrence 1,000,000 Aggregate 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The following policy provisions and/or endorsements form part of the policies of insurance represented by this certificate of insurance. The terms contained in the policies and/or endorsements supersede the representations made herein. Electronic copies of the policy provisions and/or endorsements listed below are available by emailing: Contact Person Shown Above.

General Liability:
 Blanket additional insured Ongoing Operations per form #CG D2 46 04 19
 Blanket additional insured Completed Operations per form #CG D2 46 04 19
 Blanket waiver of subrogation per form #CG D3 1602 19
 See Attached...

CERTIFICATE HOLDER**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Westwin Elements Inc.
 7 NE Sixth Street, Unit 100
 Oklahoma City OK 73104

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ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY Bowen, Miclette & Britt of Florida, LLC		NAMED INSURED T & G Construction, Inc 800 SE 1st Street Lawton OK 73501
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

Blanket primary/non-contributory per form #CGT100 02/19

Automobile:

Blanket additional insured per form #CA F13 35 02 15
 Blanket waiver of subrogation per form #CA F13 50 02 15
 Blanket primary/non-contributory per form #CA T4 99 02 16

Worker's Compensation:

Blanket waiver of subrogation per form #WC 00 03 13

Umbrella:

Blanket additional insured per form #EU00010716
 Blanket waiver of subrogation per form #EU00010716
 Blanket primary/non-contributory per form #EU 00 01 07 16

Project No. 23PP01

Lawton Economic Development Authority, a public trust, its board members, officers, employees, and agents 212 S.W. 9th Street Lawton, OK 73501, City of Lawton, a municipal corporation, its elected officials, officers, employees, and agents 212 S.W. 9th Street Lawton, OK 73501, and Comanche County Industrial Development Authority, a public trust, its board members, officers, employees, and agents P.O. Box 2334 Lawton, OK 73502 are included as additional insured only when required by written contract.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED
(Includes Products-Completed Operations If Required By Contract)

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

PROVISIONS

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that you agree in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only:

- a. With respect to liability for "bodily injury" or "property damage" that occurs, or for "personal injury" caused by an offense that is committed, subsequent to the signing of that contract or agreement and while that part of the contract or agreement is in effect; and
- b. If, and only to the extent that, such injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the written contract or agreement applies. Such person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

The insurance provided to such additional insured is subject to the following provisions:

- a. If the Limits of Insurance of this Coverage Part shown in the Declarations exceed the minimum limits required by the written contract or agreement, the insurance provided to the additional insured will be limited to such minimum required limits. For the purposes of determining whether this limitation applies, the minimum limits required by the written contract or agreement will be considered to include the minimum limits of any Umbrella or Excess liability coverage required for the additional insured by that written contract or agreement. This provision will not increase the limits of insurance described in Section III – Limits Of Insurance.
- b. The insurance provided to such additional insured does not apply to:

- (1) Any "bodily injury", "property damage" or "personal injury" arising out of the providing, or failure to provide, any professional architectural, engineering or surveying services, including:

- (a) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or the preparing, approving, or failing to prepare or approve, drawings and specifications; and

- (b) Supervisory, inspection, architectural or engineering activities.

- (2) Any "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the written contract or agreement specifically requires you to provide such coverage for that additional insured during the policy period.

- c. The additional insured must comply with the following duties:

- (1) Give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:

- (a) How, when and where the "occurrence" or offense took place;
- (b) The names and addresses of any injured persons and witnesses; and
- (c) The nature and location of any injury or damage arising out of the "occurrence" or offense.

- (2) If a claim is made or "suit" is brought against the additional insured:

COMMERCIAL GENERAL LIABILITY

- (a) Immediately record the specifics of the claim or "suit" and the date received; and
 - (b) Notify us as soon as practicable and see to it that we receive written notice of the claim or "suit" as soon as practicable.
- (3) Immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
- (4) Tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover such additional insured for a loss we cover. However, this condition does not affect whether the insurance provided to such additional insured is primary to other insurance available to such additional insured which covers that person or organization as a named insured as described in Paragraph 4., Other Insurance, of Section IV – Commercial General Liability Conditions.

GENERAL PURPOSE ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED ENTITY – NOTICE OF CANCELLATION PROVIDED BY US
(IL T4 05 05 19)

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:
ALL COVERAGE PARTS INCLUDED IN THIS POLICY

SCHEDULE

PERSON OR ORGANIZATION:

ANY PERSON OR ORGANIZATION TO WHOM YOU HAVE AGREED IN A WRITTEN CONTRACT THAT
NOTICE OF CANCELLATION OF THIS POLICY WILL BE GIVEN, BUT ONLY IF:

1. YOU SEND US A WRITTEN REQUEST TO PROVIDE SUCH NOTICE, INCLUDING THE NAME
AND ADDRESS OF SUCH PERSON OR ORGANIZATION, AFTER THE FIRST NAMED INSURED
RECEIVES NOTICE FROM US OF THE CANCELLATION OF THIS POLICY; AND

2. WE RECEIVE SUCH WRITTEN REQUEST AT LEAST 14 DAYS BEFORE THE BEGINNING OF
THE APPLICABLE NUMBER OF DAYS SHOWN IN THIS ENDORSEMENT.

ADDRESS:

THE ADDRESS FOR THAT PERSON OR ORGANIZATION INCLUDED IN SUCH WRITTEN REQUEST
FROM YOU TO US.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED PERSON OR ORGANIZATION – NOTICE OF CANCELLATION PROVIDED BY US

This endorsement modifies insurance provided under the following:
ALL COVERAGE PARTS INCLUDED IN THIS POLICY

	SCHEDULE	
CANCELLATION:	Number of Days Notice:	30

PERSON OR

ORGANIZATION: ANY PERSON OR ORGANIZATION TO WHOM YOU HAVE AGREED IN A WRITTEN CONTRACT THAT NOTICE OF CANCELLATION OF THIS POLICY WILL BE GIVEN, BUT ONLY IF:

1. YOU SEND US A WRITTEN REQUEST TO PROVIDE SUCH NOTICE, INCLUDING THE NAME AND ADDRESS OF SUCH PERSON OR ORGANIZATION, AFTER THE FIRST NAMED INSURED RECEIVES NOTICE FROM US OF THE CANCELLATION OF THIS POLICY; AND
2. WE RECEIVE SUCH WRITTEN REQUEST AT LEAST 14 DAYS BEFORE THE BEGINNING OF THE APPLICABLE NUMBER OF DAYS SHOWN IN THIS SCHEDULE.

ADDRESS:

THE ADDRESS FOR THAT PERSON OR ORGANIZATION INCLUDED IN SUCH WRITTEN REQUEST FROM YOU TO US.

PROVISIONS

If we cancel this policy for any legally permitted reason other than nonpayment of premium, and a number of days is shown for Cancellation in the Schedule above, we will mail notice of cancellation to the person or organization shown in such Schedule. We will mail such notice to the address shown in the Schedule above at least the number of days shown for Cancellation in such Schedule before the effective date of cancellation.

This Project-Specific Subcontractor Services Agreement ("Agreement") is made and entered into this 11th day of November, 2023 by and between WESTWIN ELEMENTS INC., a Delaware corporation registered to do business in Oklahoma, with offices at 7 NE Sixth Street Unit 100 Oklahoma City, OK 73104 (hereinafter referred to as "Westwin") and,

T&G Construction, Inc., a Oklahoma corporation,
with offices at 800 SE 1st Street, Lawton, OK 73501 (hereinafter referred to as "Contractor") for Work (as defined below) on Project No. 23PP01.

In consideration of the mutual covenants of the parties, it is hereby agreed as follows:

1. THE WORK Contractor shall use its diligent efforts to perform the "Work," as described in Exhibit A, in an expeditious manner consistent with the Contract Documents. Contractor shall provide all labor, materials, equipment, and services necessary to complete the Work, and in full accord with and reasonably inferable from the Contract Documents. The Work shall be completed in accordance with Exhibit E, "Estimated Budget and Schedule of the Work." The time allotted in Exhibit E shall define the "Contract Time."

2. COMPENSATION Westwin shall compensate Contractor for Work performed on the following basis:

Contractor costs are reimbursable on a Time and Material arrangement in accordance with Exhibit D.

3. EXHIBITS The following attached exhibits are made part of this Agreement:

EXHIBIT A: General Description of the Work, [] page/s.

EXHIBIT B: Contract Documents, [18] page/s.

EXHIBIT C: Progress Schedule, [] page/s.

EXHIBIT D: Contractor's Rate Sheet.

EXHIBIT E: Contractor's Billing Process

EXHIBIT F: Contractor's Certificate of Liability Insurance.

4. PARTIES' RELATIONSHIP AND ETHICS Each Party agrees to proceed on the basis of mutual trust, good faith, and fair dealing. Each shall perform its obligations with integrity. Each shall (a) avoid any conflicts of interest; (b) promptly disclose to the other Party any that may arise; and (c) warrant that it has not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including its agents, officers, and employees, subcontractors, or others to secure preferential treatment. Nothing in this Agreement will create a fiduciary relationship.

5. CONTRACTOR'S RESPONSIBILITIES Contractor shall be responsible for supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized, unless the Contract Documents give other specific instructions.

5.1. Except for permits and fees that are the responsibility of Westwin pursuant to this Agreement, Contractor shall obtain and pay for all necessary Oklahoma Contractor licenses, and renewals pertaining to the Work.

5.2. Contractor shall pay all applicable taxes for the Work provided by Contractor.

5.3. If Westwin elects to perform work at the geographical area of the Project ("Worksite") directly or by others retained by Westwin, the Parties shall coordinate the activities of all forces at the Worksite and shall agree upon fair and reasonable schedules and operational procedures for Worksite activities. Westwin shall require each separate contractor to cooperate with and to assist with the coordination of activities and the review of construction schedules and operations.

5.4. In order to facilitate its responsibilities, before starting the Work, Contractor shall examine and compare the drawings and specifications with information furnished by Westwin pursuant to §6.1; relevant field measurements made by Contractor; and any visible conditions at the Worksite affecting the Work.

5.5. COMPLIANCE WITH LAWS Contractor shall comply with all laws. Contractor shall be liable to Westwin for all loss, cost, or expense, attributable to any negligent acts or omissions by Contractor, its employees, subcontractors, suppliers, and agents for failure to comply with laws, including fines, penalties, or corrective measures. The estimated Cost of the Work and Contractor's Fee, shall be equitably adjusted for laws, including taxes, impacting cost or time, enacted after bids are received or negotiations concluded.

5.6. WARRANTY

5.6.1. Contractor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. Contractor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by Westwin or others retained by Westwin, or abuse.

5.6.2. If, before the Date of Substantial Completion and within one year after the Date of Substantial Completion of the Work, any portion of the Work is found to be not in conformance with the Contract Documents ("Defective Work"), Westwin shall promptly notify Contractor in writing. Unless Westwin provides written acceptance of the condition, Contractor shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible.

5.7. SAFETY Contractor shall have overall responsibility for safety precautions and programs in the performance of the Work, except that Contractor's subcontractors shall also be responsible for the safety of persons or property in the performance of their work, and for compliance with the provisions of laws. Contractor shall prevent against injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite; materials and equipment stored at on-site or off-site locations for use in the Work; and property located at the Worksite and adjacent to Work areas, whether or not the property is part of the Work.

5.8. HAZARDOUS MATERIALS A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or clean-up. Contractor shall not be obligated to commence or continue work until any Hazardous Material discovered at the Worksite has been removed, or rendered or determined to be harmless by Westwin as certified by an independent testing laboratory and approved by the appropriate government agency. Westwin shall be deemed the generator of all preexisting Hazardous Material and shall indemnify, defend, and hold harmless Contractor from all cost, liability, and damages arising from or related thereto. If Contractor incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, Contractor shall be entitled to an equitable adjustment in the Contract Price and Contract Time.

5.9. MATERIALS BROUGHT TO THE WORKSITE Contractor shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Contractor in accordance with the Contract Documents and used or consumed in the performance of the Work.

5.10. SUBMITTALS Contractor shall submit to Westwin and Design Professional for review and approval all shop drawings, samples, product data, and similar submittals required by the Contract Documents. Submittals may be submitted in electronic form. Contractor shall be responsible to Westwin for the accuracy and conformity of its submittals to the Contract Documents. Contractor shall prepare and deliver its submittals to Westwin and Design Professional in a manner consistent with the Schedule of the Work and in such time and sequence so as not to delay the performance of the Work or the work of Westwin and others retained by Westwin. Contractor submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. An approval of a Contractor submittal conforms the Contract Documents including any deviation, substitution, or change. To the extent a change, deviation, or substitution causes an impact to the compensation or Contract Time, such approval shall be memorialized in a Change Order no later than seven (7) Days following approval. Westwin shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay. Contractor shall perform all Work strictly in accordance with approved submittals. Westwin's approval does not relieve Contractor from responsibility for Defective Work resulting from errors or omissions in not following the approved shop drawings.

- 5.11. **CONCEALED OR UNKNOWN SITE CONDITIONS** If a condition encountered at the Worksite is (a) a subsurface or other physical condition which is materially different from those indicated in the Contract Documents, or (b) an unusual and unknown physical condition which is materially different from conditions ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents, Contractor shall stop Work and give prompt written notice of the condition to Westwin and Design Professional. Westwin shall investigate and then issue an Interim Directive specifying the extent to which Westwin agrees that a concealed or unknown condition exists and directing how Contractor is to proceed. Contractor shall not be required to perform any Work relating to the condition without the written mutual agreement of the Parties.
- 5.12. **CUTTING, FITTING, AND PATCHING** Contractor shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of Westwin or others retained by Westwin.
- 5.13. **CLEANING UP** Contractor shall regularly remove debris and waste materials at the Worksite resulting from the Work. Before discontinuing Work in an area, Contractor shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Contractor shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Contractor shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.
6. **WESTWIN'S RESPONSIBILITIES** Any information or services to be provided by Westwin shall be provided in a timely manner.
- 6.1. Not used.
- 6.2. **WORKSITE INFORMATION** To the extent Westwin has obtained, or is required to obtain the following Worksite information, then Westwin shall provide Contractor the following:
- 6.2.1. information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data, or drawings depicting existing conditions, subsurface, and environmental studies, reports, and investigations;
- 6.2.2. tests, inspections, and other reports dealing with environmental matters, hazardous material and other existing conditions, including structural, mechanical, and chemical tests required by the Contract Documents or by law;
- 6.2.3. the limits of Pollution Liability Insurance covering the Worksite held by Westwin; and
- 6.2.4. any other information or services requested in writing by Contractor that are relevant to Contractor's performance of the Work and under Westwin's control.
- 6.3. **MECHANICS AND CONSTRUCTION LIEN INFORMATION** Within seven (7) Days after receiving Contractor's written request, Westwin shall provide Contractor with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include Westwin's interest in the real property on which the Project is located and the record legal title.
- 6.4. **BUILDING PERMIT, FEES, AND APPROVALS** Except for Oklahoma Contractor's licenses required of Contractor pursuant to this Agreement, Westwin shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the development, construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.
- 6.5. **ELECTRONIC DOCUMENTS** If Westwin requires that Westwin, Design Professional, and Contractor exchange documents and data in electronic or digital form, before any such exchange, the Parties and Design Professional shall agree on and follow a written protocol governing all exchanges in accordance with Contractor's project controls and administration processes.
7. **SUBCONTRACTS** Contractor agrees to bind every subcontractor and supplier (and require every subcontractor to so bind its subcontractors and suppliers) to this Agreement and the Contract Documents as they apply to the subcontractor's and supplier's portions of the Work.

8. COST OF THE WORK

Westwin agrees to pay Contractor as defined in this article.

- 8.1. Labor wages directly employed by Contractor in the performing of the Work;
- 8.2. Salaries of Contractor's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and supervisory employees from the principal or branch office as mutually agreed by the Parties in writing;
- 8.3. Employee benefits and taxes including but not limited to workers' compensation, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by law, labor agreements, or paid under Contractor's standard personnel policy, insofar as such costs are paid to employees of Contractor who are included in the Cost of the Work, above;
- 8.4. Reasonable transportation, travel, hotel, of Contractor's personnel incurred in connection with the work when preapproved in advance by Westwin Elements Construction Manager;
- 8.5. All materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by Westwin, transportation, storage, and handling;
- 8.6. Payments made by Contractor to subcontractors for performed Work;
- 8.7. Transportation and maintenance of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers that are used or consumed in the performance of the Work.
- 8.8. Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from Contractor or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed in accordance with Exhibit D. Rentals from Contractor or its affiliates, subsidiaries, or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to the value of the piece of equipment;
- 8.9. The Cost to cover the premiums for all insurance and surety bonds which Contractor is required to procure or deems necessary, and approved by Westwin, including any additional premium incurred as a result of any increase in the Cost of the Work;
- 8.10. Sales, use, gross receipts, or other taxes, tariffs, or duties related to the Work for which Contractor is liable;
- 8.11. Permits, fees, licenses, tests, and royalties;
- 8.12. Losses, expenses, or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work before expiration of the one-year period following the Date of Substantial Completion, provided that such losses, expenses, damages, or corrective work did not arise from Contractor's gross negligence;
- 8.13. Equipping, operating, maintaining, and demobilizing the field office; including temporary shut down and remobilizing costs.
- 8.14. Water, power, and fuel costs necessary for the Work;
- 8.15. Removal of all non-hazardous substances, debris, and waste materials;
- 8.16. Costs incurred due to an emergency affecting the safety of persons or property;
- 8.17. Legal, mediation, and arbitration fees and costs, other than those arising from disputes between the Parties, reasonably and properly resulting from Contractor's performance of the Work.

9. PAYMENT

9.1. **PROGRESS PAYMENTS** Contractor shall submit to Westwin application for payments in accordance with Exhibit "E".

9.2. **ADJUSTMENT OF CONTRACTOR'S PAYMENT APPLICATION** Westwin may adjust or reject a payment application, in whole or in part, as may reasonably be necessary to protect Westwin from loss or damage based upon the following, to the extent that Contractor is responsible for such under this Agreement:

9.2.1. Contractor's repeated failure to perform the Work as required by the Contract Documents;

9.2.2. loss or damage for which Westwin may be liable arising out of or relating to this Agreement and caused by Contractor to Westwin or to others retained by Westwin to whom Westwin may be liable;

9.2.3. Contractor's failure to properly pay subcontractors or suppliers in connection with the Work following receipt of such payment from Westwin, for that portion of the Work or for supplies, provided that Westwin is making payments to Contractor in accordance with this Agreement;

9.2.4. rejected or Defective Work not corrected in a timely fashion; and

9.2.5. unless arising from Westwin's non-payment for the performance of the Work, uninsured third party claims involving Contractor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Contractor furnishes Westwin with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment which is sufficient to discharge such claims if established.

No later than three (3) Days after receipt of an application for payment, Westwin shall give written notice to Contractor disapproving or nullifying it or a portion of it, specifying the reasons for the disapproval or nullification.

9.3. **PAYMENT DELAY** If for any reason not the fault of Contractor, Contractor does not receive a progress payment from Westwin within seven (7) Days after the time such payment is due, Contractor, upon giving seven (7) Days' written notice to Westwin, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to Contractor has been received, including interest for late payment.

9.4. **SUBSTANTIAL COMPLETION** When Substantial Completion of the Work or a designated portion has been achieved, Contractor shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, and the respective responsibilities of the Parties for interim items such as security, maintenance, utilities, insurance, and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by Contractor to Westwin for written acceptance of responsibilities assigned in the Certificate. Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion. For this industrial project, Substantial Completion shall occur on mechanical completion of the Work.

9.5. **FINAL COMPLETION** When final completion has been achieved, Contractor shall prepare for Westwin's acceptance a final application for payment stating that to the best of Contractor's knowledge, and based on Westwin's inspections, the Work has reached final completion in accordance with the Contract Documents.

9.5.1. Final payment shall be made to Contractor within fifteen (15) Days after Contractor has submitted a complete and accurate application for final payment and the following submissions:

9.5.1.1. an affidavit declaring any indebtedness connected with the Work, to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber Westwin's property;

9.5.1.2. as-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents;

9.5.1.3. release of any liens, conditioned on final payment being received;

9.5.1.4. consent of any surety, if applicable; and

9.5.1.5. any outstanding known and unreported accidents or injuries experienced by Contractor or its subcontractors at the Worksite.

9.6. Claims not reserved by Westwin in writing with the making of final payment shall be waived except for claims relating to liens or similar encumbrances, warranties, Defective Work, and latent defects. Unless Contractor

provides written identification of unsettled claims known to Contractor at the time of making application for final payment, acceptance of final payment constitutes a waiver of such claims.

9.7. **LATE PAYMENT** Payments due but unpaid shall bear interest at the statutory rate prevailing at the place of the Project from the date payment is due.

10. INDEMNITY

10.1. To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Westwin, Westwin's officers, directors, members, consultants, agents, and employees ("Indemnitees") from all claims for bodily injury and property damage, other than to the Work itself and other property insured under §11.3, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of the Work but only to the extent caused by the negligent or intentional wrongful acts or omissions of Contractor, subcontractors, suppliers, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Contractor shall be entitled to reimbursement of any defense costs paid above Contractor's percentage of liability for the underlying claim to the extent provided in the section immediately below.

10.2. To the fullest extent permitted by law, Westwin shall indemnify and hold harmless Contractor, its officers, directors, or members, subcontractors, suppliers, or anyone employed directly or indirectly by any of them, or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured under §11.3, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of work by Westwin, Design Professional, or others retained by Westwin, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Westwin, Design Professional, or others retained by Westwin. Westwin shall be entitled to reimbursement of any defense costs paid above Westwin's percentage of liability for the underlying claim to the extent provided in the section immediately above.

10.3. In any and all claims against the Indemnitees by any employee of Contractor, anyone directly or indirectly employed by Contractor, or anyone for whose acts Contractor may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor under workers' compensation acts, disability benefit acts, or other employment benefit acts.

10.4. As part of the consideration for entering this Agreement, the parties agree that Contractor must have a hard dollar stop-loss on liability. Therefore, in addition to any funds actually received from insurance, Contractor may never be liable to Westwin or any other party claiming hereunder or based on this Agreement for more than 25% of the Contract Price, regardless of the theory of law pleaded or the type of damages claimed, for claims known or unknown, past, present, or future, accrued or unaccrued, of any sort whatsoever.

11. INSURANCE

11.1. Before commencing the Work and as a condition precedent to payment, Contractor shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, Commercial General Liability Insurance (CGL), and an Umbrella Insurance Policy. If applicable, Contractor shall also procure and maintain in force Pollution Liability Insurance or Professional Liability Insurance. The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. Contractor shall maintain completed operations liability insurance for one year after Substantial Completion or as required by the Contract Documents, whichever is longer. Contractor's Employers' Liability, Business Automobile Liability, and CGL policies shall be written with at least the following limits of liability:

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11.1.1. Employers' Liability Insurance:

- a. \$1,000,000 bodily injury by accident per accident;
- b. \$1,000,000 bodily injury by disease policy limit;
- c. \$1,000,000 bodily injury by disease per employee.

11.1.2. Business Automobile Liability Insurance: \$1,000,000 per accident.

11.1.3. CGL Insurance:

- a. \$1,000,000 per occurrence;
- b. \$3,000,000 general aggregate;
- c. \$1,000,000 products/completed operations aggregate;
- d. \$1,000,000 personal and advertising injury limit.

11.1.4. Umbrella Policy: in the amount of \$5,000,000.00

11.2. Employers' Liability, Business Automobile Liability, and CGL coverage required under this article may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella liability policies. Contractor shall maintain in effect all insurance coverage required in this article with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If Contractor fails to obtain or maintain any insurance coverage required under this Agreement, Westwin may purchase such coverage and charge the expense to Contractor, or terminate this Agreement.

To the extent commercially available to Contractor and its current insurance company, insurance policies required under §11.1 shall contain a provision that the insurance company or its designee must give Westwin written notice transmitted in paper or electronic format: (a) 30 Days before coverage is nonrenewed by the insurance company, and (b) within 10 Business Days after cancellation of coverage by the insurance company. Before commencing the Work and upon renewal or replacement of the insurance policies, Contractor shall furnish Westwin with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under §11.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Contractor shall give Westwin prompt written notice upon actual or constructive knowledge of such condition.

11.3. PROPERTY INSURANCE

Westwin shall obtain and maintain a Builder's Risk Policy, with a maximum deductible of \$ 0.00 per occurrence, upon the entire Project for the full cost of replacement at the time of loss, including existing structures. This insurance shall also: (a) name Contractor, subcontractors, sub-subcontractors, and suppliers as insureds; (b) be written in such form as to cover all risks of physical loss except those specifically excluded by the policy. In addition, this insurance shall insure at least against and not exclude:

11.3.1. the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of the Contractor) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse however caused;

11.3.2. damage resulting from defective design, workmanship, or material;

11.3.3. coverage extension for damage to existing buildings, plant, or other structures at the Worksite, when the Project is contained within or attached to such existing buildings, plant or structures. Coverage shall be to the extent loss or damage arises out of Contractor's activities or operations at the Project;

11.3.4. equipment breakdown, including mechanical breakdown, electrical injury to electrical devices, explosion of steam equipment, and damage to steam equipment caused by a condition within the equipment;

11.3.5. testing coverage for running newly installed machinery and equipment at or beyond the specified limits of their capacity to determine whether they are fit for their intended use; and

11.3.6. physical loss resulting from terrorism.

11.3.7. The Party that is the primary cause of a Builder's Risk Policy claim shall be responsible for any deductible amounts or coinsurance payments. If no Party is the primary cause of a claim, then the Party responsible to obtain and maintain the Builder's Risk Policy shall be responsible for the deductible amounts or coinsurance payments. This policy shall provide for a waiver of subrogation. This insurance shall remain in effect until final payment has been made or until no person or entity other than Westwin has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until Contractor has secured the consent of the insurance company or companies providing the coverage required in this subsection. Before commencing the Work, Westwin shall provide a copy of the property policy or policies obtained in compliance with §11.3.

11.3.8. Westwin shall give written notice to Contractor and Design Professional before the Work is commenced and provide a copy of the property policy or policies obtained in compliance with §11.3. Westwin shall then provide insurance to protect its interests and the interests of Contractor, subcontractors, suppliers, and sub-subcontractors. If Westwin gives written notice of its intent to purchase property insurance required by this Agreement and fails to purchase or maintain such insurance, Westwin shall be responsible for costs reasonably attributed to such failure.

- 11.3.9. The Parties waive all rights against each other and their respective employees, agents, contractors, subcontractors and sub-subcontractors, suppliers, and design professionals for damages caused by risks covered by the property insurance except such rights as they may have to the proceeds of the insurance.
- 11.3.10. To the extent of the limits of Contractor's CGL specified in §11.1, Contractor shall indemnify and hold harmless Westwin against any and all liability, claims, demands, damages, losses, and expenses, including reasonable attorneys' fees, in connection with or arising out of any damage or alleged damage to any of Westwin's existing adjacent property that may arise from the performance of the Work, to the extent caused by the negligent or intentionally wrongful acts or omissions of Contractor, subcontractor, supplier, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.
- 11.3.11. POLLUTION LIABILITY INSURANCE Contractor is not required to maintain pollution liability insurance. Contractor's general liability policy shall include an endorsement to cover accidental spills.
- 11.4. ADDITIONAL LIABILITY COVERAGE Westwin ☐ shall/ ☐ shall not require Contractor to purchase and maintain liability coverage. If required, Contractor will provide:
- 11.4.1. ADDITIONAL INSURED. Westwin shall be named as an additional insured on Contractor's CGL insurance specified, for on-going operations and completed operations, excess/umbrella liability, commercial automobile liability, and any required pollution liability, but only with respect to liability for bodily injury, property damage, or personal and advertising injury to the extent caused by the negligent acts or omissions of Contractor, or those acting on Contractor's behalf, in the performance of the Work for Westwin at the Worksite. Contractor's insurance shall be primary and non-contributory to any insurance available to the Additional Insureds. Any insurance available to the Additional Insured shall be excess and non-contributory.
- 11.4.2. OCP. Contractor shall provide an Westwins' and Contractors' Protective Liability Insurance ("OCP") policy with limits equal to the limits on CGL insurance specified, or limits as otherwise required by Westwin. Any documented additional cost in the form of a surcharge associated with procuring and maintaining coverage in accordance with this subsection shall be paid by Westwin directly, or as a Cost of the Work. Before commencing the Work, Contractor shall provide either a copy of the OCP policy, or a certificate and endorsement evidencing that Westwin has been named as an additional insured, as applicable.
12. BONDS Performance and Payment Bonds ☐ are/ ☐ are not required of Contractor.
13. MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for losses covered by insurance required by the Contract Documents, the Parties agree to waive all claims against each other for any consequential, special, or punitive damages that may arise out of or relate to this Agreement.
- 13.1. This article shall also apply to the termination of this Agreement and shall survive such termination. The Parties shall each require similar waivers in contracts with subcontractors and others retained for the project.
14. TERMINATION
- 14.1. NOTICE TO CURE A DEFAULT If Contractor persistently fails to supply enough qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work or fails to make prompt payment to its workers, subcontractors, or suppliers, disregards law or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, Contractor may be deemed in default. If Contractor fails to commence and to continue satisfactory correction of such default with diligence and promptness within seven (7) Days after written notification, then Westwin shall give Contractor a second written notice to correct the default within a three (3) Business Day period. If Contractor fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, Westwin, without prejudice to any other rights or remedies, shall have the right to take reasonable steps it deems necessary to correct deficiencies and charge the cost to Contractor, who shall be liable for such payments including attorneys' fees.
- 14.2. TERMINATION BY WESTWIN Upon expiration of the second notice for default period, Westwin may terminate this Agreement by written notice absent appropriate corrective action. Termination for default is in addition to any other remedies available to Westwin. Westwin shall make reasonable efforts to mitigate damages arising from Contractor default and shall promptly invoice Contractor for all amounts due.
- 14.3. TERMINATION BY CONTRACTOR Upon seven (7) Days' written notice to Westwin, Contractor may terminate this Agreement if the Work has been stopped for a thirty (30) Day period through no fault of Contractor.
- 14.3.1. In addition, upon seven (7) Days' written notice to Westwin, Contractor may terminate the Agreement if Westwin does any of the following: (a) assigns this Agreement over Contractor's reasonable objection; (b) fails to

pay Contractor in accordance with this Agreement and Contractor has stopped Work in compliance with this Agreement; or (c) otherwise materially breaches this Agreement.

14.3.2. Upon termination by Contractor pursuant to this Agreement, Contractor shall be entitled to recover from Westwin payment for all Work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs plus reasonable overhead and profit.

14.4. OBLIGATIONS ARISING BEFORE TERMINATION Even after termination, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred, or obligations arising before the termination date.

15. DISPUTE MITIGATION AND RESOLUTION

15.1. ADDITIONAL COST OR TIME Contractor shall give Westwin prompt written notice if the Estimated Budget or Contract Time is estimated to be exceeded.

15.2. WORK CONTINUANCE AND PAYMENT Contractor shall continue the Work and maintain the Schedule of Work during any dispute resolution proceedings. If Contractor continues to perform, Westwin shall continue to make payments in accordance with the Agreement.

15.3. DISPUTE MITIGATION THROUGH DIRECT DISCUSSIONS If a dispute arises out of or related to this Agreement or its breach, the Parties shall endeavor to settle the dispute through direct discussions. Within five (5) Business Days, the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions, shall conduct direct discussion and make a good faith effort to resolve such dispute.

15.4. BINDING DISPUTE RESOLUTION The Parties shall submit unresolved disputes to the binding dispute resolution procedure below:

ARBITRATION The Parties choose binding arbitration decided by arbitrator in accordance with the Construction Industry Arbitration Rules of the AAA then in effect. Arbitration will be used for any claim or dispute related to this Agreement. **EACH PARTY WAIVES THEIR RIGHT TO BE HEARD IN A COURT OF LAW**, with or without a jury. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. An arbitrator's award shall be final and binding upon the Parties, and judgment may be entered upon it in any court having jurisdiction.

15.5.1. COSTS The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

15.5.2. VENUE The Project location shall serve as the venue.

15.5.3. Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations. If, however, a state or federal court exercising jurisdiction over a timely filed claim or cause of action orders that the claim or cause of action be submitted to arbitration, the arbitration proceeding shall be deemed commenced as of the date the court action was filed, provided that the Party asserting the claim or cause of action files its demand for arbitration with the person or entity administering the arbitration within thirty (30) Days after the entry of such order.

16. MISCELLANEOUS

16.1. EXTENT OF AGREEMENT Except as expressly provided, this Agreement is for the exclusive benefit of the Parties and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

16.2. ASSIGNMENT Except as to the assignment of proceeds, neither Party shall assign its interest in this Agreement, in whole or in part, without the written consent of the other Party. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives.

16.3. GOVERNING LAW The law in effect at the location of the Project shall govern.

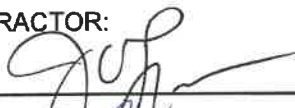
16.4. NOTICE Unless changed in writing, a Party's address indicated above ARTICLE 1 shall be used when delivering notice to a physical address. Except for Agreement termination and as otherwise specified in the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service.

16.5. JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms before execution. This Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

WESTWIN:

BY:  NAME: AJ Arends TITLE: Vice President WITNESS:
Ashlea Sartin NAME: Ashlea Sartin TITLE: Engineering Project Manager

CONTRACTOR:

BY:  NAME: JC Grayson TITLE: President WITNESS:
Keri L. Brammer NAME: Keri Brammer TITLE: Admin Assistant

ConsensusDocs 235 – Modified.

5.9. Bid Form – 103 Process Building Concrete Package Exhibit B

Item	Labor Cost	Equipment Cost	Material Cost	Subcontractor Cost	Subtotal
Base Bid					
Excavation					
Compacted Fill					
Grading					
Reinforcement					
Concrete					
Mobilization					
Demobilization					
As Built Drawings					
Total Base Bid					210,000.00

6. SUBMITTALS

6.1. The Owner's Engineer must receive and approve all required submittals prior to purchase or fabrication.

- Concrete Mix Design
- Any embedded materials

6.2. As-Built Drawings. The contractor is required to submit As-Built drawings for all disciplines described in Section 4 Items of Work.

6.3. Close-Out Documents

7. UNIT PRICING

7.1. It is understood that the Owner reserves the right to alter work without invalidating or canceling the contract. The Contractor shall provide the following Unit Prices for Additions or Deductions to the work:

7.2. Unit Price Form

Item Number	Unit	Item Description	Unit Price
1	CY	Unclassified Excavation	
2	CY	Footer Excavation	
3	CY	Compacted Structural Fill	
4	CY	Compacted Structural Aggregate	
5	CY	Concrete Forms	
6	SY	Vapor Barrier	
7	TON	Reinforcement	
8	CY	Concrete - Footers	600.00
9	SF	Concrete – Finished Slab 6" Thick	19.66



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/11/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Bowen, Milette & Britt of Florida, LLC 1020 N. Orlando Avenue Suite #200 Maitland FL 32751	CONTACT NAME: Tayley Abrahams PHONE (A/C, No, Ext): 407-647-1616 FAX (A/C, No): 407-628-1635 E-MAIL ADDRESS: tabrahams@bmbinc.com														
INSURED T & G Construction, Inc 800 SE 1st Street Lawton OK 73501	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Illinois Union Insurance Co.</td> <td>27960</td> </tr> <tr> <td>INSURER B : Charter Oak Fire Ins. Co.</td> <td>25615</td> </tr> <tr> <td>INSURER C : Travelers Property Casualty Co of Amer</td> <td>25674</td> </tr> <tr> <td>INSURER D : Travelers Indemnity Company</td> <td>25658</td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Illinois Union Insurance Co.	27960	INSURER B : Charter Oak Fire Ins. Co.	25615	INSURER C : Travelers Property Casualty Co of Amer	25674	INSURER D : Travelers Indemnity Company	25658	INSURER E :		INSURER F :	
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COVERAGES**CERTIFICATE NUMBER:** 1637679023**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☒ LOC OTHER:	Y	Y	DT-CO-7R376306-COF-23	2/1/2023	2/1/2024	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	Y	Y	810-7R562140-23-26-G	2/1/2023	2/1/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 10,000			CUP9S540363-23-NF	2/1/2023	2/1/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y	N/A	UB7R572587-23-26-G	2/1/2023	2/1/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Pollution Liability			CPMG28116251004	6/1/2022	6/1/2024	Per Occurrence 1,000,000 Aggregate 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The following policy provisions and/or endorsements form part of the policies of insurance represented by this certificate of insurance. The terms contained in the policies and/or endorsements supersede the representations made herein. Electronic copies of the policy provisions and/or endorsements listed below are available by emailing: Contact Person Shown Above.

General Liability:

Blanket additional insured Ongoing Operations per form #CG D2 46 04 19
 Blanket additional insured Completed Operations per form #CG D2 46 04 19
 Blanket waiver of subrogation per form #CG D3 1602 19
 See Attached...

CERTIFICATE HOLDER

Westwin Elements Inc. 7 NE Sixth Street, Unit 100 Oklahoma City OK 73104	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY Bowen, Miclette & Britt of Florida, LLC		NAMED INSURED T & G Construction, Inc 800 SE 1st Street Lawton OK 73501
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

Blanket primary/non-contributory per form #CGT100 02/19

Automobile:

Blanket additional insured per form #CA F13 35 02 15
 Blanket waiver of subrogation per form #CA F13 50 02 15
 Blanket primary/non-contributory per form #CA T4 99 02 16

Worker's Compensation:

Blanket waiver of subrogation per form #WC 00 03 13

Umbrella:

Blanket additional insured per form #EU00010716
 Blanket waiver of subrogation per form #EU00010716
 Blanket primary/non-contributory per form #EU 00 01 07 16

Project No. 23PP01

Lawton Economic Development Authority, a public trust, its board members, officers, employees, and agents 212 S.W. 9th Street Lawton, OK 73501, City of Lawton, a municipal corporation, its elected officials, officers, employees, and agents 212 S.W. 9th Street Lawton, OK 73501, and Comanche County Industrial Development Authority, a public trust, its board members, officers, employees, and agents P.O. Box 2334 Lawton, OK 73502 are included as additional insured only when required by written contract.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED
(Includes Products-Completed Operations If Required By Contract)

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

PROVISIONS

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that you agree in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only:

- a. With respect to liability for "bodily injury" or "property damage" that occurs, or for "personal injury" caused by an offense that is committed, subsequent to the signing of that contract or agreement and while that part of the contract or agreement is in effect; and
- b. If, and only to the extent that, such injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the written contract or agreement applies. Such person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

The insurance provided to such additional insured is subject to the following provisions:

- a. If the Limits of Insurance of this Coverage Part shown in the Declarations exceed the minimum limits required by the written contract or agreement, the insurance provided to the additional insured will be limited to such minimum required limits. For the purposes of determining whether this limitation applies, the minimum limits required by the written contract or agreement will be considered to include the minimum limits of any Umbrella or Excess liability coverage required for the additional insured by that written contract or agreement. This provision will not increase the limits of insurance described in Section III – Limits Of Insurance.
- b. The insurance provided to such additional insured does not apply to:

(1) Any "bodily injury", "property damage" or "personal injury" arising out of the providing, or failure to provide, any professional architectural, engineering or surveying services, including:

- (a) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or the preparing, approving, or failing to prepare or approve, drawings and specifications; and
- (b) Supervisory, inspection, architectural or engineering activities.

(2) Any "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the written contract or agreement specifically requires you to provide such coverage for that additional insured during the policy period.

c. The additional insured must comply with the following duties:

(1) Give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:

- (a) How, when and where the "occurrence" or offense took place;
- (b) The names and addresses of any injured persons and witnesses; and
- (c) The nature and location of any injury or damage arising out of the "occurrence" or offense.

(2) If a claim is made or "suit" is brought against the additional insured:

COMMERCIAL GENERAL LIABILITY

- (a) Immediately record the specifics of the claim or "suit" and the date received; and
 - (b) Notify us as soon as practicable and see to it that we receive written notice of the claim or "suit" as soon as practicable.
- (3) Immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
- (4) Tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover such additional insured for a loss we cover. However, this condition does not affect whether the insurance provided to such additional insured is primary to other insurance available to such additional insured which covers that person or organization as a named insured as described in Paragraph 4., Other Insurance, of Section IV – Commercial General Liability Conditions.

GENERAL PURPOSE ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED ENTITY – NOTICE OF CANCELLATION PROVIDED BY US
(IL T4 05 05 19)

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:
ALL COVERAGE PARTS INCLUDED IN THIS POLICY

SCHEDULE

PERSON OR ORGANIZATION:

ANY PERSON OR ORGANIZATION TO WHOM YOU HAVE AGREED IN A WRITTEN CONTRACT THAT
NOTICE OF CANCELLATION OF THIS POLICY WILL BE GIVEN, BUT ONLY IF:

1. YOU SEND US A WRITTEN REQUEST TO PROVIDE SUCH NOTICE, INCLUDING THE NAME
AND ADDRESS OF SUCH PERSON OR ORGANIZATION, AFTER THE FIRST NAMED INSURED
RECEIVES NOTICE FROM US OF THE CANCELLATION OF THIS POLICY; AND
2. WE RECEIVE SUCH WRITTEN REQUEST AT LEAST 14 DAYS BEFORE THE BEGINNING OF
THE APPLICABLE NUMBER OF DAYS SHOWN IN THIS ENDORSEMENT.

ADDRESS:

THE ADDRESS FOR THAT PERSON OR ORGANIZATION INCLUDED IN SUCH WRITTEN REQUEST
FROM YOU TO US.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED PERSON OR ORGANIZATION – NOTICE OF CANCELLATION PROVIDED BY US

This endorsement modifies insurance provided under the following:

ALL COVERAGE PARTS INCLUDED IN THIS POLICY

SCHEDULE

CANCELLATION:

Number of Days Notice:

30

PERSON OR

ORGANIZATION: ANY PERSON OR ORGANIZATION TO WHOM YOU HAVE AGREED IN A WRITTEN CONTRACT THAT NOTICE OF CANCELLATION OF THIS POLICY WILL BE GIVEN, BUT ONLY IF:

1. YOU SEND US A WRITTEN REQUEST TO PROVIDE SUCH NOTICE, INCLUDING THE NAME AND ADDRESS OF SUCH PERSON OR ORGANIZATION, AFTER THE FIRST NAMED INSURED RECEIVES NOTICE FROM US OF THE CANCELLATION OF THIS POLICY; AND
2. WE RECEIVE SUCH WRITTEN REQUEST AT LEAST 14 DAYS BEFORE THE BEGINNING OF THE APPLICABLE NUMBER OF DAYS SHOWN IN THIS SCHEDULE.

ADDRESS:

THE ADDRESS FOR THAT PERSON OR ORGANIZATION INCLUDED IN SUCH WRITTEN REQUEST FROM YOU TO US.

PROVISIONS

If we cancel this policy for any legally permitted reason other than nonpayment of premium, and a number of days is shown for Cancellation in the Schedule above, we will mail notice of cancellation to the person or organization shown in such Schedule. We will mail such notice to the address shown in the Schedule above at least the number of days shown for Cancellation in such Schedule before the effective date of cancellation.

This Project-Specific Subcontractor Services Agreement ("Agreement") is made and entered into this 7th day of November, 2023 by and between WESTWIN ELEMENTS INC., a Delaware corporation registered to do business in Oklahoma, with offices at 7 NE Sixth Street Unit 100 Oklahoma City, OK 73104 (hereinafter referred to as "Westwin") and, T&G Construction, Inc., a Oklahoma corporation, with offices at 800 SE 1st Street, Lawton, OK 73501 (hereinafter referred to as "Contractor") for Work (as defined below) on Project No. 23PP01.

In consideration of the mutual covenants of the parties, it is hereby agreed as follows:

1. THE WORK Contractor shall use its diligent efforts to perform the "Work," as described in Exhibit A, in an expeditious manner consistent with the Contract Documents. Contractor shall provide all labor, materials, equipment, and services necessary to complete the Work, and in full accord with and reasonably inferable from the Contract Documents. The Work shall be completed in accordance with Exhibit E, "Estimated Budget and Schedule of the Work." The time allotted in Exhibit E shall define the "Contract Time."

2. COMPENSATION Westwin shall compensate Contractor for Work performed on the following basis:

Contractor costs are reimbursable on a Time and Material arrangement in accordance with Exhibit D.

3. EXHIBITS The following attached exhibits are made part of this Agreement:

EXHIBIT A: General Description of the Work, [] page/s.

EXHIBIT B: Contract Documents, [] page/s.

EXHIBIT C: Progress Schedule, [] page/s.

EXHIBIT D: Contractor's Rate Sheet.

EXHIBIT E: Contractor's Billing Process

EXHIBIT F: Contractor's Certificate of Liability Insurance.

4. PARTIES' RELATIONSHIP AND ETHICS Each Party agrees to proceed on the basis of mutual trust, good faith, and fair dealing. Each shall perform its obligations with integrity. Each shall (a) avoid any conflicts of interest; (b) promptly disclose to the other Party any that may arise; and (c) warrant that it has not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including its agents, officers, and employees, subcontractors, or others to secure preferential treatment. Nothing in this Agreement will create a fiduciary relationship.

5. CONTRACTOR'S RESPONSIBILITIES Contractor shall be responsible for supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized, unless the Contract Documents give other specific instructions.

5.1. Except for permits and fees that are the responsibility of Westwin pursuant to this Agreement, Contractor shall obtain and pay for all necessary Oklahoma Contractor licenses, and renewals pertaining to the Work.

5.2. Contractor shall pay all applicable taxes for the Work provided by Contractor.

5.3. If Westwin elects to perform work at the geographical area of the Project ("Worksite") directly or by others retained by Westwin, the Parties shall coordinate the activities of all forces at the Worksite and shall agree upon fair and reasonable schedules and operational procedures for Worksite activities. Westwin shall require each separate contractor to cooperate with and to assist with the coordination of activities and the review of construction schedules and operations.

5.4. In order to facilitate its responsibilities, before starting the Work, Contractor shall examine and compare the drawings and specifications with information furnished by Westwin pursuant to §6.1; relevant field measurements made by Contractor; and any visible conditions at the Worksite affecting the Work.

5.5. COMPLIANCE WITH LAWS Contractor shall comply with all laws. Contractor shall be liable to Westwin for all loss, cost, or expense, attributable to any negligent acts or omissions by Contractor, its employees, subcontractors, suppliers, and agents for failure to comply with laws, including fines, penalties, or corrective measures. The estimated Cost of the Work and Contractor's Fee, shall be equitably adjusted for laws, including taxes, impacting cost or time, enacted after bids are received or negotiations concluded.

5.6. WARRANTY

5.6.1. Contractor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. Contractor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by Westwin or others retained by Westwin, or abuse.

5.6.2. If, before the Date of Substantial Completion and within one year after the Date of Substantial Completion of the Work, any portion of the Work is found to be not in conformance with the Contract Documents ("Defective Work"), Westwin shall promptly notify Contractor in writing. Unless Westwin provides written acceptance of the condition, Contractor shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible.

5.7. SAFETY Contractor shall have overall responsibility for safety precautions and programs in the performance of the Work, except that Contractor's subcontractors shall also be responsible for the safety of persons or property in the performance of their work, and for compliance with the provisions of laws. Contractor shall prevent against injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite; materials and equipment stored at on-site or off-site locations for use in the Work; and property located at the Worksite and adjacent to Work areas, whether or not the property is part of the Work.

5.8. HAZARDOUS MATERIALS A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or clean-up. Contractor shall not be obligated to commence or continue work until any Hazardous Material discovered at the Worksite has been removed, or rendered or determined to be harmless by Westwin as certified by an independent testing laboratory and approved by the appropriate government agency. Westwin shall be deemed the generator of all preexisting Hazardous Material and shall indemnify, defend, and hold harmless Contractor from all cost, liability, and damages arising from or related thereto. If Contractor incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, Contractor shall be entitled to an equitable adjustment in the Contract Price and Contract Time.

5.9. MATERIALS BROUGHT TO THE WORKSITE Contractor shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Contractor in accordance with the Contract Documents and used or consumed in the performance of the Work.

5.10. SUBMITTALS Contractor shall submit to Westwin and Design Professional for review and approval all shop drawings, samples, product data, and similar submittals required by the Contract Documents. Submittals may be submitted in electronic form. Contractor shall be responsible to Westwin for the accuracy and conformity of its submittals to the Contract Documents. Contractor shall prepare and deliver its submittals to Westwin and Design Professional in a manner consistent with the Schedule of the Work and in such time and sequence so as not to delay the performance of the Work or the work of Westwin and others retained by Westwin. Contractor submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. An approval of a Contractor submittal conforms the Contract Documents including any deviation, substitution, or change. To the extent a change, deviation, or substitution causes an impact to the compensation or Contract Time, such approval shall be memorialized in a Change Order no later than seven (7) Days following approval. Westwin shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay. Contractor shall perform all Work strictly in accordance with approved submittals. Westwin's approval does not relieve Contractor from responsibility for Defective Work resulting from errors or omissions in not following the approved shop drawings.

- 5.11. **CONCEALED OR UNKNOWN SITE CONDITIONS** If a condition encountered at the Worksite is (a) a subsurface or other physical condition which is materially different from those indicated in the Contract Documents, or (b) an unusual and unknown physical condition which is materially different from conditions ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents, Contractor shall stop Work and give prompt written notice of the condition to Westwin and Design Professional. Westwin shall investigate and then issue an Interim Directive specifying the extent to which Westwin agrees that a concealed or unknown condition exists and directing how Contractor is to proceed. Contractor shall not be required to perform any Work relating to the condition without the written mutual agreement of the Parties.
- 5.12. **CUTTING, FITTING, AND PATCHING** Contractor shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of Westwin or others retained by Westwin.
- 5.13. **CLEANING UP** Contractor shall regularly remove debris and waste materials at the Worksite resulting from the Work. Before discontinuing Work in an area, Contractor shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Contractor shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Contractor shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.
6. **WESTWIN'S RESPONSIBILITIES** Any information or services to be provided by Westwin shall be provided in a timely manner.
- 6.1. Not used.
- 6.2. **WORKSITE INFORMATION** To the extent Westwin has obtained, or is required to obtain the following Worksite information, then Westwin shall provide Contractor the following:
- 6.2.1. information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data, or drawings depicting existing conditions, subsurface, and environmental studies, reports, and investigations;
- 6.2.2. tests, inspections, and other reports dealing with environmental matters, hazardous material and other existing conditions, including structural, mechanical, and chemical tests required by the Contract Documents or by law;
- 6.2.3. the limits of Pollution Liability Insurance covering the Worksite held by Westwin; and
- 6.2.4. any other information or services requested in writing by Contractor that are relevant to Contractor's performance of the Work and under Westwin's control.
- 6.3. **MECHANICS AND CONSTRUCTION LIEN INFORMATION** Within seven (7) Days after receiving Contractor's written request, Westwin shall provide Contractor with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include Westwin's interest in the real property on which the Project is located and the record legal title.
- 6.4. **BUILDING PERMIT, FEES, AND APPROVALS** Except for Oklahoma Contractor's licenses required of Contractor pursuant to this Agreement, Westwin shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the development, construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.
- 6.5. **ELECTRONIC DOCUMENTS** If Westwin requires that Westwin, Design Professional, and Contractor exchange documents and data in electronic or digital form, before any such exchange, the Parties and Design Professional shall agree on and follow a written protocol governing all exchanges in accordance with Contractor's project controls and administration processes.
7. **SUBCONTRACTS** Contractor agrees to bind every subcontractor and supplier (and require every subcontractor to so bind its subcontractors and suppliers) to this Agreement and the Contract Documents as they apply to the subcontractor's and supplier's portions of the Work.

8. COST OF THE WORK

Westwin agrees to pay Contractor as defined in this article.

- 8.1. Labor wages directly employed by Contractor in the performing of the Work;
- 8.2. Salaries of Contractor's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and supervisory employees from the principal or branch office as mutually agreed by the Parties in writing;
- 8.3. Employee benefits and taxes including but not limited to workers' compensation, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by law, labor agreements, or paid under Contractor's standard personnel policy, insofar as such costs are paid to employees of Contractor who are included in the Cost of the Work, above;
- 8.4. Reasonable transportation, travel, hotel, of Contractor's personnel incurred in connection with the work when preapproved in advance by Westwin Elements Construction Manager;
- 8.5. All materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by Westwin, transportation, storage, and handling;
- 8.6. Payments made by Contractor to subcontractors for performed Work;
- 8.7. Transportation and maintenance of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers that are used or consumed in the performance of the Work.
- 8.8. Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from Contractor or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed in accordance with Exhibit D. Rentals from Contractor or its affiliates, subsidiaries, or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to the value of the piece of equipment;
- 8.9. The Cost to cover the premiums for all insurance and surety bonds which Contractor is required to procure or deems necessary, and approved by Westwin, including any additional premium incurred as a result of any increase in the Cost of the Work;
- 8.10. Sales, use, gross receipts, or other taxes, tariffs, or duties related to the Work for which Contractor is liable;
- 8.11. Permits, fees, licenses, tests, and royalties;
- 8.12. Losses, expenses, or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work before expiration of the one-year period following the Date of Substantial Completion, provided that such losses, expenses, damages, or corrective work did not arise from Contractor's gross negligence;
- 8.13. Equipping, operating, maintaining, and demobilizing the field office; including temporary shut down and remobilizing costs.
- 8.14. Water, power, and fuel costs necessary for the Work;
- 8.15. Removal of all non-hazardous substances, debris, and waste materials;
- 8.16. Costs incurred due to an emergency affecting the safety of persons or property;
- 8.17. Legal, mediation, and arbitration fees and costs, other than those arising from disputes between the Parties, reasonably and properly resulting from Contractor's performance of the Work.

9. PAYMENT

9.1. **PROGRESS PAYMENTS** Contractor shall submit to Westwin application for payments in accordance with Exhibit "E".

9.2. **ADJUSTMENT OF CONTRACTOR'S PAYMENT APPLICATION** Westwin may adjust or reject a payment application, in whole or in part, as may reasonably be necessary to protect Westwin from loss or damage based upon the following, to the extent that Contractor is responsible for such under this Agreement:

9.2.1. Contractor's repeated failure to perform the Work as required by the Contract Documents;

9.2.2. loss or damage for which Westwin may be liable arising out of or relating to this Agreement and caused by Contractor to Westwin or to others retained by Westwin to whom Westwin may be liable;

9.2.3. Contractor's failure to properly pay subcontractors or suppliers in connection with the Work following receipt of such payment from Westwin, for that portion of the Work or for supplies, provided that Westwin is making payments to Contractor in accordance with this Agreement;

9.2.4. rejected or Defective Work not corrected in a timely fashion; and

9.2.5. unless arising from Westwin's non-payment for the performance of the Work, uninsured third party claims involving Contractor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Contractor furnishes Westwin with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment which is sufficient to discharge such claims if established.

No later than three (3) Days after receipt of an application for payment, Westwin shall give written notice to Contractor disapproving or nullifying it or a portion of it, specifying the reasons for the disapproval or nullification.

9.3. **PAYMENT DELAY** If for any reason not the fault of Contractor, Contractor does not receive a progress payment from Westwin within seven (7) Days after the time such payment is due, Contractor, upon giving seven (7) Days' written notice to Westwin, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to Contractor has been received, including interest for late payment.

9.4. **SUBSTANTIAL COMPLETION** When Substantial Completion of the Work or a designated portion has been achieved, Contractor shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, and the respective responsibilities of the Parties for interim items such as security, maintenance, utilities, insurance, and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by Contractor to Westwin for written acceptance of responsibilities assigned in the Certificate. Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion. For this industrial project, Substantial Completion shall occur on mechanical completion of the Work.

9.5. **FINAL COMPLETION** When final completion has been achieved, Contractor shall prepare for Westwin's acceptance a final application for payment stating that to the best of Contractor's knowledge, and based on Westwin's inspections, the Work has reached final completion in accordance with the Contract Documents.

9.5.1. Final payment shall be made to Contractor within fifteen (15) Days after Contractor has submitted a complete and accurate application for final payment and the following submissions:

9.5.1.1. an affidavit declaring any indebtedness connected with the Work, to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber Westwin's property;

9.5.1.2. as-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents;

9.5.1.3. release of any liens, conditioned on final payment being received;

9.5.1.4. consent of any surety, if applicable; and

9.5.1.5. any outstanding known and unreported accidents or injuries experienced by Contractor or its subcontractors at the Worksite.

9.6. Claims not reserved by Westwin in writing with the making of final payment shall be waived except for claims relating to liens or similar encumbrances, warranties, Defective Work, and latent defects. Unless Contractor

provides written identification of unsettled claims known to Contractor at the time of making application for final payment, acceptance of final payment constitutes a waiver of such claims.

9.7. **LATE PAYMENT** Payments due but unpaid shall bear interest at the statutory rate prevailing at the place of the Project from the date payment is due.

10. INDEMNITY

10.1. To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Westwin, Westwin's officers, directors, members, consultants, agents, and employees ("Indemnitees") from all claims for bodily injury and property damage, other than to the Work itself and other property insured under §11.3, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of the Work but only to the extent caused by the negligent or intentional wrongful acts or omissions of Contractor, subcontractors, suppliers, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Contractor shall be entitled to reimbursement of any defense costs paid above Contractor's percentage of liability for the underlying claim to the extent provided in the section immediately below.

10.2. To the fullest extent permitted by law, Westwin shall indemnify and hold harmless Contractor, its officers, directors, or members, subcontractors, suppliers, or anyone employed directly or indirectly by any of them, or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured under §11.3, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of work by Westwin, Design Professional, or others retained by Westwin, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Westwin, Design Professional, or others retained by Westwin. Westwin shall be entitled to reimbursement of any defense costs paid above Westwin's percentage of liability for the underlying claim to the extent provided in the section immediately above.

10.3. In any and all claims against the Indemnitees by any employee of Contractor, anyone directly or indirectly employed by Contractor, or anyone for whose acts Contractor may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor under workers' compensation acts, disability benefit acts, or other employment benefit acts.

10.4. As part of the consideration for entering this Agreement, the parties agree that Contractor must have a hard dollar stop-loss on liability. Therefore, in addition to any funds actually received from insurance, Contractor may never be liable to Westwin or any other party claiming hereunder or based on this Agreement for more than 25% of the Contract Price, regardless of the theory of law pleaded or the type of damages claimed, for claims known or unknown, past, present, or future, accrued or unaccrued, of any sort whatsoever.

11. INSURANCE

11.1. Before commencing the Work and as a condition precedent to payment, Contractor shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, Commercial General Liability Insurance (CGL), and an Umbrella Insurance Policy. If applicable, Contractor shall also procure and maintain in force Pollution Liability Insurance or Professional Liability Insurance. The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. Contractor shall maintain completed operations liability insurance for one year after Substantial Completion or as required by the Contract Documents, whichever is longer. Contractor's Employers' Liability, Business Automobile Liability, and CGL policies shall be written with at least the following limits of liability:

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11.1.1. Employers' Liability Insurance:

- a. \$1,000,000 bodily injury by accident per accident;
- b. \$1,000,000 bodily injury by disease policy limit;
- c. \$1,000,000 bodily injury by disease per employee.

11.1.2. Business Automobile Liability Insurance: \$1,000,000 per accident.

11.1.3. CGL Insurance:

- a. \$1,000,000 per occurrence;
- b. \$3,000,000 general aggregate;
- c. \$1,000,000 products/completed operations aggregate;
- d. \$1,000,000 personal and advertising injury limit.

11.1.4. Umbrella Policy: in the amount of \$5,000,000.00

11.2. Employers' Liability, Business Automobile Liability, and CGL coverage required under this article may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella liability policies. Contractor shall maintain in effect all insurance coverage required in this article with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If Contractor fails to obtain or maintain any insurance coverage required under this Agreement, Westwin may purchase such coverage and charge the expense to Contractor, or terminate this Agreement.

To the extent commercially available to Contractor and its current insurance company, insurance policies required under §11.1 shall contain a provision that the insurance company or its designee must give Westwin written notice transmitted in paper or electronic format: (a) 30 Days before coverage is nonrenewed by the insurance company, and (b) within 10 Business Days after cancellation of coverage by the insurance company. Before commencing the Work and upon renewal or replacement of the insurance policies, Contractor shall furnish Westwin with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under §11.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Contractor shall give Westwin prompt written notice upon actual or constructive knowledge of such condition.

11.3. PROPERTY INSURANCE

Westwin shall obtain and maintain a Builder's Risk Policy, with a maximum deductible of \$ 0.00 per occurrence, upon the entire Project for the full cost of replacement at the time of loss, including existing structures. This insurance shall also: (a) name Contractor, subcontractors, sub-subcontractors, and suppliers as insureds; (b) be written in such form as to cover all risks of physical loss except those specifically excluded by the policy. In addition, this insurance shall insure at least against and not exclude:

11.3.1. the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of the Contractor) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse however caused;

11.3.2. damage resulting from defective design, workmanship, or material;

11.3.3. coverage extension for damage to existing buildings, plant, or other structures at the Worksite, when the Project is contained within or attached to such existing buildings, plant or structures. Coverage shall be to the extent loss or damage arises out of Contractor's activities or operations at the Project;

11.3.4. equipment breakdown, including mechanical breakdown, electrical injury to electrical devices, explosion of steam equipment, and damage to steam equipment caused by a condition within the equipment;

11.3.5. testing coverage for running newly installed machinery and equipment at or beyond the specified limits of their capacity to determine whether they are fit for their intended use; and

11.3.6. physical loss resulting from terrorism.

11.3.7. The Party that is the primary cause of a Builder's Risk Policy claim shall be responsible for any deductible amounts or coinsurance payments. If no Party is the primary cause of a claim, then the Party responsible to obtain and maintain the Builder's Risk Policy shall be responsible for the deductible amounts or coinsurance payments. This policy shall provide for a waiver of subrogation. This insurance shall remain in effect until final payment has been made or until no person or entity other than Westwin has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until Contractor has secured the consent of the insurance company or companies providing the coverage required in this subsection. Before commencing the Work, Westwin shall provide a copy of the property policy or policies obtained in compliance with §11.3.

11.3.8. Westwin shall give written notice to Contractor and Design Professional before the Work is commenced and provide a copy of the property policy or policies obtained in compliance with §11.3. Westwin shall then provide insurance to protect its interests and the interests of Contractor, subcontractors, suppliers, and sub-subcontractors. If Westwin gives written notice of its intent to purchase property insurance required by this Agreement and fails to purchase or maintain such insurance, Westwin shall be responsible for costs reasonably attributed to such failure.

- 11.3.9. The Parties waive all rights against each other and their respective employees, agents, contractors, subcontractors and sub-subcontractors, suppliers, and design professionals for damages caused by risks covered by the property insurance except such rights as they may have to the proceeds of the insurance.
- 11.3.10. To the extent of the limits of Contractor's CGL specified in §11.1, Contractor shall indemnify and hold harmless Westwin against any and all liability, claims, demands, damages, losses, and expenses, including reasonable attorneys' fees, in connection with or arising out of any damage or alleged damage to any of Westwin's existing adjacent property that may arise from the performance of the Work, to the extent caused by the negligent or intentionally wrongful acts or omissions of Contractor, subcontractor, supplier, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.
- 11.3.11. POLLUTION LIABILITY INSURANCE Contractor is not required to maintain pollution liability insurance. Contractor's general liability policy shall include an endorsement to cover accidental spills.
- 11.4. ADDITIONAL LIABILITY COVERAGE Westwin ☐ shall/ ☐ shall not require Contractor to purchase and maintain liability coverage. If required, Contractor will provide:
- 11.4.1. ADDITIONAL INSURED. Westwin shall be named as an additional insured on Contractor's CGL insurance specified, for on-going operations and completed operations, excess/umbrella liability, commercial automobile liability, and any required pollution liability, but only with respect to liability for bodily injury, property damage, or personal and advertising injury to the extent caused by the negligent acts or omissions of Contractor, or those acting on Contractor's behalf, in the performance of the Work for Westwin at the Worksite. Contractor's insurance shall be primary and non-contributory to any insurance available to the Additional Insureds. Any insurance available to the Additional Insured shall be excess and non-contributory.
- 11.4.2. OCP. Contractor shall provide an Westwins' and Contractors' Protective Liability Insurance ("OCP") policy with limits equal to the limits on CGL insurance specified, or limits as otherwise required by Westwin. Any documented additional cost in the form of a surcharge associated with procuring and maintaining coverage in accordance with this subsection shall be paid by Westwin directly, or as a Cost of the Work. Before commencing the Work, Contractor shall provide either a copy of the OCP policy, or a certificate and endorsement evidencing that Westwin has been named as an additional insured, as applicable.
12. BONDS Performance and Payment Bonds ☐ are/ ☐ are not required of Contractor.
13. MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for losses covered by insurance required by the Contract Documents, the Parties agree to waive all claims against each other for any consequential, special, or punitive damages that may arise out of or relate to this Agreement.
- 13.1. This article shall also apply to the termination of this Agreement and shall survive such termination. The Parties shall each require similar waivers in contracts with subcontractors and others retained for the project.
14. TERMINATION
- 14.1. NOTICE TO CURE A DEFAULT If Contractor persistently fails to supply enough qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work or fails to make prompt payment to its workers, subcontractors, or suppliers, disregards law or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, Contractor may be deemed in default. If Contractor fails to commence and to continue satisfactory correction of such default with diligence and promptness within seven (7) Days after written notification, then Westwin shall give Contractor a second written notice to correct the default within a three (3) Business Day period. If Contractor fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, Westwin, without prejudice to any other rights or remedies, shall have the right to take reasonable steps it deems necessary to correct deficiencies and charge the cost to Contractor, who shall be liable for such payments including attorneys' fees.
- 14.2. TERMINATION BY WESTWIN Upon expiration of the second notice for default period, Westwin may terminate this Agreement by written notice absent appropriate corrective action. Termination for default is in addition to any other remedies available to Westwin. Westwin shall make reasonable efforts to mitigate damages arising from Contractor default and shall promptly invoice Contractor for all amounts due.
- 14.3. TERMINATION BY CONTRACTOR Upon seven (7) Days' written notice to Westwin, Contractor may terminate this Agreement if the Work has been stopped for a thirty (30) Day period through no fault of Contractor.
- 14.3.1. In addition, upon seven (7) Days' written notice to Westwin, Contractor may terminate the Agreement if Westwin does any of the following: (a) assigns this Agreement over Contractor's reasonable objection; (b) fails to

pay Contractor in accordance with this Agreement and Contractor has stopped Work in compliance with this Agreement; or (c) otherwise materially breaches this Agreement.

14.3.2. Upon termination by Contractor pursuant to this Agreement, Contractor shall be entitled to recover from Westwin payment for all Work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs plus reasonable overhead and profit.

14.4. OBLIGATIONS ARISING BEFORE TERMINATION Even after termination, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred, or obligations arising before the termination date.

15. DISPUTE MITIGATION AND RESOLUTION

15.1. ADDITIONAL COST OR TIME Contractor shall give Westwin prompt written notice if the Estimated Budget or Contract Time is estimated to be exceeded.

15.2. WORK CONTINUANCE AND PAYMENT Contractor shall continue the Work and maintain the Schedule of Work during any dispute resolution proceedings. If Contractor continues to perform, Westwin shall continue to make payments in accordance with the Agreement.

15.3. DISPUTE MITIGATION THROUGH DIRECT DISCUSSIONS If a dispute arises out of or related to this Agreement or its breach, the Parties shall endeavor to settle the dispute through direct discussions. Within five (5) Business Days, the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions, shall conduct direct discussion and make a good faith effort to resolve such dispute.

15.4. BINDING DISPUTE RESOLUTION The Parties shall submit unresolved disputes to the binding dispute resolution procedure below:

ARBITRATION The Parties choose binding arbitration decided by arbitrator in accordance with the Construction Industry Arbitration Rules of the AAA then in effect. Arbitration will be used for any claim or dispute related to this Agreement. **EACH PARTY WAIVES THEIR RIGHT TO BE HEARD IN A COURT OF LAW**, with or without a jury. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. An arbitrator's award shall be final and binding upon the Parties, and judgment may be entered upon it in any court having jurisdiction.

15.5.1. COSTS The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

15.5.2. VENUE The Project location shall serve as the venue.

15.5.3. Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations. If, however, a state or federal court exercising jurisdiction over a timely filed claim or cause of action orders that the claim or cause of action be submitted to arbitration, the arbitration proceeding shall be deemed commenced as of the date the court action was filed, provided that the Party asserting the claim or cause of action files its demand for arbitration with the person or entity administering the arbitration within thirty (30) Days after the entry of such order.

16. MISCELLANEOUS

16.1. EXTENT OF AGREEMENT Except as expressly provided, this Agreement is for the exclusive benefit of the Parties and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

16.2. ASSIGNMENT Except as to the assignment of proceeds, neither Party shall assign its interest in this Agreement, in whole or in part, without the written consent of the other Party. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives.

16.3. GOVERNING LAW The law in effect at the location of the Project shall govern.

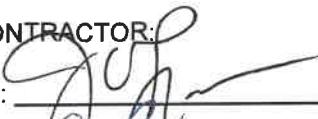
16.4. NOTICE Unless changed in writing, a Party's address indicated above ARTICLE 1 shall be used when delivering notice to a physical address. Except for Agreement termination and as otherwise specified in the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service.

16.5. JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms before execution. This Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

WESTWIN:

BY:  NAME: AJ Arends TITLE: Vice President WITNESS:
Ashlea Sartin NAME: Ashlea Sartin TITLE: _____

CONTRACTOR:

BY:  NAME: JC Grayson TITLE: President WITNESS:
 NAME: Keri Brammer TITLE: Admin Assistant

ConsensusDocs 235 – Modified.

This Project-Specific Subcontractor Services Agreement ("Agreement") is made and entered into this 10th day of October, 2023 by and between WESTWIN ELEMENTS INC., a Delaware corporation registered to do business in Oklahoma, with offices at 7 NE Sixth Street Unit 100 Oklahoma City, OK 73104 (hereinafter referred to as "Westwin") and, PCE Constructors, Inc., a Louisiana corporation, with offices at 13544 Eads Road, Prairieville, Louisiana 70769 (hereinafter referred to as "Contractor") for Work (as defined below) on Project No. 23PP01.

In consideration of the mutual covenants of the parties, it is hereby agreed as follows:

1. THE WORK Contractor shall use its diligent efforts to perform the "Work," as described in Exhibit A, in an expeditious manner consistent with the Contract Documents. The contractor shall provide all labor, materials, equipment, and services necessary to complete the Work, and in full accord with and reasonably inferable from the Contract Documents. The Work shall be completed in accordance with Exhibit E, "Estimated Budget and Schedule of the Work." The time allotted in Exhibit E shall define the "Contract Time."

2. COMPENSATION Westwin shall compensate Contractor for Work performed on the following basis:

Contractor costs are reimbursable on a Time and Material arrangement in accordance with Exhibit D.

3. EXHIBITS The following attached exhibits are made part of this Agreement:

EXHIBIT A: General Description of the Work, [] page/s.

EXHIBIT B: Contract Documents, [] page/s.

EXHIBIT C: Progress Schedule, [] page/s.

EXHIBIT D: Contractor's Rate Sheet.

EXHIBIT E: Contractor's Billing Process

EXHIBIT F: Contractor's Certificate of Liability Insurance.

4. PARTIES' RELATIONSHIP AND ETHICS Each Party agrees to proceed on the basis of mutual trust, good faith, and fair dealing. Each shall perform its obligations with integrity. Each shall (a) avoid any conflicts of interest; (b) promptly disclose to the other Party any that may arise; and (c) warrant that it has not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including its agents, officers, and employees, subcontractors, or others to secure preferential treatment. Nothing in this Agreement will create a fiduciary relationship.

5. CONTRACTOR'S RESPONSIBILITIES Contractor shall be responsible for supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized, unless the Contract Documents give other specific instructions.

5.1. Except for permits and fees that are the responsibility of Westwin pursuant to this Agreement, Contractor shall obtain and pay for all necessary Oklahoma Contractor licenses, and renewals pertaining to the Work.

5.2. Contractor shall pay all applicable taxes for the Work provided by Contractor.

5.3. If Westwin elects to perform work at the geographical area of the Project ("Worksite") directly or by others retained by Westwin, the Parties shall coordinate the activities of all forces at the Worksite and shall agree upon fair and reasonable schedules and operational procedures for Worksite activities. Westwin shall require each separate contractor to cooperate with and to assist with the coordination of activities and the review of construction schedules and operations.

5.4. In order to facilitate its responsibilities, before starting the Work, Contractor shall examine and compare the drawings and specifications with information furnished by Westwin pursuant to §6.1; relevant field measurements made by Contractor; and any visible conditions at the Worksite affecting the Work.

5.5. COMPLIANCE WITH LAWS Contractor shall comply with all laws. Contractor shall be liable to Westwin for all loss, cost, or expense, attributable to any negligent acts or omissions by Contractor, its employees, subcontractors, suppliers, and agents for failure to comply with laws, including fines, penalties, or corrective measures. The estimated Cost of the Work and Contractor's Fee shall be equitably adjusted for laws, including taxes, impacting cost or time, enacted after bids are received or negotiations concluded.

5.6. WARRANTY

5.6.1. Contractor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. Contractor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by Westwin, or others retained by Westwin, or abuse.

5.6.2. If, before the Date of Substantial Completion and within one year after the Date of Substantial Completion of the Work, any portion of the Work is found to be not in conformance with the Contract Documents ("Defective Work"), Westwin shall promptly notify Contractor in writing. Unless Westwin provides written acceptance of the condition, Contractor shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible.

5.7. SAFETY Contractor shall have overall responsibility for safety precautions and programs in the performance of the Work, except that Contractor's subcontractors shall also be responsible for the safety of persons or property in the performance of their work, and for compliance with the provisions of laws. Contractor shall prevent against injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite; materials and equipment stored at on-site or off-site locations for use in the Work; and property located at the Worksite and adjacent to Work areas, whether or not the property is part of the Work.

5.8. HAZARDOUS MATERIALS A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or clean-up. Contractor shall not be obligated to commence or continue work until any Hazardous Material discovered at the Worksite has been removed, or rendered or determined to be harmless by Westwin as certified by an independent testing laboratory and approved by the appropriate government agency. Westwin shall be deemed the generator of all preexisting Hazardous Material and shall indemnify, defend, and hold harmless Contractor from all cost, liability, and damages arising from or related thereto. If Contractor incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, Contractor shall be entitled to an equitable adjustment in the Contract Price and Contract Time.

5.9. MATERIALS BROUGHT TO THE WORKSITE Contractor shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Contractor in accordance with the Contract Documents and used or consumed in the performance of the Work.

5.10. SUBMITTALS Contractor shall submit to Westwin and Design Professional for review and approval all shop drawings, samples, product data, and similar submittals required by the Contract Documents. Submittals may be submitted in electronic form. The contractor shall be responsible to Westwin for the accuracy and conformity of its submittals to the Contract Documents. Contractor shall prepare and deliver its submittals to Westwin and Design Professional in a manner consistent with the Schedule of the Work and in such time and sequence so as not to delay the performance of the Work or the work of Westwin and others retained by Westwin. Contractor submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. An approval of a contractor submittal conforms to the Contract Documents including any deviation, substitution, or change. To the extent a change, deviation, or substitution causes an impact to the compensation or Contract Time, such approval shall be memorialized in a Change Order no later than seven (7) Days following approval. Westwin shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay. Contractor shall perform all Work strictly in accordance with approved submittals. Westwin's approval does not relieve Contractor from responsibility for Defective Work resulting from errors or omissions in not following the approved shop drawings.

- 5.11. **CONCEALED OR UNKNOWN SITE CONDITIONS** If a condition encountered at the Worksite is (a) a subsurface or other physical condition which is materially different from those indicated in the Contract Documents, or (b) an unusual and unknown physical condition which is materially different from conditions ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents, Contractor shall stop Work and give prompt written notice of the condition to Westwin and Design Professional. Westwin shall investigate and then issue an Interim Directive specifying the extent to which Westwin agrees that a concealed or unknown condition exists and directing how Contractor is to proceed. Contractor shall not be required to perform any Work relating to the condition without the written mutual agreement of the Parties.
- 5.12. **CUTTING, FITTING, AND PATCHING** Contractor shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of Westwin or others retained by Westwin.
- 5.13. **CLEANING UP** Contractor shall regularly remove debris and waste materials at the Worksite resulting from the Work. Before discontinuing Work in an area, Contractor shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Contractor shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Contractor shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.
6. **WESTWIN'S RESPONSIBILITIES** Any information or services to be provided by Westwin shall be provided in a timely manner.
- 6.1. Not used.
- 6.2. **WORKSITE INFORMATION** To the extent Westwin has obtained, or is required to obtain the following Worksite information, then Westwin shall provide Contractor the following:
- 6.2.1. information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data, or drawings depicting existing conditions, subsurface, and environmental studies, reports, and investigations.
- 6.2.2. tests, inspections, and other reports dealing with environmental matters, hazardous material and other existing conditions, including structural, mechanical, and chemical tests required by the Contract Documents or by law.
- 6.2.3. the limits of Pollution Liability Insurance covering the Worksite held by Westwin; and
- 6.2.4. any other information or services requested in writing by Contractor that are relevant to Contractor's performance of the Work and under Westwin's control.
- 6.3. **MECHANICS AND CONSTRUCTION LIEN INFORMATION** Within seven (7) Days after receiving Contractor's written request, Westwin shall provide Contractor with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include Westwin's interest in the real property on which the Project is located and the record legal title.
- 6.4. **BUILDING PERMIT, FEES, AND APPROVALS** Except for Oklahoma Contractor's licenses required of Contractor pursuant to this Agreement, Westwin shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the development, construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.
- 6.5. **ELECTRONIC DOCUMENTS** If Westwin requires that Westwin, Design Professional, and Contractor exchange documents and data in electronic or digital form, before any such exchange, the Parties and Design Professional shall agree on and follow a written protocol governing all exchanges in accordance with Contractor's project controls and administration processes.
7. **SUBCONTRACTS** Contractor agrees to bind every subcontractor and supplier (and require every subcontractor to so bind its subcontractors and suppliers) to this Agreement and the Contract Documents as they apply to the subcontractor's and supplier's portions of the Work.

8. COST OF THE WORK

Westwin agrees to pay Contractor as defined in this article.

- 8.1. Labor wages directly employed by Contractor in the performing of the Work;
- 8.2. Salaries of Contractor's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and supervisory employees from the principal or branch office as mutually agreed by the Parties in writing;
- 8.3. Employee benefits and taxes including but not limited to workers' compensation, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by law, labor agreements, or paid under Contractor's standard personnel policy, insofar as such costs are paid to employees of Contractor who are included in the Cost of the Work, above;
- 8.4. Reasonable transportation, travel, hotel, of Contractor's personnel incurred in connection with the work when preapproved in advance by Westwin Elements Construction Manager.
- 8.5. All materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by Westwin, transportation, storage, and handling.
- 8.6. Payments made by Contractor to subcontractors for performed Work.
- 8.7. Transportation and maintenance of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers that are used or consumed in the performance of the Work.
- 8.8. Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from Contractor or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed in accordance with Exhibit D. Rentals from Contractor, or its affiliates, subsidiaries, or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to the value of the piece of equipment;
- 8.9. The Cost to cover the premiums for all insurance and surety bonds which Contractor is required to procure or deems necessary, and approved by Westwin, including any additional premium incurred as a result of any increase in the Cost of the Work.
- 8.10. Sales, use, gross receipts, or other taxes, tariffs, or duties related to the Work for which Contractor is liable.
- 8.11. Permits, fees, licenses, tests, and royalties.
- 8.12. Losses, expenses, or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work before expiration of the one-year period following the Date of Substantial Completion, provided that such losses, expenses, damages, or corrective work did not arise from Contractor's gross negligence;
- 8.13. Equipping, operating, maintaining, and demobilizing the field office; including temporary shut down and remobilizing costs.
- 8.14. Water, power, and fuel costs necessary for the Work.
- 8.15. Removal of all non-hazardous substances, debris, and waste materials.
- 8.16. Costs incurred due to an emergency affecting the safety of persons or property.
- 8.17. Legal, mediation, and arbitration fees and costs, other than those arising from disputes between the Parties, reasonably and properly resulting from Contractor's performance of the Work.



9. PAYMENT

9.1. **PROGRESS PAYMENTS** Contractor shall submit to Westwin application for payments in accordance with Exhibit "E".

9.2. **ADJUSTMENT OF CONTRACTOR'S PAYMENT APPLICATION** Westwin may adjust or reject a payment application, in whole or in part, as may reasonably be necessary to protect Westwin from loss or damage based upon the following, to the extent that Contractor is responsible for such under this Agreement:

9.2.1. Contractor's repeated failure to perform the Work as required by the Contract Documents;

9.2.2. loss or damage for which Westwin may be liable arising out of or relating to this Agreement and caused by Contractor to Westwin or to others retained by Westwin to whom Westwin may be liable.

9.2.3. Contractor's failure to properly pay subcontractors or suppliers in connection with the Work following receipt of such payment from Westwin, for that portion of the Work or for supplies, provided that Westwin is making payments to Contractor in accordance with this Agreement.

9.2.4. rejected or Defective Work not corrected in a timely fashion; and

9.2.5. unless arising from Westwin's non-payment for the performance of the Work, uninsured third party claims involving Contractor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Contractor furnishes Westwin with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment which is sufficient to discharge such claims if established.

No later than three (3) Days after receipt of an application for payment, Westwin shall give written notice to Contractor disapproving or nullifying it or a portion of it, specifying the reasons for the disapproval or nullification.

9.3. **PAYMENT DELAY** If for any reason not the fault of Contractor, Contractor does not receive a progress payment from Westwin within seven (7) Days after the time such payment is due, Contractor, upon giving seven (7) Days' written notice to Westwin, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to Contractor has been received, including interest for late payment.

9.4. **SUBSTANTIAL COMPLETION** When Substantial Completion of the Work or a designated portion has been achieved, Contractor shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, and the respective responsibilities of the Parties for interim items such as security, maintenance, utilities, insurance, and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by Contractor to Westwin for written acceptance of responsibilities assigned in the Certificate. Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion. For this industrial project, Substantial Completion shall occur on mechanical completion of the Work.

9.5. **FINAL COMPLETION** When final completion has been achieved, Contractor shall prepare for Westwin's acceptance a final application for payment stating that to the best of Contractor's knowledge, and based on Westwin's inspections, the Work has reached final completion in accordance with the Contract Documents.

9.5.1. Final payment shall be made to Contractor within fifteen (15) Days after Contractor has submitted a complete and accurate application for final payment and the following submissions:

9.5.1.1. an affidavit declaring any indebtedness connected with the Work, to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber Westwin's property.

9.5.1.2. as-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents.

9.5.1.3. release of any liens, conditioned on final payment being received.

9.5.1.4. consent of any surety, if applicable; and

9.5.1.5. any outstanding known and unreported accidents or injuries experienced by Contractor or its subcontractors at the Worksite.

9.6. Claims not reserved by Westwin in writing with the making of final payment shall be waived except for claims relating to liens or similar encumbrances, warranties, Defective Work, and latent defects. Unless Contractor



provides written identification of unsettled claims known to Contractor at the time of making application for final payment, acceptance of final payment constitutes a waiver of such claims.

9.7. LATE PAYMENT Payments due but unpaid shall bear interest at the statutory rate prevailing at the place of the Project from the date payment is due.

10. INDEMNITY

10.1. To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Westwin, Westwin's officers, directors, members, consultants, agents, and employees ("Indemnitees") from all claims for bodily injury and property damage, other than to the Work itself and other property insured under §11.3, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of the Work but only to the extent caused by the negligent or intentional wrongful acts or omissions of Contractor, subcontractors, suppliers, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Contractor shall be entitled to reimbursement of any defense costs paid above Contractor's percentage of liability for the underlying claim to the extent provided in the section immediately below.

10.2. To the fullest extent permitted by law, Westwin shall indemnify and hold harmless Contractor, its officers, directors, or members, subcontractors, suppliers, or anyone employed directly or indirectly by any of them, or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured under §11.3, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of work by Westwin, Design Professional, or others retained by Westwin, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Westwin, Design Professional, or others retained by Westwin. Westwin shall be entitled to reimbursement of any defense costs paid above Westwin's percentage of liability for the underlying claim to the extent provided in the section immediately above.

10.3. In any and all claims against the Indemnitees by any employee of Contractor, anyone directly or indirectly employed by Contractor, or anyone for whose acts Contractor may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor under workers' compensation acts, disability benefit acts, or other employment benefit acts.

10.4. As part of the consideration for entering this Agreement, the parties agree that Contractor must have a hard dollar stop-loss on liability. Therefore, in addition to any funds actually received from insurance, Contractor may never be liable to Westwin or any other party claiming hereunder or based on this Agreement for more than 25% of the Contract Price, regardless of the theory of law pleaded or the type of damages claimed, for claims known or unknown, past, present, or future, accrued or unaccrued, of any sort whatsoever.

11. INSURANCE

11.1. Before commencing the Work and as a condition precedent to payment, Contractor shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. Contractor shall maintain completed operations liability insurance for one year after Substantial Completion or as required by the Contract Documents, whichever is longer. Contractor's Employers' Liability, Business Automobile Liability, and CGL policies shall be written with at least the following limits of liability:

11.1.1. Employers' Liability Insurance:

- a. \$1,000,000 bodily injury by accident per accident;
- b. \$1,000,000 bodily injury by disease policy limit;
- c. \$1,000,000 bodily injury by disease per employee.

11.1.2. Business Automobile Liability Insurance: \$1,000,000 per accident.

11.1.3. CGL Insurance:

- a. \$1,000,000 per occurrence;
- b. \$3,000,000 general aggregate;
- c. \$1,000,000 products/completed operations aggregate;
- d. \$1,000,000 personal and advertising injury limit.



11.2. Employers' Liability, Business Automobile Liability, and CGL coverage required under this article may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella liability policies. Contractor shall maintain in effect all insurance coverage required in this article with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If Contractor fails to obtain or maintain any insurance coverage required under this Agreement, Westwin may purchase such coverage and charge the expense to Contractor or terminate this Agreement.

To the extent commercially available to Contractor and its current insurance company, insurance policies required under §11.1 shall contain a provision that the insurance company or its designee must give Westwin written notice transmitted in paper or electronic format: (a) 30 Days before coverage is nonrenewed by the insurance company, and (b) within 10 Business Days after cancellation of coverage by the insurance company. Before commencing the Work and upon renewal or replacement of the insurance policies, Contractor shall furnish Westwin with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under §11.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Contractor shall give Westwin prompt written notice upon actual or constructive knowledge of such condition.

11.3. PROPERTY INSURANCE

Westwin shall obtain and maintain a Builder's Risk Policy, with a maximum deductible of \$50,000.00 per occurrence, upon the entire Project for the full cost of replacement at the time of loss, including existing structures. This insurance shall also: (a) name Contractor, subcontractors, sub-subcontractors, and suppliers as insureds; (b) be written in such form as to cover all risks of physical loss except those specifically excluded by the policy. In addition, this insurance shall insure at least against and not exclude:

11.3.1. the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of the Contractor) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse however caused;

11.3.2. damage resulting from defective design, workmanship, or material.

11.3.3. coverage extension for damage to existing buildings, plant, or other structures at the Worksite, when the Project is contained within or attached to such existing buildings, plant or structures. Coverage shall be to the extent loss or damage arises out of Contractor's activities or operations at the Project.

11.3.4. equipment breakdown, including mechanical breakdown, electrical injury to electrical devices, explosion of steam equipment, and damage to steam equipment caused by a condition within the equipment.

11.3.5. testing coverage for running newly installed machinery and equipment at or beyond the specified limits of their capacity to determine whether they are fit for their intended use; and

11.3.6. physical loss resulting from terrorism.

11.3.7. The Party that is the primary cause of a Builder's Risk Policy claim shall be responsible for any deductible amounts or coinsurance payments. If no Party is the primary cause of a claim, then the Party responsible to obtain and maintain the Builder's Risk Policy shall be responsible for the deductible amounts or coinsurance payments. This policy shall provide for a waiver of subrogation. This insurance shall remain in effect until final payment has been made or until no person or entity other than Westwin has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until Contractor has secured the consent of the insurance company or companies providing the coverage required in this subsection. Before commencing the Work, Westwin shall provide a copy of the property policy or policies obtained in compliance with §11.3.

11.3.8. Westwin shall give written notice to Contractor and Design Professional before the Work is commenced and provide a copy of the property policy or policies obtained in compliance with §11.3. Westwin shall then provide insurance to protect its interests and the interests of Contractor, subcontractors, suppliers, and sub-subcontractors. If Westwin gives written notice of its intent to purchase property insurance required by this Agreement and fails to purchase or maintain such insurance, Westwin shall be responsible for costs reasonably attributed to such failure.

11.3.9. The Parties waive all rights against each other and their respective employees, agents, contractors, subcontractors and sub-subcontractors, suppliers, and design professionals for damages caused by risks covered by the property insurance except such rights as they may have to the proceeds of the insurance.

11.3.10. To the extent of the limits of Contractor's CGL specified in §11.1, Contractor shall indemnify and hold harmless Westwin against any and all liability, claims, demands, damages, losses, and expenses, including reasonable attorneys' fees, in connection with or arising out of any damage or alleged damage to any of Westwin's existing adjacent property that may arise from the performance of the Work, to the extent caused by the negligent or intentionally wrongful acts or omissions of Contractor, subcontractor, supplier, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

11.3.11. POLLUTION LIABILITY INSURANCE Contractor is not required to maintain pollution liability insurance. Contractor's general liability policy shall include an endorsement to cover accidental spills.

11.4. ADDITIONAL LIABILITY COVERAGE Westwin ☐ shall/ ☐ shall not require Contractor to purchase and maintain liability coverage. If required, Contractor will provide:

11.4.1. ADDITIONAL INSURED. Westwin shall be named as an additional insured on Contractor's CGL insurance specified, for on-going operations and completed operations, excess/umbrella liability, commercial automobile liability, and any required pollution liability, but only with respect to liability for bodily injury, property damage, or personal and advertising injury to the extent caused by the negligent acts or omissions of Contractor, or those acting on Contractor's behalf, in the performance of the Work for Westwin at the Worksite. Contractor's insurance shall be primary and non-contributory to any insurance available to the Additional Insureds. Any insurance available to the Additional Insured shall be excess and non-contributory.

11.4.2. OCP. Contractor shall provide an Westwins' and Contractors' Protective Liability Insurance ("OCP") policy with limits equal to the limits on CGL insurance specified, or limits as otherwise required by Westwin. Any documented additional cost in the form of a surcharge associated with procuring and maintaining coverage in accordance with this subsection shall be paid by Westwin directly, or as a Cost of the Work. Before commencing the Work, Contractor shall provide either a copy of the OCP policy, or a certificate and endorsement evidencing that Westwin has been named as an additional insured, as applicable.

12. BONDS Performance and Payment Bonds ☐ are/ ☐ are not required of Contractor.

13. MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for losses covered by insurance required by the Contract Documents, the Parties agree to waive all claims against each other for any consequential, special, or punitive damages that may arise out of or relate to this Agreement.

13.1. This article shall also apply to the termination of this Agreement and shall survive such termination. The Parties shall each require similar waivers in contracts with subcontractors and others retained for the project.

14. TERMINATION

14.1. NOTICE TO CURE A DEFAULT If Contractor persistently fails to supply enough qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work or fails to make prompt payment to its workers, subcontractors, or suppliers, disregards law or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, Contractor may be deemed in default. If Contractor fails to commence and to continue satisfactory correction of such default with diligence and promptness within seven (7) Days after written notification, then Westwin shall give Contractor a second written notice to correct the default within a three (3) Business Day period. If Contractor fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, Westwin, without prejudice to any other rights or remedies, shall have the right to take reasonable steps it deems necessary to correct deficiencies and charge the cost to Contractor, who shall be liable for such payments including attorneys' fees.

14.2. TERMINATION BY WESTWIN Upon expiration of the second notice for default period, Westwin may terminate this Agreement by written notice absent appropriate corrective action. Termination for default is in addition to any other remedies available to Westwin. Westwin shall make reasonable efforts to mitigate damages arising from Contractor default and shall promptly invoice Contractor for all amounts due.

14.3. TERMINATION BY CONTRACTOR Upon seven (7) Days' written notice to Westwin, Contractor may terminate this Agreement if the Work has been stopped for a thirty (30) Day period through no fault of Contractor.

14.3.1. In addition, upon seven (7) Days' written notice to Westwin, Contractor may terminate the Agreement if Westwin does any of the following: (a) assigns this Agreement over Contractor's reasonable objection; (b) fails to pay Contractor in accordance with this Agreement and Contractor has stopped Work in compliance with this Agreement; or (c) otherwise materially breaches this Agreement.



14.3.2. Upon termination by Contractor pursuant to this Agreement, Contractor shall be entitled to recover from Westwin payment for all Work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs plus reasonable overhead and profit.

14.4. OBLIGATIONS ARISING BEFORE TERMINATION Even after termination, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred, or obligations arising before the termination date.

15. DISPUTE MITIGATION AND RESOLUTION

15.1. ADDITIONAL COST OR TIME Contractor shall give Westwin prompt written notice if the Estimated Budget or Contract Time is estimated to be exceeded.

15.2. WORK CONTINUANCE AND PAYMENT Contractor shall continue the Work and maintain the Schedule of Work during any dispute resolution proceedings. If Contractor continues to perform, Westwin shall continue to make payments in accordance with the Agreement.

15.3. DISPUTE MITIGATION THROUGH DIRECT DISCUSSIONS If a dispute arises out of or related to this Agreement or its breach, the Parties shall endeavor to settle the dispute through direct discussions. Within five (5) Business Days, the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions, shall conduct direct discussion and make a good faith effort to resolve such dispute.

15.4. BINDING DISPUTE RESOLUTION The Parties shall submit unresolved disputes to the binding dispute resolution procedure below:

ARBITRATION The Parties choose binding arbitration decided by arbitrator in accordance with the Construction Industry Arbitration Rules of the AAA then in effect. Arbitration will be used for any claim or dispute related to this Agreement. **EACH PARTY WAIVES THEIR RIGHT TO BE HEARD IN A COURT OF LAW**, with or without a jury. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. An arbitrator's award shall be final and binding upon the Parties, and judgment may be entered upon it in any court having jurisdiction.

15.5.1. COSTS The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

15.5.2. VENUE The Project location shall serve as the venue.

15.5.3. Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations. If, however, a state or federal court exercising jurisdiction over a timely filed claim or cause of action orders that the claim or cause of action be submitted to arbitration, the arbitration proceeding shall be deemed commenced as of the date the court action was filed, provided that the Party asserting the claim or cause of action files its demand for arbitration with the person or entity administering the arbitration within thirty (30) Days after the entry of such order.

16. MISCELLANEOUS

16.1. EXTENT OF AGREEMENT Except as expressly provided, this Agreement is for the exclusive benefit of the Parties and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, or agreements, either written or oral.

16.2. ASSIGNMENT Except as to the assignment of proceeds, neither Party shall assign its interest in this Agreement, in whole or in part, without the written consent of the other Party. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives.

16.3. GOVERNING LAW The law in effect at the location of the Project shall govern.

16.4. NOTICE Unless changed in writing, a Party's address indicated above ARTICLE 1 shall be used when delivering notice to a physical address. Except for Agreement termination and as otherwise specified in the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service.

16.5. JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms before execution. This Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

WESTWIN:

BY: *Arend J. Arends* NAME: Arend J. Arends TITLE: Vice President WITNESS:
Ashlea Sartin NAME: Ashlea Sartin TITLE: Engineering Project Manager

CONTRACTOR: PCE Constructors, Inc.

BY: *Mike A. Cook* NAME: Mike A. Cook TITLE: COO WITNESS:
Jennie Miller NAME: Jennie Miller TITLE: ADM Assistant

Consensus 235 – Modified.

