



Office of Management & Enterprise Services ■ Capital Assets Management ■ Construction and Properties

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion.

AGREEMENT made as of the _____ day of _____ in the year 20__.

BETWEEN THE OWNER:

State of Oklahoma
OMES/CAM/CAP
P.O. Box 53448
Oklahoma City, OK 73152-3448
cap@omes.ok.gov

PROJECT:

(CAP Project Number) (Solicitation Number)

(CAP Project Name)

(Address/Location)

ON BEHALF OF THE USING AGENCY:

(Using Agency Name)

OWNER'S REPRESENTATIVE (AE1)

AND THE DESIGN-BUILDER:

(Company Name)

(City, State ZIP)

(Address)

(Email)

(Telephone Number)

In consideration of the mutual covenants and obligations contained herein, Owner, Using Agency and Design-Builder agree as set forth herein.

ARTICLE 1: Scope of Work.

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

ARTICLE 2: Contract Documents.

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with CAP Form DB535 *General Conditions of the Contract for Design Build* ("General Conditions");

2.1.2 The Guaranteed Maximum Price ("GMP") Exhibit referenced in Section 6.6.1.1 herein or, if applicable, the GMP Proposal accepted by the Owner in accordance with Section 6.6.2 herein;

2.1.3 This Agreement, including all exhibits (List for example, performance standard requirements, performance incentive arrangements, markup exhibits, allowances, unit prices, or exhibit detailing off-site reimbursable personnel) but excluding, if applicable, the GMP Exhibit;

2.1.4 CAP Form DB535 *General Conditions of the Contract for Design-Build* ("General Conditions"); and

2.1.5 Construction Documents prepared and accepted in accordance with Section 2.4 of the General Conditions.

ARTICLE 3: Interpretation and Intent.

3.1 Design-Builder and Owner, prior to execution of the Agreement (and again, if applicable, at the time of acceptance of the GMP Proposal by Owner in accordance with Section 6.6.2 hereof), shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement or, if applicable, prior to Owner's acceptance of the GMP Proposal.

3.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistencies, conflict, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, or if applicable, after the Owner's acceptance of the GMP Proposal, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.

3.3 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions.

3.4 If Owner's Project Criteria contain design specifications: (a) Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any performance specifications; and (b) Design-Builder shall be entitled to an adjustment in Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification.

3.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

ARTICLE 4: Ownership of Work Product.

4.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are the property of the State of Oklahoma. Owner shall retain ownership and property interests therein, including the copyrights thereto.

ARTICLE 5: Contract Time.

5.1 Date of Commencement. The Work shall commence within ten (10) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion and Final Completion.

5.2.1 Substantial Completion of the entire Work shall be achieved no later than _____ (_____) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

(If following clause is selected with an "X", it shall hereby become a part of the 5.2.1 Agreement clause.)

The parties agree that the definition for Substantial Completion set forth in Section 1.2.25 of the General Conditions is hereby modified to read as follows:

"Substantial Completion is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes, provided, however, that Substantial Completion shall be deemed to have been achieved no later than the date of issuance of a Temporary Certificate of Occupancy issued by the local building official."

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work ("Scheduled Interim Milestone Dates") shall be achieved, if applicable, and set forth in **Exhibit _____** hereto.

5.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.7 of the General Conditions.

5.2.4 All of the dates set forth in this Article 5 (collectively the "Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

5.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 Liquidated Damages. Design-Builder and Owner have agreed not to provide for liquidated damages in this Agreement for failure of Design-Builder to achieve the Contract Time(s) set forth in this Article 5. Design-Builder understands, however, that Owner may suffer actual damages in the event the Contract Time(s) set forth herein are not timely achieved. Design-Builder agrees that if Substantial Completion is not attained by _____ (_____) calendar days after the Scheduled Substantial Completion Date (the "LD Date"), Owner shall be able to recover such actual damages from Design-Builder to the extent it can demonstrate that actual damages have been incurred, are directly related and caused by Design-Builder's failure to meet the Contract Time(s) set forth herein, and are not waived by Section 10.5.1 of the General Conditions of Contract.

(If following clause is selected with an "X," it shall become a supplemental part of the 5.4 clause of this Agreement)

Furthermore, Design-Builder understands that if Final Completion is not achieved within _____ (_____) calendar days of the Substantial Completion Date, Owner shall be able to recover such actual damages from Design-Builder to the extent it can demonstrate that actual damages have been incurred, are directly related and caused by Design-Builder's failure to meet the Contract Time(s) set forth herein, and are not waived by Section 10.5.1 of the General Conditions of Contract.

ARTICLE 6: Contract Price.

6.1 Contract Price.

6.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price ("Contract Price") equal to Design-Builder's Fee (as defined in Section 6.2 hereof) plus the Cost of the Work (as described in Section 6.3 hereof), subject to any GMP established in Section 6.6 hereof and any adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.1.2 For the Specific Work set forth below, Owner agrees to pay Design-Builder, as part of the Contract Price, on the following basis:

(This is an optional section intended to provide the parties with flexibility to identify and price limited preliminary services, such as lump sum or cost-plus arrangement for preliminary design, programming, or services necessary to enable Design-Builder to furnish Owner with a GMP before execution of this Agreement.)

6.2 Design-Builder's Fee.

6.2.1 Design-Builder's Fee shall be _____ percent (____) of the Cost of the Work, as adjusted in accordance with Section 6.2.2 below.

6.2.2 Design-Builder's Fee will be adjusted as follows for any changes in the Work:

a. For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of _____ percent (____) of the additional costs incurred for that Change Order, plus any other markups set forth at **Exhibit** _____ hereto.

b. For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include: *(The clause selected with an "X" shall become the valid supplemental clause to 6.2.2 of this Agreement)*

No additional reduction to account for Design-Builder's Fee or any other markup.

An amount equal to the sum of: (a) _____ percent (____) applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee); plus (b) any other markups set forth at **Exhibit** _____ hereto applied to the direct costs of the net reduction.

6.3 Cost of the Work. The term Cost of the Work shall mean costs reasonably and actually incurred by Design-Builder in the proper performance of the Work. The Cost of the Work shall include only the following:

6.3.1 Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site; provided, however, that the costs for those employees of Design-Builder performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement.

6.3.2 Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of materials and equipment necessary for the Work.

6.3.3 Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, but only to the extent said personnel are identified in Exhibit N/A and performing the function set forth in said Exhibit. The reimbursable costs of personnel stationed at Design-Builder's principal or branch offices shall include a zero percent (0%) markup to compensate Design-Builder for the Project-related overhead associated with such personnel.

6.3.4 Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 6.3.1 through 6.3.3 hereof. *(If clause is selected with an "X", it shall hereby become a part of the 6.3.4 Agreement clause.)*

A multiplier of _____ percent (____) shall be applied to the wages and salaries of the employees of Design-Builder covered under Sections 6.3.1 through 6.3.3 hereof.

6.3.5 The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work.

6.3.6 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.

6.3.7 Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion) executed by the Design-Builder, or those working by or through Design-Builder, provided that such defective, damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the costs of repair or correction is not recoverable by the Design-Builder from insurance, sureties, sub-contractors, design consultants or suppliers.

6.3.8 Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work.

6.3.9 Costs (less salvage value) of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.

6.3.10 Costs of removal of debris and waste from the Site.

6.3.11 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.

6.3.12 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work.

6.3.13 Premiums for insurance and bonds required by this Agreement or the performance of the Work.

6.3.14 All fuel and utility costs incurred in the performance of the Work.

6.3.15 Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work.

6.3.16 Legal costs, court costs and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work, provided such costs do not arise from disputes between Owner and Design-Builder.

6.3.17 Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.

6.3.18 The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product required by Owner, paying legal judgments against Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.

6.3.19 Deposits which are lost, except to the extent caused by Design-Builder's negligence.

6.3.20 Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.

6.3.21 Accounting and data processing costs related to the Work.

6.3.22 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.

6.4 Allowance Items and Allowance Values.

6.4.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the GMP Exhibit or GMP Proposal and are included within the GMP.

6.4.2 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed on an Allowance Item by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

6.4.3 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed on an Allowance Item by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

6.4.4 Allowance Value. The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and fee, are deemed to be included in the original Contract Price, and are not subject to adjustment, regardless of the actual amount of the Allowance Item.

6.4.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.4.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

6.5 Non-Reimbursable Costs.

6.5.1 The following shall not be deemed as costs of the Work:

a. Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 6.3.1, 6.3.2 and 6.3.3 hereof.

b. Overhead and general expenses, except as provided for in Section 6.3 hereof, or which may be recoverable for changes to the Work.

c. The cost of Design-Builder's capital used in the performance of the Work.

d. If the parties have agreed on a GMP, costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

6.6 The Guaranteed Maximum Price ("GMP").

6.6.1 GMP Established Upon Execution of this Agreement. Not Applicable

6.6.2 GMP Established After Execution of this Agreement.

a. **GMP Proposal.** If requested by Owner, Design-Builder shall submit a GMP Proposal to Owner which shall include the following, unless the parties mutually agree otherwise:

i. A proposed GMP, which shall be the sum of:

A) Design-Builder's Fee as defined in Section 6.2.1 hereof;

B) The estimated Cost of the Work as defined in Section 6.3 hereof, inclusive of any Design-Builder's Contingency as defined in Section 6.6.1.2 hereof; and

C) If applicable, any prices established under Section 6.1.2 hereof.

- ii. The Basis of Design Documents, which may include, by way of example, Owner's Project Criteria, which are set forth in detail and are attached to the GMP Proposal;
- iii. A list of the assumptions and clarifications made by Design-Builder in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the drawings and specifications and is specifically included as part of the Basis of Design Documents;
- iv. The Scheduled Substantial Completion Date upon which the proposed GMP is based, to the extent said date has not already been established under Section 5.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based;
- v. If applicable, a list of Allowance Items, Allowance Values, and a statement of their basis;
- vi. If applicable, a schedule of alternate prices;
- vii. If applicable, a schedule of unit prices;
- viii. If applicable, a statement of Additional Services which may be performed but which are not included in the GMP and which, if performed, shall be the basis for an increase in the GMP and/or Contract Time(s); and
- ix. The time limit for acceptance of the GMP Proposal.

b. Review and Adjustment to GMP Proposal. After submission of the GMP Proposal, Design-Builder and Owner shall meet to discuss and review the GMP Proposal. If Owner has any comments regarding the GMP Proposal or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the GMP Proposal.

c. Acceptance of GMP Proposal. If Owner accepts the GMP Proposal, as may be amended by Design-Builder, the GMP and its basis shall be set forth in an amendment to this Agreement.

d. Failure to Accept the GMP Proposal. If Owner rejects the GMP Proposal or fails to notify Design-Builder in writing on or before the date specified in the GMP Proposal that it accepts the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

- i. Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 6.6.2.3 above;
- ii. Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 6.1 hereof without a GMP, in which case all references in this Agreement to the GMP shall not be applicable; or
- iii. Owner may terminate this Agreement for convenience in accordance with Article 8 hereof; provided, however, in this event, Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof.

ARTICLE 7: Procedure for Payment.

7.1 Progress Payments.

7.1.1 Design-Builder shall submit to Owner on the _____ (_____) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Invoice (CAP Form G702/G703) in accordance with Article 6 of the General Conditions.

7.1.2 Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Invoice in accordance with Article 6 of the General Conditions, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions. All Payments shall be in accordance with the Fair Pay for Construction Act.

7.1.3 If Design-Builder's Fee under Section 6.2.1 hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Invoice and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

7.2 Retainage on Progress Payments.

7.2.1 *(The clause selected with an "X" shall become the valid 8.1.3 clause of this Agreement)*

Owner will retain _____ percent (_____) of each Design-Builder's Invoice provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional retention amounts from Design-Builder's subsequent Invoices. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.

Owner will retain _____ percent (_____) from Design-Builder's Invoice, exclusive of general conditions costs, and any amounts paid to Design-Builder's Design Consultant, from each Invoice provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional amounts from Design-Builder's subsequent Invoices. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.

7.2.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to: (a) 150% of the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion and in accordance with the Fair Pay for Construction Act Title 61 Section 226, and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions.

7.3 Final Payment. Design-Builder shall submit its Final Invoice to Owner in accordance with Section 6.7 of the General Conditions. Owner shall make payment on Design-Builder's properly submitted and accurate Final Invoice (less any amount the parties may have agreed to set aside for warranty work) within thirty (30) days after Owner's receipt of the Final Invoice, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions.

7.4 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest in accordance with the Fair Pay for Construction Act.

7.5 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with general accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

ARTICLE 8: Termination for Convenience.

8.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

8.1.1 All Work executed and for proven loss, cost or expense in connection with the Work;

8.1.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Sub-contractors and Design Consultants.

8.1.3 *(The clause selected with an "X" shall become the valid 8.1.3 clause of this Agreement)*

The fair and reasonable sums for overhead and profit on the sum of items 8.1.1 and 8.1.2 above.

Overhead and profit in the amount of _____ percent (_____) on the sum of items 8.1.1 and 8.1.2 above.

8.2 In addition to the amounts set forth in Section 8.1 above, if Owner terminates this Agreement ____ commencement of construction, Design-Builder shall be paid _____ percent (_____) of the remaining balance of the Contract Price, provided, however, that if a GMP has not been established, the above percentage shall be applied to the remaining balance of the most recent estimated Contract Price.

8.3 If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work construct the Project through its employees, agents or third parties, Owner's rights to use the Work others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4.

ARTICLE 9: Representatives of the Parties.

9.1 Owner and Owner's Representatives.

9.1.1 Owner designates the individual listed below as its Senior Individual ("Owner's Senior Contact"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

Individual Name _____ Direct Telephone _____ Direct Email _____

9.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract:

Individual Name _____ Direct Telephone _____ Direct Email _____

9.2 Design-Builder's Representatives.

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

Individual Name _____ Direct Telephone _____ Direct Email _____

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract:

Individual Name _____ Direct Telephone _____ Direct Email _____

9.3 Using Agency's Representative.

9.3.1 Using Agency designates the individual listed below as its Senior Representative ("Using Agency's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

Individual Name _____ Direct Telephone _____ Direct Email _____

9.3.2 Using Agency designates the individual listed below as its Using Agency Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract:

Individual Name _____ Direct Telephone _____ Direct Email _____

ARTICLE 10: Bonds and Insurance.

10.1 Bonds and Other Performance Security. Design-Builder shall provide in accordance with Article 5 of the General Conditions the following state required bonds and security:

10.1.1 Performance Bond. Required Not Required

10.1.2 Payment Bond. Required Not Required

10.1.3 Warranty (Defect) Bond. Required Not Required

10.2 Letter of Credit. Irrevocable Letters of Credit may be used as a substitute for the bonds required in Section 10.2. Each Letter of Credit must be on the forms prescribed and provided by the Owner and issued by a financial institution insured by Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. Each Letter of Credit must be for the total value of the contract.

10.3 Insurance. Design-Builder shall procure in accordance with Article 5 of the General Conditions the state required coverage amounts of the following insurance coverage's:

10.3.1 Worker's Compensation Insurance shall not be less than statutory limit.

10.3.2 Employer's Liability Insurance shall not be less than \$500,000 each accident, \$500,000 disease each employee, and \$500,000 disease policy limit.

10.3.3 Commercial General Liability (including Products-completed operations, Contractual Liability, Personal & Advertising Injury) shall be not less than \$2,000,000 each occurrence.

10.3.4 Automobile, Liability Insurance. Such insurance shall extend to owned, non-owned and hired automobiles used in the performance of this Agreement. The limits of liability of such insurance shall be not less than \$2,000,000 per Combined Single Limit of each accident.

10.3.5 Builder's Risk Insurance shall not be less than minimum limits equal to the contract value.

10.3.6 Professional Liability insurance shall be not less than \$1,000,000.00 or _____, whichever is greater.

ARTICLE 11: Other Provisions.

11.1 Other Provisions, if any, are as follows:

11.1.1 Notwithstanding Section 2.3.1 of the General Conditions of Contract, if the parties agree upon specific performance standards in the Basis of Design Documents, the design professional services shall be performed to achieve such standards.

11.1.2 Key Personnel, Subcontractors and Outside Associates or Consultant. In connection with this contract, any in-house personnel, subcontractors, and outside associates or consultants will be limited to individuals or firms that were specifically identified in the Design-Builder's accepted proposal. The Design-Builder will obtain the Owner's written consent before making any substitution for these designated in-house personnel, subcontractors, associates, or consultants.

11.1.3 Responsibility of the Design-Builder for Design. The Design-Builder will be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other non-construction services furnished by the Design-Builder under this contract. The Design-Builder will, without additional compensation, correct or revise any errors or deficiency in its designs, drawings, specifications, and other non-construction services and perform any necessary rework or modifications, including any damage to real or personal property, resulting from the design error or omission.

The standard of care for all design services performed under this agreement will be the care and skill ordinarily used by members of the architectural or engineering professions practicing under similar conditions at the same time and locality. Notwithstanding the above, in the event that the contract specifies that portions of the Work be performed in accordance with a performance standard, the design services shall be performed so as to achieve such standards.

Neither the Owner's review, approval or acceptance of, nor payment for, the services required under this contract, will be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract. The Design-

Builder will be and remain liable to the Owner in accordance with applicable law for all damages to the Owner caused by the Design-Builder's negligent performance of any of these services furnished under this contract

The rights and remedies of the Owner provided for under this contract are in addition to any other rights and remedies provided by law.

If the Design-Builder is comprised of more than one legal entity, each entity will be jointly and severally liable hereunder.

11.1.4 Audits and Records Clause. As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. In accepting any contract with the State, the Consultant agrees any pertinent State or Federal agency will have the right to examine and audit all records relevant to execution of the resultant contract. The consultant is required to retain all records relative to this contract for the duration of the contract term and for a period of three years following completion and/or termination of the contract. If an audit, litigation, or other action involving such records are started before the end of the three year period, the records are required to be maintained for three years from the date that all issues arising out of the action are resolved or until the end of the three year retention period, whichever is later.

11.1.5 Fair Pay for Construction Act. Design Consultant shall have the same rights and terms as a Subcontractor.

11.1.6 State of Oklahoma Governor's Executive Order 2012-01. Per the State of Oklahoma Governor's Executive Order 201201, filed February 6, 2012 and effective July 1, 2012, the use of any tobacco product shall be prohibited on any and all properties owned, leased or contracted for use by the State of Oklahoma, including but not limited to all buildings, land and vehicles owned, leased or contracted for use by agencies or instrumentalities of the State of Oklahoma.

11.1.7 Oklahoma Taxpayer and Citizen Protection Act of 2007. The Design-Builder certifies that it and all proposed subcontractors and suppliers, whether known or unknown at the time this contract is executed or awarded, will comply with the provisions of the Oklahoma Taxpayer and Citizen Protection Act of 2007 and participate in the Status Verification System. The Status Verification System is defined in the Oklahoma Statutes, Title 25 §1312.

ARTICLE 12: Enumeration of the Documents

12.1The Design Build Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

12.1.1 The Documents, if any, and accepted by the Owner, consist of those set forth at **Exhibit _____** hereto.

12.1.2 Other Documents, if any, forming part of the Design-Builder's documents are as follows:

- a. Notice to Proceed/Work Order**
- b. Purchase Order**

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:

State of Oklahoma
Office of Management and Enterprise Services
Capital Assets Management
Construction and Properties

USING AGENCY:

The Using Agency certifies that funds are available and dedicated to completing the contract sums stated in this Contract. The Using Agency agrees to pay all project related costs including but not limited to work related to unknown site conditions, remediation of discovered environmental conditions, legal expenses, judgments and any reasonable project related expense.

(Owner's Signature)

(Date Signed)

(Authorized Representative Signature)

(Date Signed)

(Owner's Printed Name)

(Authorized Representative Printed Name)

(Owner's Printed Title)

(Authorized Representative Printed Title)

DESIGN-BUILDER:

Non-Collusion Statement

The Authorized Representative for the Design-Builder, of lawful age, solemnly swears or affirms, under penalty of perjury, that (s)he is the duly authorized agent of the Company indicated herein under the contract which is attached to this statement, for the purpose of certifying the facts pertaining to the giving of things of value to government personnel in order to procure said Contract.

(S)He is fully aware of the facts and circumstances surrounding the making of the Contract to which this statement is attached and has been personally and directly involved in the proceedings leading to the procurement of said Contract: and

Neither the Company nor anyone subject to the Company's direction or control has paid, given or donated or agreed to pay, give or donate to any office or employee of the State of Oklahoma any money or other thing of value, either directly or indirectly, in procuring the Contract to which this statement is attached.

Exhibits/Attachments list:

(Authorized Representative Signature)

(Date Signed)

(Authorized Representative Printed Name)

(Authorized Representative Printed Title)

(EIN/TIN number)