



The Contract and these General Conditions take precedence over all other Contract Documents including but not limited to the Drawings and Specifications.

**ARTICLE 1: General Provisions**

**1.1 Basic Definitions.**

**1.1.1 The Contract Documents.** The Contract Documents consist of the agreement between the Owner and the Contractor (hereinafter called the Contract), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications normally contained in a booklet titled "Project Manual" along with the conditions of the Contract, Addenda issued prior to execution of the Contract, other documents listed in the Contract and Change Orders issued after execution of the Contract. A Change Order is a modification of the Contract signed by both parties.

**1.1.2 The Contract.** The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties thereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract shall be amended or modified only by a Change Order. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Consultant and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor or (3) between any persons or entities other than the Owner and Contractor. The Consultant shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Consultant's duties.

**1.1.3 The Work.** The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

**1.1.4 The Project.** The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate Contractors.

**1.1.5 The Drawings.** The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, and includes plans, elevations, sections, details, schedules, diagrams and drawing notes.

**1.1.6 The Specifications.** The Specifications are located in the Project Manual and are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services. Where there is a discrepancy between the Drawings and the Specifications, the Specifications will take precedence. Such discrepancies must be brought to the attention of the Owner's Representative (Consultant) and the Owner before execution of any work related to the discrepancies.

**1.2 Execution, Correlation and Intent.**

**1.2.1** The Contract Documents shall be signed by the Owner and Contractor as provided in the Contract.

**1.2.2** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

**1.2.3** The intent of the Contract Documents is to include all items

necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

**1.2.4** Organization of the Specifications into divisions, sections and articles and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**1.2.5** Unless otherwise stated in the Contract Documents, words which have well known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

**1.3 Ownership and Use of Drawings and Specifications.**

**1.3.1** The Drawings, Specifications and other documents prepared by the Consultant are the property of the State of Oklahoma. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications or other documents prepared by the Consultant. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Owner, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Consultant and copies thereof furnished to the Contractor are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents appropriate to and for use in the execution of their Work under the Contract Documents.

**1.3.2** The Contractor shall provide all copies of the Drawings and Project Manuals required to complete the Work. The Owner will provide an electronic copy of the documents to the reproduction company for printing purposes.

**1.4 Capitalization.** Terms capitalized in these General Conditions include those which are (1) specifically defined or (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document.

**1.5 Interpretation.** In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

**ARTICLE 2: Owner.**

**2.1 Definition.** The Owner is the State of Oklahoma acting through the Office of Management and Enterprise Services Capital Assets Management Construction and Properties, usually acting on behalf of another state agency, commission or department and is referred to throughout the Contract Documents as if singular in number. The Using Agency shall 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. The term "Owner" means the Owner or the Owner's authorized representative.

**2.2 Owner's Right to Stop Work.** If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.1-3.

**2.3 Owner's Right to Carry-out the Work.** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a second seven-day period. If the Contractor within such second seven-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Consultant's additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such payments, the Contractor shall pay the difference to the Owner.

**2.4 Owner's Right to Reject Work.** The Owner shall have the authority to reject Work which does not conform to the Contract Documents.

**2.5 Owner's Right to Approve Payment Applications.** The Owner shall have the right to review, evaluate and approve or reject Applications for Payment and Certificates for Payment.

### **ARTICLE 3: Contractor.**

**3.1 Definition.** The Contractor is the person or entity identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

### **3.2 Review of Contract Documents and Field Conditions by Contractor.**

**3.2.1** The Contractor shall carefully study and compare the Contract Documents with each other and shall at once report to the Consultant or Owner any errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or Consultant for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and knowingly failed to report it to the Consultant or Owner. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Consultant, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

**3.2.2** The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Consultant at once.

### **3.3 Supervision and Construction Procedures.**

**3.3.1** The Contractor shall supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely

responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters.

**3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor.

**3.3.3** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Consultant in the Consultant's administration of the Contract or by tests, inspections or approvals required or performed by persons other than the Contractor.

**3.3.4** The Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

### **3.4 Labor and Materials.**

**3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**3.4.2** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

**3.5 Warranty.** The Contractor warrants to the Owner and Consultant that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. If required by the Consultant, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

### **3.6 Taxes.**

**3.6.1** The Contractor shall pay sales, consumer use and similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted when Bids are received, whether or not yet effective or merely scheduled to go into effect.

**3.6.2** The State of Oklahoma is **not** sales tax exempt. This project is **not** sales tax exempt.

### **3.7 Permits, Fees and Notices.**

**3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for permits, fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when Bids are received. Building permits from local municipalities are not required for Work on state-owned lands except where the Work requires connection to utilities owned by the local municipality.

**3.7.2** The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work.

**3.7.3** It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at

variance therewith, the Contractor shall promptly notify the Consultant and Owner in writing, and necessary changes shall be accomplished by appropriate Change Order.

**3.7.4** If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Consultant and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

**3.8 Allowances.**

**3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against which the Contractor makes reasonable objection.

**3.8.2** Unless otherwise provided in the Contract Documents:

- a. Materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work.
- b. Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts.
- c. Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances.
- d. Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order

**3.9 Superintendent.** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The Contractor shall submit the name and experience qualifications of the proposed superintendents to the Owner for approval. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

**3.10 Contractor's Construction Schedule.**

**3.10.1** Prior to the Work Order or Notice to Proceed being issued, the Contractor shall prepare and submit for the Owner's and Consultant's information a "90-Day Construction Schedule" which shall be used to monitor the progress of the Work during the first 90 calendar days of the Contract. During this 90-day period, the Contractor shall prepare and submit the "Construction Schedule" for the entire project, including the "90-day Project Schedule," which shall be used to monitor the remainder of the Work. The overall duration of the "Construction Schedule" shall coincide with and shall not exceed the time limits specified in the Contract Documents. During construction, if the progress of the Work does not meet the "Construction Schedule," the Contractor shall revise and resubmit the schedule for the delayed activities within 21 days of any delayed activity. Resubmitted schedules shall indicate the revised times for each activity and shall not exceed the time limits specified in the Contract Documents and any approved Change Orders. Failure to resubmit the delayed activity or maintain a current "Construction Schedule" shall be considered a breach of the Contract.

**3.10.2** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Consultant.

**3.10.3** Failure of the Contractor to construct the Work in accordance with the "90-Day Construction Schedule" or the "Construction Schedule" shall be considered a substantial breach of the Contract Documents and the Owner may terminate the Contract in accordance with Section 14.2. All "Float" time in the "Construction Schedule" shall be available to the Owner for the Owner's use.

**3.10.4** The Contractor shall prepare and keep current, for the Consultant's approval, a schedule of submittals, which is coordinated with the Contractor's "Construction Schedule" and allows the Consultant reasonable time to review submittals.

**3.11 Documents and Samples at the Site.**

**3.11.1** The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Contract Documents, in good order and marked currently to record changes and selections made during construction and, in addition, approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Consultant and shall be delivered to the Consultant for submittal to the Owner upon completion of the Work.

**3.11.2** Additionally, the Contractor shall maintain at the site the Drawings that have been stamped and approved by the State Fire Marshal. This approved set of Drawings is only for the use of the State Fire Marshal's office.

**3.12 Shop Drawings, Product Data and Samples.**

**3.12.1** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

**3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**3.12.3** Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**3.12.4** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate, for those portions of the Work for which submittals are required, the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Consultant is subject to the limitations of Subparagraph 4.2.7.

**3.12.5** The Contractor shall review, approve and submit to the Consultant Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate Contractors. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action.

**3.12.6** The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Consultant. Such Work shall be in accordance with approved submittals.

**3.12.7** By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**3.12.8** The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Consultant's approval of Shop Drawings, Product Samples or similar submittals unless the Contractor has specifically informed the Consultant in writing of such deviation at the time of submittal and the Consultant has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Consultant's approval thereof.

**3.12.9** The Contractor shall direct specific attention in writing, or on

resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Consultant on previous submittals.

**3.12.10** Informational submittals upon which the Consultant is not expected to take responsive action may be so identified in the Contract Documents.

**3.12.11** When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Consultant shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

**3.13 Use of Site.** The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

**3.14 Cutting and Patching.**

**3.14.1** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

**3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate Contractor except with written consent of the Owner and of such separate Contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate Contractor the Contractor's consent to cutting or otherwise altering the Work.

**3.15 Cleaning Up.**

**3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work the Contractor shall remove from and about the Project site, all waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

**3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

**3.16 Access to Work.** The Contractor shall provide the Owner and Consultant access to the Work in preparation and progress wherever located.

**3.17 Royalties and Payments.** The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner and Consultant harmless from loss on account thereof but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Consultant.

**3.18 Indemnification.**

**3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Consultant, Consultant's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property other than the Work itself including loss of use resulting there from but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity

which would otherwise exist as to a party or person described in this Paragraph 3.18.

**3.18.2** In claims against any person or entity indemnified under this Paragraph 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 3.18 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workmen's compensation acts.

**ARTICLE 4: Administration of the Contract.**

**4.1.1** The Consultant is the person lawfully licensed to practice architecture or engineering or an entity lawfully practicing architecture or engineering identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number. The term "Consultant" means the Consultant or the Consultant's authorized representative acting in the capacity as the Owner's Representative. The Consultant on a Project may be an employee of the State of Oklahoma (may also be referred to as a Supervisory Official) or may be from the private sector.

**4.1.2** Duties, responsibilities and limitations of authority of the Consultant as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner and Consultant. Consent shall not be unreasonably withheld.

**4.1.3** In case of termination of employment of the Consultant, the Owner shall appoint a Consultant against whom the Contractor makes no reasonable objection and whose status under the Contract Documents shall be that of the former Consultant

**4.2 Consultant's Administration of the Contract**

**4.2.1** The Consultant will provide administration of the Contract as described in the Contract Documents and will be the Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. The Consultant will advise and consult with the Owner. The Consultant will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.

**4.2.2** The Consultant and subconsultants will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Consultant will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work. On the basis of on-site observations as an Architect or Engineer, the Consultant will keep the Owner informed of progress of the Work and will endeavor to guard the Owner against defects and deficiencies in the Work.

**4.2.3** The Consultant will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraph 3.3. The Consultant will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Consultant will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors or their agents or employees or of any other persons performing portions of the Work.

**4.2.4 Communications Facilitating Contract Administration.** Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate through the Consultant. Communications by and with the Consultant's consultants shall be through the Consultant. Communications by and with Subcontractors and material suppliers shall be through the Contractor.

Communications by and with separate contractors shall be through the Owner.

**4.2.5** Based on the Consultant's observations and evaluations of the Contractor's Applications for Payment, the Consultant will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**4.2.6** The Consultant will have authority to reject Work that does not conform to the Contract Documents. Whenever the Consultant considers it necessary or advisable for implementation of the intent of the Contract Documents, the Consultant will have authority to require additional inspection or testing of the Work in accordance with Subparagraphs 13.5.2 and 13.5.3 whether or not such Work is fabricated, installed or completed. However, neither this authority of the Consultant nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Consultant to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

**4.2.7** The Consultant will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Consultant's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate Contractors, while allowing sufficient time in the Consultant's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Consultant's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5 and 3.12. The Consultant's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Consultant, of any construction means, methods, techniques, sequences or procedures. The Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**4.2.8** When modifications to the Contract or Contract Documents are being requested, the Contractor shall prepare and submit CAP Form G701, *Change Order*, to the Consultant. If approved by the Consultant, the Change Order shall be forwarded to the Using Agency and the OMES CAM CAP administrator for review and approval. The OMES CAM CAP administrator will forward the approved Change Order to the Consultant and Contractor. The Work described in the approved Change Order may be started by the Contractor upon receipt of the approved Change Order.

**4.2.9** The Consultant will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

**4.2.10** If the Owner and Consultant agree, the Consultant will provide one or more project representatives to assist in carrying out the Consultant's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

**4.2.11** The Consultant will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Contractor. The Consultant's response to such requests will be made with reasonable promptness

and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Consultant shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Consultant to furnish such interpretations until 15 days after written request is made for them.

**4.2.12** Interpretations and decisions of the Consultant will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.

### **4.3 Claims and Disputes.**

**4.3.1 Definition.** A Claim is a demand or assertion by the Contractor seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made by submitting a CAP Form G701, *Change Order*.

**4.3.2 Decision of Consultant.** Claims, including those alleging an error or omission by the Consultant, shall be referred initially to the Consultant for action as provided in Paragraph 4.4. A decision by the Consultant, as provided in Subparagraph 4.4.4, shall be required as a condition precedent to consideration by the Owner.

**4.3.3 Time Limits on Claims.** Claims must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

**4.3.4 Continuing Contract Performance.** Pending final resolution of a Claim, including protest, except as otherwise agreed in writing or with exception to 9.6.7, Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make monthly progress payments in accordance with the Contract Documents.

**4.3.5 Waiver of Claims: Final Payment.** The making of final payment shall constitute a waiver of Claims except those arising from any of the following:

- a. Liens, Claims, Security interests or encumbrances arising out of the Contract and unsettled.
- b. Failure of the Work to comply with the requirements of the Contract Documents.
- c. Terms of special warranties required by the Contract Documents.

**4.3.6 Claims for Concealed or Unknown Conditions.** If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then written notice by the Contractor shall be given to the Consultant and Owner promptly before conditions are disturbed and in no event later than seven days after first observance of the conditions. The failure by the Contractor to give such written notice of the discovered concealed or unknown condition prior to executing any additional Work shall constitute a waiver of any claim for additional compensation or time extension. Upon receipt of a written notice, the Consultant will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of or time required for performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. Any change in the Contract Sum or Contract Time shall only be made by the execution of a Change Order. If the Consultant determines that the conditions at the site are not materially different from those indicated in the Contract Documents

and that no change in the terms of the Contract is justified, the Consultant shall so notify the Owner and Contractor in writing, stating the reasons. Claims by the Contractor in opposition to such determination must be made within 21 days after the Consultant has given notice of the decision.

**4.3.7 Claims for Additional Cost.** If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.3. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Consultant, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Consultant, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with the procedure established herein. Any change in the Contract Sum shall only be made by the execution of a Change Order.

**4.3.8 Claims for Additional Time.**

- a. If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include a description of the probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary. Any change in the Contract Time shall only be made by the execution of a Change Order.
- b. The Contract construction time was determined by the estimated construction time with additional time added for project days lost due to typical adverse weather conditions in the project vicinity. Consideration was given to the projected starting date and an anticipated schedule of work. Adverse weather conditions include abnormal precipitation, temperature and wind conditions. Claims for additional time may be made when the actual weather conditions at the project site cause delay days which exceed the days indicated on the following chart.

Month	Workdays lost included in Contract Time					
	OKC	Tulsa	NW	NE	SE	SW
January	8	9	10	8	8	7
February	8	8	10	8	8	8
March	5	6	8	6	6	6
April	5	6	5	5	6	5
May	3	3	1	2	3	2
June	3	3	1	2	2	1
July	1	1	1	1	1	1
August	1	1	1	1	1	1
September	1	1	1	1	1	1
October	2	3	1	2	1	2
November	3	2	2	2	2	2
December	4	4	4	4	4	4
<b>Totals</b>	<b>44</b>	<b>47</b>	<b>45</b>	<b>42</b>	<b>43</b>	<b>40</b>

- c. All claims for additional days that exceed the work days lost as indicated on the chart shall be submitted with documentation from a recognized climatological source such as the Oklahoma Climatological Survey ([mesonet.org](http://mesonet.org)) or the National Oceanic and Atmospheric Administration (NOAA) ([noaa.gov](http://noaa.gov)). Other sources must be submitted to the Consultant and Owner for approval.
- d. All claims for additional time due to adverse weather conditions that exceed the days indicated on the chart, shall be submitted with the next monthly payment application.
- e. Weather conditions and lost workdays shall be recorded daily by the Contractor and submitted to the Consultant with the monthly

payment applications.

- f. Unused lost weather days, as indicated in paragraph 4.3.8.2, included in the Contract time shall be used by the Owner to offset lost time for other approved delay claims.

**4.3.9 Injury or Damage to Person or Property.** If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Subparagraphs 4.3.7 or 4.3.8.

**4.4 Resolution of Claims and Suits.**

**4.4.1** The Consultant will review Claims and take one or more of the following preliminary actions within ten days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) reject the Claim in whole or in part, stating reasons for rejection, (3) recommend approval of the Claim by the Owner or (4) suggest a compromise. The Consultant may also but is not obligated to notify the surety, if any, of the nature and amount of the Claim.

**4.4.2** If a Claim has been resolved, the Consultant will prepare or obtain appropriate documentation.

**4.4.3** If a Claim has not been resolved, the Contractor shall, within 10 days after the Consultant's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Consultant, (2) modify the initial Claim or (3) notify the Consultant that the initial Claim stands.

**4.4.4** If a Claim has not been resolved after consideration of the foregoing and of further evidence presented to the Owner by the Consultant or Contractor, the Owner will notify the Consultant and Contractor in writing that the Owner's decision will be made within seven days. Upon expiration of such time period, the Owner will render to the parties the Owner's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Owner may but is not obligated to notify the surety and request the surety's assistance in resolving the controversy.

**4.4.5** The Contractor may appeal the Owner's decision by submitting written notice of a protest to the OMES CAM administrator within 10 days of receiving the Owner's decision as described in 4.4.4 above.

**4.4.6** The OMES CAM administrator may hear the protest or assign the Contractor's appeal to an administrative law judge the Owner retains. If the appeal is assigned to an administrative law judge, the administrative law judge shall review the protest for legal authority and jurisdiction. If legal authority and jurisdictional requirements are met, the administrative law judge shall conduct an administrative hearing in accordance with the Administrative Procedures Act, 75 O.S. §§ 309 et seq. and provide findings of fact and conclusions of law to the administrator. The administrator shall send written notice to the Contractor of the final decision sustaining or denying the Contractor's appeal.

**4.4.7** If the OMES CAM administrator denies a Contractor's appeal, the Contractor may appeal pursuant to provisions of 75 O.S. §§ 309 et seq. of the Administrative Procedures Act.

**ARTICLE 5: Subcontractors.**

**5.1 Definitions.**

**5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

**5.1.2** A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

**5.2 Award of Subcontracts and other Contracts for Portions of the Work.**

**5.2.1** The Contractor, within seven days, shall furnish in writing to the Owner, through the Consultant, the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Consultant will promptly reply to the Contractor in writing stating whether or not the Owner or the Consultant, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Consultant to reply promptly shall constitute notice of no reasonable objection.

**5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner or Consultant has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**5.2.3** If the Owner or Consultant has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Consultant has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued. However, no increase in the Contract Sum shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

**5.2.4** The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Consultant makes reasonable objection to such change.

**5.3 Sub Contractual Relations.** By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner and Consultant. Each subcontract agreement shall preserve and protect the rights of the Owner and Consultant under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**5.4 Contingent Assignment of Subcontracts.**

**5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided the following:

- a. Assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing.
- b. Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

**5.4.2** If the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted.

**ARTICLE 6: Construction by Owner or by Separate Contractor(s).**

**6.1 Owner's Right to Perform Construction and to Award Separate Contracts.**

**6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided elsewhere in the Contract Documents.

**6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner- Contractor Contract.

**6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule and Contract Sum deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

**6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract.

**6.2 Mutual Responsibility.**

**6.2.1** The Contractor shall afford the Owner and separate contractors' reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

**6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Consultant apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgment that the Owner's or separate contractors completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

**6.2.3** Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

**6.2.4** The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2.5.

**6.2.5** Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Paragraph 4.3 provided the separate contractor has reciprocal obligations.

**6.2.6** The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 3.14.

**6.3 Owner's Right to Clean Up.** If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility

under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up and allocate the cost among those responsible as the Consultant determines to be just.

## **ARTICLE 7: Changes in the Work.**

### **7.1 Changes.**

**7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Section 7 and elsewhere in the Contract Documents.

**7.1.2** A Change Order shall be based upon agreement among the Owner, Contractor and Consultant; a Construction Change Directive requires agreement by the Owner and Consultant and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Consultant alone.

**7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order.

**7.1.4** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices may be equitably adjusted by negotiation.

**7.1.5** A CAP Form G701, *Change Order*, shall be submitted by the Contractor and approved and executed by the Consultant, Using Agency and the OMES CAM CAP administrator before any Work, including Work using unit prices, is started.

### **7.2 Change Orders.**

**7.2.1** A *Change Order* (CAP Form G701) is a written instrument prepared by the Consultant and signed by the Owner, Contractor and Consultant, stating their agreement upon all of the following:

- a. A change in the Work.
- b. The amount of the adjustment in the Contract Sum, if any.
- c. The extent of the adjustment in the Contract Time, if any.

**7.2.2** The cost or credit to the Owner resulting from a change in the work shall be determined by the Contractor completing a CAP Form G701, *Change Order*, which requires a listing of the following:

- a. All materials with the cost per item.
- b. All labor with the number and cost of hours.
- c. All equipment used with an hourly cost.
- d. Overhead costs and profit, for Contractor and Subcontractor are limited to a combined 10% in total.
- e. Miscellaneous costs including cost of insurance and bonds, permit fees, and sales, use or similar taxes related to the Work.

**7.2.3** The Contractor must include a breakdown of costs for each Subcontractor similar to the requirements in Paragraph 7.2.2. Miscellaneous costs as listed in 7.2.2 (e) shall not incur an overhead and profit markup.

### **7.3 Construction Change Directives.**

**7.3.1** A *Construction Change Directive* (CAP Form G714), is a written order prepared by the Consultant and signed by the Owner and Consultant, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time or both. The Owner may by *Construction Change Directive*, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**7.3.2** A *Construction Change Directive* shall be used in the absence of total agreement on the terms of a Change Order.

**7.3.3** If the *Construction Change Directive* provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- a. Mutual acceptance of a lump sum properly itemized and

supported by sufficient substantiating data to permit evaluation.

b. Unit prices stated in the Contract Documents or subsequently agreed upon.

c. Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.

d. As provided in Subparagraph 7.3.6.

**7.3.4** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Consultant of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**7.3.5** A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in the Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**7.3.6** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Consultant on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, overhead and profit shall be limited as per Subparagraph 7.2.2.. In such case, and also under Clause 7.3.3, the Contractor shall keep and present, in such form as the Consultant may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 7.3.6 shall be limited as per Subparagraph 7.2.2.

**7.3.7** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Consultant. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**7.3.8** Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Consultant will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 4.

**7.3.9** When the Owner and Contractor agree with the determination made by the Consultant concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

**7.4 Minor Changes in the Work.** The Consultant will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be affected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

## **ARTICLE 8: Time.**

### **8.1 Definitions.**

**8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments by Change Order, allotted in the Contract Documents for Substantial Completion of the Work.

**8.1.2** The date of commencement of the Work is the date established in the Notice to Proceed/Work Order. The date shall not be postponed by the failure of acts of the Contractor or of persons or entities for



whom the Contractor is responsible.

**8.1.3** The date of Substantial Completion is the date certified by the Consultant and approved by the Owner in accordance with Paragraph 9.8.

**8.1.4** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

## **8.2 Progress and Completion.**

**8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Contract, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the date of commencement as established by the Work Order issued by the Owner.

**8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

## **8.3 Delays and Extensions for Time.**

**8.3.1** If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner or Consultant, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending hearing results, or by other causes which the Consultant determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Consultant and Owner may determine.

**8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.3.

**8.3.3** An extension of the Contract Time is the sole and exclusive remedy available to the Contractor, in the event of delays described in Paragraph 8.3. In no event, and under no circumstances, shall the Contract Sum be increased, nor shall the Contractor claim, recover or receive payment for any delay to the Project, whether or not such delayed event is in the critical path of the construction schedule.

## **ARTICLE 9: Payments and Completion.**

**9.1 Contract Sum.** The Contract Sum is stated in the Contract and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Contract Sum shall only be changed by a Change Order.

**9.2 Schedule of Values.** Before the first Application for Payment is submitted, the Contractor shall submit to the Consultant and Owner a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Consultant and Owner may require. Each value indicated on the Schedule of Values shall be the exact amount of each subcontract or portion of the Work it represents. This schedule, unless objected to by the Consultant or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

## **9.3 Applications for Payment (Contractor's Invoice).**

**9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Consultant an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Consultant may require, such as copies of requisitions from Subcontractors and material suppliers.

**a.** Up to five percent (5%) of all partial payments made shall be withheld as retainage.

**b.** All payment applications must be on a CAP Form G702-703, *Contractor's Invoice*.

**c.** Such applications shall not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

**9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location properly bonded or insured as a warehouse for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. All stored materials shall be protected from weather conditions by properly secured methods. The Owner shall not pay for stored materials that are not properly protected.

**9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

## **9.4 Certificates for Payment.**

**9.4.1** The Consultant will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Consultant determines is properly due or notify the Contractor and Owner in writing of the Consultant's reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1. The Owner shall have the right to review and approve the Certificates for Payment.

**9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Consultant to the Owner, based on the Consultant's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Consultant's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents.

## **9.5 Decisions to Withhold Certification.**

**9.5.1** The Consultant or Owner may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Consultant's opinion the representations to the Owner required by Subparagraph 9.4.2 cannot be made. If the Consultant is unable to certify payment in the amount of the Application, the Consultant will notify the Contractor and Owner as provided in Subparagraph 9.4.1. If the Contractor and Consultant cannot agree on a revised amount, the Consultant will promptly issue a Certificate for Payment for the amount for which the Consultant is able to make such representations to the Owner. The Consultant may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Consultant's opinion to protect the Owner from loss because of any of the following:

**a.** Defective Work not remedied.

**b.** Third party claims filed or reasonable evidence indicating probable filing of such claims.

**c.** Failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment.

**d.** Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum.

**e.** Damage to the Owner or another Contractor.

**f.** Reasonable evidence that the Work will not be completed within

the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay.

g. Persistent failure to carry out the Work in accordance with the Contract Documents.

**9.5.2** When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**9.6 Progress Payments.**

**9.6.1** After the Consultant has issued a Certificate for Payment, the Owner shall review for approval and make payment in the manner and within the time provided in the Contract Documents and shall so notify the Consultant.

**9.6.2** The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.

**9.6.3** The Consultant will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Consultant and Owner on account of portions of the Work done by such Subcontractor.

**9.6.4** Neither the Owner nor Consultant shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

**9.6.5** Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2, 9.6.3 and 9.6.4.

**9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

**9.6.7** Progress payments shall be discontinued after the Contract Time, including approved Change Orders, has been exceeded. No additional progress payments will be made until Substantial Completion of the Work.

**9.7 Failure of Payment.**

**9.7.1** If the Consultant does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within thirty days after the date of receipt from the Consultant, the Contractor may be entitled to interest on the certified amount.

**9.7.2** Interest shall be paid to the Contractor at the prevailing state rate on the final payment if the payment is delayed more than thirty (30) days after the Contract is completed, accepted, and all required materials, certificates and other required documentation have been provided to the Owner.

**9.8 Substantial Completion.**

**9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

**9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Consultant a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include all items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Consultant will make an inspection to determine whether the Work or

designated portion thereof is substantially complete. If the Consultant's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Consultant. The Contractor shall then submit a request for another inspection by the Consultant to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Owner will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

**9.8.3** Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Consultant, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

**9.9 Partial Occupancy or Use.**

**9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is authorized by the Owner. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, Retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Consultant as provided under Subparagraph 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Consultant.

**9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor and Consultant shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

**9.10 Final Completion and Final Payment.**

**9.10.1** Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Consultant will promptly make such inspection and, when the Consultant finds the Work acceptable under the Contract Documents and the Contract fully performed, the Consultant will promptly issue a final Certificate for Payment stating that to the best of the Consultant's knowledge, information and belief, and on the basis of the Consultant's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said final Certificate is due and payable. The Consultant's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.10.2 as precedent to the Contractor's being entitled to final payment have

been fulfilled.

**9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Consultant an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied.

**9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Consultant so confirms, the Owner shall, upon application by the Contractor and certification by the Consultant, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Consultant prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims. The making of final payment shall constitute a waiver of claims by the Owner as provided in Subparagraph 4.3.5.

**9.10.4** Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment. Such waivers shall be in addition to the waiver described in Subparagraph 4.3.5.

**9.10.5** When the Contract Time has been exceeded, including approved Change Orders, and claims for additional compensation are submitted by Consultants for extended services and approved by the Owner, the Owner shall deduct the amount of the claims from the final payment to the Contractor.

## **ARTICLE 10: Protection of Persons and Property.**

### **10.1 Safety Precautions and Programs.**

**10.1.1** The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

**10.1.2** In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Consultant in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or PCB and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or PCB, or when it has been rendered harmless, by written agreement of the Owner and Contractor.

**10.1.3** The Contractor shall not be required (pursuant to Article 7) to perform any Work without consent relating to asbestos or PCB.

### **10.2 Safety to Persons and Property.**

**10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to the following:

- a. Employees on the Work and other persons who may be affected thereby.
- b. The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors.
- c. Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in

the course of construction.

**10.2.2** The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

**10.2.3** The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

**10.2.4** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Consultant or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.18.

**10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Consultant.

**10.2.7** The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

### **10.3 Emergencies.**

**10.3.1** In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Section 7.

## **ARTICLE 11: Insurance and Bonds.**

### **11.1 Contractor's Liability Insurance.**

**11.1.1** The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the State of Oklahoma such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- a. Claims under workers' compensation.
- b. Claims involving contractual liability insurance.
- c. Liability insurance required by 61 O.S.
- d. Builder's risk insurance.

**11.1.2** The insurance required by Subparagraph 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverage, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

**11.1.3** Certificates of Insurance acceptable to the Owner shall be filed with the Owner with the executed Contract. These Certificates and the

insurance policies required by this Paragraph 11.1 shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner.

**11.2 Performance Bond, Payment Bond and Defect Bond.**

**11.2.1** The Contractor is required to have three bonds for Contracts exceeding One-hundred Thousand Dollars (\$100,000.00):

- a. Performance Bond for 100% of the value of the Contract to insure completion of the Work.
- b. Defect Bond for 100% of the value of the Contract to provide correction of defects in the construction and equipment for one year after acceptance of the Work.
- c. Payment Bond for 100% of the Contract to assure that the Owner is protected from the action of Subcontractors, suppliers and employees for unpaid debts of the Contractor.

**11.2.2** All bonds shall be on the forms prescribed and issued by the Owner. All bond submittals shall contain all terms and conditions of the bonds or applicable to the bonds.

**11.2.3** Irrevocable Letters of Credit may be used as a substitute for the bonds required in 11.2.2 above. The Letters 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.

**11.2.4** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor or the Owner shall promptly furnish a copy of the bonds or of letters of credit or shall permit a copy to be made.

**ARTICLE 12: Uncovering and Correction of Work.**

**12.1 Uncovering of Work.**

**12.1.1** If a portion of the Work is covered contrary to the Consultant's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Consultant, be uncovered for the Consultant's observation and be replaced at the Contractor's expense without change in the Contract Time.

**12.1.2** If a portion of the Work has been covered which the Consultant has not specifically requested to observe prior to its being covered, the Consultant may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

**12.2 Correction of Work.**

**12.2.1** The Contractor shall promptly correct Work rejected by the Consultant or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Consultant's services and expenses made necessary thereby.

**12.2.2** If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Subparagraph 9.8.2, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation under this

Subparagraph 12.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

**12.2.3** The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**12.2.4** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.3. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Consultant, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten days after written notice, the Owner may upon ten additional days written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Consultant's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

**12.2.5** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate Contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

**12.2.6** Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one year as described in Subparagraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

**12.3 Acceptance of Non-conforming Work.**

**12.3.1** If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be affected whether or not final payment has been made.

**ARTICLE 13: Miscellaneous Provisions.**

**13.1 Governing Law.**

**13.1.1** The Contract shall be governed by Title 61 of the Oklahoma Statutes.

**13.2 Successors and Assigns.**

**13.2.1** The Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract as a whole without written consent of the Owner. If the Contractor attempts to make such an assignment without such consent, the Contractor shall nevertheless remain legally responsible for all obligations under the Contract.

**13.3 Written Notice.**

**13.3.1** Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if

delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

#### **13.4 Rights and Remedies.**

**13.4.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

**13.4.2** No action or failure to act by the Owner, Consultant or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

#### **13.5 Tests and Inspections.**

**13.5.1** Tests, inspections and approvals of portions of the Work required by the Contract Documents shall be made at appropriate times as specified. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with the independent testing laboratory under separate contract with the Owner. The Contractor shall give the Consultant timely notice of when and where tests and inspections are to be made so the Consultant may observe such procedures. The Owner shall bear costs of tests, inspections or approvals.

**13.5.2** If the Consultant or Owner determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, the Consultant will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Consultant of when and where tests and inspections are to be made so the Consultant may observe such procedures. The Owner shall bear such costs except as provided in Subparagraph 13.5.3.

**13.5.3** If such procedures for testing, inspection or approval under Subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Consultant's services and expenses.

**13.5.4** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Consultant.

**13.5.5** If the Consultant is to observe tests, inspections or approvals required by the Contract Documents, the Consultant will do so promptly and, where practicable, at the normal place of testing.

**13.5.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

#### **13.6 Interest.**

**13.6.1** Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as specified in current law.

### **ARTICLE 14: Termination or Suspension of the Contract.**

#### **14.1 Termination by the Contractor.**

**14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor, for any of the following reasons:

- a. Issuance of an order of a court or other public authority having jurisdiction.
- b. An act of government, such as a declaration of national emergency, making material unavailable.
- c. If repeated suspensions, delays or interruptions by the Owner as described in Paragraph 14.3 constitute in the aggregate more than 100% of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**14.1.2** If one of the above reasons exists, the Contractor may, upon seven additional days written notice to the Owner and Consultant, terminate the Contract and recover from the Owner payment for Work executed; documented costs incurred by reason of such termination including costs attributable to termination of subcontracts as substantiated by invoice(s) and agreement(s) to not exceed the termination or cancellation fee paid by Contractor. Contractor shall not be entitled to any claim against the Owner for any additional compensation for damages in the event of such termination and payment.

**14.1.3** If the Work is stopped for a period of 60 days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days written notice to the Owner and the Consultant, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.2.

#### **14.2 Termination by the Owner for Cause.**

**14.2.1** The Owner may terminate the Contract if the Contractor:

- a. Persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials.
- b. Fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors.
- c. Persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- d. Repeatedly fails to comply with the terms and conditions of the Contract and Contract Documents.
- e. Is guilty of substantial breach of a provision of the Contract Documents.

**14.2.2** When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven-day written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- a. Take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor.
- b. Accept assignment of subcontracts pursuant to Paragraph 5.4.
- c. Finish the Work by whatever reasonable method the Owner may deem expedient.

**14.2.3** When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Consultant's services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Consultant, upon application, and this obligation for payment shall survive termination of the Contract.

#### **14.3 Suspension by the Owner for Convenience.**

**14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

**14.3.2** An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent of either of the following:

- a. That performance is, was or would have been so suspended, delayed or interrupted by another cause which the Contractor is responsible.

b. That an equitable adjustment is made or denied under another provision of this Contract.

**14.3.3** Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

**14.4 Termination by the Owner for Convenience.**

**14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**14.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

- a. Cease operations as directed by the Owner in the notice.
- b. Take actions necessary, or that the Owner may direct, for the protection and preservation of the Work.
- c. Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase order.

**14.4.3** In case of such termination for the Owner's convenience, the Contractor shall receive payment for Work executed and accepted; documented costs incurred by reason of such termination including costs attributable to termination of subcontracts as substantiated by invoice(s) and agreement(s) to not exceed the termination or cancellation fee paid by Contractor. Contractor shall not be entitled to any claim against the Owner for any additional compensation for damages in the event of such termination and payment.

**ARTICLE 15: Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. 12101).** As a public entity, the State of Oklahoma may only contract with other entities which comply with the ADA. Contractors, by signing the bid documents and entering into a contract with the State of Oklahoma, signify that they are aware of and comply with the requirements of the ADA. Failure to be in compliance with the ADA may require cancellation of a contract.

**End of General Conditions.**