

Request for Proposal Materials Testing Services



GWYD DBF
CHEROKEE NATION®
Catoosa Child Development Center
19244 Country Club Drive
Catoosa, OK 74015



Construction
Manager:



Architect:



BIDDING INSTRUCTIONS AND BID FORMS

October 31, 2024

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NOTICE TO CONTRACTORS

All proposals should be sent electronically to Cherokee Nation Business Purchasing Department at the following link:

Submittal Response Email Address: CN_Cato.ojj3uzm3yqz6ce2w@u.box.com

Bidders Checklist:

- Executed Bid Form (found within this document)
- 3 Executed Affidavits (Business Relationship, Non-Collusion, Certificate of Eligibility)
- Combine these items into one file and rename it to "Bid Package #__ - Contractor X"

The bidder must supply all the information required by the RFP Documents, hereinafter defined.

To receive preference, TERO vendors must submit a copy of their TERO certificate (front and back) with their bid.

The bidder must plan for a post bid meeting/interview to review bidder's proposal and scope of work associated with the project. This post bid de-scope meeting/interview will be scheduled at the close of business day a minimum of 48-hours after the initial Bid Day.

It is the intention of the Maska Builders Construction Team and Cherokee Nation to award this project within 30 days of the proposal date.

Any proposal received more than ninety-six (96) hours, excluding Saturdays, Sundays, and holidays, before the time set for the opening of proposals, or any proposal so received after the time set for opening of proposals, shall not be considered, and shall be returned unopened to the proposing firm.

The Cherokee Nation and the Maska Builders Construction Team will privately review bids. The Owner and/or the Construction Manager expressly reserve the right to waive all formalities or minor irregularities and to reject any or all bids. Combination of bid packages, incomplete bid packages and/or qualified bids may be subject to rejection.

ATTENTION TO BIDDERS

The following constitutes a full document set:

1. **Blue River Architects, LLC Project Manual dated 08-16-2024.**
2. **Blue River Architects, LLC Architectural Drawings dated 08-16-2024.**
3. **Wallace Design Collective Civil Drawings dated 08-16-2024.**
4. **Wallace Design Collective Structural Drawings dated 08-16-2024.**
5. **Precision Engineering Group M.E.P. plans dated 08-16-2024.**
6. **Crux Security Solutions IT plans dated 08-16-2024.**
7. **Maska Builders, LLC's Bidder's Book dated 10-31-2024.**

INDEX OF DRAWINGS

SHEET INDEX

SHEET NUMBER	SHEET NAME
GENERAL	
C5	COVER SHEET
G001	PROJECT INFORMATION, ADAAG INFO AND GUIDELINES
G002	LIFE SAFETY

CIVIL	
C100	COVER SHEET
C200	SURVEY
C300	DEMOLITION & EROSION CONTROL PLAN
C400	SITE PLAN - OVERALL
C401	SITE PLAN - NORTH
C402	SITE PLAN - SOUTH
C500	GRADING PLAN - OVERALL
C501	GRADING PLAN - NORTH
C502	GRADING PLAN - SOUTH
C503	GRADING SECTIONS
C504	DRAINAGE MAP - EXISTING
C505	DRAINAGE MAP - PROPOSED
C600	UTILITY PLAN - OVERALL
C601	UTILITY PLAN - NORTH
C602	UTILITY PLAN - SOUTH
C700	STORM PROFILES
C701	WATER LINE PROFILES
C702	SANITARY SEWER PROFILE
C800	DETAILS
C801	DETAILS
C802	DETAILS
C803	DETAILS
C804	DETAILS

LANDSCAPE	
L101	LANDSCAPE PLAN - OVERALL
L102	IRRIGATION KEY PLAN
L201	ENLARGED REFERENCE PLANS
L202	ENLARGED REFERENCE PLANS
L301	LAYOUT AND DIMENSION PLANS
L401	PLANTING PLAN - OVERALL
L402	PLANTING PLANS

SHEET NUMBER	SHEET NAME
5301	TYPICAL FOUNDATION DETAILS
5302	TYPICAL FOUNDATION DETAILS
5303	FOUNDATION DETAILS
5304	FOUNDATION DETAILS
5401	VERTICAL ELEMENTS ELEVATIONS AND DETAILS
5501	TYPICAL STEEL & METAL DECK DETAILS
5502	ROOF FRAMING DETAILS
5601	STORM SHELTER TYPICAL DETAILS
5602	STORM SHELTER DETAILS

PLUMBING	
P001	GENERAL NOTES, LEGENDS & SYMBOLS
P100	OVERALL PLUMBING PLAN
P101	PLUMBING PLAN - WASTE & VENT - AREA A
P102	PLUMBING PLAN - WASTE & VENT - AREA B
P103	PLUMBING PLAN - WATER & GAS - AREA A
P104	PLUMBING PLAN - WATER & GAS - AREA B
P200	PLUMBING SCHEDULES
P300	PLUMBING DETAILS
F400	WASTE & VENT RISER DIAGRAMS - AREA A
F401	WASTE & VENT RISER DIAGRAMS - AREA B
F402	DOMESTIC RISER DIAGRAM AREA A
F403	DOMESTIC RISER DIAGRAM AREA B
F404	NATURAL GAS RISER DIAGRAM
MP101	MECHANICAL AND PLUMBING ROOF PLAN

FIRE PROTECTION	
FP100	GENERAL NOTES, LEGENDS & SYMBOLS
FP101	FIRE PROTECTION PLAN
FP200	FIRE PROTECTION DETAILS

MECHANICAL	
H100	HOOD DRAWINGS
H101	HOOD DRAWINGS
H102	HOOD DRAWINGS
H103	HOOD DRAWINGS
H104	HOOD DRAWINGS
H105	HOOD DRAWINGS
H106	HOOD DRAWINGS

SHEET NUMBER	SHEET NAME
L501	DETAILS
L502	DETAILS

ARCHITECTURAL	
A101	OVERALL FLOOR PLAN & REFLECTED CEILING PLAN
A101A	FIRST FLOOR PLAN - AREA A
A101B	FIRST FLOOR PLAN - AREA B
A111	ROOF PLAN
A112	ROOF DETAILS
A113	CANOPY DETAILS
A121A	REFLECTED CEILING PLAN - AREA A
A121B	REFLECTED CEILING PLAN - AREA B
A122	REFLECTED CEILING PLAN - ENLARGED PLANS
A201	EXTERIOR ELEVATIONS
A301	BUILDING SECTIONS
A402	ENLARGED PLANS & INTERIOR ELEVATIONS
A601	PARTITION TYPES
A611	DOOR SCHEDULE AND DETAILS
A621	STOREFRONT ELEVATIONS AND DETAILS
A701	INTERIOR ELEVATIONS
A702	CASEWORK SECTIONS

INTERIORS	
ID101A	FIRST FLOOR FINISH PLAN - AREA A
ID101B	FIRST FLOOR FINISH PLAN - AREA B
ID121A	FIRST FLOOR SIGNAGE PLAN - AREA A
ID121B	FIRST FLOOR SIGNAGE PLAN - AREA B
ID131A	FIRST FLOOR FURNITURE PLAN - AREA A
ID131B	FIRST FLOOR FURNITURE PLAN - AREA B

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S001	DESIGN PARAMETERS AND GENERAL NOTES
S002	STRUCTURAL SPECIAL INSPECTIONS
S003	GENERAL NOTES STORM SHELTER
S004	JOIST LOADING DIAGRAM
S101	FOUNDATION PLAN - AREA A
S102	FOUNDATION PLAN - AREA B
S201	PARTIAL PLANS

SHEET NUMBER	SHEET NAME
H101	HOOD DRAWINGS
H102	HOOD DRAWINGS
H103	HOOD DRAWINGS
H104	HOOD DRAWINGS
M001	GENERAL NOTES, LEGENDS & SYMBOLS
M100	OVERALL MECHANICAL AND PLUMBING PLAN
M101	HVAC PLAN - AREA A
M102	HVAC PLAN - AREA B
M200	HVAC SCHEDULES
M300	HVAC CONTROLS
M301	HVAC CONTROLS
M400	HVAC DETAILS
M500	DUCT RISER DIAGRAM

ELECTRICAL	
E000	ELECTRICAL TITLE SHEET
E101A	LIGHTING PLAN - AREA A
E101B	LIGHTING PLAN - AREA B
E201A	POWER PLAN - AREA A
E201B	POWER PLAN - AREA B
E202	ENLARGED POWER PLANS
E203	HVAC POWER PLAN
E300	ONE-LINE DIAGRAM, SCHEDULES, & DETAILS
E301	ELECTRICAL SCHEDULES
E302	ELECTRICAL SCHEDULES
E303	GENERATOR SPECS
E5101	ELECTRICAL SITE PLAN
E5102	ELECTRICAL SITE PHOTOMETRICS PLAN
FA101A	FIRE ALARM PLAN - AREA A
FA101B	FIRE ALARM PLAN - AREA B

KITCHEN	
K1	F0 GENERAL COORDINATION NOTES
K1.0	F0 EQUIPMENT PLAN
K1.1	F0 FACILITY MODEL
K1.2	F0 EQUIPMENT MODEL
K1.3	F0 SPECIAL CONDITIONS & MECHANICAL PLAN
K1.4	F0 PLUMBING PLAN
K1.5	F0 ELECTRICAL PLAN

SHEET NUMBER	SHEET NAME
QF1.6	F0 EXHAUST HOODS
QF1.7	F0 CONDENSING UNITS
QF1.8	F0 ELEVATIONS
QF2	F0 SECTIONS & DETAILS
QF2.1	F0 DETAILS

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T002	RESPONSIBILITY SCHEDULE
T003	SITE PLAN
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T121	MASTER REFLECTED CEILING PLAN - LEVEL 1
T201	SC5 - FIRST FLOOR PLAN - AREA A
T202	SC5 - FIRST FLOOR PLAN - AREA B
T4201	AV - FIRST FLOOR PLAN - AREA A
T4202	AV - FIRST FLOOR PLAN - AREA B
TY201	SECURITY - FIRST FLOOR PLAN - AREA A
TY202	SECURITY - FIRST FLOOR PLAN - AREA B
T221	REFLECTED CEILING PLAN - AREA A
T222	REFLECTED CEILING PLAN - AREA B
T301	IDF/MDF PLANS AND ELEVATIONS
T401	TELECOM - DETAILS
TY401	SECURITY DETAILS
TY501	SECURITY SCHEDULES
T621	A/V FUNCTIONALS, DETAILS, & ELEVATIONS

INTERPRETATION OF BIDDING DOCUMENTS

- A. If a conflict occurs in or between bidding documents regarding material or quantity required, and the bidder does not obtain a written decision with respect thereto prior to submitting his proposal, they shall be deemed to have bid upon the better quality or greater quantity of material. If Maska Builders, LLC elects to use the less expensive quality or lesser quantity of material, Maska Builders, LLC shall receive a suitable credit to be refunded to the Owner.
- B. When doubt exists in the mind of the bidder as to the true meaning of any part of the bidding documents, the bidder shall request an interpretation. Such requests shall be in writing to those named below.
- C. Direct all bidding questions to:

Stephanie Shults, Senior Buyer
Cherokee Nation Businesses
O: (918) 384-7455
Stephanie.shults@cn-bus.com

- D. Interpretations, clarifications, or corrections as required during the bid period will be provided by addendums. Maska Builders, LLC assumes no responsibility for explanation or interpretation of the Bidding Documents.

ALTERNATES

Alternates are not to be included in the base bid. Indicate all alternates in the designated space on the bid proposal form. CM/GC and the Owner reserve the right to accept any combination of alternates.

PLANS

Plans are available at the office of the Construction Manager for Two Hundred Dollars per set (\$200.00). Please call in advance to reserve plans.

PROPOSAL ACCEPTANCE

The owner reserves the right to reject any or all bids. Being initially prequalified as a bidder does not in any way obligate the Owner to accept your bid. Any award will be to the bidder whose qualifications indicate that the award will be in the best interest of the Owner.

No award will be made until the Project Team has concluded such investigations as deemed necessary and appropriate to establish the responsibility, qualifications, and financial ability of the bidder to do the work in accordance with the contract to the satisfaction of the Owner within the time prescribed. Investigation of a bidder may continue after bids have been submitted and the Owner reserves the right to reject the bid of a bidder who does not pass any investigations to the owner's satisfaction.

The Owner reserves the right to waive informalities in bids submitted, and to hold and consider as many bids as they so desire for a period of **thirty (30) days** after the bids are opened.

INSURANCE REQUIREMENTS

Prior to starting Work, the Subcontractor/Supplier shall procure and maintain in force insurance as described below. Certificates of Insurance to be issued on ACORD Form 25 provided by companies with a minimum A.M. Best's Rating of A-, VIII or companies acceptable to Owner and Contractor are in force. Required endorsements must be included. Reference specific project in the certificate description/comments area for identification purposes. Subcontractor/Supplier shall not commence work until they have furnished two (2) copies of Certificate of Insurance to Contractor.

A. COMMERCIAL GENERAL LIABILITY INSURANCE: Coverage form at least equal to ISO CG 00 01, latest available edition, on

an occurrence basis. Subcontractor/Supplier shall identify on the Certificate any Residential, Mold, EIFS, Silica or other major exclusions that impact the Subcontractor/Supplier's ability to insure its risk. If the Project includes any Residential components or the proposed design includes EIFS systems, then the Subcontractor/Supplier shall obtain appropriate endorsements acceptable to Contractor as a condition of this Subcontract. The above coverage shall be written for not less than the following minimum limits:

\$1,000,000	General Aggregate (Per Project)
\$1,000,000	Each Occurrence
\$1,000,000	Products Completed Operations Aggregate
\$1,000,000	Personal and Advertising Injury

COMMERCIAL AUTOMOBILE LIABILITY INSURANCE: Owned, Hired and Non-Owned vehicles shall be written for not less than the following minimum limits:

\$1,000,000	Combined Single Limit – Per Accident
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UMBRELLA (EXCESS) LIABILITY INSURANCE: Coverage shall be excess over and be no less broad than all underlying coverages.

\$2,000,000	General Aggregate
\$2,000,000	Products – Completed Operations Aggregate
\$2,000,000	Each Occurrence

POLLUTION LIABILITY INSURANCE: Coverage shall be written for not less than the following minimum limits:

\$2,000,000	Aggregate
\$2,000,000	Each Incident

PROFESSIONAL LIABILITY INSURANCE: Any retroactive date applicable to the policy shall precede the commencement of any professional services provided under this Agreement. Professional Liability Insurance coverage shall be maintained by the Subcontractor/Supplier for not less than three (3) years beyond the completion of the project with no change in the original retroactive date. If Subcontractor/Supplier enters into an agreement with a third-party Professional Engineer for professional services provided under this Agreement, Contractor will accept evidence of Professional Liability from such Professional Engineer as fulfillment of this requirement herein. Coverage shall be written for not less than the following minimum limits:

\$2,000,000	Aggregate
\$2,000,000	Each Claim

WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:

Statutory Workers' Compensation coverage in accordance with the laws of the State of Operations.

Employer's Liability Coverage with a minimum limit of:

\$1,000,000	Bodily Injury by Accident – Each Accident
\$1,000,000	Bodily Injury by Disease – Policy Limit
\$1,000,000	Bodily Injury by Disease – Each Employee

BUILDER'S RISK INSURANCE: Builder's Risk coverage including the interests of the Subcontractor/Supplier will be provided by Owner or General Contractor as identified in the Subcontract Documents. The Subcontractor is responsible for the \$10,000 Builder's Risk deductible for each loss to the extent losses payable under the Builder's Risk policy are attributable to the Subcontractor's work, acts or omissions, or the work, acts or omissions of any lower tier subcontractor, or any other party for whom Subcontractor may be responsible. Contractor and Subcontractor waive all rights against each other and any of their subcontractors for damages caused by fire or other causes of loss to the extent covered by Builder's Risk insurance, except such rights as they have to proceeds of such insurance held by the Contractor or Owner as fiduciary. Subcontractor shall require all of its subcontractors, by appropriate agreement, written where legally required for validity, similar waivers each in favor of other parties enumerated herein.

CONDITIONS:

1. All Subcontractor/Suppliers, unless otherwise approved by Contractor, shall be required to carry insurance equal to that as stated above.
2. General Liability, Automobile Liability, Umbrella/Excess Liability and Pollution Liability will include Subcontractor/Suppliers officers, directors, and shareholders of Subcontractor/Supplier (or their equivalents if Subcontractor/Supplier is not a

corporation), Contractor and Owner as Additional Insureds, for ongoing and completed operations on a primary and non-contributory basis, with contractual coverage and such other insurance, to the extent required by the contract documents for the Subcontractor/Supplier's Work. Additional Insured status for completed operations coverage will be maintained for a period equal to the statute of repose for the state of operations.

3. To the fullest extent permitted by law, all insurance policies procured, paid for, and maintained by the Subcontractor/Supplier for the work performed according to this Subcontract Agreement must contain a Waiver of Subrogation in favor of the Contractor, Owner and others as required by the Owner-Contractor Agreement. This Waiver of Subrogation is required not only with respect to insurance required of Subcontractor/Supplier in this article, but also with respect to any other property, inland marine, liability, or other insurance the Subcontractor/Supplier may have in force that may cover the work performed for this job.
4. Subcontractor/Supplier agrees to notify Contractor in writing, at least 30 days in advance, of any reduction by the insurers in required coverage or coverage limits, cancellation, or non-renewal of Subcontractor/Supplier policies. Subcontractor agrees to provide new, complying Certificates showing property renewal coverages and limits in force at least 10 days prior to expiration of current policies.
5. Subcontractor/Supplier shall be responsible for securing whatever fire and extended coverage Subcontractor/Supplier may deem necessary for protection against loss of owned, rented, or borrowed equipment and tools, including, but not limited to any tools, equipment, scaffolding, staging, and trailers owned, rented, or borrowed by Subcontractor/Supplier. Contractor shall have no liability with respect to such equipment and tools. Failure of the Subcontractor/Supplier to secure such insurance or to maintain adequate levels of coverage shall not obligate Contractor for any losses on owned, rented, or borrowed equipment.
6. The amount and types of insurance coverage required to be provided by Subcontractor/Supplier herein, including any limitation on Subcontractor/Supplier's obligation to include Contractor, Owner and others as required by the Owner-Contractor Agreement as Additional Insureds on Subcontractor/Supplier's liability policies, shall not be construed to be a limitation of the liability on the part of the Contractor or any of its Subcontractor/Suppliers.
7. Contractor shall have no duty to Subcontractor/Supplier or to any of its insurers or their insurance agents to review any Certificates or copies of insurance furnished to Contractor or to determine whether the terms of each Certificate or policy of insurance comply with the insurance-related provisions of the Subcontract Documents. A failure of Contractor to detect that Subcontractor/Supplier has not submitted Certificates, or proper Certificates, or is otherwise not in compliance with the insurance-related provisions of the Subcontract Documents shall not be considered a waiver or other impairment of any of Contractor's rights under such insurance-related provisions.
8. Any deductibles or retentions under Subcontractor/Supplier's policies shall be paid by, assumed by, for the account of, and at Subcontractor/Supplier's sole risk.
9. If the Subcontractor/Supplier fails to procure and maintain such insurance, in addition to the option of declaring Subcontractor/Supplier in default for breach of a material provision of the Subcontract, Contractor shall have the right, but not the duty, to procure and maintain the same insurance, or other insurance that provides Contractor with equivalent protection, and Subcontractor/Supplier shall furnish all necessary information to make effective and maintain such insurance. At the option of Contractor, the cost of said insurance purchased by Contractor shall be charged against and deducted from any monies then due or to become due to Subcontractor/Supplier or Contractor shall notify Subcontractor/Supplier of the cost thereof and Subcontractor/Supplier shall promptly pay such cost.
10. If Subcontractor/Supplier enters any subcontract with any lower-tier Subcontractor/Supplier, Subcontractor/Supplier shall require such lower-tier Subcontractor/Supplier to maintain insurance similar to that required of Subcontractor/Supplier under this Agreement, including primary/non-contributory additional insured and waiver of subrogation provisions as required hereunder.

Contractor reserves the right to require additional limits of insurance and if, in its opinion, the Subcontractor/Supplier's work creates a special hazard at the project.

GENERAL PROPOSAL INFORMATION ITEMS

Proposals shall be made in accordance with the following:

- A. Before submitting a proposal, bidders shall carefully examine the provided documents, visit the site of work, and fully inform themselves as to all existing conditions and limitations.
- B. Should a bidder find discrepancies, omissions, or should they be in doubt as to meanings, they should, at once, notify Maska Builders, LLC. All changes or clarifications to documents will be made in the form of an addendum. All bidders shall verify that they have considered all addenda. The Owner, Architect, or CM/GC will bear no responsibility for any oral instructions.
- C. Any addenda issued shall be covered and included in the proposal and, in closing a contract; they shall become a part thereof.
- D. Oral proposals will not be considered.
- E. Proposals must be delivered on or before the date, time, and place shown herein.
- F. The Project Team may elect to interview one or more subcontractors for completeness of scope and ability to perform.

SUBCONTRACT AWARD

The Project Team will award subcontracts to the responsible qualified bidders, who have submitted complete proposals within the required time frame. The successful subcontractors will be issued a contract on Maska Builders, LLC's standard form for contracts. See Attachment B.

BID SCHEDULE

- | | | |
|----------------------|---------------|------------------------|
| 1. Advertise for Bid | | - Thursday, 10-31-2024 |
| 2. Receive Proposals | 5:00 P.M. CST | - Tuesday, 11-05-2024 |

CONSTRUCTION SCHEDULE

The overall duration of construction for this project will be 15 Months. The current overall construction schedule does not allow for additional days of construction to be awarded for weather or material delays. ***The Construction Manager reserves the right to require subcontractors to work in multiple shifts per day and/or six 10hr days per week to make up for lost time and late starts. Please consider this when submitting your proposal.***

GENERAL REQUIREMENTS FOR ALL BIDDERS

The following items will become a part of all subcontracts. Please read all items carefully.

The minimum OSHA safety standards will be observed at all times while on this construction site. Subcontractors agree that they have included the cost of all safety devices and or safety requirements for the protection of their company's personnel. Site safety is the responsibility of the subcontractor. Your company's safety manual must be submitted to and approved by the Construction Manager prior to the

start of work. Any contractor that does not have a written safety program must agree to the standards set forth and abide by the Construction Manager's safety program. **Please see Attachment "C" for clarification.**

1. Subcontractors agree that they will submit cost estimates and change order proposals in as complete and full analytical detail as required or requested and in a prompt and timely manner.
2. ***Profits and overhead from change orders will be limited to cost plus 5% for work that is not self-performed by the contractor submitting the change request or cost plus 10% for work that is performed by the contractor's own forces.***
3. All bidders must include in their bid, costs associated with interface and coordination of their work with all other work activities.
4. Subcontractor shall include all necessary cost so as to guarantee delivery of equipment and materials in accordance with CM/GC's construction schedule.
5. Within ten (10) working days of commencement of work, a detailed schedule of work shall be submitted to the Construction Manager. The schedule is to contain milestone dates for major activities and is to be man-hour loaded and equipment loaded and should also show and/or list the quantities of work items and expected production rates.
6. Subcontractors agree to furnish bi-monthly progress schedule updates.
7. No allowance for an extension of time, for any cause whatsoever, shall be claimed by subcontractor or be made to the Owner, unless the subcontractor shall have made a written request to CM/GC for such extension within three (3) days after the cause of such extension first occurred, and unless CM/GC and subcontractor agreed in writing upon the allowance of additional time to be made. No extension of time granted to CM/GC by the Owner shall inure to the benefit of the subcontractor unless such extension of time is directly related to subcontractor supplying work hereunder and specifically agreed to in writing.
8. Coordinate shop drawings and material submissions with Construction Manager's Project Engineer and/or Project Superintendent.
9. Subcontractors must make accommodations for access to the site along with any snow removal or dewatering necessary for acceptable working conditions related to their work.
10. Deliveries of material and equipment should be sequenced and scheduled as closely as possible on an as-needed basis and must be coordinated with the Construction Manager's superintendent.
11. Subcontractors shall be responsible for the storage, hoisting, unloading and handling of their own materials, supplies, and equipment.
12. Identification and coordination of all testing procedures required by the scope of work of this subcontract, whether performed by the Owner's testing agent or by others, are the responsibility of the subcontractor. Any retesting cost will be borne by the subcontractor or supplier whose material and/or installation has failed. Failure to notify the appropriate party will not relieve the subcontractor / supplier from this responsibility. The subcontractor shall provide all testing, documentation, and certification as required by the contract documents other than those performed by the Owner.
13. Certified as-built drawings will be required at the end of the project. These drawings shall be updated on a weekly basis throughout the duration of the project.
14. Any monument or benchmarks destroyed by this subcontractor during the course of this work will be restored by CM/GC at the subcontractor's expense.
15. Mobilizations will be as required and are to be included in the contractor's proposal.

16. Protection of your own work and adjacent work is to be included.
17. Contractors agree that, if in the performance of their subcontract it becomes necessary, convenient or advisable to remove, replace or interfere with any safety devices, barricades, or controls installed by the CM/GC or another subcontractor, this subcontractor will replace or restore such devices or controls at his expense. In the event such safety devices or controls are not so replaced, subcontractor agrees to reimburse the CM/GC for doing so.
18. Each subcontractor/supplier shall palletize all loose materials on "two-way" pallets and shall coordinate storage of pallets with the CM/GC's superintendent.
19. All construction parking is to be in areas designated by the Construction Manager. Parking may be available adjacent to the site. If for any reason this is terminated or inadequate, it will be the responsibility of each subcontractor to provide shuttle service for their employees from an off-site location as designated by Maska Builders, LLC's superintendent.
20. Tobacco use will only be permitted only in designated areas.
21. The Owner's facilities will be off limits for use by all construction personnel unless noted otherwise.
22. It is expressly understood that the successful bidder is required to become an active and integral participant in the Project Team. The expectations synonymous with "Team" cannot be over emphasized. Daily participation in design development may/will be required. Your ability to provide this service cannot be compromised. Additional requirements unique to this agreement will include:
 - a. Technical assistance in developing, with the Construction Manager, the final overall project CPM schedule.
 - b. Participation in establishing your prospective transmittal and delivery schedules.
 - c. Provided help in coordination between all disciplines of work.
23. The Construction Manager will furnish the following items:
 - a. Unless noted otherwise, construction (120) power will be available for small tools. Power for welders and other specialty equipment, will be the responsibility of individual subcontractors.
 - b. Assistance with subcontractor schedule preparation (primary dates, milestone dates, and sequence of operation).
 - c. Subcontractor parking will be designated by the Construction Manager's project superintendent.
 - d. Sanitary facilities will be provided for use of subcontractor workforce and staff.
24. The owner has the right to reject any proposed subcontractor. Any subcontract agreement will be conditioned upon owner acceptance of the subcontractor.
25. Coordinate shop drawings and material submissions with the Construction Manager's project engineer/superintendent.
26. All subcontractors shall adhere to the construction managers safety procedures including, but not limited to, requiring all workers to wear **hard hats, shirts with sleeves (long or short), pants (no shorts), safety glasses, high visibility clothing, and work boots at all times when on the jobsite.**
27. Subcontractors shall visit the site and examine the conditions existing and the character of the work to be performed.
28. Subcontractors shall protect all work included within their Bid Package until final acceptance by the Architect/Owner. Any cost for work damaged prior to acceptance shall be borne by the subcontractor.
29. All deliveries shall be strictly coordinated with the Construction Manager's Superintendent. All materials shall be delivered on an as needed basis.

30. Accumulation of debris will not be permitted. At completion of work, each day, subcontractor will clean premises of all rubbish and debris related to this Bid Package, leaving premises in a clean and orderly condition.
31. This project will utilize Procore (www.procore.com) for project management, contractor collaboration and the distribution of all project documentation.
32. Select team members of subcontractors will be required to create a Procore username (email) and password if they do not already have one.
33. All Contractors shall obtain drawings, sketches, RFIs, meeting minutes, coordination drawings, change information, schedules, etc. via Procore.
34. Maska Builders, LLC will update and maintain the information in Procore for use by subcontractors. It is the responsibility of all subcontractors to regularly check and review Procore for updated documents and information.
35. Subcontractors are required to provide at least one mobile device, compatible for use with the Procore App, to the responsible person in charge for their scope of work. This person shall be on site to provide real-time access to current posted drawings, specifications, RFIs, submittals, project documents, and reports.
36. Subcontractors will be required to submit all pay applications through Flashtract (<https://flashtract.com>). Pay applications submitted via mail, hard copy, or email will be rejected and could delay payment. Each subcontractor will be supplied a username and password to access the site.
 - a. Draws/invoices must be received in Flashtract online accounting system no later than 3:00 p.m. on the 20th of each month.
 - b. All draws/invoices must be accompanied by either a conditional Partial Lien Release or a conditional Final Lien Release, whichever applies.
 - c. When submitting your pay application through Flashtract it will automatically prompt and create the lien release.

Requirements for Cherokee Nation for Contractors/Sub Contractors

The work to be performed under this contract is on a project subject to Section 7 (b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) (Indian Act). Section 7 (b) requires that to the greatest extent feasible: (A) Preferences and opportunities for training and employment shall be given to Indians; and Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

Laws and Regulations

The bidder's attention is directed to the fact that all applicable State Laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though written out in full.

Method of Award

After consideration of price and other factors, the contract will be awarded to the bidder whose bid is determined to be the lowest most responsive/reasonable offer and in the best interest of the NATION and Construction Management Company to accept. TERO Preference will be given in accordance with Cherokee Nation Acquisition Management's Policy and Procedures and only to bidders who provide proof of current TERO certification from the Cherokee Nation Tribal Employments Office (TERO). Proof of TERO certification must accompany and be included in sealed bid submittal.

Safety Standards and Accident Prevention

The Cherokee Nation Risk Management Department, in conjunction with the Construction Management Company will monitor the jobsite for safety violations.

With respect to all work performed under the contract, the contractor shall:

- Comply with the safety standards provision of applicable laws, building and construction codes and the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, the requirements of the Occupational Safety and Health Act of 1970 (Public Law 91-596) and the requirements of Title 29 of the Code of Federal Regulations, Section 1518 as published in the "Federal Register", Volume 36, No. 75, Saturday, April 17, 1971.
- Always exercise every precaution for the prevention of accidents and the protection of persons (including employees) and property.
- Maintain at his office or other well-known place at the job site, all articles necessary for giving first aid to the injured and shall make standing arrangements for the immediate removal to a hospital or a doctor's care for persons (including employees) who may be injured on the job site.
- Employees shall not be permitted to work at a job site before the employer has made a standing arrangement for removal of injured persons to a hospital or doctor.

Drug Free Workplace and Tobacco Free Workplace

- Any Contractor performing work for the Cherokee Nation agrees to publish a statement notifying all employees, subcontractors, and other workers that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against violators of such prohibition.
- NATION will consider lack of enforcement or lax enforcement of the statement by Contractor a default of the contract.
- The Contractor further agrees to provide all persons engaged in performance of the contract with a copy of the statement.
- A copy of bidder's Drug Free Workplace statement shall be included with the bid or else the successful bidder will be deemed to accept and agree to use the statement provided by NATION.
- The Contractor understands and recognizes that all Cherokee Nation buildings, whether leased or owned, and the grounds surrounding those facilities are considered by the Nation to be a tobacco free workplace. The Contractor will ensure all employees, subcontractors, and other workers will abide by this policy.

Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters

The Contractor shall certify, to the best of its knowledge and belief, that the Contractor or any of its Principals:

- Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency or Indian tribe;
- Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, local or tribal) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsifications or destruction of records, making false statements, or receiving stolen property and are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in this provision.

The Contractor certifies they have not, within a three-year period preceding this offer, had one or more contracts terminated for default by a Federal, state, local or tribal agency.

The Contractor shall provide immediate written notice to the NATION and the Construction Management Company if, at any time prior to contract award, the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making award. If it is later determined the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the NATION and the Construction Management Company, the contract may be terminated.

Environmental Protection

- If extraordinary or exceptional circumstances involving the National Environmental Policy Act (NEPA) and related environmental considerations are encountered in the project, or if there is any change in the project, which could change the project environmental determination, the Contractor agrees to stop construction in affected areas and to notify the NATION'S Project Inspector.
- The work covered by this section consists of furnishing all labor, materials, and equipment, and performing all work required for the prevention of environmental pollution during, and as a result of, construction operations under this contract except for those measures set forth in other technical provisions of these specifications. For the purpose of these specifications, environmental pollution is defined as the presence of chemical, physical, or biological elements or agents which adversely affect human health or welfare; unfavorably alter ecological balances of importance of human life; affect other species of importance to man; or degrade the utility of the environmental pollution requiring consideration of air, water, and land, and involves noise and solid waste-management, as well as other pollutants. This section applies to work at all sites.
- In order to prevent, and to provide for abatement and control of, any environmental pollution arising from construction activities of the Contractor and subcontractors in the performance of this contract, they shall comply with all applicable Federal, State, Local, Tribal laws, and regulations concerning environmental pollution control and abatement.
- The NATION will notify the Contractor of any observed non-compliance with the foregoing provisions. The Contractor shall, after receipt of such notice, immediately take corrective action. Such notice when delivered to the Contractor or his authorized representative at the site of the work shall be deemed sufficient for the purpose.
- If the Contractor fails or refuses to promptly take corrective action, the NATION may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of a claim for extension of time, for excess costs or damages by the Contractor unless it was later determined the Contractor was complying.
- Compliance with the provisions of this section by subcontractors will be the responsibility of the Contractor.
- Prior to commencement of the work, the Contractor will discuss environmental protection with the NATION's Project Inspector to develop a mutual understanding relative to compliance with these provisions and administration of the environmental pollution control program.

Protection of Land Resources:

- The resources within the scope of work under this contract shall be preserved in their present condition or be restored to a condition after completion of construction that will appear to be natural and not detract from the appearance of the project. Insofar as possible, the Contractor shall confine his construction activities to areas defined by the plans or specifications. At the onset of ditch grading, topsoil shall be saved for use in restoring the ditch areas. Waste and borrow areas shall be leveled or trimmed to regular lines and shaped to provide a neat appearance. In all instances the restored area shall be well drained, so as to prevent the accumulation of stagnant water.
- Except in areas shown on the plans or specified to be cleared, the Contractor shall not deface, injure, or destroy trees or shrubs, nor remove or cut them without special authority from the NATION.
- Any trees or other landscape features scarred or damaged by the Contractor's equipment or operations shall be restored as nearly as possible to original condition at the Contractor's expense.
- The Contractor shall obliterate all signs of temporary construction facilities such as haul roads, work areas, structures, foundations of temporary structures, stockpiles of excess or waste materials, or any other vestiges of construction, as directed by the Project Engineer or his representative. The disturbed areas shall be graded and filled as required sufficient topsoil shall be spread to provide minimum depth of four (4) inches of suitable soil for the growth of grass, and the entire area seeded.

Protection of Water Resources:

- The Contractor shall not pollute streams, lakes or reservoirs with fuel, oils, bitumens, calcium chloride, acids, construction wastes or other environmentally harmful materials. It is the responsibility of the Contractor to investigate and comply with all applicable Federal, State, County, local and Tribe water laws concerning pollution of rivers and streams.
- Special measures shall be taken to prevent chemicals, fuels, oils, bituminous materials, waste washings, and cement from entering drainage ditches.
- The Contractor shall at all times perform all work and take such steps required to prevent any interference or disturbance to fish and wildlife. Fouling or polluting of water will not be permitted. Wash waters and wastes shall be processed, filtered, ponded, or otherwise treated pursuant to all applicable rules prior to their release into a river or other body of water.
- No material shall be burned at the project site unless otherwise specified in the contract or authorized by the NATION and any other appropriate regulatory body.
- The Contractor will be required to maintain all work areas within the project boundaries free from dust or debris that would cause a hazard or nuisance to others. Dust control shall be performed as the work proceeds and whenever a dust nuisance or hazard occurs.



Bid Forms

CONTENTS OF PROPOSAL

Contents of Bid:

The following must be included in your bid package.

Packet contents:

- Bid Form (*complete*)
- Non-Collusion Affidavit (attachment A)
- Business Relationships Affidavit (attachment A)
- Certificate of Eligibility (attachment A)

BID PROPOSAL FORM:

Bid Package #: _____ (Fill in blank)

If proposing on multiple packages, list all package numbers above, and indicate on the bid form a lump sum amount for each package along with a combination amount for all packages.

Proposals for this project submitted on any other form will not be accepted.

1.00 DATE: _____

1.01 BIDDER: _____

ADDRESS: _____

PHONE: _____

EMAIL: _____

1.02 PROJECT: **CN Catoosa CDC**

EMAIL PROPOSALS TO:

CN_Cato.ojj3uzm3yqz6ce2w@u.box.com

1.03 AGREEMENT:

- A. This proposal shall remain valid for a period of **30** days.
- B. Alternate pricing shall remain valid for a period of **60** days.
- C. A sub-contractor's written warranty will be provided and remain in effect for a period of not less than **one (1)** year after the date of the project's substantial completion unless otherwise noted.
- D. Submittals, "As built" drawings, and close out documents are included as needed and outline in the project manual.
- E. Supervision and labor will be provided in a capacity to meet or improve the project schedule as determined by Maska Builders, LLC.

1.04 ACKNOWLEDGEMENTS:

This acknowledgement is and shall be considered a part of the contract documents and modifies the original bidding documents. Failure to include this document with your sealed bid may subject the bidder to disqualification.

- A. Construction documents dated **08/16/2024** for the above-mentioned project have been received and examined. _____ (yes/no).
- B. **Architects/Engineers** Addenda No.'s _____ have been received and all costs associated with said addenda are included.
- C. **Construction Manager** Addenda No.'s _____ have been received and all costs associated with said addenda are included.
- D. We have inspected the project site and existing conditions for the proposed work.

1.05 COST PROPOSAL (**LUMP SUM**)

A. Base bid: I (We) propose to furnish all labor, supervision, materials, equipment and services described in the bidding documents for the Lump Sum of:

BASE BID (lump sum):

UNIT COST (per site visit):

Corporate Seal

Firm: _____

BY: _____

Title: _____

Date: _____

The base bid sum includes all transportation charges, and if this is accepted, we will execute a formal contract completely consistent with the provisions of the proposal form and all contract documents referred to here.

Attachment A

(Affidavits)

BUSINESS RELATIONSHIPS AFFIDAVIT

STATE OF OKLAHOMA

COUNTY OF _____) ss
_____)

_____, of lawful age, being first duly sworn, on oath says:

1. (s)he is the duly sworn authorized agent of _____ the bidder submitting the competitive bid which is attached to this statement.
2. Affiant states that the nature of any partnership, joint venture, or other business relationship presently in effect or which existed within one (1) year prior to the date of this statement with the Architect, Engineer, or other party to the project, is as follows:

(If none, so state)

3. and, any such business relationship then in effect or which existed within one (1) year prior to the date of this statement between any officer or director of the bidding company and any officer or director of the architectural or engineering firm or other party to the project, is as follows:

(If none, so state)

4. and, the names of all persons having any such business relationships and the positions they hold with their respective companies or firms, is as follows:

(If none, so state)

If none of the business relationships hereinabove mentioned exist, then a statement to that effect.

Signed by: _____
Bidder

(printed name and title)

Subscribed and sworn to before me this _____ day of _____, 20__

Notary Public (or Clerk or Judge)

NON-COLLUSION AFFIDAVIT

STATE OF OKLAHOMA

COUNTY OF _____) ss

_____, of lawful age, being first duly sworn, on oath says:

- 1. (s)he is the duly sworn authorized agent of _____, the bidder submitting the competitive bid which is attached to this statement, for the purpose of certifying the facts pertaining to the existence of collusion among bidders and between bidders and state officials or employees, as well as fact pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract pursuant to the bid to which this statement is attached; and
- 2. (s)he is fully aware of the facts and circumstances surrounding the making of the bid to which this statement is attached and has been personally and directly involved in the proceedings leading to the submission of such bid; and
- 3. neither the bidder nor anyone subject to the bidder’s direction or control has been party:
 - a. to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding,
 - b. to any collusion with any state official or employee as to quantity, quality, or price in the prospective contract, or as to any other terms of such prospective contract, nor
 - c. in any discussions between bidders and any state official concerning exchange of money or other thing of value for special consideration in the letting of a contract.

Signed by: _____
Bidder

(printed name and title)

Subscribed and sworn to before me this _____ day of _____, 20__

Notary Public (or Clerk or Judge)

Certificate of Eligibility Affidavit

State of _____,)

County of _____,)

The undersigned Bidder _____, of lawful age, being first duly sworn, on oath states: I have not been suspended or disbarred from doing business with any Federal, State or Local agency.

Signed by: _____
Bidder

(printed name and title)

Subscribed and sworn to before me this _____ day of _____, 20__

Notary Public *(or Clerk or Judge)*

MASKA BUILDERS

NATIVE AMERICAN ENTERPRISE

Subcontractor Bid Packages



Summary of Materials Testing

Div. 00 Procurement & Contracting Requirements (all)	Div. 01 General Requirements (all)
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Includes all other divisions as they pertain to the following general scope of work associated with this bid package

In the event of a conflict or ambiguity between the following clarifications, as related to the scope of work, and contract documents, the contract documents shall take precedence. The following scope clarifications are intended to emphasize, amplify, and clarify work included in this bid package. These clarifications do not in any way supersede the contract documents nor do they list every item of work included or required by the contract documents for this bid package.

General Scope of Work: Generally, the Geotechnical Firm shall, at each site visit, perform the following services and prepare and provide the following deliverables:

1. Conduct site visits and material testing of construction materials related to subgrade, paving, concrete, pipe installation and backfill, welding inspections and components, etc. during construction.
2. Prepare and provide written reports of site progress after each site inspection and test results.
3. Prepare and provide a final report at the end of the project.
4. Specifically, the services and deliverables the Geotechnical Firm shall perform, prepare and/or provide include, but are not limited to, the following:
 - a. Evaluate subgrade compaction and sampling for laboratory testing.
 - b. Evaluate aggregate base compaction and sampling for laboratory testing.
 - c. Evaluate and observe bearing material for conformance with geotechnical report and plans.
 - d. Observe and perform field and laboratory testing during placement of fresh concrete.
 - e. Observe reinforcing steel placement.
 - f. Observe field welding and bolted structural steel connections.
 - g. Observe and sample hot mix asphalt.
 - h. Provide all reports of testing and note deficiencies of tests.
 - i. Generate review comments for owner, construction and design team review.
 - j. Participate in construction team progress meetings in person or via conference calls when requested.
 - k. Provide site inspections during foundation pour structural steel erection and exterior light gauge wall construction.
5. Selected firm will work with Project Architect, Construction Manager, and Cherokee Nation Business on issues or concerns as necessary.
6. The Construction Materials Testing Services fee is to be the total cost per site visit. The cost/ site visit is to be all inclusive, which includes the cost for the trip to and from the site, materials and labor for on-site testing and any lab testing that is required plus test report and all reimbursable costs.
7. The Base Bid amount shall be an estimated total amount for the entire project
8. The Unit Cost shall be the total cost per site visit as described in line item 6.

Attachment B

(Standard Form of Contract)

MASKA BUILDERS, LLC
MASTER SUBCONTRACT AGREEMENT (Lump Sum)

This Agreement made this _____ day of _____, _____ and effective until indefinite, by and between Maska Builders, LLC, an Oklahoma Corporation whose principal address is 555 N. Elm St., Jenks, Oklahoma 74037, hereinafter referred to as THE CONSTRUCTION MANAGER, and _____, whose principal address is _____, hereinafter referred to as THE SUBCONTRACTOR, to perform work on projects as delineated by specific Work Orders issued as appropriate.

Now therefore in consideration of the mutual covenants herein made by Construction Manager and Subcontractor, the parties mutually agree as follows:

- 1) Subcontractor promises, covenants and agrees to furnish all labor, material, tools, taxes (if applicable), insurance, equipment, services and supplies in a good and workmanlike manner to perform the work as described in specific Work Orders. Work Orders shall be issued for the construction of each project, defining the project, Owner, specific Contract Documents, Scope of Work, and Work Order Sum to be paid to Subcontractor. Work shall be performed in accordance with the Contract Documents as defined in Article III.
- 2) Construction Manager agrees to pay Subcontractor in Tulsa County, Oklahoma for the scope of Work described in each Work Order. Subcontractor agrees to accept payments to be made in accordance with Articles V and VI.
- 3) The Master Subcontract Agreement consisting of Articles I thru XIV and any exhibits or addendum attached or referred to therein or incorporated therein are made a part of this Agreement.
- 4) Sub-contractor shall furnish Construction Manger a Certificate of Insurance per Article VIII prior to commencing the Work.
- 5) Prior to starting work, Subcontractor is required to submit for approval, all suppliers, with contact names and numbers. In the event the Subcontractor does not pay supplier bills with received funds each month, the Subcontractor will forfeit all retainage for each project.

In Witness whereof, the parties hereto have executed this Subcontract Agreement for themselves, their heirs, executors, successors, administrators and assignees.

Subcontractor:

Maska Builders, LLC

By: _____

By: _____

L. David Kerns, Vice President

Printed Name: _____

Title: _____

Date: _____

Date: _____

Phone: _____

Phone: 918-392-7083

Fax: _____

Fax: 918-392-7084

**ARTICLE I
SCOPE OF WORK**

1.01 Subcontract Work: Subcontractor shall furnish all labor, materials, fuel, equipment, tools, machinery, and supplies; perform all Work; obtain all necessary permits; and do all things necessary to complete the following part or parts of the Agreement in strict compliance with the contract documents described in Article III below. All of the referenced Work shall be in strict compliance with contract documents. Deviation from contract documents requires prior approval from Construction Manager by way of submittal process. Please allow two weeks for submittal process.

**ARTICLE II
AGREEMENT SUM**

2.01 Construction Manager agrees to pay Subcontractor the sum stated in the specific Work Orders for performance of the Subcontract Work thereunder, subject to adjustments for changes pursuant to Article VII - Changes.

2.02 Receipt of payment from the Owner for the Subcontractor's work is a condition precedent to Construction Manager's obligation to make payment to the Subcontractor, regardless of the reason for Owner's nonpayment, whether attributable to the fault of the Owner, the Construction Manager, the Subcontractor, or to any other cause. Payment as used in this clause shall include retainage, progress payments, payment for change orders and extra work, and final payment. The Subcontractor hereby acknowledges that it relies solely and exclusively on the credit of the Owner, not the Construction Manager, for payment for its work.

**ARTICLE III
CONTRACT DOCUMENTS**

3.01 The contract documents are specifically referred to in the Work Orders for each specific project and shall include this Master Subcontract Agreement

3.02 Subcontractor acknowledges that he has read the contract documents and is familiar with each and every part thereof affecting his Subcontract Work, together with all related drawings, plans, specifications, general provisions and conditions incidental thereto. Subcontractor, by examination, has satisfied himself as to the nature and location of the Work; the character, other local conditions or matters affecting compliance with the contract documents. Further, Subcontractor is familiar with the respective rights, powers, benefits and liabilities of the Construction Manager and the Owner under the contract documents and hereby agrees to comply with and perform all provisions thereof which are applicable to the Subcontract Work.

3.03 Any provisions arising with respect to interpretation of the contract documents or any related drawings, plans, or specifications shall be submitted through the Construction Manager and the Subcontractor shall follow the Construction Manager's directions with respect to such matters.

3.04 Subcontractor shall be bound to the Construction Manager by the terms of the contract documents and this Agreement, and assume toward the Construction Manager all the obligations and responsibilities that the Construction Manager, by those documents, assumes toward the Owner, as applicable to this Subcontract. Subcontractor is bound to the same conditions as stated in the prime Contract between the Construction Manager and Owner (copy of prime Contract supplied upon request).

3.05 Subcontractor shall promptly submit shop drawings and samples, as required in order to carry on and work efficiently and at a speed that will not cause delay in the progress of the Construction Manager's Work on other branches of the Work carried on by other Subcontractors.

3.06 Subcontractor acknowledges receipt of all plans, specifications, drawings, forms and other items referred to in this Agreement.

**ARTICLE IV PERFORMANCE.
PROSECUTION OF WORK,
DAMAGES FOR DELAY**

4.01 Time is of the essence to this Agreement Subcontractor shall begin Work as soon as instructed by the Construction Manager and shall prosecute the Subcontract Work promptly, efficiently and in a manner that will not cause delay to the progress of Construction Manager's Work or other Work performed on the project by other Subcontractors.

4.02 Subcontractor shall provide Construction Manager with scheduling information and Subcontractor's proposed performance schedule in a form satisfactory to the Construction Manager. Construction Manager may from time to time as the Work progresses, reschedule the order of Work to be performed by Subcontractor or otherwise revise subcontractor's schedule. Subcontractor agrees to comply with such schedule revision without any increases to the subcontract price for acceleration or delay.

4.03 Subcontractor shall furnish periodic progress reports of Subcontract Work as may be required by Construction Manager, and shall attend periodic conferences at the job site to discuss progress.

4.04 Subcontractor shall be liable for any damages for delay sustained by Construction Manager caused directly or indirectly by Subcontractor, including but not limited to, damages, liquidated or otherwise, for which Construction Manager is liable to Owner and Construction Manager's overhead and expenses related to managing and supervising the prime contract Work during such periods of delay. Any such damages shall be deducted from payments due Subcontractor, and if such damages exceed the amount of payments due, Subcontractor shall pay Construction Manager upon demand, such excess damages due.

4.05 Construction Manager shall not be liable to Subcontractor for delay to Subcontractor's Work caused by the act, neglect or default of the Owner or Owner's representative, or by reason of fire or other casualty, or on account of riots or strikes, or other combined actions of the workmen or others, or on account of any acts of God, or any other causes beyond the Construction Manager's control, or any circumstance caused or contributed to by any Subcontractor or any other party performing a part of the Work; but Construction Manager will cooperate with Subcontractor to enforce any just claim against the Owner or Owner's representative for delay. Construction Manager shall be reimbursed by Subcontractor for any expenses, including attorney's fees, in connection with any claims asserted at the request of Subcontractor. Should Subcontractor be delayed in his Work by Construction Manager, then Construction Manager shall owe Subcontractor therefore only an extension of time for completion equal to the delay caused, and then only if written claim for delay is made to Construction Manager within forty-eight (48) hours from the time of the beginning of the delay.

4.06 Subcontractor shall perform all Work subject to the final approval of the Owner's authorized agent, and his decision in matters relating to artistic effect shall be final, if within the terms of the contract documents.

**ARTICLE V
PROGRESS PAYMENTS**

5.01 Subcontractor shall submit to the Construction Manager monthly applications for payment on the date specified by the Construction Manager to enable Construction Manager to include such amount in his application of payment to the Owner. Payments are made on valuations of Subcontract Work performed. The Subcontractor has submitted to the Construction Manager a schedule of values of the various parts of the Work, aggregate to the total sum of the Agreement. In applying for payment, the Subcontractor shall submit a statement based upon this schedule. Application for payment made on account of materials not incorporated in the Work, but delivered and suitably stored at the site or at some other location agreed upon in writing, shall include evidence of payment from supplier and shall be in accordance with the terms and conditions of the contract documents. Applications for payment submitted by the 20th day of each month shall be processed by the Construction Manager for payment. Progress payments shall be made to Subcontractor on or about the 25th day of the following month, provided that like payment has been made to Construction Manager by Owner. See Paragraph 2.02.

5.02 Retainage of ten percent (10%) of the sums due thereunder shall be withheld until completion and acceptance of all Work to be performed, however, not to exceed thirty (30) days under this Agreement, provided that like payment has been made to Construction Manager by Owner. See Paragraph 2.02.

5.03 In the event the Construction Manager believes any of the conditions listed below warrant such action, the Construction Manager may withhold from monthly progress payments due thereunder sums deemed necessary to protect the Construction Manager and Owner from any losses on account of: (a) Defective Work not remedied; (b) Failure of the Subcontractor to (i) pay bills for labor and/or materials furnished in connection with the Subcontract Work; and (ii) deliver to Maska Builders, LLC affidavits and/or waivers, releases and indemnities On forms acceptable to Maska Builders, LLC) from laborers, lower tier contractors and materialmen who furnish labor or provide materials in connection with the Subcontract Work.;©) Inability of Subcontractor to complete the Subcontract Work for the unpaid Subcontract balance; (d) Failure of the Subcontractor to diligently prosecute the Subcontract Work such that damages for delay are likely; (e) Damages to another Subcontractor; or, (f) Breach by the Subcontractor of any provision or obligations of this Agreement.

5.04 Subcontract shall pay for all taxes, materials, equipment, and labor used in, or connection with the performance of the Agreement, throughout the period covered by previous payments received from the Construction Manager and furnish satisfactory evidence when requested by the Construction Manager to verify compliance with this request

5.05 Construction Manager reserves the right to make any payment to Subcontractor through the medium of a check made payable to the joint order of: (a) Subcontractor and such of Subcontractor's workmen, material men, suppliers; or (b) Subcontractors, or to any of Subcontractor's creditors having potential lien rights against the Work or claims against any payment bond of Construction Manager, whose claim against Subcontractor shall, in Construction Manager's sole determination, be in jeopardy of non-payment.

5.06 All contract documents must be fully executed (notarized where applicable) and forwarded to Construction Manager before payment will be released, Le., Certificates of Insurance showing General Liability limits and Worker's Compensation coverage, IRS W 9 Form, Release of Lien Forms, Warranty Letters and Affidavits of All Bills Paid.

ARTICLE VI FINAL PAYMENT

6.01 Final payment shall be paid to the Subcontractor upon approval by the Owner, Architect and the Construction Manager of the Subcontractor's Work and, upon payment having been received by the Construction Manager for all the Subcontractor's Work, including any retainage withheld by the Owner from Construction Manager, attributable to the Subcontract Work, and satisfactory evidence having been received by the Construction Manager that all labor, including customary fringe benefits and payments due under collective bargaining agreements, and all Subcontractors and material men have been paid to date and are waiving their lien rights upon the final payment of a specific balance due. See Paragraph 2.02.

6.02 Applications for final payment shall be accompanied by a warranty letter and all necessary closeout documents as detailed in the Project Manual and Specifications as required by the construction contract. Prior to releasing or in conjunction with release of final payment, Subcontractor must execute an unconditional lien waiver and an affidavit of bills paid

ARTICLE VII CHANGES

7.01 The Subcontractor may be ordered by the Construction Manager, without invalidating the Subcontract, to make changes in the Subcontract Work within the general scope of this Subcontract, consisting of additions, deletions or other revisions to the Subcontract Work. Subcontractor, prior to the commencement of such changed or revised Work, shall promptly submit to the Construction Manager any claim for adjustment to the Subcontract price or performance schedule because of such changed or revised Work.

7.02 Subcontractor shall not be entitled to any extra compensation or additional performance time for any changed or revised Work unless the notice of claim for adjustment is provided the Construction Manager before such changed or revised Work is performed, and either. (a) the Construction Manager or Subcontractor entered into a modification changing the agreement sum and/or schedules; or, (b) the Construction Manager, after receiving the Subcontractor's claim, provides the Subcontractor notice to proceed with the changed or revised Work absent such modification.

7.03 Notwithstanding anything contained herein to the contrary, if the Work for which the Subcontractor claims extra compensation to be due is determined pursuant to the contract documents to be such that the Construction Manager is not

entitled to additional compensation for such Work from the Owner, the Construction Manager shall not be liable to the Subcontractor for any extra compensation for such Work.

7.04 All Change Orders, Modifications, Claims for Adjustments, and Notice contemplated in this Article VII shall be in writing. All such requests shall be broken into cost categories of costs, overhead and profit, and sales/use tax (if applicable).

7.05 Duly authorized officers (president or Vice President) of the company are the only representatives of the Construction Manager who are authorized to approve and sign Change Orders.

7.06 All Change Orders, Modifications, Claims for Adjustments not directly reimbursed by the Owner and paid by Mask Builders, LLC, shall be passed on at cost, that is, without overhead and profit.

ARTICLE VIII INSURANCE

8.01 Prior to starting Work, the Subcontractor/Supplier shall procure and maintain in force insurance as described below. Certificates of Insurance to be issued on ACORD Form 25 provided by companies with a minimum A.M. Best's Rating of A-, VIII or companies acceptable to Owner and Contractor are in force. Required endorsements must be included. Reference specific project in the certificate description/comments area for identification purposes. Subcontractor/Supplier shall not commence work until they have furnished two (2) copies of Certificate of Insurance to Contractor.

8.02 COMMERCIAL GENERAL LIABILITY INSURANCE: Coverage form at least equal to ISO CG 00 01, latest available edition, on an occurrence basis. Subcontractor/Supplier shall identify on the Certificate any Residential, Mold, EIFS, Silica or other major exclusions that impact the Subcontractor/Supplier's ability to insure its risk. If the Project includes any Residential components or the proposed design includes EIFS systems, then the Subcontractor/Supplier shall obtain appropriate endorsements acceptable to Contractor as a condition of this Subcontract. The above coverage shall be written for not less than the following minimum limits:

\$1,000,000	General Aggregate (Per Project)
\$1,000,000	Each Occurrence
\$1,000,000	Products Completed Operations Aggregate
\$1,000,000	Personal and Advertising Injury

8.03 COMMERCIAL AUTOMOBILE LIABILITY INSURANCE: Owned, Hired and Non-Owned vehicles shall be written for not less than the following minimum limits:

\$1,000,000	Combined Single Limit – Per Accident
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8.04 UMBRELLA (EXCESS) LIABILITY INSURANCE: Coverage shall be excess over and be no less broad than all underlying coverages.

\$2,000,000	General Aggregate
\$2,000,000	Products – Completed Operations Aggregate
\$2,000,000	Each Occurrence

8.05 POLLUTION LIABILITY INSURANCE: Coverage shall be written for not less than the following minimum limits:

\$2,000,000	Aggregate
\$2,000,000	Each Incident

8.06 PROFESSIONAL LIABILITY INSURANCE: Any retroactive date applicable to the policy shall precede the commencement of any professional services provided under this Agreement. Professional Liability Insurance coverage shall be maintained by the Subcontractor/Supplier for not less than three (3) years beyond the completion of the project with no change in the original retroactive date. If Subcontractor/Supplier enters into an agreement with a third-party Professional Engineer for professional services provided under this Agreement, Contractor will accept evidence of Professional Liability from such Professional Engineer as fulfillment of this requirement herein. Coverage shall be written for not less than the following minimum limits:

\$2,000,000	Aggregate
\$2,000,000	Each Claim

8.07 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:

Statutory Workers' Compensation coverage in accordance with the laws of the State of Operations.

Employer's Liability Coverage with a minimum limit of:

\$1,000,000	Bodily Injury by Accident – Each Accident
\$1,000,000	Bodily Injury by Disease – Policy Limit
\$1,000,000	Bodily Injury by Disease – Each Employee

8.08 BUILDER'S RISK INSURANCE: Builder's Risk coverage including the interests of the Subcontractor/Supplier will be provided by Owner or General Contractor as identified in the Subcontract Documents. The Subcontractor is responsible for the \$10,000 Builder's Risk deductible for each loss to the extent losses payable under the Builder's Risk policy are attributable to the Subcontractor's work, acts or omissions, or the work, acts or omissions of any lower tier subcontractor, or any other party for whom Subcontractor may be responsible. Contractor and Subcontractor waive all rights against each other and any of their subcontractors for damages caused by fire or other causes of loss to the extent covered by Builder's Risk insurance, except such rights as they have to proceeds of such insurance held by the Contractor or Owner as fiduciary. Subcontractor shall require all of its subcontractors, by appropriate agreement, written where legally required for validity, similar waivers each in favor of other parties enumerated herein.

8.09 CONDITIONS:

1. All Subcontractor/Suppliers, unless otherwise approved by Contractor, shall be required to carry insurance equal to that as stated above.
2. General Liability, Automobile Liability, Umbrella/Excess Liability and Pollution Liability will include Subcontractor/Suppliers officers, directors, and shareholders of Subcontractor/Supplier (or their equivalents if Subcontractor/Supplier is not a corporation), Contractor and Owner as Additional Insureds, for ongoing and completed operations on a primary and non-contributory basis, with contractual coverage and such other insurance, to the extent required by the contract documents for the Subcontractor/Supplier's Work. Additional Insured status for completed operations coverage will be maintained for a period equal to the statute of repose for the state of operations.
3. To the fullest extent permitted by law, all insurance policies procured, paid for, and maintained by the Subcontractor/Supplier for the work performed according to this Subcontract Agreement must contain a Waiver of Subrogation in favor of the Contractor, Owner and others as required by the Owner-Contractor Agreement. This Waiver of Subrogation is required not only with respect to insurance required of Subcontractor/Supplier in this article, but also with respect to any other property, inland marine, liability, or other insurance the Subcontractor/Supplier may have in force that may cover the work performed for this job.
4. Subcontractor/Supplier agrees to notify Contractor in writing, at least 30 days in advance, of any reduction by the insurers in required coverage or coverage limits, cancellation, or non-renewal of Subcontractor/Supplier policies. Subcontractor agrees to provide new, complying Certificates showing property renewal coverages and limits in force at least 10 days prior to expiration of current policies.
5. Subcontractor/Supplier shall be responsible for securing whatever fire and extended coverage Subcontractor/Supplier may deem necessary for protection against loss of owned, rented, or borrowed equipment and tools, including, but not limited to any tools, equipment, scaffolding, staging, and trailers owned, rented, or borrowed by Subcontractor/Supplier. Contractor shall have no liability with respect to such equipment and tools. Failure of the Subcontractor/Supplier to secure such insurance or to maintain adequate levels of coverage shall not obligate Contractor for any losses on owned, rented, or borrowed equipment.
6. The amount and types of insurance coverage required to be provided by Subcontractor/Supplier herein, including any limitation on Subcontractor/Supplier's obligation to include Contractor, Owner and others as required by the Owner-Contractor Agreement as Additional Insureds on Subcontractor/Supplier's liability policies, shall not be construed to be a limitation of the liability on the part of the Contractor or any of its Subcontractor/Suppliers.
7. Contractor shall have no duty to Subcontractor/Supplier or to any of its insurers or their insurance agents to review any Certificates or copies of insurance furnished to Contractor or to determine whether the terms of each Certificate or policy of insurance comply with the insurance-related provisions of the Subcontract Documents. A failure of Contractor to detect that

Subcontractor/Supplier has not submitted Certificates, or proper Certificates, or is otherwise not in compliance with the insurance-related provisions of the Subcontract Documents shall not be considered a waiver or other impairment of any of Contractor's rights under such insurance-related provisions.

8. Any deductibles or retentions under Subcontractor/Supplier's policies shall be paid by, assumed by, for the account of, and at Subcontractor/Supplier's sole risk.

9. If the Subcontractor/Supplier fails to procure and maintain such insurance, in addition to the option of declaring Subcontractor/Supplier in default for breach of a material provision of the Subcontract, Contractor shall have the right, but not the duty, to procure and maintain the same insurance, or other insurance that provides Contractor with equivalent protection, and Subcontractor/Supplier shall furnish all necessary information to make effective and maintain such insurance. At the option of Contractor, the cost of said insurance purchased by Contractor shall be charged against and deducted from any monies then due or to become due to Subcontractor/Supplier or Contractor shall notify Subcontractor/Supplier of the cost thereof and Subcontractor/Supplier shall promptly pay such cost.

10. If Subcontractor/Supplier enters any subcontract with any lower-tier Subcontractor/Supplier, Subcontractor/Supplier shall require such lower-tier Subcontractor/Supplier to maintain insurance similar to that required of Subcontractor/Supplier under this Agreement, including primary/non-contributory additional insured and waiver of subrogation provisions as required hereunder.

11. Contractor reserves the right to require additional limits of insurance and if, in its opinion, the Subcontractor/Supplier's work creates a special hazard at the project

ARTICLE IX **INDEMNIFICATION**

9.01 To the fullest extent permitted by law, the Subcontractor hereby undertakes and agrees to indemnify, defend and save and keep the Construction Manager, the Owner, the Architect/Engineer and all of their agents and employees, harmless without limit and without regard to the cause or causes thereof or the negligence of any party, from and against any and all claims, demands, liability or damages, including punitive damages, losses and expenses, including but not limited to attorney's fees arising out of or resulting from the performance, or failure in performance, of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense is: (a) attributable in bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom; and (b) caused in whole or in part by Work performed by the Subcontractor or anyone directly or indirectly employed by him or anyone for whose acts he may be liable or responsible for regardless of whether it is caused in part by a party indemnified thereunder. Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this provision.

9.02 In any and all claims against the Construction Manager or any of his agents or employees by an employee of the Subcontractor, anyone directly or indirectly employed by him or anyone for whose acts he may be liable, the Indemnification obligation under this Article IX shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under Worker's Compensation acts, disability benefit. acts, or other employee benefit acts.

9.03 The obligations of the Subcontractor under this Article IX shall not extend to the liability of the Architect/Engineer, his agents or employees, arising out of: (a) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications; or (b) the giving of, or failure to give directions or instruction by, the Architect/Engineer, its agents or employees, providing such giving or failure to give is the primary cause of the injury or damage.

ARTICLE X **WARRANTY**

10.01 The Subcontractor agrees to promptly make good, without cost to the Owner or Construction Manager, any and all defects due to faulty workmanship and/or materials which may appear within the guarantee or warranty period so established in the contract documents; and if no such period be stipulated in the contract documents, then such guarantee shall be for a period of

one year from date of substantial completion and acceptance of the project by the Owner. The Subcontractor further agrees to execute any special guarantee as provided by the terms of the contract documents prior to final payment.

ARTICLE XI **TERMINATION**

11.01 Should the Subcontractor fail at any time to supply a sufficient number of properly skilled workmen and sufficient materials and equipment of the proper quality, or fail in any respect to prosecute the Work with promptness and diligence, or fail to promptly correct defective Work, or fail in the performance of any of the agreements herein contained, the Construction Manager may, at his option, provide such labor, materials and equipment and to deduct the cost thereof, together with all loss or damage occasioned thereby, from any money then due or thereafter to become due, to the Subcontractor under this Agreement

11.02 If the Subcontractor at any time shall refuse or neglect to supply sufficient properly skilled workmen or materials or equipment of the proper quality or quantity, or fail in any respect to prosecute Subcontractor's Work with promptness and diligence, or cause by any active admission the stoppage or interference with the Work of the Construction Manager or other Subcontractors, or fail in performance of any of the covenants herein contained, or be unable to meet his debts as they mature, the Construction Manager may at his option, upon twenty-four (24) hours notice to the Subcontractor, terminate the Subcontractor's right to proceed with the Subcontract Work by delivering written notice of termination to the Subcontractor. Thereafter, the Construction Manager may take possession of the plant and Work, materials, tools, appliances and equipment of the Subcontractor at the building site, and through himself or others provide labor, equipment and materials to prosecute Subcontractor's Work on such terms and conditions as shall be deemed necessary, and shall deduct the cost thereof, including without restriction thereto all charges, expenses, losses, costs, damages, and attorney's fees incurred as a result of the Subcontractor's failure to perform, from any money then due or thereafter to become due to the Subcontractor under this Agreement.

11.03 If the contract between the Construction Manager and Owner contains a provision by which the Owner may terminate the right of the Construction Manager to proceed with the project for the convenience of the Owner, the Construction Manager shall have the right thereunder to terminate the right of the Subcontractor to proceed with the Subcontract Work for the convenience of the Construction Manager. In the event the Construction Manager terminates the right of the Subcontractor to proceed with the Subcontract Work for the convenience of the Construction Manager, the Subcontractor shall be compensated in accordance with the provisions of the Termination for Convenience provision of the prime contract. The Subcontractor shall be entitled to no other compensation or damages for any termination for the convenience of the Construction Manager, except as provided in this Paragraph 11.03.

11.04 If the Construction Manager so terminates the employment of the Subcontractor, the Subcontractor shall not be entitled to any future payment under this Agreement until Subcontractors Work has been completed and accepted by the Owner and payment has been received by the Construction Manager from any money then due or thereafter to become due to the Subcontractor under this Agreement.

11.05 This offer may be withdrawn by Maska Builders, LLC - General Contractors if not accepted within thirty (30) days from date of this Agreement.

ARTICLE XII **CLAIMS**

12.01 The Subcontractor agrees to make any claims to the Construction Manager for damaged or additional compensation based on "alleged extra Work, changed conditions, or any other grounds in the same manner as provided in the contract documents for like claims of the Construction Manager upon the Owner, and in such times as will enable the Construction Manager to present such claims to the Owner for payment or recognition, and the Construction Manager will not be liable to the Subcontractor on account of any claim not timely or properly presented, nor unless and until it is allowed by the Owner. Notwithstanding anything to the contrary contained herein, no interruption, cessation, postponement or delay in the commencement of the Work or in the progress thereof from any cause whatsoever, including disputes, shall relieve the Subcontractor of its duty to perform or give rise to any right therefore with respect to the Work to be performed by Subcontractor thereunder, and the Subcontractor hereby expressly waives and releases any other or further right to damages or additional compensation.

12.02 In the event of any dispute or claim between the Construction Manager and the Owner which directly or indirectly involves the Work required to be performed by Subcontractor under this Subcontract, or in the event of any dispute or claim between Construction Manager and Subcontractor which directly or indirectly involves a claim against the Owner for either additional compensation and/or an extension of time under the contract documents, Subcontractor agrees to be bound to Construction Manager and Construction Manager agrees to be bound to Subcontractor to the same extent that Construction Manager is bound to the Owner by the terms of the contract documents and by any and all decisions, findings or determinations made thereunder by the person so authorized in the contract documents, or by an administrative agency or court of competent jurisdiction, whether or not Subcontractor is a party to the proceedings before said person, agency or court. If any dispute or claim is prosecuted or defended by Construction Manager, and Subcontractor is not directly a party or litigant, Subcontractor agrees to cooperate fully with Construction Manager and to furnish all documents, statements, witnesses and other information required by Construction Manager for such purpose and shall pay or reimburse Construction Manager for all expenses and costs, including reasonable attorneys' fees incurred in connection therewith to the extent of the Subcontractor's interest in such claim or dispute. It is expressly understood and agreed, in connection with the determination of such claims or disputes, that as to any and all Work done and agreed to be done by the Subcontractor, and as to any and all materials or services furnished or agreed to be furnished by the Subcontractor, and as to any and all damage, if any, incurred by Subcontractor in connection with this project, Construction Manager shall never be liable to Subcontractor to any greater extent than Owner is liable to Construction Manager.

12.03 If the Subcontractor encounters surfaces or Work which he considers unsatisfactory, and which affect the Work under this Subcontract, or if the Subcontractor encounters any other condition whatsoever upon which he may base a claim for extra compensation, extra time or any other type of claim, it shall be his duty to give written notice to the Construction Manager prior to commencing any Work involving said conditions in order to allow the Construction Manager to inspect said conditions and to make such arrangements and take such steps as Construction Manager deems necessary. In the absence of such notice to the Construction Manager, Subcontractor shall be fully and solely responsible and liable for any and all expenses, loss, or damages resulting from said condition and Construction Manager shall be relieved of all liability in connection therewith.

12.04 Subcontractor shall call) on Subcontractor's Work and maintain his progress during any arbitration or litigation proceedings.

12.05 All Claims or disputes between the Subcontractor and the Construction Manager arising out or relating to the Contract, or the breach thereof, shall be decided by arbitration in accordance-with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise. Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association and shall be made within a reasonable time after the dispute has arisen. The award rendered by the arbitrator or arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Except by written consent of the person or entity sought to be joined, no arbitration arising out of or relating to the General Contract or this Agreement shall include, by consolidation, joinder or in any other manner, any person or entity not a party to the Agreement under which such arbitration arises, unless it is shown at the time the demand for arbitration is filed that (a) such person or entity is substantially involved in a common questions of fact or law, (b) the presence of such person or entity is required if complete relief is to be accorded in the arbitration and the interest or responsibility of such person or entity in the matter is not insubstantial. The Agreement herein among the parties to the Agreement and any other written agreement to arbitrate referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

12.06 Subcontractor shall make no claim for services rendered or materials furnished by the Subcontractor to the Construction Manager unless written notice thereof is given by the Subcontractor to the Construction Manager during the first ten (10) days of the calendar month following that in which the claim originated.

ARTICLE XIII **PROTECTION OF PERSONS AND PROPERTY**

13.01 Subcontractor shall not discriminate against any employee or applicant for employment because of race, sex, creed, color, age or national origin.

13.02 Subcontractor shall take necessary precaution to properly protect the finished Work of other trades and Subcontractors.

13.03 Subcontractor shall pay all laborers and mechanics performing Work upon the project no less than the minimum rate of pay and fringe benefits as may be specified in the contract documents, and provide certified payroll reports weekly, or as may be required by Construction Manager, evidencing payment of such wage rates.

13.04 Keep the building and premises clean, at all times, of debris arising out of the operation of this Agreement. The Subcontractor shall not be held responsible for unclean conditions caused by other Construction Managers or Subcontractors unless otherwise provided for. Subcontractor shall be given one (1) twenty-four (24) hour notice to remove his trash. If, at the end of the twenty-four (24) hour notice period, the Subcontractor's trash has not been removed, Construction Manager shall, without further notice, remove trash at a flat rate of fifty dollars (\$50.00) per hour with a minimum two (2) hour charge. A deductive change order shall be issued for cleaning expenses and will be signed by Subcontractor prior to Construction Manager's payment of any additional money to Subcontractors.

13.05 Comply with all Federal, State and local laws and ordinances applying to the building or structure and to comply and give adequate notices relating to the Work to the proper authorities, and to secure and pay for all necessary licenses or permits to call) on the Work as described in the contract documents as applicable to this Agreement.

13.06 Subcontractor shall comply with all Federal, State, and local statutes, Social Security statutes, and Unemployment Compensation statutes and Worker's Compensation statutes insofar as applicable to the performance of the Agreement.

13.07 Subcontractor shall provide sufficient, safe and proper facilities at all times for the inspection of the Work by the Construction Manager or his authorized representatives. Work not meeting the specifications or intent of the drawings shall be removed or rebuilt to conform to same at Subcontractor's expenses.

13.08 Subcontractor shall comply with all safety regulations on the Federal, State, and municipal authorities, and)particularly agrees to comply with all the requirements of the most current Occupational Safety and Health Act and all regulations promulgated by the U.S. Department of Labor under the terms thereof.

13.09 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, given written notice of the chemical composition thereof to the Construction Manager in sufficient detail and time to permit compliance with such laws by the Construction Manager, other Subcontractors and other employers on the site.

13.10 In the event the Subcontractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Subcontractor shall immediately stop Work the area affected and report the condition to the Construction Manager in writing. The Work in the affected area shall resume in e absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written, agreement of the Construction Manager and Subcontractor, or in accordance with final determination by the Architect on which titration has not been demanded, or by arbitration as provided in this Agreement.

ARTICLE XIV **MISCELLANEOUS PROVISIONS**

14.01 Subcontractor shall not assign or factor this Subcontract or any payments due, or to become due, thereunder without the written consent of the Construction Manager; nor subcontract the whole of this Subcontract without the written consent of the Construction Manager; nor further subcontract portions of this Subcontract without written notification to the Construction Manager, when such notification is requested by the Construction Manager.

14.02 Either party may require the Subcontractor to enter into agreements with Sub-subcontractors performing portions of the Work of this Agreement by which the Subcontractor and the Sub-subcontractor are mutually bound, to e extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities which the Construction Manager and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other which the Construction Manager and Subcontractor have by virtue of the provisions , this Agreement

14.03 Subcontractor shall maintain a qualified Superintendent, approved by Construction Manager, on the job at all times.

14.04 Subcontractor shall furnish all necessary liens, waivers, affidavits, or other documents which are required to keep Owner's premises free from liens or claims arising out of the furnishings of materials or equipment.

14.05 Only an officer or authorized representative of the Subcontractor's Company presenting a Power of Attorney or letter of authorization will be allowed to sign the Agreement and other pertinent contract documents.

14.06 If any provision of this Agreement is determined to be invalid or unenforceable, such determination shall not affect the enforceability or validity of the balance of the provisions of this Agreement and this Agreement shall, as to those provisions, remain in full force and effect.

14.07 This Agreement shall be construed as a unit and shall not be considered severable. If the Subcontractor fails to perform its obligations under the Agreement and becomes obligated to pay the Construction Manager a sum of money which exceeds the amount of money retained by the Construction Manager under the terms of this Agreement, the Construction Manager may, at its option, withhold or deduct the amount of money due from the Subcontractor under this Agreement from the monies the Construction Manager may be obligated to pay to the Subcontractor under any other Agreement between the Subcontractor and the Construction Manager.

14.08 All parties agree that in the event legal action becomes necessary the same will be filed and tried in Tulsa County, Oklahoma.

14.09 Construction Manager shall conduct their own punch list prior to Owner/Architect punch list. All items pertaining to Construction Manager's punch list must be completed independent of and prior to Owner/Architect punch list.

14.10 Construction Manager shall be bound to the Subcontractor by all the obligations that the Owner assumes to the Construction Manager under the contract documents and by all the provisions thereof affording remedies and redress to the Construction Manager from the Owner, insofar as applicable to this Agreement.

14.11 Construction Manager shall not issue or give any instructions, orders or directions directly to employees or workmen of the subcontractor other than the persons designated as the authorized representative(s) of the Subcontractor.

14.12 All notices required to be given under this Agreement shall be deemed delivered when Federal Expressed, faxed, or deposited in the United States mail, first class, postage prepaid to the attention of Project Manager.

14.13 This Agreement contains the entire agreement of the parties. All prior Agreements respecting the subject matter hereof are of no force or effect. All modifications to this Agreement shall be in writing, executed by both parties.

14.14 In the event there is a conflict between the contract documents and any provisions of this Agreement, the terms of this Agreement shall govern.

14.15 In the event either party is required to obtain the services of an attorney to enforce this Agreement, the prevailing party, in addition to other remedies available, shall be entitled to recover reasonable attorneys' fees.

END