



This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion. The responsibilities of the Consultant described in CAP Form A201 General Conditions of the Contract for Construction, are included as part of this Contract.

**AGREEMENT** made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_  
**BETWEEN THE OWNER:**

State of Oklahoma  
OMES/CAM/CAP  
P.O. BOX 53448  
Oklahoma City, OK 73152-3448  
[cap@omes.ok.gov](mailto:cap@omes.ok.gov)

**PROJECT:**

PROJECTNUMBER \_\_\_\_\_ **XX** \_\_\_\_\_  
(Cap Project Number) (Solicitation Number)

Project Name \_\_\_\_\_  
(Project Name)

LOCATION \_\_\_\_\_  
(Address/Location)

**ON BEHALF OF USING AGENCY:**

Agency Name \_\_\_\_\_  
(Using Agency Name)

**AND THE OWNER'S REPRESENTATIVE (Consultant):**

Consultant Name _____ (Company Name)	City, State Zip _____ (City, State ZIP)	
Address _____ (Address)	Email _____ (Email)	Phone _____ (Telephone Number)

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

**ARTICLE 1: Owner's Representative (Consultant)'s Responsibilities.**

- 1.1 The services performed by the Owner's Representative, Owner's Representative's employees and Owner's Representative's sub-consultants shall be as enumerated in Articles 2, 3 and 12.
- 1.2 The Owner's Representative's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Owner's Representative shall submit for the Owner's approval a schedule for the performance of the Owner's Representative's services which may be adjusted as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Owner's Representative or the Owner.
- 1.3 The Owner's Representative shall designate a representative authorized to act on behalf of the Owner's Representative with respect to the Project.
- 1.4 The services covered by this Agreement are subject to the time limitations contained in Subparagraph 11.4.1.
- 1.5 **AUDITS AND RECORDS CLAUSE:** As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. In accepting any contract with the State, the Owner's Representative agrees any pertinent State or Federal agency will have the right to examine and audit all records relevant to execution of the resultant contract. The Owner's Representative is required to retain all records relative to this contract for the duration of the contract term and for a period of three years following completion and/or termination of the contract. If an audit, litigation, or other action involving such records, are started before the end of the three-year period, the records are required to be maintained for three years from the date that all issues arising out of the action are resolved or until the end of the three-year retention period, whichever is later.

**ARTICLE 2: Scope of Owner's Representative's Basic Services.**

**2.1 Definition:** The Owner's Representative's Basic Services consist of those described in Paragraphs 2.2 through 2.6 and any other services identified in Article 12 as part of Basic Services, and include normal structural, mechanical and electrical engineering services.

**2.2 Schematic Design Phase:** The Owner's Representative shall review the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

**2.2.1** The Owner's Representative shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Subparagraph 5.2.1.

**2.2.2** The Owner's Representative shall review with the Owner alternative approaches to design and construction of the Project.

**2.2.3** Based on the mutually agreed-upon program, schedule and construction budget requirements, the Owner's Representative shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

**2.2.4** The Owner's Representative shall submit to the Owner a preliminary estimate of Construction Cost based on current area, volume or similar conceptual estimating techniques.

**2.3 Design Development Phase.**

**2.3.1** Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Owner's Representative shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

**2.3.2** The Owner's Representative shall advise the Owner of any adjustments to the preliminary estimate of Construction Cost.

**2.4 Construction Document Phase.**

**2.4.1** Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Owner's Representative shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

**2.4.2** The Owner's Representative shall assist the Owner in the preparation of the necessary bidding information and bidding forms.

**2.4.3** The Owner's Representative shall advise the Owner of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions.

**2.4.4** The Owner's Representative shall be responsible for filing documents required for the approval of governmental authorities having jurisdiction over the Project, including but not limited to the State Fire Marshal, State Health Department and the Department of Environmental Quality.

**2.4.5** The Owner's Representative shall provide one (1) set of electronic data of the CAD files, plot files of the drawings and the specifications to the Owner.

**2.5 Bidding Phase.** *(The 2.5 clauses, if selected with an "X," shall become a valid clause of this Agreement.)* The Owner's Representative, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner in the bidding phase. The Owner's Representative shall only accept written questions from bidders, subcontractors, material suppliers or any other interested parties. The Owner's Representative shall prepare written responses to the questions and shall forward the written questions and the written responses to the Owner for the Owner's review and potential inclusion in an addendum that will be issued to all bidders. The Owner's Representative shall not respond to questions from bidders, subcontractors, material suppliers or any other interested parties in any other manner. Failure to comply with this requirement shall be considered a material breach of the Contract.

**2.6 Construction Phase – Administration of Construction Contract.** *(The 2.6 clauses, if selected with an "X," shall become a valid clause of this Agreement.)*

**2.6.1** The Owner's Representative's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the earlier of the issuance to the Owner of the final Certificate for Payment or 60 days after the date of Substantial Completion of the Work. When the original contract date has been exceeded by more than sixty (60) days, the Owner's Representative may request compensation for additional services.

**2.6.2** The Owner's Representative shall provide administration of the Contract for Construction as set forth below and in the General Conditions of the Contract for Construction, current as of the date of this Agreement, unless otherwise provided in this Agreement. Modifications made to the General Conditions, when adopted as part of the Contract Documents, shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Owner's Representative.

**2.6.3** Duties, responsibilities and limitations of authority of the Owner's Representative under this Paragraph 2.6 shall not be restricted, modified or extended without written agreement of the Owner and Owner's Representative.

**2.6.4** The Owner's Representative shall be a representative of and shall advise and consult with the Owner during the administration of the Contract for Construction. The Owner's Representative shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written agreement.

**2.6.5** The Owner's Representative shall provide experienced construction observers, as approved by the Owner, to conduct construction observation of the Architectural, Structural, Mechanical and Electrical Work. The Owner's Representative, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the Owner and the Owner's Representative in Article 12, (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Owner's Representative shall submit a written report, each month, indicating the progress and quality of the Work and the Contractor's adherence to the construction schedule. However, the Owner's Representative shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner's Representative shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

**2.6.6** The Owner's Representative shall report to the Owner known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the Owner's Representative shall not be responsible for the

Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Owner's Representative shall be responsible for the Owner's Representative's negligent acts or omissions but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

**2.6.7** The Owner's Representative shall at all times have access to the Work wherever it is in preparation or progress.

**2.6.8** Except as otherwise provided in this Agreement or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor through the Owner's Representative about matters arising out of or relating to the Contract Documents. Communications by and with the Owner's Representative's sub-consultants shall be through the Owner's Representative.

**2.6.9 Applications and Certificates for Payment (Contractor Invoice).**

**a.** The Owner's Representative shall follow the current Rules and Procedures established by Construction and Properties of the Office of Management and Enterprise Services, Capital Assets Management, State of Oklahoma to ensure compliance with state statutes.

**b.** The Owner's Representative shall attend the monthly payment review meeting at the project site to review a "draft" copy of the Contractor's monthly payment application.

**c.** The Owner's Representative shall review and certify the amounts due the Contractor and shall issue certificates in such amounts.

**d.** The Owner's Representative's certification for payment shall constitute a representation to the Owner, based on the Owner's Representative's evaluation of the Work as provided in Subparagraph 2.6.5 and on the data comprising the Contractor's Application for Payment, that the work has progressed to the point indicated and that, to the best of the Owner's Representative's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Owner's Representative.

**e.** The issuance of a Certificate for Payment shall not be a representation that the Owner's Representative has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**2.6.10** The Owner's Representative shall have authority to reject Work that does not conform to the Contract Documents. Whenever the Owner's Representative considers it necessary or advisable, the Owner's Representative shall have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner's Representative nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner's Representative to the Contractor, Sub-contractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

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

**2.6.12** If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner's Representative shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Owner's Representative. The Owner's Representative shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

**2.6.13** The Owner's Representative shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Owner's Representative as provided in Subparagraphs 3.1.1 and 3.3.3, for the Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work not involving an adjustment in the Contract sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents. The Owner's Representative shall review properly prepared, timely requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the Owner's Representative and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.

**2.6.14** The Owner's Representative shall conduct inspections in order to determine and recommend to the Owner the date or dates of Substantial Completion and the date of final completion, shall receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

**2.7 Record As-built Documents.** The Owner's Representative shall prepare record drawings showing significant changes in the work made during construction based on marked-up prints, drawings and other data furnished by the Contractor. The Owner's Representative shall submit two (2) sets of electronic data of the CAD files, plot files for the drawings and specifications at the completion of the project. Electronic data storage shall be in compliance with current requirements of the Owner. All drawings shall be in conformance with the current CAD standards of the Owner.

**ARTICLE 3: Additional Services.**

**3.1 General.** The services described in this Article 3 are not included in the Basic Services unless so identified in Article 12, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Paragraphs 3.2 and 3.4 shall only be provided if authorized and confirmed in writing by the Owner. If services described under Contingent Additional Services in Paragraph 3.3 are required due to circumstances beyond the Owner's Representative's control, the Owner's Representative shall notify the Owner in writing prior to commencing such services. If the Owner deems that such services described under Paragraph 3.3 are not required, the Owner shall give prompt written notice to the Owner's Representative. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Owner's Representative shall have no obligation to provide those services.

**3.2 Project Representation Beyond Basic Services.**

**3.2.1** If more extensive representation at the site than is described in Subparagraph 2.6.5 is required, the Owner's Representative shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

**3.2.2** Project Representatives shall be selected, employed and directed by the Owner's Representative, and the Owner's Representative shall be compensated therefore as agreed by the Owner and Owner's Representative. The duties, responsibilities and limitations of authority of Project Representatives shall be as described in CAP Form B352 current as of the date of this Agreement, unless otherwise agreed.

**3.2.3** Through the presence at the site of such Project Representatives, the Owner's Representative shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Owner's Representative as described elsewhere in this Agreement.

**3.3 Contingent Additional Services.**

**3.3.1** Making revisions in drawings, specifications or other documents when such revisions are:

**3.3.2** inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;

**3.3.3** required by the enactment or revision of codes, laws or regulations subsequent to the preparation of Design Development documents; or

**3.3.4** due to changes required as a result of the Owner's failure to render decisions in a timely manner.

**3.3.5** Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding and contracting for construction, except for services required under Subparagraph 5.2.5

**3.3.6** Preparing Drawings, Specifications and other documentation and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and Construction Change Directives due to unforeseen conditions or Owner requested changes.

**3.3.7** Providing services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.

**3.3.8** Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

- 3.3.9** Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction, when the original contract Substantial Completion date is exceeded by more than sixty (60) days.
- 3.3.10** Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work.
- 3.3.11** Providing services in connection with a public hearing, a dispute resolution proceeding or a legal proceeding except where the Owner's Representative is a party thereto.
- 3.4 Optional Additional Services.**
- 3.4.1** Providing analyses of the Owner's needs and programming the requirements of the Project.
- 3.4.2** Providing financial feasibility or other special studies.
- 3.4.3** Providing planning surveys, site evaluations or comparative studies of prospective sites.
- 3.4.4** Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.
- 3.4.5** Providing services relative to future facilities, systems and equipment.
- 3.4.6** Providing services to investigate existing conditions or facilities or to make measured drawings thereof.
- 3.4.7** Providing services to verify the accuracy of drawings or other information furnished by the Owner.
- 3.4.8** Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.
- 3.4.9** Providing services in connection with the work of a construction manager or separate Owner's Representatives retained by the Owner.
- 3.4.10** Providing detailed estimates of Construction Cost.
- 3.4.11** Providing detailed quantity surveys or inventories of material, equipment and labor.
- 3.4.12** Providing analyses of owning and operating costs.
- 3.4.13** Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.
- 3.4.14** Providing services for planning tenant or rental spaces.
- 3.4.15** Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.
- 3.4.16** Providing services in connection with a warranty inspection which will be conducted approximately nine (9) months after Substantial Completion date.
- 3.4.17** Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.
- 3.4.18** Providing services after issuance to the Owner of the final Certificate for Payment, or in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of the Work.

**3.4.19** Providing services of Owner's Representatives for other than architectural, structural, mechanical and electrical engineering portions of the Project provided as part of Basic Services.

**3.4.20** Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

**ARTICLE 4: Owner's Responsibilities.**

**4.1** The Owner shall provide full information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

**4.2** The Owner shall establish and periodically update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.

**4.3** The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such designated representative shall render decisions in a timely manner pertaining to documents submitted by the Owner's Representative in order to avoid unreasonable delay in the order and sequential progress of the Owner's Representative's services.

**4.4** The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

**4.5** The Owner shall furnish the services of geotechnical engineers when such services are requested by the Owner's Representative. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations.

**4.6** The Owner shall furnish the services of Owner's Representatives other than those designated in Paragraph 4.5 when such services are requested by the Owner's Representative and are reasonably required by the scope of the Project.

**4.7** The Owner shall furnish structural, mechanical, and chemical tests; tests for air and water pollution; tests for hazardous materials; and other laboratory and environmental tests, inspections and reports required by law.

**4.8** The Owner shall furnish all legal, accounting and insurance services that may be necessary at any time for the Project to meet the Owner's needs and interests. Such services shall include auditing services the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner.

**4.9** The services, information, surveys and reports required by Paragraphs 4.4 through 4.8 shall be furnished at the Owner's expense, and the Owner's Representative shall be entitled to rely upon the accuracy and completeness thereof.

**4.10** The Owner shall provide prompt written notice to the Owner's Representative if the Owner becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's Instruments of Service.

**ARTICLE 5: Construction Cost.**

**5.1 Definition.**

**5.1.1** The Construction Cost shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Owner's Representative.

**5.1.2** The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Owner's Representative, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for

their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

**5.1.3** Construction Cost does not include the compensation of the Owner's Representative and the Owner's Representative's sub-consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner as provided in Article 4.

## **5.2 Responsibility for Construction Cost.**

**5.2.1** Evaluations of the Owner's Project budget, the preliminary estimate of Construction Cost and detailed estimates of Construction Cost, if any, prepared by the Owner's Representative, represent the Owner's Representative's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Owner's Representative nor the Owner has control over the cost of labor, materials, or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Owner's Representative cannot and does not warrant or represent that the bid prices will not vary from the Owner's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Owner's Representative.

**5.2.2** A fixed limit has been established (Refer Article 12) and the Owner's Representative shall be permitted to include contingencies for bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the Construction Cost to the fixed limit.

**5.2.3** If the Bidding Phase has not commenced within 90 days after the Owner's Representative submits the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry.

**5.2.4** If a fixed limit of Construction Cost (adjusted as provided in Subparagraph 5.2.3) is exceeded by the lowest bona fide bid, the Owner shall:

- a. give written approval of an increase in such fixed limit;
- b. authorize rebidding of the Project within a reasonable time;
- c. terminate in accordance with Paragraph 8.5; or
- d. cooperate in revising the Project scope and quality as required to reduce the Construction Cost.

**5.2.5** If the Owner chooses to proceed under Clause 5.2.4.1, the Owner's Representative shall not be entitled to an adjustment in the compensation.

**5.2.6** If the Owner chooses to proceed under Clause 5.2.4.4, the Owner's Representative, without additional compensation, shall modify the documents for which the Owner's Representative is responsible under this Agreement as necessary to comply with the fixed limit, if established as a condition of this Agreement. The modification of such documents without cost to the Owner shall be the

limit of the Owner's Representative's responsibility under this Subparagraph 5.2.6. The Owner's Representative shall be entitled to compensation in accordance with Agreement for all services performed whether or not the Construction Phase is commenced.

## **ARTICLE 6: Contract Documents.**

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



**ARTICLE 7: Claims and Disputes.**

**7.1** The Owner and Owner's Representative shall endeavor to resolve claims, disputes and other matters in question between them by participating in a settlement meeting to obtain a mutual agreement that resolves the claim or dispute. If an agreement cannot be attained, the Owner's Representative may appeal to the Administrator of the Division of Capital Assets Management by submitting written notice of a protest to the Administrator within twenty-one (21) days of the previous settlement meeting.

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

**7.3** If the Administrator denies a Owner's Representative's appeal, the Owner's Representative may appeal pursuant to provisions of 75 O.S., Section 309 et seq. of the Administrative Procedures Act.

**ARTICLE 8: Termination or Suspension.**

**8.1** If the Owner fails to make payments to the Owner's Representative in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Owner's Representative's option, cause for suspension of performance of services under this Agreement. If the Owner's Representative elects to suspend services, prior to suspension of services, the Owner's Representative shall give seven days' written notice to the Owner. In the event of a suspension of services, the Owner's Representative shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner's Representative shall be paid all sums due prior to suspension. The Owner's Representative's fees for the remaining services and the time schedules shall be equitably adjusted.

**8.2** If the Project is suspended by the Owner for more than 30 consecutive days, the Owner's Representative shall be compensated for services performed prior to notice of such suspension. The Owner's Representative's fees for the remaining services and time schedules shall be equitably adjusted.

**8.3** If the Project is suspended or the Owner's Representative's services are suspended for more than 90 consecutive days, the Owner's Representative may terminate this Agreement by giving not less than seven days' written notice.

**8.4** This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

**8.5** This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Owner's Representative for the Owner's convenience and without cause.

**8.6** In the event of termination not the fault of the Owner's Representative, the Owner's Representative shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

**ARTICLE 9: Miscellaneous Provisions.**

**9.1** This Agreement shall be governed by the laws of the State of Oklahoma.

**9.2** The Owner's Representative certifies that it and all proposed subcontractors, whether known or unknown at the time this contract is executed or awarded, are in compliance with 25 O.S. §1313 and participate in the Status Verification System. The Status Verification System is defined in 25 O.S. §1312 and includes but is not limited to the free Employee Verification Program (E-Verify) available at [www.dhs.gov/E-Verify](http://www.dhs.gov/E-Verify).

**9.3** Terms in this Agreement shall have the same meaning as those in the edition of CAP Form A201 General Conditions of the Contract for Construction, current as of the date of this Agreement.

**9.4** Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to

act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Owner's Representative's services are substantially completed.

**9.5** To the extent damages are covered by property insurance during construction, the Owner and Owner's Representative waive all rights against each other and against the contractors, Owner's Representatives, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of CAP Form A201 General Conditions of the Contract for Construction, current as of the date of this Agreement. The Owner or the Owner's Representative, as appropriate, shall require of the contractors, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

**9.6** The Owner and Owner's Representative, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Owner's Representative shall assign this Agreement without the written consent of the other.

**9.7** This Agreement represents the entire and integrated agreement between the Owner and the Owner's Representative and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by Owner and Owner's Representative.

**9.8** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Owner's Representative.

**9.9** Unless otherwise provided in this Agreement, the Owner's Representative and the Owner's Representative's sub-consultants shall have no responsibility for the discovery, presence, handling, removal, or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

**9.10** The Owner's Representative shall have the right to include photographic or artistic representations of the design of the Project among the Owner's Representative's promotional and professional materials. The Owner's Representative shall be given reasonable access to the completed Project to make such representations. However, the Owner's Representative's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Owner's Representative in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Owner's Representative in the Owner's promotional materials for the Project.

**9.11** If the Owner requests the Owner's Representative to execute certificates, the proposed language of such certificates shall be submitted to the Owner's Representative for review at least 14 days prior to the requested dates of execution. The Owner's Representative shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

**ARTICLE 10: Payments to the Owner's Representative.**

**10.1 Direct Personnel Expense:** Direct Personnel Expense is defined as the direct salaries of the Owner's Representative's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

**10.2 Reimbursable Expenses.**

**10.2.1** Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Owner's Representative and the Owner's Representative's employees and Owner's Representatives directly related to the Project, as identified in the following Clauses:

- a. fees paid for securing approval of authorities having jurisdiction over the Project;
- b. renderings, models and mockups requested by the Owner;

**10.3 Payments on Account of Basic Services.**

**10.3.1** Payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Subparagraph 11.1.2.

**10.3.2** If and to the extent that the time initially established in Subparagraph 11.4.1 of this Agreement is exceeded or extended through no fault of the Owner's Representative, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Subparagraph 11.2.2.

**10.4 Payments on Account of Additional Services:** Payments on account of the Owner's Representative's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Owner's Representative's statement of services rendered or expenses incurred.

**10.5 Payments Withheld:** No deductions shall be made from the Owner's Representative's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Owner's Representative has been adjudged to be liable.

**10.6 Owner's Representative's Accounting Records:** Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

**ARTICLE 11: Basis of Compensation** - The Owner shall compensate the Owner's Representative as follows:

**11.1 Basis of Compensation.**

**11.1.1** For Basic Services, as described in Article 2, and any other services included in Article 12 as part of Basic Services, Basic Compensation shall be computed as follows:

Basic Services: **XXX**

**11.1.2** Progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable: (insert additional phases as appropriate)

Schematic Design Phase	percent	( <b>XX</b> %)
Design Development Phase	percent	( <b>XX</b> %)
Construction Documents Phase	percent	( <b>XX</b> %)
Bidding Phase: (Optional Service)	percent	( <b>XX</b> %)
Construction Phase: (Optional Service)	percent	( <b>XX</b> %)
Record As-Built Documents:	percent	( <b>XX</b> %)
Total Basic Compensation	One Hundred Percent	(100%)

**11.2 Compensation for Additional Services.**

**11.2.1** For Project Representation Beyond Basic Services, as described in Paragraph 3.2, compensation shall be computed as follows:

**XX**

**11.2.2** For Additional Services of the Owner's Representative, as described in Articles 3 and 12, other than (1) Additional Project Representation, as described in Paragraph 3.2, and (2) services included in Article 12 as part of Basic Services, but excluding services of Owner's Representatives, compensation shall be computed according to the attached hourly rate schedule; or as follows:

**XX**

**11.2.3** For Additional Services of Sub-consultants, including additional architectural, structural, mechanical and electrical engineering services and those provided under Subparagraph 3.4.19 or identified in Article 12 as part of Additional Services, a multiple of 1.1 times the amounts billed to the Owner's Representative for such services.

**11.3 Reimbursable Expenses:** For Reimbursable Expenses, as described in Paragraph 10.2, and any other items included in Article 12 as Reimbursable Expenses, a multiple of 1.1 times the expenses incurred by the Owner's Representative, the Owner's Representative's employees and sub-consultants directly related to the Project.

**11.4 Additional Provisions.**

**11.4.1** If the Basic Services covered by this Agreement have not been completed within 24 months of the date hereof, through no fault of the Owner's Representative, extension of the Owner's Representative's services beyond that time shall be compensated as provided in Subparagraphs 10.3.2 and 11.2.2.

**11.4.2** Amounts unpaid 45 days after the above due date, shall accrue interest on the unpaid balance commencing 30 days after the due date, until paid, said rate being in the amount as set forth in the rules of the Office of State Finance. Reference 62 O.S.

**ARTICLE 12: Other Conditions or Services.**

**12.1** Construction Costs – Fixed Limit: The amount of the Owner's fixed limit for the Cost of the Work, including the Owner's Representative's compensation is

**12.1.1** Services:

XX

**12.2.2 Printing and Distribution of Bid Documents:** The Owner will print and distribute all plans, project manuals and addenda for the bidding phase.

**12.3 Insurance Requirements.**

**12.3.1** The insurance coverage and limits required of the Owner's Representative under this Contract are designed to meet the minimum requirements of the Owner. Such coverage and limits are not designed as a recommended insurance program for the Owner's Representative. The Owner's Representative alone shall be responsible for the sufficiency of its own insurance program. Should the Owner's Representative have any question concerning its exposures to loss under this Contract or the possible insurance coverage needed therefor, the Owner's Representative should seek professional assistance.

**a.** Any deductibles or self-insured retentions or any scheme other than a fully insured program of general liability, automobile liability and/or employer's liability must be declared by the Owner's Representative for approval in advance by the Owner. The Owner's Representative shall provide the Owner the following insurance.

**b.** Professional Liability Insurance. Before this Contract may become effective, the Owner's Representative shall provide the Owner with a certificate of insurance evidencing the Owner's Representative's coverage under a Professional Liability Insurance Policy in an amount not less than XX Dollars (XX) aggregate annual limit of liability. Such insurance shall be maintained for a period of two (2) years after the completion of construction of this Project. The Professional Liability Insurance Carrier shall notify the Owner in writing of any revisions to the policy.

**c.** Worker's Compensation and Death Liability. The Owner's Representative shall maintain, during the term of the Contract, Worker's Compensation Insurance as prescribed by the laws of the State of Oklahoma.

**d.** Commercial General Liability Insurance. The Owner's Representative shall maintain during the term of the Contract sufficient Commercial General Liability Insurance to protect the Owner's Representative and any additional insured(s) from claims from property damages or loss, which may arise from activities, omissions and operations under the Contract, whether such activities, omissions and operations be by the Owner's Representative or by any subcontractor or by anyone directly or indirectly employed by or acting on behalf of or to the benefit of them. The amounts of such insurance shall be not less than the State's maximum liability under the Governmental Tort Claims Act, 51 O.S. § 151 et seq., as amended from time to time and currently are:

**i.** Property Damage Liability in an amount not less than Twenty-Five Thousand Dollars (\$25,000.00) per claimant for loss, damage to or destruction of property, including but not limited to consequential damages arising out of a single accident or occurrence.

**ii.** All Other Liability in an amount not less than the limits described in the Governmental Tort Claims Act per claimant for claims including death, personal injury, and all other claims arising out of a single accident or occurrence.

**iii.** Single Occurrence or Accident Liability in an amount not less than One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single accident or occurrence.

Note: If Commercial General Liability coverage is written in a "claims-made" form, the Owner's Representative shall also provide tail coverage that extends a minimum of one year from the expiration of this Contract.

**e.** Automobile Liability Insurance shall be maintained by the Owner's Representative as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles, with limits of not less than:

i. Automobile Liability (owned, non-owned and hired vehicles) shall be \$175,000 (Each Occurrence) and \$1,000,000 (General Aggregate), for bodily injury and property damage.

ii. Property Damage shall be \$25,000 (Each Occurrence) or \$1,000,000 (combined single limit each accident).

**12.3.2** Required insurance shall be carried and maintained throughout the term of this Contract, and Certificates of Insurance shall contain a provision by the insurer(s) to the effect that the policy(s) may not be canceled, fail to be renewed, nor the limits decreased by endorsement without thirty (30) days prior written notice to the Owner.

**12.4** Other Services included as Part of Basic Services shall include.

**12.4.1** Providing analyses of the Owner's needs and programming the requirements of the Project.

**12.4.2** Providing services in connection with a warranty inspection which will be conducted approximately nine (9) months after Substantial Completion date.

**12.5** Other Conditions of the Contract.

**12.5.1** State statute 61O.S. 204 A.3 requires Construction and Properties to "review and approve all construction plans and specifications to ensure compliance with good construction practices and space standards, costs of the project, proposed construction timetables, and agency need for the project," The Construction and Properties review and approval process is not intended to be and shall not be considered a comprehensive review of the Contract Documents or a quality control check of the Construction Documents. The Owner's Representative shall be solely responsible for any and all errors, omissions or conflicting information in the Contract Documents.

**12.5.2** The Owner's Representative shall not, without written permission of the Owner, obligate the Owner to provide any portion of the Work or provide any service specified in the Contract Documents.

This agreement is entered into as of the day and year first written above.

**OWNER:**

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

**USING AGENCY:**

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

\_\_\_\_\_  
(Owner's Signature)

\_\_\_\_\_  
(Date Signed)

\_\_\_\_\_  
(Authorized Representatives Signature)

\_\_\_\_\_  
(Date Signed)

\_\_\_\_\_  
(Owner's Printed Name)

\_\_\_\_\_  
(Authorized Representatives Printed Name)

\_\_\_\_\_  
(Owner's Printed Title)

\_\_\_\_\_  
(Authorized Representatives Printed Title)

**OWNER'S REPRESENTATIVE (Consultant):**

Non-Collusion Statement

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

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

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

**Exhibits/Attachments list:**

\_\_\_\_\_  
(Authorized Representative Signature)

\_\_\_\_\_  
(Date Signed)

\_\_\_\_\_  
(Authorized Representative Printed Name)

\_\_\_\_\_  
(Authorized Representative Printed Title)

\_\_\_\_\_  
(EIN/TIN number)