

**AGREEMENT FOR CONSTRUCTION MANAGER AT RISK SERVICES  
MISTY LAKE DAM REPAIR**

THIS AGREEMENT is entered into between The City of Norman, Oklahoma and the Norman Municipal Authority (collectively the "CITY") and DOWNEY CONTRACTING, LLC ("Construction Manager") for the following reasons:

1. The CITY previously entered into Contract No. K-1617-137 with the Summit Lakes POA, the Summit Lake Villas POA, and Summit Lakes, LLC relating to the repair and ongoing maintenance of the Misty Lake Dam; and,
2. The CITY is now proceeding with the construction of engineered repairs to the Misty Lake Dam according to those certain engineering plans that were referenced, incorporated, and created as a result of Contract No. K-1617-137 all amendments thereto (the PROJECT);
3. According to Contract No. K-1617-137, and the amendments thereto, the CITY is also separately contracting with Parkhill, Smith & Cooper, Inc. ("Parkhill") for the provision of construction oversight and related services, as set forth in that separate agreement to which Construction Manager is not a party; and
4. The Construction Manager has responded to the CITY's RFQ No. 2122-11 dated June 30, 2021 and is prepared to provide the necessary Construction Management services.

The City and Construction Manager agree as set forth below:

**ARTICLE 1 GENERAL PROVISIONS**

**1.1 RELATIONSHIP OF PARTIES:** The Construction Manager accepts the relationship of trust and confidence established with the CITY by this Agreement, and covenants with the CITY to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Parkhill in furthering the interests of the CITY. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the CITY. The CITY shall endeavor to promote harmony and cooperation among the CITY, Parkhill, Construction Manager and other persons or entities employed by the CITY for the Project.

**1.2 GENERAL CONDITIONS:** For the Construction Phase, the General Conditions of the contract shall be the City of Norman General Provisions Document, which is incorporated herein by reference. For the Preconstruction Phase, or in the event that the Preconstruction and Construction Phases proceeds concurrently, the City of Norman General Provisions Document shall apply to the Preconstruction Phase only as specifically provided in this Agreement. The term "Contractor" as used in the City of Norman General Provisions Document shall mean the Construction Manager. The term "Owner" as used in the City of Norman General Provisions Document shall mean the CITY, and the term "Consultant" as used in the City of Norman General Provisions shall mean Parkhill.

**1.3 RULES AND PROCEDURES:** The Contractor shall follow the current adopted Rules and procedures established by the State of Oklahoma to ensure compliance with state statutes.

**1.4 CONTRACT DOCUMENTS:** The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement (including but limited to those certain engineering plans referenced, incorporated into or created as a result of K-1617-137 and any amendments thereto), and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the CITY's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Parkhill and furnished by the CITY, if any, as described in Section 2.2. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

## **ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

The Construction Manager shall perform the services described in this Article. The services to be provided under Sections 2.1 and 2.2 constitute the Preconstruction Phase services. If the CITY and Construction Manager agree, after consultation with the Parkhill, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

### **2.1 PRECONSTRUCTION PHASE – PHASE ONE SERVICES**

**2.1.1 PRELIMINARY EVALUATION:** The Construction Manager shall provide a preliminary evaluation of the CITY's program and Project budget requirements, each in terms of the other.

**2.1.2 CONSULTATION:** The Construction Manager shall schedule and attend meetings as necessary with the CITY, with the participation of Parkhill at the CITY's discretion. The Construction Manager shall consult with the CITY, and as necessary with Parkhill, regarding site use and improvements and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

**2.1.3 PRELIMINARY PROJECT SCHEDULE:** When Project requirements described in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Parkhill's review and the CITY's approval. The Construction Manager shall obtain the Parkhill's approval of the portion of the preliminary Project schedule relating to the performance of the Parkhill's services. The

Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the CITY, Parkhill and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, CITY's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the CITY and Parkhill.

**2.1.4 PHASED CONSTRUCTION:** The Construction Manager acknowledges that the Project has been engineered for single-phase construction, according to those engineering plans already completed by Cardinal Engineering, now Parkhill, for the Work, and which have been previously provided to Construction Manager by CITY. The Construction Manager shall make appropriate recommendations to the CITY and Parkhill in the case that single-phase construction is not believed to be the most efficient or cost-effective method of proceeding with Project construction.

#### **2.1.5 PRELIMINARY COST ESTIMATES**

**2.1.5.1** Within two weeks of the execution of this Agreement, the Construction Manager shall prepare, for the review of the Parkhill and approval of the CITY, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques based upon the completed Parkhill Contract Documents.

**2.1.5.2** Parkhill has previously provided the CITY with an estimate resulting in a CITY project budget of \$547,470.00, including contingency.

**2.1.5.3** If any estimate submitted to the CITY by Construction Manager exceeds previously approved estimates or the CITY's budget, the Construction Manager shall make appropriate recommendations to the CITY and Parkhill.

**2.1.6 SUBCONTRACTORS AND SUPPLIERS:** The Construction Manager shall seek to develop subcontractor interest in the Project. Subcontractors and suppliers shall be selected and contracts let in strict accordance with the provisions of the Oklahoma Public Competitive Bidding Act, 61 O.S. § 101, et seq. (the "Act"). The Construction Manager represents and warrants to the CITY that: (1) the Construction Manager has sufficient experience with the requirements of the Act to effectively and efficiently solicit and receive bids from potential Subcontractors; (2) the Construction Manager will review all proposed contract documents, bidding materials, including bid notices, and bids received from potential Subcontractors for compliance with the Act; and (3) the Construction Manager will verify that all Work performed under the Contract Documents is performed in accordance with the provisions of the Act. Construction Manager may elect to self-perform portions of the Work provided that the Construction Manager competitively bids the Work under the same terms and conditions as other bidders and the Construction Manager is the lowest responsible bidder for that trade scope of work. All bids shall be made and received in accordance with the provisions of the Act.

**2.1.7 LONG-LEAD-TIME ITEMS:** The Construction Manager shall recommend to the CITY and Parkhill a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by the CITY, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the CITY's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the CITY to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items.

**2.1.8 EXTENT OF RESPONSIBILITY:** The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the CITY and the CITY's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Parkhill and CITY in writing.

**2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION:** The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

## **2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME**

**2.2.1** When the Drawings and Specifications are sufficiently complete, and after the award of subcontracts to subcontractors, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of all subcontracts, lump sum self-perform amounts, including allowances and contingencies sufficient to not result in change orders and as described in Section 2.2.3, the General Conditions, and the Construction Manager's Fee.

**2.2.2** The Guaranteed Maximum Price proposal shall include the Project contingency, a sum established by the CITY for the CITY's exclusive use to cover costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order. The CITY and the Construction Manager acknowledge that the Project contingency is included in the Guaranteed Maximum Price proposal for costs, which have not been taken into precise account in the establishment of the Guaranteed Maximum Price, including, but not limited to those resulting from:

- (1) scope gaps between Subcontractors;
- (2) costs due to Subcontractor failure that are not paid under applicable bonds or subcontractor default insurance;
- (3) excess costs due to major weather events;

- (4) damage to the Work not recoverable from another party or insurance policy; or
- (5) any other increase in the Cost of Work due to an unforeseen event or occurrence that is not under the Construction Manager's control.

The Project contingency may be applied by the Construction Manager to any item of cost described above or as defined by the Cost of the Work without the necessity of a modification, without constituting a change in the Work, and without resulting in any change in the Guaranteed Maximum Price. The Construction Manager shall advise Parkhill and the CITY in writing and acquire written acceptance prior to applying a part of the Project contingency as allowed by the Contract Documents.

**2.2.3 BASIS OF GUARANTEED MAXIMUM PRICE:** The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

**2.2.3.1** A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.

**2.2.3.2** A list of allowances and a statement of their basis.

**2.2.3.3** A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.

**2.2.3.4** The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, General Conditions, and other items and the Fee that comprise the Guaranteed Maximum Price.

**2.2.3.5** The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

**2.2.3.6** A date by which the CITY must accept the Guaranteed Maximum Price.

**2.2.4** The Construction Manager shall meet with the CITY and Parkhill to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the CITY or Parkhill discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

**2.2.5** Unless the CITY accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Construction Manager.

**2.2.6** Prior to the CITY's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost

to be reimbursed as part of the Cost of the Work, except as the CITY may specifically authorize in writing.

**2.2.7** Upon acceptance by the CITY of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

**2.2.8** The CITY may authorize, instruct or otherwise cause Parkhill to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in Amendment No. 1, if any. Such revised Drawings and Specifications, if any, shall be furnished to the Construction Manager in accordance with schedules agreed to by the CITY, Parkhill and Construction Manager. The Construction Manager shall promptly notify Parkhill and CITY if such revised Drawings and Specifications, if any, are inconsistent with the agreed-upon assumptions and clarifications.

**2.2.9** The Guaranteed Maximum Price shall include in the Cost of the Work only those taxes which are enacted at the time the Guaranteed Maximum Price is established. The CITY may request that the Construction Manager assist with reviewing subcontractor invoices to verify that purchases are for the Project.

### **2.3 CONSTRUCTION PHASE – PHASE TWO SERVICES**

**2.3.1 GENERAL:** The Construction Phase shall commence on the CITY's acceptance of the Guaranteed Maximum Price proposal and the issuance of a Notice to Proceed or Work Order.

#### **2.3.2 ADMINISTRATION**

**2.3.2.1** The Construction Manager shall solicit bids for all portions of the Work including portions that the Construction Manager customarily performs with the Construction Manager's own personnel. The Construction Manager shall solicit bids from subcontractors and from suppliers of materials or equipment fabricated especially for the Work in accordance with the mandatory provisions of the Act.

**2.3.2.2** If the Guaranteed Maximum Price has been established and a specific bidder (1) is recommended to the CITY by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the CITY requires that another bid be accepted, then the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the CITY by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the CITY.

**2.3.2.3** Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Sections 7.1.8.

**2.3.2.4** After all the subcontracts are awarded, the CITY and the Construction Manager may agree to convert the Guaranteed Maximum Price to a Lump Sum Price.

**2.3.2.5** The Construction Manager shall schedule and conduct meetings at which the CITY, Parkhill, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

**2.3.2.6** Promptly after the CITY's acceptance of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare a schedule in accordance with the City of Norman General Provisions Document, including the CITY's occupancy requirements.

**2.3.2.7** The Construction Manager shall provide monthly written reports to the CITY and Parkhill on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the CITY may reasonably require. The log shall be available to the CITY and Parkhill.

**2.3.2.8** The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the CITY and Parkhill at regular intervals.

**2.3.2.9.** Notwithstanding any other provisions in this Agreement, including the City of Norman General Provisions:

(1) The Construction Manager shall present all requests for change in orders to the CITY in writing including the following information:

(a) the specific change in the CMAR contract and/or GMP Amendment, including, without limitation: (i) modifications of the description, amount or timing of the work to be performed; (ii) modifications of the manner in which the work will be performed; (iii) modifications of the description, specifications, or amount of the materials to be supplied or utilized and (iv) provisions for additional goods and services;

(b) the GMP established in the GMP amendment; and

(c) the adjustment, if any to the time allowed by the CMAR contract for the CMAR to fulfill its obligations under the CMAR Contract;

AND

(2) The Construction Manager shall not commence any work implicated by a requested Change Order without the written permission of CITY except where emergencies endangering life or property are involved, and as set forth further within the City of Norman General Provisions.

**2.4 PROFESSIONAL SERVICES:** Section 4, “Administration of the Contract”, of the City of Norman General Provisions Document shall apply to both the Preconstruction and Construction Phases.

**2.5 HAZARDOUS MATERIALS:** Section 10 of the City of Norman General Provisions Document shall apply to both the Preconstruction and Construction Phases.

### **ARTICLE 3 CITY'S RESPONSIBILITIES**

#### **3.1 INFORMATION AND SERVICES**

**3.1.1** The CITY shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the CITY's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

**3.1.2 Reserved.**

**3.1.3** The CITY shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Parkhill, which shall include contingencies for changes in the Work and other costs which are the responsibility of the CITY.

**3.1.4 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS:** In the Preconstruction Phase, the CITY shall furnish the following with reasonable promptness and at the CITY's expense. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in Sections 3.1.4.1 through 3.1.4.4 but shall exercise customary precautions relating to the performance of the Work.

**3.1.4.1** All currently available reports, surveys, drawings and tests concerning the conditions of the site.

**3.1.4.2** Surveys describing 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 pertaining 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 information on the survey shall be referenced to a project benchmark.

**3.1.4.3** The services of a geotechnical engineer when such services are requested by the Construction Manager, and reasonably required for the scope of the Project. 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 and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.



**3.1.4.4** Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

**3.1.4.5** The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager.

**3.2 CITY'S DESIGNATED REPRESENTATIVE:** The CITY shall designate in writing a representative who shall have express authority to bind the CITY with respect to all matters requiring the CITY's approval or authorization. This representative shall have the authority to make decisions on behalf of the CITY concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in the City of Norman General Provisions Document, Parkhill does not have such authority.

**3.3 PARKHILL:** The CITY shall retain a Parkhill to provide Basic Services, including normal engineering and construction management services, other than cost estimating services, requested by the Construction Manager which must necessarily be provided by the Parkhill for the Preconstruction and Construction Phases of the Work. Such services shall be provided in accordance with time schedules agreed to by the CITY, Parkhill and Construction Manager. Upon request of the Construction Manager, the CITY shall furnish to the Construction Manager a copy of the CITY's Agreement with the Parkhill, from which compensation provisions may be deleted.

**3.4 LEGAL REQUIREMENTS:** The CITY shall determine and advise the Parkhill and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The CITY shall furnish such legal services as are necessary to provide the information and services required under Section 3.1.

#### **ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

The CITY shall compensate and make payments to the Construction Manager for Preconstruction Phase services as follows:

**4.1 COMPENSATION:** For the services described in Sections 2.1 and 2.2, the Construction Manager's compensation shall be calculated as follows:

**4.1.1 Pre-Construction Services:** *(insert method and amount, use multiple entries if necessary):*

**Lump sum \$10,000.00 for all Pre-Construction Activities relating to the scope of the Project.**

**4.2 PAYMENTS:** Payments shall be made monthly following presentation of the Construction Manager's invoice and shall be in proportion to services performed.

Payments are due and payable thirty (30) days from the date the Construction Manager's invoice is received by the CITY. Amounts unpaid after the date on which payment is due shall bear interest in accordance with Section 41.4b of Title 62 of the Oklahoma Statutes.

## **ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

The CITY shall compensate the Construction Manager for Construction Phase services as follows:

**5.1 COMPENSATION:** For the Construction Manager's performance of the Work as described in Section 2.3, the CITY shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work as defined in Article 7 and the Construction Manager's Fee determined as follows:

### **5.1.1 Construction Services:**

**8.00% of the total Guaranteed Maximum Price**

### **5.1.2 General Conditions (Reimbursable Costs): Refer to Attachment.**

The CITY and Construction Manager have agreed to a "General Conditions" cost that shall be included in the Guaranteed Maximum Price as part of the Cost of the Work, and shall include all costs of Construction Manager's supervisory and administrative personnel including all associated costs of insurance, taxes, benefits, vehicle allowances, cell phones, radios, telecommunications, computers, software, other miscellaneous office costs, office trailer rental, office utilities, and any other costs required to maintain a construction office on-site for a monthly lump sum amount of To be Determined in GMP Amendment for the To be Determined in GMP Amendment month duration of the Project through Final Completion. The monthly lump sum amount may be prorated for part of a calendar month at the commencement of construction and applied accordingly should the Project Schedule be impacted beyond the Construction Manager's control.

**5.2 GUARANTEED MAXIMUM PRICE:** The sum of the Cost of the Work, General Conditions, and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided in Amendment No. 1, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the CITY.

## **5.3 CHANGES IN THE WORK**

**5.3.1** Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1 may be determined by any of the methods listed in the City of Norman General Provisions Document.

**5.3.2** In calculating adjustments to subcontracts (except those awarded with the CITY's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in the City of Norman General Provisions Document and the terms "costs" and "a reasonable allowance for overhead and profit" as used in the City of Norman General Provisions Document shall have the meanings

assigned to them in that document and shall not be modified by this Article 5. Adjustments to subcontracts awarded with the CITY's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

**5.3.3** In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions of the City of Norman General Provisions Document shall mean the Cost of the Work as defined in Article 6 of this Agreement, and the term "and a reasonable allowance for overhead and profit" shall mean the Construction Manager's Fee as defined in Section 5.1.1 of this Agreement.

**5.3.4** If no specific provision is made in Section 5.1.1 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.1 will cause substantial inequity to the CITY or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

**5.3.5** Prior to the beginning of the Construction Phase, all parties will agree to the percent markup for Overhead and Profit, to be implemented in the event there are changes to the work

Amendment No. 1 may be determined by any of the methods listed in the City of Norman General Provisions Document.

## **ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE**

### **6.1 COSTS TO BE REIMBURSED**

**6.1.1** The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the CITY. The Cost of the Work shall include only the items set forth in this Article 6.

#### **6.1.2 LABOR COSTS**

**6.1.2.1** Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the CITY's written agreement, at off-site workshops.

**6.1.2.2** Wages or salaries of the Construction Manager's supervisory and administrative personnel are included in the General Conditions and shall not be charged separately as part of labor costs.

**6.1.2.3** Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work are included in the General Conditions and shall not be charged separately as part of labor costs.

**6.1.2.4** Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements,

and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Sections 6.1.2.1 through 6.1.2.3.

**6.1.3 SUBCONTRACT AND SELF-PERFORM COSTS:** Payments are due or made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts awarded pursuant to the Act and payments due to the Construction Manager for any self-performed portions of the Work.

**6.1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION**

**6.1.4.1** Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

**6.1.4.2** Costs of materials described in the preceding Section 6.1.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the CITY at the completion of the Work or, at the CITY's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the CITY as a deduction from the Cost of the Work.

**6.1.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS**

**6.1.5.1** Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

**6.1.5.2** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be one hundred percent (100%) of current edition of the "AED Green Book" standard rates for company owned equipment and actual charges for rented equipment from outside sources.

**6.1.5.3** Costs of removal of debris from the site and its proper and legal disposal.

**6.1.5.4** Reproduction costs within the Construction Manager's office on site, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office

are included in the monthly General Conditions costs and shall not be charged separately as part of temporary facilities costs.

**6.1.5.5** That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.

**6.1.5.6** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the CITY's prior approval.

#### **6.1.6 MISCELLANEOUS COSTS**

**6.1.6.1** That portion directly attributable to this Contract of premiums for insurance and bonds at fixed rates agreed to by the CITY. Self-insurance for either the full or partial amounts of the coverages required by the Contract Documents, with the CITY's prior approval.

**6.1.6.2** Sales, use or similar taxes imposed by a governmental authority which are related to any portion of the Work that is not subject to the CITY's tax status and for which the Construction Manager is liable.

**6.1.6.3** Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

**6.1.6.4** Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Section 6.1.8.2.

**6.1.6.5** Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the CITY's consent; provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of the Construction Manager's Fee or the Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by the last sentence of the City of Norman General Provisions Document or other provisions of the Contract Documents.

**6.1.6.6** Data processing costs related to the Work.

**6.1.6.7** Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the CITY set forth in this Agreement.

**6.1.6.8** Legal, mediation and arbitration costs, other than those arising from disputes between the CITY and Construction Manager, reasonably incurred by the Construction Manager in

the performance of the Work and with the CITY's written permission, which permission shall not be unreasonably withheld.

**6.1.7 OTHER COSTS:** Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the CITY.

**6.1.8 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK:** The Cost of the Work shall also include costs described in Section 6.1.1 which are incurred by the Construction Manager:

**6.1.8.1** In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in the City of Norman General Provisions Document.

**6.1.8.2** In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the CITY set forth in this agreement of the Construction Manager or the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers.

**6.1.9** The costs described in Sections 6.1.1 through 6.1.8 shall be included in the Cost of the Work notwithstanding any provision of the City of Norman General Provisions Document.

**6.1.10** Other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.2.

**6.2 COSTS NOT TO BE REIMBURSED:** The Cost of the Work shall not include:

**6.2.1** Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Sections 6.1.2.2 and 6.1.2.3.

**6.2.2** Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Section 6.1.

**6.2.3** Overhead and general expenses, except as may be expressly included in Section 6.1.

**6.2.4** The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

**6.2.5** Rental costs of machinery and equipment, except as specifically provided in Section 6.1.5.2.

**6.2.6** Except as provided in Section 6.1.8.2, costs due to the negligence of the Construction Manager or to the failure of the Construction Manger to fulfill a specific responsibility to the CITY set forth in this Agreement.

6.2.7 Except as provided in Section 6.1.7, any cost not specifically and expressly described in Section 6.1.

6.2.8 Costs which would cause the Guaranteed Maximum Price to be exceeded, unless mutually agreed upon based on change in scope

### **6.3 DISCOUNTS, REBATES AND REFUNDS**

6.3.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the CITY if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the CITY, or (2) the CITY has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the CITY, and the Construction Manager shall make provisions so that they can be secured.

6.3.2 Amounts which accrue to the CITY in accordance with the provisions of Section 6.3.1 shall be credited to the CITY as a deduction from the Cost of the Work.

### **6.4 ACCOUNTING RECORDS AND AUDITS**

6.4.1 The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the CITY. The CITY and the CITY's accountants shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

6.4.2 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 CITY and subject to execution of a mutually acceptable non-disclosure agreement by the Construction Manager, the CITY and the CITY's auditors, the Construction Manager agrees any pertinent City, State, or Federal agency will have the right to examine and audit all records relevant to execution of the resultant 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. The CITY agrees that (i) lump sum amounts for General Conditions, lump sum amounts for self-perform work, Construction Manager's Lump Sum Price (if the Guaranteed Maximum Price is converted to a Lump Sum Price), subcontractor lump subcontract amounts, rates, multipliers and other fixed percentages and amounts it has agreed that the Construction Manager may charge as a Cost of the Work are subject to the CITY's audit rights only for the CITY to confirm that such lump sum amounts, rates, multipliers, percentages or amounts have been charged by the Construction Manager in accordance with the Contract

Documents, and (ii) the composition of such rates, multipliers, percentages or amounts is not subject to audit by the CITY or the CITY's auditors.

## **ARTICLE 7 CONSTRUCTION PHASE**

### **7.1 PROGRESS PAYMENTS**

**7.1.1** Based upon Applications for Payment submitted to the CITY by the Construction Manager and Certificates for Payment issued by the Parkhill, the CITY shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

**7.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as a mutually agreed upon by all parties.

**7.1.3** Provided an Application for Payment is received by Parkhill not later than the first (1st) day of a month, the CITY shall make payment to the Construction Manager not later than as required by state statutes. Amounts unpaid forty-five (45) days after the invoice date shall bear interest at a rate equal to the Wall Street Journal Prime Rate plus two percent (2%), not to exceed ten percent (10%) per annum.

**7.1.4** Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Parkhill or CITY may require. This schedule, unless objected to by Parkhill or the CITY, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

**7.1.5** Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

**7.1.6** Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**7.1.6.1** Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the CITY of changes in the Work, amounts not in dispute may be included as provided in the City of Norman General



Provisions Document even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.

**7.1.6.2** Add that portion of the Lump Sum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the CITY, suitably stored off the site at a location agreed upon in writing.

**7.1.6.3** Add the Construction Manager's Fee, less retainage of five percent (5%). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Sections at the rate stated in Section 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Sections bears to a reasonable estimate of the probable Cost of the Work upon its completion.

**7.1.6.4** Subtract the aggregate of previous payments made by the CITY.

**7.1.6.5** Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the CITY's accountants in such documentation.

**7.1.6.6** Subtract amounts, if any, for which Parkhill has withheld or nullified a Certificate for Payment as provided in the City of Norman General Provisions Document.

**7.1.7** Payments to Subcontractors shall be subject to retention in accordance with the City of Norman General Provisions Document, General Conditions of the Construction Contract. The CITY and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

**7.1.8** In taking action on the Construction Manager's Applications for Payment, Parkhill shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Parkhill has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data, that the Parkhill has made exhaustive or continuous on-site inspections or that the Parkhill has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the CITY, will be performed by the CITY's accountants acting in the sole interest of the CITY.

## **7.2 FINAL PAYMENT**

**7.2.1** Final payment shall be made by the CITY to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct nonconforming Work, as provided in the City of Norman General Provisions Document, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have

been submitted by the Construction Manager and reviewed by the CITY; and (3) a final Certificate for Payment has then been issued by Parkhill and approved by the CITY; such final payment shall be made by the CITY not more than 30 days after the issuance of Parkhill's final Certificate for Payment and the CITY's approval.

**7.2.2** The amount of the final payment shall be calculated as follows:

**7.2.2.1** Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.

**7.2.2.2** Subtract amounts, if any, for which Parkhill withholds, in whole or in part, a final Certificate for Payment as provided in the City of Norman General Provisions Document or other provisions of the Contract Documents.

**7.2.2.3** Subtract the aggregate of previous payments made by the CITY.

**7.2.3** The CITY will review the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Parkhill by the Construction Manager. Based upon such Cost of the Work as the CITY determines to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, Parkhill will, within seven days after the CITY's approval of the final Cost of the Work, either issue to the CITY a final Certificate for Payment with a copy to the Construction Manager or notify the Construction Manager and CITY in writing of Parkhill's reasons for withholding a certificate as provided in Section 9.5.1 of the City of Norman General Provisions Document. The time periods stated in this Section 7.2 supersede those stated in Section 9.4.1 of the City of Norman General Provisions Document.

**7.2.4** If the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 9 without a further decision of Parkhill. All claims of any disputed amount shall be submitted in accordance with Section 4.4 of the City of Norman General Provisions Document, and shall be made by the Construction Manager within 60 days after the Construction Manager's receipt of a copy of Parkhill's final Certificate for Payment. Failure to make such demand within this 60-day period shall result in the substantiated amount reported by the CITY becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the CITY shall pay the Construction Manager the amount certified in Parkhill's final Certificate for Payment.

**7.2.5** If, subsequent to final payment and at the CITY's request, the Construction Manager incurs costs described in Section 6.1 and not excluded by Section 6.2 (1) to correct nonconforming Work or (2) arising from the resolution of disputes, the CITY shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price.

## **ARTICLE 8 INSURANCE AND BONDS**

**8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER:** During both phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth in Section 11 of the City of Norman General Provisions Document. Such insurance shall be written for not less than the following limits, or greater if required by law:

**8.1.1** Workers' Compensation and Employers' Liability meeting statutory limits mandated by state and federal laws.

**8.1.2** Commercial General Liability including coverage for Premises-Operations, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards):

Each Occurrence: \$300,000.00

General Aggregate: \$1,000,000 minimum

**8.1.2.1** The policy shall be endorsed to have the General Aggregate apply to this Project only.

**8.1.2.2** Builder's Risk Insurance

**8.1.3** Automobile Liability (owned, non-owned and hired vehicles), \$50,000/\$100,000, for bodily injury and property damage.

## **8.2 BONDS**

**8.2.1** The Construction Manager shall furnish performance, statutory and maintenance bonds covering faithful performance of the Contract, payment of obligations arising thereunder and defective materials or workmanship. Bonds shall be included in the Cost of the Work. The amount of each bond shall be equal to One Hundred percent (100%) of the Contract Sum. The CITY may omit the requirement for bonds for the Construction Manager, but bonds would be required for all subcontracts to meet the requirements of Title 61.

**8.2.2** The Construction Manager shall deliver the required bonds to the CITY at least three days before the commencement of any Work at the Project site.

## **ARTICLE 9 MISCELLANEOUS PROVISIONS**

**9.1 DISPUTE RESOLUTION:** During both the Preconstruction and Construction Phases, Claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in the City of Norman General Provisions Document.

## **9.2 OTHER PROVISIONS**

**9.2.1** Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in the City of Norman General Provisions Document, *General Conditions of the Contract for Construction*.

**9.2.2 EXTENT OF CONTRACT:** This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the CITY and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the CITY and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

**9.2.3 CITYSHIP AND USE OF DOCUMENTS:** Article 1.3 of the City of Norman General Provisions Document shall apply to both the Preconstruction and Construction Phases.

**9.2.4 GOVERNING LAW:** The Contract shall be governed by the laws of the State of Oklahoma.

**9.2.4.1** The Construction Manager 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).

**9.2.5 ASSIGNMENT:** The CITY and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.1 of the City of Norman General Provisions Document, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

## **ARTICLE 10 TERMINATION OR SUSPENSION**

### **10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE**

**10.1.1** Prior to execution by both parties of Amendment No. 1 establishing the Guaranteed Maximum Price, the CITY may terminate this Contract at any time without cause, and the Construction Manager may terminate this Contract for any of the reasons described in Section 14.1.1 of the City of Norman General Provisions Document.

**10.1.2** If the CITY or Construction Manager terminates this Contract pursuant to this Section 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for Preconstruction Phase Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Section 4.1.1.

**10.1.3** If the CITY or Construction Manager terminates this Contract pursuant to this Section 10.1 after commencement of the Construction Phase, the Construction Manager shall, in addition to the compensation provided in Section 10.1.2, be paid an amount calculated as follows:

**10.1.3.1** Take the Cost of the Work incurred by the Construction Manager.

**10.1.3.2** Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.

**10.1.3.3** Subtract the aggregate of previous payments made by the CITY on account of the Construction Phase.

**10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE:** Subsequent to execution by both parties of Amendment No. 1, the Contract may be terminated as provided in the City of Norman General Provisions Document, attached.

**10.2.1** In the event of such termination by the CITY, the amount payable to the Construction Manager pursuant to Section 14.1.3 of the City of Norman General Provisions Document shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

**10.2.2** In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Section 14.1.3 of the City of Norman General Provisions Document shall not exceed the amount the Construction Manager would have been entitled to receive under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the Cost of the Work for Work not actually completed.

**10.3 SUSPENSION:** The Work may be suspended by the CITY as provided in Article 14 of the City of Norman General Provisions Document; in such case, the Guaranteed Maximum Price, if established, shall be increased as provided in Section 14.3.2 of the City of Norman General Provisions Document except that the term "cost of performance of the Contract" in that Section shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1.1 and 5.3.4 of this Agreement.

The CITY shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the CITY, for any equipment owned by the Construction Manager which the CITY elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the CITY elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the CITY may require for the purpose of fully vesting in the CITY the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the CITY's written approval prior to the execution of Amendment No. 1 shall contain provisions permitting assignment to the CITY as described above. If the CITY accepts such assignment, the CITY shall reimburse or indemnify the Construction Manager with respect to all

costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the CITY elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such subcontract, purchase order or rental agreement and the CITY shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

**ARTICLE 11 OTHER CONDITIONS AND SERVICES**

11.1 Other Documents, if any, forming part of the Contract Documents, are as follows:

- Notice to Proceed/Work Order**
- City of Norman General Provisions/Conditions**
- Contract Documents including engineering for Misty Lake Dam Project by the Cardinal Engineering, now Parkhill**
- Tax Exempt and CITY Direct Pay Documents from the City of Norman**
- Materials and Documents Submitted by Downey**

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IN WITNESS WHEREOF, CITY and PARKHILL ENGINEERING, INC. have executed this AGREEMENT.

DATED this \_\_th day of \_\_\_\_\_, 2021.

(“CITY”)

**THE CITY OF NORMAN**

**NORMAN MUNICIPAL AUTHORITY**

\_\_\_\_\_  
Breea Clark, Mayor

\_\_\_\_\_  
Breea Clark, Chair

ATTEST \_\_\_\_\_  
Brenda Hall, City Clerk

ATTEST: \_\_\_\_\_  
Brenda Hall, Secretary

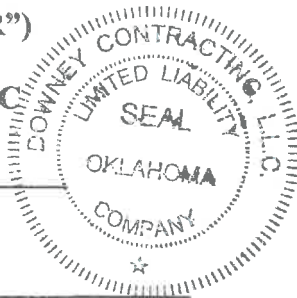
Approved as to form and legality this 7 day of Oct 2021.

Elizabeth Iludola  
\_\_\_\_\_  
City Attorney

(“CONSTRUCTION MANAGER”)

**DOWNEY CONTRACTING, LLC**

Brandon Downey  
\_\_\_\_\_  
Printed: Brandon Downey



**Manager** \_\_\_\_\_  
**Title**

ATTEST: Stacy Kye  
\_\_\_\_\_

**Witness** \_\_\_\_\_  
**Title**