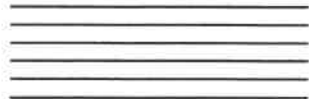


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TULSA COUNTY



PURCHASING  
DEPARTMENT

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# MEMO

DATE: April 24, 2019

FROM: Matney M. Ellis  
Purchasing Director 

TO: Board of County Commissioners

SUBJECT: Agreement – Murray Womble, Inc

Bids for the Tulsa County “HQ” Administration Building Renovations were opened on February 25, 2019 and the recommendation to award Bid Package 10D (Metal Lockers) to Murray Womble, Inc was approved by the Board of County Commissioners on March 11, 2019, CMF# 247245.

The Tulsa County Purchasing Department respectfully requests the Board of County Commissioners approve and execute the attached Trade Contractor Agreement between the Board of County Commissioners and Murray Womble, Inc. for the scope of work as defined in the agreement and referenced bid documents.

Respectfully submitted for your approval and execution.

MME / mlb

ORIGINAL: Michael Willis, County Clerk, for the April 29, 2019 agenda.

## TRADE CONTRACTOR AGREEMENT

### 1. Effective Date, Parties and Notice

This Agreement is entered into this 11 day of March in the year 2019 by and between  
Tulsa County, referred to in this Agreement as the Owner, and the

TRADE CONTRACTOR      Murray Womble, Inc.  
8150 N. 116<sup>th</sup> E. Ave.  
Owasso, OK 74055  
  
Tax ID/EIN/SSN: 73-0955436  
  
ATTENTION: Caleb Hill

referred to in this Agreement as the Trade Contractor for services in connection with this

PROJECT NAME            Tulsa County Administration Building Renovations  
  
PROJECT NUMBER        HEADQ  
  
LOCATION                  218 W 6<sup>th</sup> St  
Tulsa, OK 74119

whose

CONSTRUCTION        FLINTCO, LLC  
MANAGER is            1624 W 21<sup>st</sup> St  
Tulsa, OK 74107

and whose

ARCHITECT is            GH2 Architects  
320 S Boston Ave  
Suite 100  
Tulsa, Ok 74103

NOTICE TO THE PARTIES SHALL BE GIVEN AT THESE ADDRESSES

## **2. Safety**

**2.1** The Trade Contractor agrees that the prevention of accidents to workmen and property engaged upon or in the vicinity of the Trade Work is its responsibility. The Trade Contractor agrees to comply with all Federal, State, Municipal and local laws, ordinances, rules, regulations, codes, standards, orders, notices and requirements concerning safety as shall be applicable to the Trade Work, including, among others, the Federal Occupational Safety and Health Act of 1970, as amended, and all standards, rules, regulations and orders which have been or shall be adopted or issued thereunder, and with the safety standards established during the progress of the Trade Work by the Construction Manager (referred to herein as "CM").

**2.2** When so ordered, the Trade Contractor shall stop any part of the Trade Work which the CM deems unsafe until corrective measures satisfactory to the CM have been taken. The Trade Contractor agrees that it shall not have nor make any claim for damages arising from such stoppages. Should the Trade Contractor fail to take appropriate corrective measures in a timely manner, the CM may do so at the cost and expense of the Trade Contractor and may deduct the cost and expense thereof from any payments due or to become due to the Trade Contractor. Failure on the part of the CM to stop unsafe practices shall in no way relieve the Trade Contractor of its responsibility therefor.

**2.3** The Trade Contractor will follow the provisions of all applicable statutes and ordinances which require persons or firms doing excavation to do so only after giving notice to utility companies and obtaining information on the location of utilities (such as "one-call" systems).

## **3. Trade Contractor Representations**

**3.1** The Trade Contractor acknowledges receipt of all policies listed in Exhibit C. Subject to applicable law the Trade Contractor further agrees to be bound by these policies as part of this Agreement. The Trade Contractor represents and agrees that it has carefully examined and understands this Agreement and the other Trade Contract Documents, has investigated the nature, locality and site of the Trade Work and the conditions and difficulties under which it is to be performed, and that it enters into this Agreement on the basis of its own examination, investigation and evaluation of all such matters and not in reliance upon any opinions or representations of the CM, the Owner or any of their respective officers, agents or employees.

**3.2** The commencement of the Trade Work by the Trade Contractor on the site of the Project shall constitute the legal and binding acceptance by the Trade Contractor of this Agreement. For purposes of this paragraph the mobilization of equipment, delivery of materials or the performance of actual labor on the Project site, whichever occurs first, shall constitute a "commencement" of Trade Work by the Trade Contractor. The Owner reserves the right, however, to insist on a signed Agreement prior to the making of any payment to the Trade Contractor.

## **4. Bonds**

The Trade Contractor shall furnish a Performance Bond and a Separate Payment Bond satisfactory to the CM, in its sole determination, in the full amount of the Agreement Amount. Bonds shall be furnished by a surety acceptable to the CM, in the full amount of the Agreement Amount, and on the forms attached as Exhibit G. Trade Contractor must also furnish any applicable statutory bonds if required by the state in which the Project is located.

## **5. Trade Contractor Duties**

**5.1 Trade Work.** The Owner retains the Trade Contractor as an independent contractor, to provide all labor, materials, equipment and services necessary or incidental to complete that portion of the work on the Project as set forth in Exhibit A to this Agreement, consistent with the Project Schedule and in strict accordance with and reasonably inferable from the Trade Contract Documents. The Trade Contractor agrees to perform such part of the work (hereafter called "Trade Work") for the Project under the general direction of the CM and subject to the final approval of the CM, Architect/Engineer or other specified representative of the Owner.

**5.2 Trade Contract Documents.** The Trade Contract Documents include this Agreement, Agreement between the Owner and the CM ("CM Agreement"), including all addenda, modifications, revisions, plans, drawings, specifications, details, together with all general, technical, supplementary and special terms and conditions, any invitations for bids or information for bidders, if any, to the extent applicable, and all other documents listed in or referred to by the CM Agreement. The Owner and the Trade Contractor are mutually bound by the terms of this Agreement. To the extent the terms of the CM Agreement apply to the work of the Trade Contractor, then the CM on behalf of the Owner assumes toward the Trade Contractor all the obligations, rights, duties and redress that the Owner under the CM Agreement assumes toward the CM. In the identical way, the Trade Contractor assumes toward the CM all the same obligations, rights, duties and redress that the CM assumes toward the Owner and Architect/Engineer under the CM Agreement. This Agreement and the rest of the Trade Contract Documents are intended to supplement and complement each other and shall, where possible, be so interpreted. However, if any provision of this Agreement

Irreconcilably conflicts with a provision of the Trade Contract Documents, the provision granting greater rights or remedies to the Owner or imposing the greater duty, standard or responsibility or obligation on the Trade Contractor shall govern.

**5.3 Design Delegation.** If the Trade Contract Documents (1) specifically require the Trade Contractor to provide design services and (2) specify all design and performance criteria, the Trade Contractor shall provide the design services necessary to satisfactorily complete the Trade Work. Design services provided by the Trade Contractor shall be procured from licensed, design professionals (the "Designer") retained by the Trade Contractor as permitted by the law of the place where the Project is located. The Designer's signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by the Designer. Shop Drawings and other submittals related to the Trade Work designed or certified by the Designer, if prepared by others, shall bear the Trade Contractor's and the Designer's written approvals when submitted to the CM. The Owner and the CM shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by the Designer.

**5.3.1** If the Designer is an independent professional, the design services shall be procured pursuant to a separate agreement between the Trade Contractor and the Designer. The Trade Contractor-Designer agreement shall not provide for any limitation of liability or exclusion from participation in the multiparty proceedings requirement of Paragraph 21.6. If applicable, the Designer(s) is (are)

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The Trade Contractor shall notify the CM in writing if it intends to change the Designer. The Trade Contractor warrants the design furnished by the Designer will be in conformance with the information given and the design concept expressed in the Trade Contract Documents. The Trade Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Trade Contract Documents furnished by the Owner, Architect/Engineer or CM

**5.3.2** The Trade Contractor shall not be required to provide design services in violation of any applicable law.

**5.4 Clean Up.** The Trade Contractor is responsible for its own "clean-up" and keeping the Trade Work areas "broom clean". If the CM determines the Trade Work area to be unsatisfactorily cleaned, the CM will so advise the Trade Contractor. If the Trade Contractor fails to commence cleaning procedures within twenty four (24) hours and continue to clean said area to the CM's satisfaction, the CM may without further notice execute and complete such clean up activities as the CM deems necessary and charge the cost to the Trade Contractor or deduct such cost from payments due to the Trade Contractor. The Trade Contractor is responsible to clean the mud and gravel off its vehicles (including vehicles operated by its lower tier contractors and suppliers) prior to leaving the site. Any mud or gravel that is tracked onto the surrounding roads shall be removed immediately. The CM has the right to clean up surrounding roads immediately upon the Trade Contractor's failure to do so, the cost of which shall be deducted from the Trade Contractor's next payment.

**5.5 Protection of Trade Work.** The Trade Contractor is responsible for protection of its material, equipment and installation until the final acceptance by the Owner and the Architect.

**5.6 Protection of the Project.** The Trade Contractor shall confine operations at the Project site to areas permitted by the CM and shall not unreasonably encumber the Project site with materials or equipment. The Trade Contractor is responsible for any damage caused to adjacent property or access roads by the Trade Contractor, its lower tier contractors or suppliers during the course of the Trade Work.

**5.7 Supervision.** All of the Trade Work is the sole and absolute responsibility of the Trade Contractor; shall be initiated, managed, performed and completed by qualified, competent, skilled and reputable supervisors, administrators, mechanics and laborers, all of which are satisfactory to the CM; shall be in full compliance with the Trade Contract Documents including this Agreement; and shall meet the approval and acceptance of the CM and the Owner or its authorized representative.

## **6. Schedule**

Time is of the essence. The Trade Contractor shall commence the Trade Work under this Agreement when notified by the CM and shall complete the Trade Work in a diligent manner in accordance with the Trade Contract Documents and the Schedule of Work as set forth in Exhibit E so that progress or completion of the Project will not be delayed and in such a manner that the CM, any other Trade Contractors, and any separate contractors of the Owner shall not be delayed or impeded in their work. The Trade Contractor shall participate and cooperate in the development of schedules and other efforts to achieve timely completion of the Trade Work by providing information on the timing and sequence of operations so as to meet the CM's overall schedule requirements. The Trade Contractor shall continuously monitor the Project Schedule including any revisions thereto, and other work on the Project so as to execute the Trade Work in accordance with the requirements of the Project Schedule.

The Trade Contractor agrees to be responsible for, carry out, and perform all time guarantees upon work or materials referred to in the Trade Contract Documents relating to any labor performed or material furnished under this Agreement.

## **7. Payment**

7.1 In consideration of faithful and timely performance by the Trade Contractor of all the covenants and the conditions aforesaid, the Owner agrees to pay the Trade Contractor, subject to other provisions hereof, including authorized additions and deletions, the sum of

<b>Eight Thousand, Two Hundred, Fifteen and 00/100 DOLLARS</b>	<b>(\$8,215.00)</b>
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(the "Agreement Amount") [which amount is Tax Exempt in accordance with attached Exhibit H]. Payment shall only be due for the portion of the Trade Work actually completed to the satisfaction of the CM, the Architect and the Owner. Trade Contractor shall submit a progress payment application to the Owner, with a copy to the CM and the Architect, for Trade Contractor Work properly performed during that month. Within thirty (30) days after Trade Contractor's complete, proper and timely payment application has been received by the Owner, the Owner shall make payment to Trade Contractor, less any applicable retainage or other set off. The Owner may withhold payment of part or all of Trade Contractor's payment application upon notice to Trade Contractor as allowed by law. Progress payment applications must be submitted by the Trade Contractor each month in an amount equal to ninety percent (90%) of the estimated value of the labor, materials and equipment incorporated in the construction and materials and equipment suitably stored at the Project site, less the aggregate of previous payments. The Trade Contractor's Affidavit and Waiver of Lien for prior payments must be properly executed by an authorized representative of the Trade Contractor and returned to the Owner and the CM prior to issuance of subsequent payments.

7.2 Progress payment applications are to be submitted on AIA G702 with Schedule of Values AIA G703. With each progress payment application, the Trade Contractor shall furnish a tabulated breakdown of the portion of the Trade Work included in the payment request, listing items of the work in sufficient detail as determined by the Owner and the CM to easily facilitate payment requests to be checked by the CM as the work progresses.

7.3 Each payment request or invoice must be received by the Owner by the last day of the month to be processed with other progress payment applications for that month. Invoices and payment requests received that are inaccurate or without substantiation, or after said day of the month will be held until corrected and substantiated, and then processed with the following month's payment application.

7.4 The Trade Contractor shall submit its request for partial payment conforming to the standard CM billing form, with schedule of values attached thereto, representing a true and accurate estimate of the Trade Work completed, and materials stored during the immediately preceding month or such other immediately preceding period as directed by the CM. In addition, if allowed by the Trade Contract Documents, all invoices and insurance certificates shall be included for all stored materials in an off-site storage area applicable to the payment request.

7.5 The Trade Contractor shall, additionally with each payment request, submit copies of payrolls to document the value of work in place and a Partial Release of Lien from all lower tier contractors and major material suppliers for which payment has previously been made to the Trade Contractor.

7.6 If the Owner or the CM on behalf of the Owner, in their sole discretion, deem it necessary, the Trade Contractor agrees to receive each of its progress payments and final payment in the form of multiple checks issued jointly between the Trade Contractor's lower tier contractors and major material suppliers and the Trade Contractor. Lower tier contractors that are to receive part or all of their progress payments as joint checks shall additionally submit with their Payment Requests all invoices from each lower tier contractor and major supplier and the net payments to be issued to each.

7.7 No partial payment, or certificate therefore, shall constitute acceptance or approval by the Owner, the CM or the Architect of the Trade Work or material for which the partial payment is made. No partial payment shall constitute a waiver by the Owner of any right to require fulfillment of all the terms of this Agreement. Neither the final payment nor any partial payment, nor any certificate for either, shall constitute acceptance by the Owner of defective work or improper materials or of any element of the Trade Contractor's performance determined to be at variance with this Agreement.

7.8 The Owner shall have the right to set off any amounts the Trade Contractor owes to the Owner under this Agreement or by law against the remaining balance under this Agreement, or against any amounts due the Trade Contractor under any other agreements with the Owner.

7.9 **Final Payment.** Final payment by the Owner to the Trade Contractor shall not become due and payable to the Trade Contractor until the following express conditions precedent have been met: (1) The completion of the Trade Work required by this Agreement and acceptance of the Trade Work by the CM, the Owner and the Architect; (2) execution and delivery by the Trade Contractor, in a form satisfactory to the CM, of a general release running to and in favor of the CM and the Owner; and (3) complete and full satisfaction of all claims, demands, disputes and obligations of the Trade Contractor arising out of or related to this Agreement, including those between the Owner and the Trade Contractor and between the Trade Contractor and any third party. Should there be any such claim, lien or unsatisfied obligation, whether before or after final payment is made, the Trade Contractor shall deliver payment to the Owner an amount equal to whatever cost the Owner must pay to discharge or defend against any such claim, obligation, lien or action brought, or any judgment thereon and all costs, including legal fees and expenses and a 15% Administrative Fee, incurred in connection therewith.

## **8. Hazardous Materials**

The Trade Contractor shall at all times comply with all rules and regulations of any municipality, state or federal environmental protection, and toxic waste and hazardous substances laws, ordinances and regulations, and how they relate to the Trade Work, and shall be equally responsible for actions and inactions of Trade Contractors, lower tier contractors, and any other agents or independent contractors of the Trade Contractor. The Trade Contractor shall be deemed to, and shall, have included in the Agreement Amount the containment, removal, disposal or neutralization of all toxic wastes and hazardous substances created, generated or transported to or from the Project site in conjunction with the Trade Work. The Trade Contractor will be responsible for identifying toxic wastes and hazardous substances generated, released, caused by or resulting from the Trade Work and notifying the CM of its presence in writing as soon as it is identified. The terms "toxic wastes" and "hazardous substances" shall have the same meaning as defined under federal environmental laws and regulations. At all times the Trade Contractor shall defend, indemnify and hold harmless the Owner and the CM from any and all expenses, costs, damages, suits, fines, assessments, penalties and/or causes of action, including attorney's fees through all investigations, negotiations, hearings or appeals, relating to or arising out of the Trade Contractor's failure to strictly comply with the terms of this paragraph.

## **9. Compliance with Laws**

**9.1** The Trade Contractor agrees to be bound by, and at its own costs comply with, all federal, state and local laws, ordinances and regulations (the "Laws") applicable to the Trade Work, including but not limited to safety, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, sexual and racial harassment, and all other Laws with which the Owner or CM must comply.

**9.2** Where prescribed by Law pursuant to direct Federal contracts or Federally-financed or aided contracts, or otherwise required by Law, the Trade Contractor agrees the following clauses found in the Trade Contract Documents or in the Code of Federal Regulations (CFR) are incorporated in this Agreement and binding on Trade Contractor as if written herein word for word: the clauses entitled "Equal Opportunity Clause" (41 CFR Sections 60-1.4 & 60-4.3); "Affirmative Action Obligations of Contractors and Subcontractors for Disabled Veterans of the Vietnam Era" (41 CFR Section 60-250.4); "Affirmative Action Obligations of Contractors and Subcontractors for Handicapped Workers" (41 CFR Section 60-741.1); "Contract Work Hours and Safety Standards Act-Overtime Compensation"; "Apprentices and Trainees"; "Payrolls and Basic Records"; "Compliance with Copeland Act Requirements"; "Withholding"; "Subcontracts"; "Contract Termination-Department"; "Disputes Concerning Labor Standards"; "Compliance with Davis-Bacon and Related Act Requirements"; and "Certification of Eligibility" and such other clauses as the Federal Government has required by law or contract. Trade Contractor agrees to include all such clauses in any non-exempt, lower-tier contracts.

**9.3 Immigration Compliance.** The Trade Contractor represents and warrants that the Trade Contractor is in compliance with, and shall remain in compliance with, the provisions of the Immigration Reform and Control Act of 1986 (The "Act") and all other Federal, State, and/or local immigration statutes/ordinances, as applicable, including, but not limited to the provisions of the Act prohibiting hiring and continued employment of unauthorized aliens, requiring verification and record keeping with respect to identity and eligibility for employment and prohibiting discrimination on the basis of national origin, United States citizenship, or intending citizen status. The Trade Contractor agrees to indemnify the Owner and the CM and to hold the Owner and the CM harmless from all liability, including liability for interest and penalties, the Owner and/or the CM incurs with results from or is attributable to the Trade Contractor's failure to comply with any provisions of the Act, and or applicable Federal, State, and/or local immigration statute/ordinance, including reimbursing the Owner and the CM any monies expended by either of them in participating in or responding to any investigation/suit/civil or criminal immigration matter involving the Trade Contractor. As it relates to immigration compliance, the Trade Contractor shall be responsible for completing any and all required documentation in accordance with requirements put forth by the Owner, CM or applicable law.

**9.4** The Trade Contractor shall be liable to the CM and the Owner for all loss, cost and expense attributable to any acts of commission or omission by the Trade Contractor, its contractors at any tier, and its and their respective employees and agents resulting from the failure to comply with Laws, including, but not limited to, any fines, penalties

## **10. Insurance**

**10.1** The Trade Contractor agrees to procure, pay for and maintain in full force and effect during the course of the performance of the Agreement all insurance required by the laws of the state in which the Trade Work covered by this Agreement is being performed, and in such form and amounts as described in Exhibit B which is attached hereto and incorporated into this Agreement. The Trade Contractor shall not commence the Trade Work nor receive any payment hereunder until Certificate of such insurance is furnished to the CM.

**10.2** The CM shall have no duty to the Trade Contractor or to any of its insurers or their insurance agents to review any certificates or copies of insurance furnished to the CM or to determine whether the terms of each certificate or policy of insurance comply with the insurance-related provisions of the Agreement. A failure of the CM to detect that the Trade Contractor has not submitted certificates, or proper certificates, or is

otherwise not in compliance with the insurance-related provisions of the Agreement shall not be construed as a waiver or other impairment of any of the Owner's or CM's rights under such insurance-related provisions.

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

**10.4** The Trade Contractor shall identify by certificate any Residential, Mold, EIFS, Silica or other major exclusions that impact the Trade Contractor's ability to insure its risk. If the Project includes any Residential components or the proposed design includes EIFS systems, then the Trade Contractor shall obtain appropriate endorsements acceptable to the CM as a condition of this Agreement.

**10.5** The Trade Contractor shall at its own expense provide insurance coverage for materials stored off the site after written approval of the CM at the value established in the approval, and also for portions of the Trade Work in transit until such materials are permanently incorporated into the Project. The risk of loss for material and equipment provided by this Agreement, whether in a deliverable state or otherwise, shall remain with the Trade Contractor. Any damages to the material and equipment or loss of any kind occasioned in transit shall be borne by the Trade Contractor, notwithstanding the manner in which the goods are shipped or who pays the freight or other transportation costs.

## **11. Indemnity**

**11.1 General Indemnity.** To the fullest extent allowed by law, the Trade Contractor shall defend, indemnify and hold harmless the CM, the Owner's other Trade Contractors, the Architect/Engineer, the Owner and their agents, consultants, members and employees (the "Indemnitees") from and against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees, costs and expenses for bodily injury and property damage that may arise from the performance of the Trade Work to the extent of the negligent acts or omissions by, or the fault of, the Trade Contractor, the Trade Contractor's lower tier contractors or anyone employed directly or indirectly by any of them or by anyone for whose acts or omissions any of them may be liable. The Trade Contractor agrees to purchase and maintain contractual liability insurance covering its obligations in this article. These obligations shall not be interpreted to reduce or negate any other rights or obligations of indemnity otherwise existing with regard as to any party or person described in this Article.

**11.2 Patents.** The Trade Contractor hereby agrees to defend, indemnify and hold harmless the CM and the Owner from and against any and all liability, loss or damage and to reimburse the CM and the Owner for any costs, including legal fees and expenses, which the CM and the Owner may incur because of claims or litigation on account of infringement or alleged infringement of any letters patent or patent rights by reason of the Trade Work, or materials, equipment or other items used by the Trade Contractor in its performance.

**11.3 No Limitations.** In furtherance to, but not in limitation of the indemnity provisions in this Agreement, the Trade Contractor hereby expressly and specifically agrees that its obligation to indemnify, defend and hold harmless as provided in this Agreement shall not in any way be affected or diminished by any statutory or constitutional immunity it enjoys from suits by its own employees or from limitations of liability or recovery under worker's compensation laws.

## **12. Termination for Convenience**

**12.1** It is understood that the basic assumption underlying the mutual obligations and responsibilities entered into by the parties to this Agreement is the continued performance with respect to the CM Agreement that exists between the CM and the Owner. If, for any reason, the CM Agreement is breached, rescinded or terminated, the Owner shall have the right to immediately terminate this Agreement. In no event shall the CM or the Owner be obligated to the Trade Contractor for any anticipatory profits or any damages incurred by the Trade Contractor as a result of the termination of this Agreement, unless approved and paid by the Owner. The Trade Contractor agrees that it shall have no claim or cause of action against the CM arising from or relating to Owner's termination of this Agreement or Owner's determination of any amount it agrees to pay Trade Contractor upon termination of this Agreement.

**12.2** The Owner shall have the right at any time by written notice to the Trade Contractor, to terminate this Agreement without cause and require the Trade Contractor to cease work. In the event of such a termination for convenience, the Trade Contractor shall be entitled to payment pursuant to the terms of the Agreement for the portion of the Trade Work actually completed as of the date of termination, provided that such amount may be reduced by all amounts for which the Trade Contractor is liable or responsible. However, the Trade Contractor shall only be entitled to profit on that portion of the work actually completed and approved for payment to the date of termination together with retainages withheld from prior payments. The Trade Contractor waives any claim for loss of anticipated profits or other damages against the Owner or the CM in the event the Owner exercises this clause.

### **13. Failure of Performance**

**13.1. Non-Conforming Trade Work.** The Trade Contractor shall provide sufficient, safe and proper facilities at all times for inspection by the Architect, the Owner or the CM of the Trade Work in the field, at shops or at any other place where materials required hereunder are in course of preparation, manufacture, treatment or storage. The Trade Contractor shall, within twenty four (24) hours after receiving written notice from the CM to that effect, proceed to remove from the site any materials condemned by the Architect, the Owner, or the CM, whether worked or unworked, and to take down all portions of the Trade Work which the Architect, the Owner or the CM has condemned in writing, as unsound or improper, or as in any way failing to conform to the drawings, specifications and addenda and shall take full financial responsibility for all damage caused by such removal. In the event that all or any portion of the Trade Work as condemned should be of such a nature, or the time available should be so limited, that in the judgment of the Architect, the Owner or the CM it would not be expedient to order the same replaced or corrected, the Owner, at its option, may deduct from the payments due or to become due to the Trade Contractor such amount or amounts as in the opinion of the Architect, the CM or the Owner shall represent the difference between the fair and reasonable value of the Trade Work so condemned and its value had it been executed in conformity with the Trade Contract Documents.

**13.2 Notice to Cure** If the Trade Contractor is unable, refuses or fails to supply enough properly-skilled workers, proper materials, correct non-conforming Trade Work, or maintain the Schedule of Work, or fails to make prompt payment to its workers, Trade Contractors or suppliers, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of a provision of this Agreement, the Trade Contractor shall be deemed in default of this Agreement. If the Trade Contractor fails within three (3) business days after written notification to commence and continue satisfactory correction of the default with diligence and promptness, then the Owner without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:

**13.2.1** to supply workers, materials, equipment and facilities as the Owner deems necessary for the completion of the Trade Work or any part which the Trade Contractor has failed to complete or perform after written notification, and charge the cost, including reasonable overhead, profit, attorneys' fees, costs and expenses to the Trade Contractor;

**13.2.2** to contract with one or more additional contractors to perform such part of the Trade Work as the CM determines will provide the most expeditious completion of the Trade Work, and charge the cost to the Trade Contractor;

**13.2.3** withhold any payments due or to become due the Trade Contractor pending corrective action in amounts sufficient to cover losses and compel performance to the extent required by and to the satisfaction of the Owner and the CM.

**13.2.4** terminate the Trade Contractor for default by delivering written notice of such termination to the Trade Contractor.

**13.2.5** to charge to the Trade Contractor an Administrative Fee of 15% of all costs incurred by the Owner or the CM in exercising any of the above remedies.

In the event of an emergency affecting the safety of persons or property, the CM on behalf of the Owner may proceed as above without notice, but the Owner shall give the Trade Contractor notice promptly after the fact as a precondition of cost recovery.

**13.3 Termination for Default.** If the Trade Contractor has been terminated for default, the Owner may take possession of the plant and Trade Work, materials, tools, appliances and equipment of the Trade Contractor at the Project site, and through itself or others provide labor, equipment and materials to prosecute Trade Work on such terms and conditions as shall be deemed by the Owner as necessary, and shall deduct the cost, including without restriction all claims, charges, expenses, losses, costs, damages, and attorneys' fees, incurred as a result of the Trade Contractor's failure to perform, from any money then due or thereafter to become due to the Trade Contractor under this Agreement.

**13.3.1** If the Owner so terminates the employment of the Trade Contractor, the Trade Contractor shall not be entitled to any further payments under this Agreement and no sum shall be deemed due or to become due to the Trade Contractor until Trade Work has been completed and accepted by the Owner, all Agreement requirements have been fulfilled, and payment has been received by the CM from the Owner. In the event the unpaid Agreement Amount earned by Trade Contractor exceeds the cost of completion and any and all incidental costs, including administrative, legal and other professional fees, the difference shall be paid to the Trade Contractor, but if such expenses exceed the unpaid earned Agreement Amount, the Trade Contractor agrees to pay the difference to the Owner within thirty (30) days following receipt of written notice.

**13.3.2** If it is determined or agreed that the Owner wrongfully exercised any option under this Article, the Owner shall be liable to the Trade Contractor solely for the reasonable value of Trade Work performed by the Trade Contractor prior to such action, including reasonable overhead and profit on the Trade Work performed, less prior payments made. Under no circumstances shall the Trade Contractor be entitled to recovery of claimed lost future profits.



## **14. Delays**

**14.1** Should the progress of the Trade Work be delayed, obstructed or interfered with through any fault, action or failure to act by the Trade Contractor or any of its officers, agents, employees, Trade Contractors or suppliers so as to cause any additional cost, expense, liability or damage to the CM or the Owner, including legal fees or expenses incurred in defending claims arising from such delay or seeking reimbursement and indemnity from the Trade Contractor and its surety hereunder, the Trade Contractor and its surety agree to compensate and indemnify the CM and the Owner against all such costs, expenses, damages and liabilities.

**14.2** In addition, the Trade Contractor, at the CM's direction and at the Trade Contractor's own cost and expense, shall work such overtime as may be necessary to make up for all time lost in the completion of the Trade Work and in the completion of the Project due to such delay. If the Trade Contractor fails to make up for the time lost by reason of such delay, the CM has the right to use other Trade Contractors or suppliers and to take whatever other action the CM deems necessary to avoid delay in the completion of the Trade Work and the Project, the cost of which shall be borne by the Trade Contractor. In the event Trade Contractor delays timely performance of the Trade Work or to the completion of the Project, either by its acts or omissions, and such delays result in the CM being charged by the Owner with actual or liquidated damages, then the Trade Contractor shall reimburse the CM the full amount of all such damages and charges resulting from the delays caused by the Trade Contractor. The CM may offset any such damages against the remaining balance due to the Trade Contractor on the Agreement Amount, if any.

**14.3** If the commencement and/or progress of the Trade Work is delayed without the fault or responsibility of the Trade Contractor, the time for the Trade Work shall be extended by Change Order to the extent obtained by the CM from the Owner pursuant to the CM Agreement, and the Schedule of Work shall be revised accordingly.

## **15. Changes**

**15.1 Trade Work Changes.** The Owner and the Trade Contractor agree the Owner may make changes to the Trade Work, including but not limited to; additions, deletions or revisions. Any changes made to the Trade Work involved, or any other parts of this Agreement, shall be by a written Change Order. To the extent that any such change impacts Trade Contractor's cost of or time for performance, the Agreement Amount and Agreement Schedule shall be equitably adjusted to compensate for such impact. Changes shall be initiated by one of the three methods outlined below, or as provided in the CM Agreement and shall be incorporated into the Agreement by a Change Order.

**15.1.1. Request for Change Proposal.** A Request for Change Proposal ("RFCP") is a written request that informs Trade Contractor about a potential change in the Trade Work and requests a proposal for the potential change. Trade Contractor shall promptly reply with such request. Trade Contractor shall not implement the change or incur any costs until a Change Order is fully executed.

**15.1.2. Construction Change Directive.** A Construction Change Directive ("CCD") is a written directive that instructs Trade Contractor to take some immediate action in connection with the Trade Work. CCDs are issued when there is not time to issue a RFCP or Change Order. Trade Contractor shall immediately proceed so as not to delay the progress of the Work and in accordance with the terms of the CCD. Any impact of a CCD on the Contract Price or Schedule shall be adjusted by a Change Order.

**15.1.3. Change Order Requests.** Within seven (7) calendar days after the occurrence of any event or observance of any condition that Trade Contractor believes entitles Trade Contractor to an adjustment in Agreement Amount and/or Agreement Schedule, Trade Contractor shall prepare and submit a Change Order Request ("COR") to CM. The COR shall include a detailed factual narrative, a detailed analysis showing entitlement and a detailed analysis of the proposed change to the Agreement Amount and/or Agreement Schedule.

**15.2 Change Orders.** A Change Order ("CO") is a written instrument prepared by the CM or Owner and signed by the Trade Contractor stating their agreement with the change in the Trade Work and any adjustment to the Agreement Amount and/or Agreement Work Schedule. All changes and/or additions in the Trade Work ordered in writing by the Owner or CM shall be deemed a part of the Trade Work and shall be performed and furnished in strict accordance with all terms and conditions of this Agreement and the Trade Contract Documents, including the current Schedule of Work.

Change Orders will be used to implement approved Requests for Change Proposals, Construction Change Directives and Change Order Requests. Upon receipt of a properly documented COR or CCD, the parties shall negotiate in good faith to determine if the Trade Contractor is entitled to a Change Order and, if so, the appropriate equitable adjustment. Any adjustment to the Agreement Amount shall be established by one of the following methods:

- a. mutual acceptance of an itemized lump sum, or
- b. unit prices as indicated in the Trade Contract Documents or as subsequently agreed to by the parties; or
- c. costs determined in a manner acceptable to the parties and a mutually acceptable fixed or percentage fee; or
- d. another method provided in the Trade Contract Documents.

If the Parties are unable to agree on the dispositions of a COR or CCD, CM or Owner will either (i) Issue a Notice denying Trade Contractor's request or (ii) Issue a unilateral Change Order setting forth the final determination regarding the adjustments. Any cost and schedule adjustments shall be a full accord and satisfaction for all cumulative impacts of the underlying change.

**15.3** The Trade Contractor shall not be entitled to receive additional compensation for extra work or materials or changes of any kind except to the extent the same was ordered by the CM. The Trade Contractor shall be responsible for any costs incurred by the Owner or the CM for changes of any kind made by the Trade Contractor that increase the cost of the Work for either the Owner, the CM or other Trade Contractors when the Trade Contractor proceeds with such changes without a Change Order or Construction Change Directive.

**15.4** **Determination by Owner, CM or Architect/Engineer.** Notwithstanding any other provision, if the Trade Work for which the Trade Contractor claims additional compensation is determined by the Owner, the CM or Architect/Engineer not to entitle the Trade Contractor to a Change Order, additional compensation or a time extension, the Owner and the CM shall not be liable to the Trade Contractor for any additional compensation or time extension for such Trade Work, unless the Owner agrees in writing to pay such additional compensation or to grant such extension.

## **16. Claims**

**16.1** A Claim is a written demand by Trade Contractor seeking an adjustment in the Agreement Amount and/or Agreement Schedule or some other relief under the terms of the Agreement for events other than a RFCP that has been denied in writing. Trade Contractor shall provide Notice to the Owner and the CM of any potential Claim within seven (7) calendar days after the event giving rise to the Claim. Within fifteen (15) calendar days thereafter, Trade Contractor shall submit a detailed factual narrative, a detailed analysis showing entitlement and a detailed analysis of the alleged change to the Agreement Amount and/or Agreement Schedule. Claims not timely made, in writing, by the Trade Contractor shall be deemed to have been abandoned and waived. The acceptance and consideration of any claim out of time by the Owner shall not create any precedent nor "course of dealing" between the Owner and the Trade Contractor, nor shall it waive the Owner's right to insist on strict adherence by the Trade Contractor to the contract claims procedures. If Owner denies Trade Contractor's Claim, Trade Contractor may pursue the matter under Article 21 Dispute Resolution.

**16.2** The Trade Contractor shall not delay or suspend the Trade Work because of the pendency of or the denial by the Owner of any such claim or because of the continuance of the condition out of which the claim arose, but shall proceed diligently in performing the Trade Work while the claim is being resolved by agreement or being fully adjudicated.

**16.3** In the event the Trade Contractor asserts that it should receive additional compensation because of an act or omission on the Owner's part, or someone for whom the Owner is responsible, the Trade Contractor shall promptly submit the claim to the Owner and the CM in writing within the time required in Section 16.1. Failure of the Trade Contractor to submit such claims in a timely and proper manner shall result in a waiver of such claim.

**16.4** The Trade Contractor shall fully cooperate with the CM in the submission of such claims described in Section 16.3, shall prepare all supporting data and do everything else necessary to properly present the claims, including payment of legal fees incurred by the CM to prepare, submit and negotiate or otherwise resolve such claim. Should the Owner allow and pay additional compensation to the CM on account of such claim asserted by the Trade Contractor, the CM will pay the same to the Trade Contractor.

**16.5** It shall be an express condition precedent to any obligation on the part of the CM to make payment of any cost, reimbursement, compensation or damages to the Trade Contractor hereunder that the CM shall first be determined to be entitled to such compensation on behalf of the Trade Contractor and then receive such payment from Owner, and Trade Contractor expressly acknowledges that the CM is not obligated or required to pursue the Trade Contractor's claim against the Owner if the CM, in its sole discretion, after review of the Trade Contractor's claim, has deemed the claim to lack merit in whole or in part.

**16.6** If at any time a controversy should arise between the CM and the Trade Contractor with respect to any matter in this Agreement which the CM determines is not a claim, dispute or controversy which should involve or be asserted against the Owner, the decision of the CM relating to the subject of the controversy shall be followed by the Trade Contractor.

## **17. Taxes**

The Agreement Amount includes all sales, excise, transportation, unemployment compensation, social security, and any other taxes presently existing or subsequently imposed and levied and the Trade Contractor agrees to pay all of the above and to conform to all applicable municipal, state and federal laws in connection with such taxes. The Trade Contractor further agrees to withhold taxes from the wages and salaries of all employees of the Trade Contractor and pay the same in accordance with the federal and state laws and regulations pertaining thereto. The Agreement Amount includes federal, state and municipal taxes now levied or in force or hereafter imposed on any and all tangible personal property sold or transferred to the Owner under this Agreement and the Trade Contractor agrees to pay such tax or taxes on such property, the cost of which is included in the Agreement Amount.

## **18. Liens**

**18.1** The Trade Contractor shall promptly pay when due all its project creditors, together with the project creditors of all those below it in the contractual chain.

**18.2** If the Project involves private work, the Trade Contractor shall keep the property and improvements free and clear of all mechanic, materialmen and similar lien claims or statements. In the event any such lien is filed, asserted or claimed, the Trade Contractor shall immediately secure its release either by paying the lien claimant, by filing a lien release bond, or by any other means permitted by law. If not so released, the Owner may retain an amount equal to 150% of the lien or claim and may pay the claimant and offset that amount, plus any legal fees from the amount so retained. If the Project involves public work, the Trade Contractor shall promptly pay and secure releases from all of its project creditors, including all those below it in the contractual chain, who are entitled to assert claims against the Owner, the CM or its surety.

**18.3** If any claim or lien is made or filed with or against the CM, the Owner, the Project, 218 W 6<sup>th</sup> St, Tulsa, Ok 74119 or the Project funds by any person claiming that the Trade Contractor or any Trade Contractor or other person under contract to the Trade Contractor, or any person or entity employed or engaged by the Trade Contractor at any tier, has failed to make payment for any labor, services, materials, equipment, taxes or other obligations furnished or incurred in connection with the Trade Work, or if the Trade Contractor or any Trade Contractor or other person under contract to the Trade Contractor, or any person or entity employed or engaged by the Trade Contractor at any tier causes damage to the Trade Work or any other work on the project, or if the Trade Contractor fails to perform or is otherwise in default of any term or provision of this Agreement, the Owner shall have the right to retain from any payment then due or thereafter due an amount which the Owner deems sufficient to (1) satisfy, discharge and/or defend against any such claim or lien, (2) make good any such nonpayment, failure, damage or default, and (3) defend, indemnify and hold harmless the CM and the Owner against any and all losses, damages and costs, including legal fees and expenses, incurred by either or both of them. The Owner shall require proof that any such nonpayment, claim or lien is fully satisfied, dismissed and discharged before any remaining retained funds will be released. The Owner shall, in addition, have the right to apply and charge against the Trade Contractor so much of the amount retained as may be required for the foregoing purposes and the Trade Contractor shall pay and reimburse the CM and the Owner all such losses, damages, and costs incurred by them which exceed the retained funds.

## **19. Assignment**

To the fullest extent permitted by law, the Trade Contractor agrees that it shall not assign, sell, transfer, delegate or encumber any rights, duties or obligations arising under this Agreement including, but not limited to, any right to receive payments hereunder, without the prior written consent of the Owner in its sole discretion and the giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. In the event the Trade Contractor assigns, sells, encumbers or otherwise transfers its right to any funds due or to become due under this Agreement as security for any loan, financing or other indebtedness ("Assignment"), notification to the Owner and the CM of such Assignment must be sent by certified mail, return receipt requested, to the Owner and the CM and the Assignment shall not be effective as against the Owner until the Owner provides its written consent to such Assignment. The Trade Contractor agrees that any such Assignment shall not relieve the Trade Contractor of any of its agreements, duties, responsibilities or obligations under this Agreement and the Trade Contract Documents and shall not create a contractual relationship or a third party beneficiary relationship of any kind between the Owner or the CM and such assignee or transferee.

## **20. Guarantee/Warranty**

For a period of one year from the date of the Owner's final acceptance of the Trade Work, the Trade Contractor guarantees and warrants that the Trade Work complies with the Trade Contract Documents requirements and is free from defects in material and workmanship. This guarantee/warranty shall include, but is not limited to, the cost of all labor, material and related items necessary to correct any such defect, plus the cost of repairing any damage to other items which may have been caused by the defective material or workmanship. If the Trade Contractor fails to begin warranty work within forty-eight (48) hours of being notified that such work is necessary, the Owner may, at its option, perform the necessary remedial work or secure its performance by others and charge the Trade Contractor with the cost thereof, plus a 15% Administrative Fee. Nothing in this paragraph shall shorten the statute of limitations on any action by the Owner for breach of contract, negligence or other cause of action against the Trade Contractor.

## **21. Dispute Resolution**

**21.1 Scope of Disputes Provisions.** All Claims, disputes or other matters in question between the parties to this Agreement which arise out of or relate to this Agreement (or the breach thereof), whether in contract or tort, (hereinafter "Dispute") shall be subject to the dispute resolutions set forth below.

**21.2 Initial Dispute Resolution/Mediation.** A Dispute which either party desires to pursue shall be set forth in a detailed written statement of claim submitted to the other party providing the specific basis upon which monetary or other relief is claimed to be due, the specific contractual provision(s) supporting the claim and an itemization of the amount claimed to be due. Following submission of the detailed statement of claim, Owner and Trade Contractor shall endeavor to settle the Dispute first through face to face direct discussions between corporate officers of the Owner and Trade Contractor which discussions shall be held at the Owner's office location involved with the Project within thirty (30) calendar days of a request by either party. If the Dispute cannot be resolved through direct discussions, the parties shall participate in mediation under the Construction Industry Mediation Rules of the American Arbitration Association as a condition precedent and before recourse to any other form of binding dispute resolution. The location of the mediation shall be the same city as the location of the Project, unless the parties agree on another location. Upon written notice requesting mediation provided to the other party and the American Arbitration Association, the parties agree to proceed with the mediation as scheduled by the mediator. Either party may terminate the mediation at any time after the first session, but the decision to terminate must be personally delivered to the other party and the mediator.

**21.3 Binding Dispute Resolution.** In the event Owner and Trade Contractor cannot resolve the Dispute through direct discussions or mediation as contemplated above, then the Dispute shall, at the sole discretion of Owner, be decided either by submission to (a) arbitration administered by the American Arbitration Association or other arbitration tribunal mutually agreed upon by the parties; or (b) litigation subject to the exclusive jurisdiction and venue of the location of the Project.

### **21.4 Arbitration Election**

**21.4.1** In the event Owner exercises its exclusive right to resolve the Dispute in arbitration, such arbitration shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association or the applicable rules of such other arbitration tribunal as the parties may mutually determine in effect at the time the arbitration is commenced as modified by the terms hereof. Any arbitration hereunder shall be held at the location of the Project.

**21.4.2** Should Owner exercise its exclusive right to resolve the Dispute by arbitration, then within fourteen (14) days after Owner gives Trade Contractor notice of Owner's election of arbitration, the parties shall use good faith efforts to select a single arbitrator mutually acceptable to both parties. If the parties are unable to select an arbitrator, then the parties will select the arbitrator(s) from a panel of experienced construction arbitrators on the American Arbitration Association's large complex case panel or a comparable panel of experienced construction arbitrators maintained by such other arbitration tribunal mutually selected by the parties then in effect. In the event the amount in Dispute exceeds \$1,000,000.00, Owner and Trade Contractor agree the arbitration shall be heard by a panel of three (3) arbitrators; otherwise, the Dispute shall be heard by a single arbitrator.

**21.4.3** The parties will enter into an Electronically Stored Information Agreement outlining the scope and volume for ESI discovery, which shall take into account the amount and complexity of the Dispute.

**21.4.4** The arbitration award shall be final and binding upon the parties, shall include attorneys' fees and costs to the prevailing party or parties, and may be entered as a judgment in any court having proper jurisdiction. In any arbitration the Arbitrator(s) shall have no power to render an award which has the effect of altering or amending or changing in any way any provisions of this Agreement.

**21.4.5** The parties stipulate and agree that the performance of this Agreement is a transaction involving interstate commerce. Notwithstanding other provisions in the Agreement, or choice of law provisions to the contrary, this agreement to arbitrate shall be enforced pursuant to, and governed by, the Federal Arbitration Act, 9 U. S. C. §1 et seq., which shall not be superseded or supplemented by any other arbitration act, statute or regulation.

**21.4.6** At the sole discretion of Owner, any arbitration with Trade Contractor shall be consolidated with any other arbitration proceeding relating to the work under the CM Agreement.

**21.5 Litigation Election.** In the event Owner elects not to exercise its exclusive right to resolve the Dispute by arbitration, or in the event the Dispute between Owner and Trade Contractor, or any portion thereof, is found to be non-arbitrable, then the parties hereby agree that the Dispute or a portion thereof (as the case may be) shall be subject to exclusive jurisdiction and venue at the location of the Project. In any such Dispute or portion thereof which is resolved by litigation, Trade Contractor expressly waives any right to trial by jury.

**21.6 Multiparty Proceeding.** To the extent permitted by Trade Contract Documents, all parties necessary to resolve a claim shall be parties to the same dispute resolution proceeding. To the extent Disputes between the Owner and the Trade Contractor involve in whole or in part disputes between the CM and the Owner, Disputes between the Trade Contractor and the Owner shall be decided by the same tribunal and in the same forum as disputes between the CM and the Owner.

**21.7 Stay of Proceedings.** (a) In the event the provisions for resolution of disputes between the CM and the Owner contained in the Trade Contract Documents do not permit consolidation or joinder with disputes of third parties, such as the Trade Contractor, resolution of any Dispute between Owner and Trade Contractor involving in whole or in part disputes between CM and Owner shall be stayed pending conclusion of any dispute resolution proceeding between CM and Owner. (b) In the event that any action is filed prior to exhaustion of remedies under the Agreement; such action shall be stayed pending conclusion of any dispute resolution proceedings.

**21.8 Work Continuation and Payment.** Unless otherwise agreed in writing, Trade Contractor shall continue the Trade Work and maintain the Schedule of Work during any dispute resolution proceedings. As Trade Contractor continues to perform, Owner shall continue to make payments in accordance with this Agreement.

**21.9 Cost of Dispute Resolution; Attorneys' Fees.** The cost of any mediation proceeding shall be shared equally by the parties participating.

**21.9.1** The prevailing party in any Dispute arising out of or relating to this Agreement or its breach that is resolved by a dispute resolution procedure designated in the Trade Contract Documents shall be entitled to recover from the other party any remedies available under Oklahoma law after direct discussions and mediation.

**21.9.2** In the event the Trade Contractor is awarded an amount equal to or less than the last written offer of settlement from Owner, prior to the commencement of binding dispute resolution, Owner shall be deemed prevailing party and be entitled to recover those reasonable attorneys' fees, costs and expenses (including expert fees and expenses) incurred by the Owner.

## **22. Miscellaneous**

**22.1** No one, other than the parties hereto, their successors, trustees and assigns, shall be entitled to bring action on this Agreement or the Performance Bond provided by the Trade Contractor, it being the express intent of the parties that this Agreement shall not be for the benefit of any third party.

**22.2** Any term or provision of this Agreement which is held to be invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

**22.3** This Agreement, together with the documents referred to or incorporated herein by reference, constitute the complete agreement between the parties. No agent or employee of either party possesses the authority to make, and the parties shall not be bound by nor liable for, any statement, representation, promise or agreement not set forth herein. Any article, section, paragraph or other headings contained in this Agreement are for reference purposes and shall not affect in any way the meaning or interpretation of this Agreement.

**22.4** The terms and provisions shall extend to and be binding upon the successors, trustees and assigns of the parties hereto, and shall be governed and controlled, except as expressly provided herein or as required by the Trade Contract Documents, by the laws of the State of the Oklahoma.

**22.5** The Trade Contractor agrees to comply with the provisions and any applicable local, state or federal ordinance, regulation, status, or other mandate regarding affirmative action and/or minority/women's business enterprise participation.


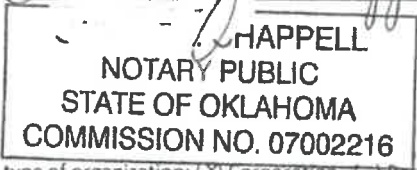
**22.6** This Agreement has not been altered in any manner from its original form as sent to the Trade Contractor except for required signatures and dates, or as clearly marked and initialed by this Trade Contractor. Any changes to this Agreement not initialed by the Owner will not be binding.

23. Schedule of Exhibits to the Agreement

The following Exhibits are attached to and are a part of this Agreement.

- Exhibit A: The Trade Contractor's Scope of Work, including alternative or unit prices
- Exhibit B: Insurance Requirements
- Exhibit C: Flintco Policies/Procedures Acknowledgement of Obtaining Form
- Exhibit D: List of Drawings, Specifications and Addenda
- Exhibit E: Schedule of Work
- Exhibit F: Certification of Non-Segregated Facilities
- Exhibit G: Payment and Performance Bond Forms
- Exhibit H: Tax Exemption Certificate

This Agreement is entered into as of the date entered in Article 1.

ATTEST:   


Murray Womble, Inc.

BY: 

PRINT NAME: Jeff Naber

PRINT TITLE: President

Designate type of organization: (X) Corporation ( ) Partnership ( ) Sole Proprietorship ( ) LLC ( ) Other

Organized in the State of Oklahoma

With its principal place of business at 8150 N. 116th E. Ave. Owasso, OK 74055

Tulsa County

ATTEST: \_\_\_\_\_

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

PRINT TITLE: \_\_\_\_\_

County Clerk

ATTEST: \_\_\_\_\_

BY: \_\_\_\_\_

PRINT NAME: Michael Willis

Approved as to form:

ATTEST: \_\_\_\_\_

BY: Nolan M. Fields II 4-24-19

PRINT NAME: Nolan Fields

PRINT TITLE: Assistant District Attorney

## TRADE CONTRACTOR - SCOPE OF WORK

Exhibit A  
Page 1 of 1

### **BID PACKAGE 10D: LOCKERS - COMPLETE**

Specification Section	Description
DIVISION 0	Procurement and Contracting Requirements
DIVISION 1	General Requirements
105113	Metal Lockers, complete

(In addition to the Specification Sections listed, Bidders will include work from referenced specifications and other work normally associated with this trade whether referenced or not.)

#### Definition of Terms

Contractor = Bidder

Construction Manager = Flintco, LLC

Owner = Tulsa County

Architect = GH2 Architects

The scope of work of this bid package shall also include the following items, but without limiting the scope of work as provided above:

- 1.) Contractor shall furnish and install all new metal lockers, including prefabricated or wood bases as required, in strict accordance with the contract documents.
- 2.) Contractor shall furnish and install all required mounting devices, accessories, and fasteners necessary for installation of all above specification sections.
- 3.) Include all sloped tops as specified on the Contract Documents.
- 4.) All locker color matching metal trim and filler pieces for horizontal and vertical joints between lockers and adjacent finish surface shall be provided and installed by contractor as indicated in the contract documents.
- 5.) Contractor shall provide all labor, on-site supervision, services, material, fasteners, equipment, tools and supplies necessary for or incidental to the complete installation of all newly provided items as described above.
- 6.) Finish and color shall be as specified in the contract documents.
- 7.) Furnish and install all core drilling and/or anchoring of supports in concrete as required by the Contract Documents
- 8.) Contractor shall handle, ship, and store materials in such a manner that it will not be damaged or deformed. Upon receipt, all material having defects that may affect serviceability of use for the intended purpose or appearance will be rejected, shall not be used, and shall be replaced immediately by this contractor at no additional cost.
- 9.) Contractor shall be responsible for verifying in-place construction and primary supports. Report, in writing to Construction Manager any conditions detrimental to proper and timely completion of work in accordance with the contract documents.
- 10.) Contractor shall make final adjustments and alignments as may be required to the satisfaction of the Construction Manager and Owner prior to final acceptance.
- 11.) All work and material deliveries shall be as phased per the project schedule.

#### **Work excluded from this bid package:**

- 1.) Millwork Lockers

***The Liquidated Damages for this Package are \$0 per day***

## TRADE CONTRACTOR INSURANCE REQUIREMENTS

The contractor (and any Sub-contractors) shall carry and keep in force during this Contract, policies of insurance in minimum amounts as set forth below, or as required by the laws of the State of Oklahoma:

1. General Liability Insurance providing for a combined amount of not less than \$200,000 for all damages arising out of bodily injury, death and property damage for each occurrence with an aggregate limit of \$300,000, and an excess umbrella liability coverage of \$2,000,000;
2. Workers Compensation Insurance and Employee Liability Insurance as required by Workers Compensation laws of the State of Oklahoma;
3. Comprehensive Automobile Insurance; and
4. Errors and Omissions Coverage (only applicable to Architect or Engineering Services).

**Note: Builders Risk Insurance will be the responsibility of the Construction Manager and therefore should not be included.**

**IMPORTANT:**

The Contractor shall name the Board of County Commissioners of Tulsa County, Oklahoma as an additional insured;

The Contractor shall furnish Certificates of Insurance which shall provide that said insurance will not be cancelled by the Insurer without Insurer providing thirty (30) days written notice to the Board of County Commissioners of Tulsa County;

The Insurance specified shall be acquired from an Insurance Company properly licensed by the State of Oklahoma to provide such coverage in the State of Oklahoma.



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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
4/23/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Arthur J. Gallagher Risk Management Services, Inc. 1300 South Main Street Tulsa OK 74119		<b>CONTACT NAME:</b> Sandi Fadler <b>PHONE (A/C, No, Ext):</b> 918-884-2944 <b>E-MAIL ADDRESS:</b> sandi.fadler@ajg.com <b>FAX (A/C, No):</b> 918-884-2999		
<b>INSURED</b> Murray Womble, Inc 8150 N 116th E Ave Owasso OK 74055 MURRWOM-01		<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
		<b>INSURER A:</b> National American Insurance Company (OK)		23663
		<b>INSURER B:</b> Pennsylvania Manufacturers Assoc Ins Co		12262
		<b>INSURER C:</b> CompSource Oklahoma		36188
		<b>INSURER D:</b>		
		<b>INSURER E:</b>		
<b>INSURER F:</b>				

**COVERAGES** **CERTIFICATE NUMBER:** 1109146518 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR \$1,000 B/VPD Ded GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	MP05171335	4/1/2019	4/1/2020	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y	MP05171335	4/1/2019	4/1/2020	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input type="checkbox"/> <b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	Y	MB43691335	4/1/2019	4/1/2020	EACH OCCURRENCE \$5,000,000 AGGREGATE \$ \$
C B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A	01885235 19 1 2019070974345Y	4/1/2019 4/1/2019	4/1/2020 4/1/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: #HQ-105113 Tulsa County Administration Building Renovations @Lockers  
Additional Insured(s): Flintco, LLC and GHZ Architects and Board of County Commissioners of Tulsa County

General Liability policy includes Additional Insured Endorsement #CG2033(04/13) and CG2037(04/13), Waiver of Subrogation Endorsement #GL2017(04/95), ALL as required by written contract.

Auto Liability policy includes Additional Insured Endorsement #NAICO-25(05/07), ALL as required by written contract.

See Attached...

<b>CERTIFICATE HOLDER</b>  Tulsa County Board of County Commissioners 500 South Denver Tulsa OK 74103-3832	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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**ADDITIONAL REMARKS SCHEDULE**Page 1 of 1

AGENCY Arthur J. Gallagher Risk Management Services, Inc.		NAMED INSURED Murray Womble, Inc 8150 N 116th E Ave Owasso OK 74055
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

**ADDITIONAL REMARKS****THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,****FORM NUMBER:** 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

Oklahoma Workers Compensation policy 01885235181 includes Waiver of Subrogation Blanket Endorsement #WC000313(0484), as required by written contract.

Excess Policy Form #CX0001(04/13) contains Follow Form coverage, as required by written contract.

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

**Schedule**

Any person or organization for whom the insured has agreed, by written contract or agreement executed prior to a loss, to furnish this waiver.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

**(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)**

Endorsement Effective 4/1/2018  
Insured Murray Womble Inc

Policy No. 01885235 18 1

Endorsement No.  
Premium

Insurance Company  
CompSource Mutual Insurance Company

Countersigned by



WC 00 03 13  
(Ed. 4-84)

**NATIONAL AMERICAN INSURANCE COMPANY**  
**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**  
**ADDITIONAL INSURED ENDORSEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTO COVERAGE PART  
TRUCKERS COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below:

NAMED INSURED: MURRAY WOMBLE, INC.

ENDORSEMENT NO.:

POLICY NUMBER: MP05171235

ISSUE DATE:

**SCHEDULE**

Name of Person or Organization:

AUTOMATIC STATUS WHEN REQUIRED BY WRITTEN CONTRACT

To the extent that the person(s) or organization(s) shown in the schedule is liable for the conduct of an "insured" arising out of the ownership, maintenance or use of a covered auto under the above policy, they are also "insureds" but only to the extent of that liability."

**All other terms and conditions of this policy remain unchanged.**

## ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
AUTOMATIC STATUS WHEN REQUIRED BY WRITTEN CONTRACT.	ALL LOCATIONS

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".
- However:
1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
  2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.
- B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**
- If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:
1. Required by the contract or agreement; or
  2. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.
- This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

Murray Womble, Inc.

Policy #MP05171235

## **NATIONAL AMERICAN INSURANCE COMPANY**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**This endorsement modifies insurance provided under the following:**

**COMMERCIAL GENERAL LIABILITY COVERAGE PART.**

**OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART.**

**It is agreed that this policy is hereby amended as indicated. All other terms and conditions of this policy remain unchanged.**

### **BLANKET WAIVER OF SUBROGATION**

**It is agreed that notwithstanding anything to the contrary in Paragraph 8 of COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV), TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US, in the event of any payment under this policy we waive our right to recovery against any principal for whom the insured is operating under a written contract when such contract requires a waiver of subrogation.**

## COMMERCIAL EXCESS LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance. The word "insured" means any person or organization qualifying as such under the "controlling underlying insurance".

Other words and phrases that appear in quotation marks in this Coverage Part have special meaning. Refer to Section IV – Definitions. Other words and phrases that are not defined under this Coverage Part but defined in the "controlling underlying insurance" will have the meaning described in the policy of "controlling underlying insurance".

The insurance provided under this Coverage Part will follow the same provisions, exclusions and limitations that are contained in the applicable "controlling underlying insurance", unless otherwise directed by this insurance. To the extent such provisions differ or conflict, the provisions of this Coverage Part will apply. However, the coverage provided under this Coverage Part will not be broader than that provided by the applicable "controlling underlying insurance".

There may be more than one "controlling underlying insurance" listed in the Declarations and provisions in those policies conflict, and which are not superseded by the provisions of this Coverage Part. In such a case, the provisions, exclusions and limitations of the "controlling underlying insurance" applicable to the particular "event" for which a claim is made or suit is brought will apply.

### SECTION I – COVERAGES

#### 1. Insuring Agreement

- a. We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" because of "injury or damage" to which insurance provided under this Coverage Part applies.

We will have the right and duty to defend the insured against any suit seeking damages for such "injury or damage" when the applicable limits of "controlling underlying insurance" have been exhausted in accordance with the provisions of such "controlling underlying insurance".

When we have no duty to defend, we will have the right to defend, or to participate in the defense of, the insured against any other suit seeking damages for "injury or damage".

However, we will have no duty to defend the insured against any suit seeking damages for which insurance under this policy does not apply.

At our discretion, we may investigate any "event" that may involve this insurance and settle any resultant claim or suit, for which we have the duty to defend.

But:

- (1) The amount we will pay for "ultimate net loss" is limited as described in Section II – Limits Of Insurance; and
  - (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under this Coverage Part. However, if the policy of "controlling underlying insurance" specifies that limits are reduced by defense expenses, our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of defense expenses, judgments or settlements under this Coverage Part.
- b. This insurance applies to "injury or damage" that is subject to an applicable "retained limit". If any other limit, such as, a sublimit, is specified in the "controlling underlying insurance", this insurance does not apply to "injury or damage" arising out of that exposure unless that limit is specified in the Declarations under the Schedule of "controlling underlying insurance".
  - c. If the "controlling underlying insurance" requires, for a particular claim, that the "injury or damage" occur during its policy period in order for that coverage to apply, then this insurance will only apply to that "injury or damage" if it occurs during the policy period of this Coverage Part. If the "controlling underlying insurance" requires that the "event" causing the particular "injury or damage" takes place during its policy period in order for that coverage to apply, then this insurance will apply to the claim only if the "event" causing that "injury or damage" takes place during the policy period of this Coverage Part.



- d. Any additional insured under any policy of "controlling underlying insurance" will automatically be an additional insured under this insurance. If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance required by the contract, less any amounts payable by any "controlling underlying insurance".

Additional insured coverage provided by this insurance will not be broader than coverage provided by the "controlling underlying insurance".

## **2. Exclusions**

The following exclusions, and any other exclusions added by endorsement, apply to this Coverage Part. In addition, the exclusions applicable to any "controlling underlying insurance" apply to this insurance unless superseded by the following exclusions, or superseded by any other exclusions added by endorsement to this Coverage Part.

Insurance provided under this Coverage Part does not apply to:

### **a. Medical Payments**

Medical payments coverage or expenses that are provided without regard to fault, whether or not provided by the applicable "controlling underlying insurance".

### **b. Auto**

Any loss, cost or expense payable under or resulting from any of the following auto coverages:

- (1) First-party physical damage coverage;
- (2) No-fault coverage;
- (3) Personal injury protection or auto medical payments coverage; or
- (4) Uninsured or underinsured motorists coverage.

### **c. Pollution**

- (1) "Injury or damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.
- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, pollutants; or

- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, pollutants.

This exclusion does not apply to the extent that valid "controlling underlying insurance" for the pollution liability risks described above exists or would have existed but for the exhaustion of underlying limits for "injury or damage".

### **d. Workers' Compensation And Similar Laws**

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

## **SECTION II – LIMITS OF INSURANCE**

1. The Limits of Insurance shown in the Declarations, and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or suits brought, or number of vehicles involved;
- c. Persons or organizations making claims or bringing suits; or
- d. Limits available under any "controlling underlying insurance".

2. The Limits of Insurance of this Coverage Part will apply as follows:

- a. This insurance only applies in excess of the "retained limit".
- b. The Aggregate Limit is the most we will pay for the sum of all "ultimate net loss", for all "injury or damage" covered under this Coverage Part. However, this Aggregate Limit only applies to "injury or damage" that is subject to an aggregate limit of insurance under the "controlling underlying insurance".
- c. Subject to Paragraph 2.b. above, the Each Occurrence Limit is the most we will pay for the sum of all "ultimate net loss" under this insurance because of all "injury or damage" arising out of any one "event".
- d. If the Limits of Insurance of the "controlling underlying insurance" are reduced by defense expenses by the terms of that policy, any payments for defense expenses we make will reduce our applicable Limits of Insurance in the same manner.

3. If any "controlling underlying insurance" has a policy period that is different from the policy period of this Coverage Part then, for the purposes of this insurance, the "retained limit" will only be reduced or exhausted by payments made for "injury or damage" covered under this insurance.

The Aggregate Limit of this Coverage Part applies separately to each consecutive annual period of this Coverage Part and to any remaining period of this Coverage Part of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

### **SECTION III – CONDITIONS**

The following conditions apply. In addition, the conditions applicable to any "controlling underlying insurance" are also applicable to the coverage provided under this insurance unless superseded by the following conditions.

#### **1. Appeals**

If the "controlling underlying insurer" or insured elects not to appeal a judgment in excess of the amount of the "retained limit", we may do so at our own expense. We will also pay for taxable court costs, pre- and postjudgment interest and disbursements associated with such appeal. In no event will this provision increase our liability beyond the applicable Limits of Insurance described in Section II – Limits Of Insurance.

#### **2. Bankruptcy**

##### **a. Bankruptcy Of Insured**

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

##### **b. Bankruptcy Of Controlling Underlying Insurer**

Bankruptcy or insolvency of the "controlling underlying insurer" will not relieve us of our obligations under this Coverage Part.

However, insurance provided under this Coverage Part will not replace any "controlling underlying insurance" in the event of bankruptcy or insolvency of the "controlling underlying insurer". The insurance provided under this Coverage Part will apply as if the "controlling underlying insurance" were in full effect and recoverable.

#### **3. Duties In The Event Of An Event, Claim Or Suit**

- a. You must see to it that we are notified as soon as practicable of an "event", regardless of the amount, which may result in a claim under this insurance. To the extent possible, notice should include:

- (1) How, when and where the "event" took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any "injury or damage" arising out of the "event".

- b. If a claim is made or suit is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or suit and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or suit as soon as practicable.

- c. You and any other insured involved must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or suit;
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the suit; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of "injury or damage" to which this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

#### **4. First Named Insured Duties**

The first Named Insured is the person or organization first named in the Declarations and is responsible for the payment of all premiums. The first Named Insured will act on behalf of all other Named Insureds for giving and receiving of notice of cancellation or the receipt of any return premium that may become payable.

At our request, the first Named Insured will furnish us, as soon as practicable, with a complete copy of any "controlling underlying insurance" and any subsequently issued endorsements or policies which may in any way affect the insurance provided under this Coverage Part.

#### **5. Cancellation**

- a. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
- b. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - (1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- c. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
- d. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
- e. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
- f. If notice is mailed, proof of mailing will be sufficient proof of notice.

#### **6. Changes**

This Coverage Part contains all the agreements between you and us concerning the insurance afforded. The first Named Insured is authorized by all other insureds to make changes in the terms of this Coverage Part with our consent. This Coverage Part's terms can be amended or waived only by endorsement.

#### **7. Maintenance Of/Changes To Controlling Underlying Insurance**

Any "controlling underlying insurance" must be maintained in full effect without reduction of coverage or limits except for the reduction of aggregate limits in accordance with the provisions of such "controlling underlying insurance" that results from "injury or damage" to which this insurance applies.

Such exhaustion or reduction is not a failure to maintain "controlling underlying insurance". Failure to maintain "controlling underlying insurance" will not invalidate insurance provided under this Coverage Part, but insurance provided under this Coverage Part will apply as if the "controlling underlying insurance" were in full effect.

The first Named Insured must notify us in writing, as soon as practicable, if any "controlling underlying insurance" is cancelled, not renewed, replaced or otherwise terminated, or if the limits or scope of coverage of any "controlling underlying insurance" is changed.

#### **8. Other Insurance**

- a. This insurance is excess over, and shall not contribute with any of the other insurance, whether primary, excess, contingent or on any other basis. This condition will not apply to insurance specifically written as excess over this Coverage Part.

When this insurance is excess, if no other insurer defends, we may undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

- b. When this insurance is excess over other insurance, we will pay only our share of the "ultimate net loss" that exceeds the sum of:
  - (1) The total amount that all such other insurance would pay for the loss in the absence of the insurance provided under this Coverage Part; and
  - (2) The total of all deductible and self-insured amounts under all that other insurance.

#### **9. Premium Audit**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. If this policy is auditable, the premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period, we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit premium is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

## **10. Loss Payable**

Liability under this Coverage Part does not apply to a given claim unless and until:

- a. The insured or insured's "controlling underlying insurer" has become obligated to pay the "retained limit"; and
- b. The obligation of the insured to pay the "ultimate net loss" in excess of the "retained limit" has been determined by a final settlement or judgment or written agreement among the insured, claimant, "controlling underlying insurer" (or a representative of one or more of these) and us.

## **11. Legal Action Against Us**

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a suit asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured, "controlling underlying insurer" and the claimant or the claimant's legal representative.

## **12. Transfer Of Defense**

### **a. Defense Transferred To Us**

When the limits of "controlling underlying insurance" have been exhausted, in accordance with the provisions of "controlling underlying insurance", we may elect to have the defense transferred to us. We will cooperate in the transfer of control to us of any outstanding claims or suits seeking damages to which this insurance applies and which would have been covered by the "controlling underlying insurance" had the applicable limit not been exhausted.

### **b. Defense Transferred By Us**

When our limits of insurance have been exhausted our duty to provide a defense will cease.

We will cooperate in the transfer of control of defense to any insurer specifically written as excess over this Coverage Part of any outstanding claims or suits seeking damages to which this insurance applies and which would have been covered by the "controlling underlying insurance" had the applicable limit not been exhausted.

In the event that there is no insurance written as excess over this Coverage Part, we will cooperate in the transfer of control to the insured and its designated representative.

## **13. When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

## **SECTION IV – DEFINITIONS**

The definitions applicable to any "controlling underlying insurance" also apply to this insurance. In addition, the following definitions apply.

1. "Controlling underlying insurance" means any policy of insurance or self-insurance listed in the Declarations under the Schedule of "controlling underlying insurance".
2. "Controlling underlying insurer" means any insurer who provides any policy of insurance listed in the Declarations under the Schedule of "controlling underlying insurance".
3. "Event" means an occurrence, offense, accident, act, or other event, to which the applicable "controlling underlying insurance" applies.
4. "Injury or damage" means any injury or damage, covered in the applicable "controlling underlying insurance" arising from an "event".
5. "Retained limit" means the available limits of "controlling underlying insurance" applicable to the claim.
6. "Ultimate net loss" means the total sum, after reduction for recoveries, or salvages collectible, that the insured becomes legally obligated to pay as damages by reason of:
  - a. Settlements, judgments, binding arbitration; or
  - b. Other binding alternate dispute resolution proceeding entered into with our consent."Ultimate net loss" includes defense expenses if the "controlling underlying insurance" specifies that limits are reduced by defense expenses.

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## FLINTCO POLICIES/PROCEDURES ACKNOWLEDGEMENT OF OBTAINING FORM

The following Policies and Procedures are part of the Agreement by reference. (Obtain documents at [www.flintco.com](http://www.flintco.com), Select Subcontractors tab and then click on Forms.)

- **Substance Free Workplace:** I acknowledge that I have obtained a copy of the Flintco, LLC policy statement regarding Substance Free Workplace and have read and understand my obligations under this policy.
- **Firearm, Weapons-Free Workplace Policy:** I acknowledge that I have obtained a copy the Flintco, LLC policy statement regarding Firearm, Weapons-Free Workplace and have read and understand my obligations under this policy.
- **Smoke-Free Workplace:** I acknowledge that I have obtained a copy of the Flintco, LLC policy statement regarding a Smoke-Free Workplace and have read and understand my obligations under this policy.
- **Safety Manual:** I acknowledge that I have obtained a copy of the Flintco, LLC Safety Manual and have read and understand my obligations regarding Job Site safety.
- **Certification of Nonsegregated Facilities:** I acknowledge that I have obtained a copy of the Flintco, LLC policy statement regarding a Nonsegregated Facility and have read and understand my obligations under this policy.

Trade Contractor acknowledges obtaining a copy of and agrees to comply with CM policies and procedures related to Trade Contractor performance on the jobsite.

Murray Womble, Inc.  
Trade Contractor Name

  
\_\_\_\_\_  
Signature of Trade Contractor Representative  
Jeff Naber, President

March 25, 2019  
\_\_\_\_\_  
Date

Return this signed form with your executed Trade.

## **DRAWINGS, SPECIFICATIONS & ADDENDA**

**Specifications:**           Tulsa County Administration Building  
                                  20180005  
                                  Project Manual  
                                  Volume 1 & 2  
                                  12/20/2018

**Addenda:**               Addendum #1 Dated 01/09/2019  
                                  Addendum #2 Dated 01/17/2019  
                                  Addendum #3 Dated 01/23/2019  
                                  Addendum #4 Dated 02/06/2019

                                  CM Clarification #1 Dated 01/14/2019  
                                  CM Clarification #3 Dated 01/28/2019  
                                  CM Clarification #4 Dated 02/11/2019

**Drawings:**               As listed in Sheet Index on Sheet CS1 Cover Sheet  
                                  Tulsa County Administration Building  
                                  GH2 Architects  
                                  Project #20180005  
                                  12/20/2018 Construction Documents

## **SCHEDULE OF WORK**

THE CONSTRUCTION SCHEDULE WILL BE MAINTAINED AT THE PROJECT SITE AND WILL BE UPDATED AS WORK PROGRESSES. TRADE CONTRACTOR WILL GIVE INPUT REGARDING THE SCHEDULE AT REGULARLY SCHEDULED PROGRESS MEETINGS. TRADE CONTRACTOR SHALL FOLLOW THE MOST CURRENT VERSION OF THE SCHEDULE MAINTAINED BY CM AND PERFORM THE SUBCONTRACT WORK ACCORDING TO THAT SCHEDULE.



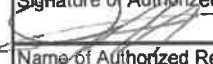
## CERTIFICATION OF NON-SEGREGATED FACILITIES

By the submission of this bid, the bidder, offeror, applicant, or subcontractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control where segregated facilities are maintained. The bidder, offeror, applicant or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color or national origin, because of habit, local custom or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors or specific time period) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provision of Equal Opportunity clause; that he will retain such certifications in his files; and that he will forward the following notice to such subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

### Notice to Prospective Subcontractors of Requirements for Certifications of Nonsegregated Facilities.

Notification of Nonsegregated Facilities, as required by the May 9, 1967, order on Elimination of Segregated Facilities, by the Secretary of Labor (32 Fed. Reg. 7439, May 19, 1967), must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontractor or for all subcontracts during a period (i.e. quarterly, semiannually, or annually).

Note: The penalty for making false statement in offers is prescribed in 18 U.S.C. 1001.

Firm Company Name
Murray Womble, Inc.
Signature of Authorized Representative

Name of Authorized Representative (Print or Type)
Jeff Naber
Title of Authorized Representative
President

Return this signed form with your executed subcontract.

**Exhibit G**

This exhibit is not applicable as the contract sum is below \$50,000.00.



Tulsa County Board of County Commissioners

Tulsa County Administration Bldg.  
500 South Denver  
Tulsa, Oklahoma 74103-3832  
918.596.5000

STAN SALLEE  
DISTRICT 1  
918.596.5020

KAREN KEITH  
DISTRICT 2  
918.596.5015

RON PETERS  
DISTRICT 3  
918.596.5010

January 2, 2019

Dear Vendor:

The Oklahoma Sales Tax Code, 68 O.S. 1991 Section 1356, exempts from the payment of sales taxes all political subdivision of the State of Oklahoma.

Because each County in this State is a political subdivision of the State (Article 17, Section 1 of the Constitution of Oklahoma: Herndon v. Anderson, 1656 Okla. 104, 25P2d 326), Tulsa County is exempt from all sales tax.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karen Keith".

Karen Keith, Chairman  
Tulsa County Board of County Commissioners

KK:sl

Approved:

A handwritten signature in cursive script, appearing to read "Douglas A. Wilson".

Douglas Wilson  
Chief of the Civil Division

Note: Tulsa County's Federal Identification Tax Number 73-6006419



# Oklahoma Tax Commission

[www.tax.ok.gov](http://www.tax.ok.gov)

Date Issued: March 21, 2014

Letter ID: L0891154944

Taxpayer ID: \*\*-\*\*\*6419



TULSA COUNTY  
500 S DENVER AVE STE 120  
TULSA OK 74103-3832

AMY

## Oklahoma Sales Tax Exemption Permit Oklahoma State Government

**Non-Transferable**

68 Oklahoma Statutes 2002 Supp., Section 1356(1) Sales of tangible personal property or services to the United States Government or to the State of Oklahoma, any political subdivision of this state or any agency of a political subdivision of this state are hereby exempted from the tax levied by this article.

**Permit Number**

EXM-10028212-06

Business Location	Industry Code	City Code	Permit Effective	Permit Expires
TULSA COUNTY BOARD OF COUNTY COMMISSIONERS 5051 S 129TH EAST AVE TULSA OK 74134-7004	921190	7281	February 10, 2006	NON-EXPIRING

Thomas Kemp Jr., Chairman  
Jerry Johnson, Vice-Chairman  
Dawn Cash, Secretary-Member

