

**CONTRACT BETWEEN OWNER AND CONTRACTOR  
FOR A STIPULATED SUM**

This **CONTRACT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**BETWEEN** the Owner: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, OK \_\_\_\_\_

and the Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, OK \_\_\_\_\_  
Phone: \_\_\_\_\_; Fax \_\_\_\_\_

For the following Project: \_\_\_\_\_  
\_\_\_\_\_

**ARTICLE I  
CONTRACT SUM**

Subject to Additions and Deductions in accordance with Article 4 of the General Conditions, the Stipulated Sum shall be \$\_\_\_\_\_.\_\_ ( \_\_\_\_\_ Dollars and \_\_/100).

For purposes of payment, the contract sum includes the following values related to portions of work:

Portions of Work	Value
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The contract sum is based upon the following contract drawings, documents, and alternates:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The contract sum shall include all items and services necessary for the proper execution and completion of work.

**ARTICLE 2  
DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

The Contractor shall achieve Substantial Completion of the entire Project no later than \_\_\_\_\_ (\_\_0) calendar days from the date of commencement specified in the Notice to Proceed issued by the Church/Ceremonial Ground Construction Project Leader. Failure to complete all work in full and in a timely manner shall be a breach of this Contract.

**ARTICLE 3**  
**SIGNATURE EXECUTION OF CONTRACT**

All terms of this Contract shall be executed, enforced and carried out by the Church/Ceremonial Ground Construction Project Leader and the onsite supervisor of Contractor. Issues arising that are not covered by the Contract Documents will be governed by the standard practices common in the United States. This contract is governed by the laws and courts of the Muscogee (Creek) Nation. The contract may be amended or modified by a written modification only in accordance with Article 4 of the General Conditions.

\_\_\_\_\_ Church/Ceremonial Ground

\_\_\_\_\_ Enterprise

\_\_\_\_\_  
\_\_\_\_\_ Representative

\_\_\_\_\_  
\_\_\_\_\_ Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

# **GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION**

## **ARTICLE 1 GENERAL PROVISIONS**

### **1.1 THE CONTRACT**

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification.

### **1.2 The Contract Documents consist of:**

1. The Contract signed by the Owner (Church/Ceremonial Ground) and Contractor dated \_\_\_\_\_, 20\_\_;
2. General Conditions of the Contract for Construction;
3. Plans and Specifications, if any; and,
4. Contractor's submitted bid dated \_\_\_\_\_, 20\_\_.

### **1.3 THE PROJECT**

The term "Project" means the labor, materials, and services required by the Contract Documents, and includes all other labor, materials, equipment and services provided by the Contractor to fulfill the Contractor's obligations. Contractor shall, in a good and first class workmanlike manner, furnish all labor, materials, tools and equipment required to perform and complete the Project in strict accordance with the Contract Documents, all of which are made a part of this Contract as if the same were herein set out at length.

### **1.4 INTENT**

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Project by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

## **ARTICLE 2 OWNER**

### **2.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall obtain and pay for other necessary approvals, easements, assessments and charges.

### **2.2 OWNER'S RIGHT TO STOP THE PROJECT**

If the Contractor fails to correct its nonconforming work on the Project within 10 days of written notice to Contractor, or such other time period agreed to in writing by Owner and Contractor, the Owner may direct the Contractor in writing to stop the Project until the correction is made.

### **2.3 OWNER'S RIGHT TO CARRY OUT THE PROJECT**

If the Contractor defaults or neglects to carry out the Project in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from the Owner to correct such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, correct such deficiencies. In such case, a change order shall be issued deducting the cost of correction from payments due the Contractor.

- 2.4 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS
- 2.4.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project.
- 2.4.2 The Contractor shall coordinate and cooperate with separate contractors of the Owner.
- 2.4.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

### **ARTICLE 3 CONTRACTOR**

- 3.1 EXECUTION OF THE CONTRACT  
Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Project is to be performed and correlated personal observations with requirements of the Contract Documents.
- 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR  
The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall: (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies or omissions discovered to the Owner.
- 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES  
The Contractor shall supervise and direct the Project, using the Contractor's best skill and attention. The Contractor shall be responsible for and have control over, subject to oversight by the Owner's Construction Project Leader, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Project.
- 3.4 LABOR AND MATERIALS
- 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation and other facilities and services necessary for proper execution and completion of the Project.
- 3.4.2 The Contractor shall deliver, handle, store and install materials in accordance with manufacturers' instructions.
- 3.5 WARRANTY  
The Contractor warrants to the Owner that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the project will be free from defects not inherent in the quality required or permitted; (3) the project will conform to the requirements of the Contract Documents; and (4) Contractor shall warrant the work for a 1-year period commencing from the date of substantial completion.
- 3.6 TAXES  
The Contractor shall pay sales, consumer, use and similar taxes that are legally required when due unless the owner exercised their right of tax exemption.

3.7 PERMITS, FEES AND NOTICES

The Contractor shall perform such functions necessary, including the payment of the permit and other fees, licenses and inspection, to secure those federal, state or local licenses and permits for the design, construction, equipping and opening of the Project, which are either: (a) required by law or (b) deemed by the Owner to serve the best interests of the project even if not legally applicable to the project. The Contractor shall cause to be prepared all documents related to such licenses and permits, and shall provide such documents to the Owner for review and approval. Upon approval by the Owner, the Owner shall execute all such documents required to secure said permits and licenses; provided that such documents shall include a disclaimer stating that the Owner does not acknowledge the regulatory authority of the federal, state or local governments over the design construction, equipping and opening of the Project and that the Owner is submitting said documents on a purely voluntary basis. If the Contractor performs the Project in a manner known by Contractor to be contrary to the applicable laws, statutes, ordinances, building codes, including those codes deemed by the Owner to serve the best interests of the Project, and rules and regulations, the Contractor shall assume appropriate responsibility for such Project and shall bear the costs attributable to correction.

3.8 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the contract documents and the Owner.

3.9 CUTTING AND PATCHING

The Contractor shall be responsible for cutting, fitting or patching required to completing the project or to make its parts fit together properly.

3.10 CLEANING UP

The Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Project.

3.11 INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performances of the Project, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the project itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

**ARTICLE 4  
CHANGES IN THE PROJECT**

4.1 After execution of the Contract, changes in the project may be accomplished by change order or by order for a minor change in the Project. The Owner, without invalidating the Contract, may order changes in the project within the general scope of the Contract consisting of additions,

deletions or other revisions, the price and contract time being adjusted accordingly; provided that a modification of price shall not occur unless additional funds are available through an approved budget or by appropriation by the National Council.

- 4.2 A change order shall be a written order to the Contractor signed by the Owner to change the Project, Price or Contract Time.
- 4.3 The Owner will have authority to order minor changes in the Project not involving changes in the Price or the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be written orders and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.
- 4.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Price and Contract time shall be subject to equitable adjustment.

## **ARTICLE 5 TIME**

- 5.1 The date of commencement and time to complete shall be the date specified in the Notice to Proceed issued by the Church/Ceremonial Ground Construction Project Leader. Failure to complete all work in full and in a timely manner shall be a breach of this Contract.
- 5.2 If the Contractor is delayed at any time in progress of the Project by changes ordered in the Project, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, the contract time shall be extended by change order for such reasonable time as the Owner may determine.
- 5.3 Liquidated Damages.
  - 5.3.1 If the Contractor fails to complete the Project within the time specified in the contract, or any extension, the Contractor shall pay to the Owner as liquidated damages, the sum of \$250.00 for each day of delay. If different completion dates are specified in the contract for separate parts or stages of the project, the amount of liquidated damages shall be assessed on those parts or stages which are delayed. To the extent that the Contractor's delay or nonperformance is excused under another clause in this contract, liquidated damages shall not be due the Owner. The Contractor remains liable for damages caused other than by delay.
  - 5.3.2 If the Owner terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the Project together with any increased costs occasioned the Owner in completing the Project.
  - 5.3.3 If the Owner does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the Project is completed or accepted.

## **ARTICLE 6**

## **PAYMENTS AND COMPLETION**

### **6.1 PRICE**

The price stated in the Agreement, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Project under the Contract Documents, subject only to written agreed change order.

### **6.2 APPLICATIONS FOR PAYMENT**

6.2.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Owner an itemized application for payment for operations completed in accordance with the values stated in the agreement. Such application shall be supported by such data substantiating the Contractor's right to payment as the Owner may reasonably require and reflecting retainage as provided in 6.4.

6.2.2 The Contractor warrants that title to all of the Project covered by a final application for payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an application for payment, all work for which certificates for payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

### **6.3 PROGRESS PAYMENTS**

6.3.1 After the Contractor has issued a certificate for payment, the Owner shall make payment in the manner provided in the Contract Documents.

6.3.2 The Contractor shall promptly pay each Subcontractor and material supplier, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such entities' portion of the Project.

6.3.3 The Owner shall not have responsibility for the payment of money to a Subcontractor or material supplier.

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

6.3.5 The Contractor shall provide a lien release waiver for each portion of worked performed under the certificate for payment prior to Owner making such payment.

### **6.4 RETAINAGE**

The Owner shall withhold retainage in the amount of five percent (5%) of each invoice. Owner shall return the retainage to the Contractor two (2) months after substantial completion has been achieved and Project has been accepted by the Owner.

### **6.5 SUBSTANTIAL COMPLETION**

Substantial Completion is the state in the progress of the Project when the work or designated

portion thereof is sufficiently complete in accordance with the contract documents so the Owner can occupy or utilize the project for its intended use.

6.6 FINAL COMPLETION AND FINAL PAYMENT

6.6.1 Upon receipt of a final application for payment, the Owner will inspect the Project. When the Owner finds the Project acceptable and the Contract fully performed, the Owner will promptly issue a final payment.

6.6.2 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final application for payment.

**ARTICLE 7**

**PROTECTION OF PERSONS AND PROPERTY**

7.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating and maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The Contractor shall promptly remedy damage and loss to property, existing and new, caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

7.2 INSURANCE

7.2.1 The Contractor shall provide Contractor's general liability and other insurance as follows, unless otherwise stated in the Contract, The Contractor shall maintain at least \$500,000.00 Workers Compensation Liability, \$5,000,000.00 Commercial Liability, \$7,000,000.00 Product and General Aggregate, and \$3,000,000.00 Business Liability. Builder's Risk insurance will also be required prior to commencement of project.

7.2.2 Certificates of insurance shall be provided by Contractor showing coverage prior to commencement of the work.

7.3 BONDING DOCUMENTS

7.3.1 For a contract in excess of \$50,000.00, the Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. The Contractor shall provide a Performance Bond equal to 100% of contract sum, Payment Bond equal to 100% of contract sum, and Bid Bond equal to 5% of project sum. A Maintenance Bond is also required.

7.3.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

**ARTICLE 8**

**CORRECTION OF PROJECT**



- 8.1 The Contractor shall promptly correct work rejected by the Owner that fails to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected work.
- 8.2 In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after Substantial Completion, correct any work not conforming to the requirements of the Contract Documents.
- 8.3 If the Contractor fails to correct nonconforming work within 10 days after written notice to Contractor, or such other time period as agreed to in writing by Owner and Contractor, the Owner may correct it and the Contractor shall reimburse the Owner for the cost of the correction.

## **ARTICLE 9 MISCELLANEOUS PROVISIONS**

### 9.1 ASSIGNMENT OF CONTRACT

Neither party to the Contract shall assign the Contract without written consent of the other.

### 9.2 TESTS AND INSPECTIONS

9.2.1 Tests, inspections and approvals of portions of the Project required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time.

9.2.2 If the Owner requires additional testing, the Contractor shall perform these tests.

9.2.3 The Owner shall pay for tests except for testing materials or workmanship found to be defective for which the Contractor shall pay.

### 9.3 GOVERNING LAW

This contract shall be governed by and construed in accordance with the laws of the Muscogee (Creek) Nation. The Nation has adopted the International Building Codes.

### 9.4 NOTICE

Any written notice given by one party to the other required by or related to this Agreement shall be deemed given on the date of delivery if hand-delivered or on the date sent or transmitted if sent by electronic or facsimile transmission, but deemed given on the date of receipt if delivered by regular mail or overnight courier to the address listed on the execution page of this Contract.

## **ARTICLE 10 TERMINATION OF CONTRACT**

### 10.1 TERMINATION BY CONTRACTOR

If the Owner fails to make payment when due or substantially breaches any other obligation of this Contract, following seven days written notice to the Owner, the Contractor may terminate the Contract and recover from the Owner payment for project executed and for proven loss

with respect to materials, equipment, tools, construction equipment and machinery, including reasonable overhead, profit and damages.

10.2 TERMINATION BY OWNER

10.2.1 The Owner may terminate the Contract if the Contractor:

1. persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
2. persistently does unsatisfactory work or uses sub-standard materials;
3. fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
4. persistently disregards laws, ordinances, rules, regulations or orders of a public authority having jurisdiction;
5. falls behind on schedule and cannot show ability to finish on schedule; or
6. is otherwise guilty of substantial breach of a provision of the Contracts Documents.

10.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, ten days written notice, terminate the Contract and may:

1. take possession of the site and all materials thereon owned by the Contractor;
2. finish the project by whatever reasonable method the Owner may deem expedient.

10.2.3 If the Contractor cures the deficiencies within the ten day notice period or additional time by agreement, then the contract may not be terminated.

10.2.4 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 10.2.1., the Contractor shall not be entitled to receive further payment until the project is finished.

10.2.5 If the unpaid balance of the price exceeds costs of finishing the project, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

Contractor Company: \_\_\_\_\_

Contractor Signature: \_\_\_\_\_ Date: \_\_\_\_\_