

Standard Agreement between Owner & Construction Manager at Risk

AGREEMENT made as of the **6th** day of **January** in the year **2023**
(*In words, indicate day, month and year.*)

BETWEEN the Owner:
(*Name, legal status, address and other information*)

Mid America Technology Center
27438 OK-59
Wayne, OK, 73095

and the Contractor:
(*Name, legal status, address and other information*)

Goldsby Construction, L.L.C.
834 W Interstate Dr
Norman, OK 73072

for the following Project:
(*Name, location and detailed description*)

Administration Building Renovation
27438 OK-59
Wayne, OK, 73095

The Architect:
Design Architects Plus, Inc.
1501 S.W. 104th.
Oklahoma City, OK 73159

The Owner and Contractor agree as follows.

TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION DATE
3	CONTRACT SUM
4	PAYMENT
5	INSURANCE
6	GENERAL PROVISIONS
7	OWNER
8	CONTRACTOR
9	ARCHITECT
10	CHANGES IN THE WORK
11	TIME
12	PAYMENTS AND COMPLETION
13	PROTECTION OF PERSONS AND PROPERTY
14	CORRECTION OF WORK
15	MISCELLANEOUS PROVISIONS
16	TERMINATION OF THE CONTRACT
17	OTHER TERMS AND CONDITIONS

ARTICLE 1 THE CONTRACT DOCUMENTS

§ 1.1 The Construction Manager shall complete the Work described in the Contract Documents for the Project. The Contract Documents consist of

- .1 this Agreement signed by the Owner and Contractor;
- .2 the drawings and specifications prepared by the Architect identified as an exhibit in the Guaranteed Maximum Amendment.
- .3 written orders for changes in the Work issued after execution of this Agreement: and
- .4 Preconstruction in the amount of \$7,500 in the event Goldsby Construction does not perform the building construction for this project.
- .5 Exhibits to be delivered with each Project’s Guaranteed Maximum Price Amendment
 - Exhibit A – Guaranteed Maximum Price Break Down and Subcontractor & Supplier Recommendation
 - Exhibit B – Specification Log (if Applicable)
 - Exhibit C – Drawing Log
 - Exhibit D – Clarifications & Qualifications (if Required)

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The number of calendar days available to the Construction Manager to substantially complete the Work is the Contract Time. The date of commencement of the Work shall be the date of this Agreement unless otherwise indicated below. The Construction Manager shall substantially complete the Work, no later than << >> (<< >>) calendar days from the date of commencement, subject to adjustment as provided in Article 10 and Article 11. *(Insert the date of commencement, if it differs from the date of this Agreement.)*

The Substantial Completion Date will be identified in the Guaranteed Maximum Price Amendments

ARTICLE 3 CONTRACT SUM

§ 3.1 Subject to additions and deductions in accordance with Article 10, the Contract Sum shall be for the preconstruction Services and Design only. The Final Cost of Construction will be identified in the Guaranteed Maximum Price Amendment

The pricing will be submitted in the Guaranteed Maximum Price Amendments for each project. 6.0% Fee on all costs, insurances, permits, General conditions. Owner agrees to pay Construction Manager \$7,500 for preconstruction fees if Goldsby Construction does not do the construction for this project.

§ 3.2 For purposes of payment, the Contract Sum includes the following values related to portions of the Work: *(Itemize the Contract Sum among the major portions of the Work.)*

Portion of Work	Value
	\$
	\$
	\$
	\$
	\$

ARTICLE 4 PAYMENT

§ 4.1 Based on Construction Manager’s Applications for Payment the Owner shall pay the Contractor, in accordance with Article 12, as follows:

(Insert below timing for payments and provisions for withholding retainage, if any.)

§ 4.2 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate below, or in the absence thereof, at the legal rate prevailing at the place of the Project.

ARTICLE 5 INSURANCE

§ 5.1 The Owner shall provide property insurance and any deductibles to cover the value of the Owner's property, including any Work provided under this Agreement. The Construction Manager is entitled to receive an increase in the Contract Sum equal to the insurance proceeds related to a loss for damage to the Work covered by the Owner's property insurance.

Construction Manager shall provide General Liability and Workers Compensation insurance. The Construction Manager is not required to provide bonding.

§ 5.2 Unless specifically precluded by the Owner's property insurance policy, the Owner and Construction Manager waive all rights against (1) each other and any of their subcontractors, suppliers, agents and employees, each of the other; and (2) the Architect, Architect's consultants and any of their agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance or other insurance applicable to the Work.

ARTICLE 6 GENERAL PROVISIONS

§ 6.1 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 in accordance with Article 10.

§ 6.2 THE WORK

The term "Work" means the construction and services required by the Contract Documents, and includes all other labor, materials, equipment and services provided, or to be provided, by the Contractor to fulfill the Construction Manager's obligations.

§ 6.3 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

Documents prepared by the Architect are instruments of the Architect's service for use solely with respect to this Project. The Architect shall retain all common law, statutory and other reserved rights, including the copyright. The Contractor, subcontractors, sub-subcontractors, and material or equipment suppliers are authorized to use and reproduce the instruments of service solely and exclusively for execution of the Work. The instruments of service may not be used for other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Architect.

ARTICLE 7 OWNER

§ 7.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 7.1.1 If requested by the Construction Manager, the Owner shall furnish all necessary surveys and a legal description of the site.

§ 7.1.2 The Owner shall obtain and pay for other necessary approvals, easements, assessments and charges.

§ 7.2 OWNER'S RIGHT TO STOP THE WORK

If the Construction Manager fails to correct Work which is not in accordance with the Contract Documents, the Owner may direct the Construction Manager in writing to stop the Work until the correction is made.

§ 7.3 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Construction Manager defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, correct such deficiencies. In such case, the Contract Sum shall be adjusted to deduct the cost of correction from payments due the Construction Manager.

§ 7.4 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 7.4.1 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.

§ 7.4.2 The Construction Manager shall coordinate and cooperate with the Owner's own forces and separate contractors employed by the Owner.

§ 7.4.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

ARTICLE 8 CONSTRUCTION MANAGER

§ 8.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONSTRUCTION MANAGER

§ 8.1.1 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 Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 8.1.2 The Construction Manager 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 known errors, inconsistencies or omissions discovered to the Architect. 4) Construction Manager is not liable for any design errors or omissions.

§ 8.2 CONSTRUCTION MANAGERS CONSTRUCTION SCHEDULE

The Construction Manager, promptly after Owner executes the Guaranteed Maximum Price Amendment, shall prepare and submit for the Owner's information a Construction Manager's construction schedule for the Work.

§ 8.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 8.3.1 The Construction Manger shall supervise and direct the Work, using the Construction Manager's best skill and attention. The Construction Manager shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work.

§ 8.3.2 If requested, the Construction Manager shall furnish in writing to the Owner the names of the lowest responsible subcontractors or suppliers for each portion of the Work in accordance with the Competitive bidding act of 1974. The Construction Manager shall not contract with any subcontractor or supplier to whom the Owner has made a timely and reasonable objection.

§ 8.4 LABOR AND MATERIALS

§ 8.4.1 Unless otherwise provided in the Contract Documents, the Construction Manager shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

§ 8.4.2 The Construction Manager shall enforce strict discipline and good order among the Construction Manager's employees and other persons carrying out the Contract Work. The Construction Manager shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ 8.5 WARRANTY

The Construction Manager 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 Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents.

§ 8.6 TAXES

This Project is Tax exempt

§ 8.7 PERMITS, FEES AND NOTICES

§ 8.7.1 The Construction Manager or his subcontractors are required to provide a building permit, other permits, governmental fees, licenses and inspections.

§ 8.8 SUBMITTALS

The Construction Manager shall promptly review, approve in writing Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

§ 8.9 USE OF SITE

The Construction Manager shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents and the Owner.

§ 8.10 CUTTING AND PATCHING

The Construction Manager shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ 8.11 CLEANING UP

The Construction Manager shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work. At the completion of the Work, the Construction Manager shall remove its tools, construction equipment, machinery and surplus material; and shall properly dispose of waste materials.

§ 8.12 INDEMNIFICATION

To the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, 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 Work itself), but only to the extent caused by the negligent acts or omissions of the Construction Manager, 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 9 ARCHITECT

§ 9.1 The Architect and their consultants employed by the Owner to provide drawings, specifications and other documents required by the Construction Manager to complete the work.

§ 9.2 The Architect will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Construction Manager's responsibility. The Architect will not be responsible for the Construction Manager's failure to carry out the Work in accordance with the Contract Documents.

§ 9.3 The Architect's duties, responsibilities and limits of authority as described in the Contract Documents shall not be changed without written consent of the Owner.

ARTICLE 10 CHANGES IN THE WORK

§ 10.1 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly in writing. If the Owner and Construction Manager cannot agree to a change in the Contract Sum, the Owner shall pay the Construction Manager its actual cost plus reasonable overhead and profit.

§ 10.2 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 Contract Sum and Contract Time shall be subject to equitable adjustment.

ARTICLE 11 TIME

§ 11.1 Time limits stated in the Contract Documents are of the essence of the Contract.

§ 11.2 If the Construction Manager is delayed at any time in progress of the Work by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, weather, unavoidable casualties or other causes beyond the Contractor's control, the Contract Time shall be subject to equitable adjustment.

ARTICLE 12 PAYMENTS AND COMPLETION

§ 12.1 CONTRACT SUM

The Contract Sum stated in the Agreement, including authorized adjustments, is the total amount payable by the Owner to the Construction Manager for performance of the Work under the Contract Documents.

§ 12.2 APPLICATIONS FOR PAYMENT

§ 12.2.1 The Construction Manager shall submit to the Owner an itemized Application for Payment for Work completed in accordance with the values stated in the Agreement. Such Application shall be supported by data substantiating the Construction Manager's right to payment as the Owner may reasonably require. Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 12.2.2 The Construction manager warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Construction Manager 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 Construction Manager's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

§ 12.3 PROGRESS PAYMENTS

§ 12.3.1 After the Construction Manager has issued a Certificate for Payment, the Owner shall make payment within 30 days of receipt of pay application.

§ 12.3.2 The Construction Manager shall promptly pay each subcontractor and supplier, upon receipt of payment from the Owner, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders.

§ 12.3.3 The Owner shall not have responsibility for payments to the Construction Manager's subcontractor or supplier.

§ 12.3.4 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 Work not in accordance with the requirements of the Contract Documents.

§ 12.3.5 Retention of Five Percent (5%) shall be held on progress payments and shall be reduced to Two and one half Percent (2.5%) at Fifty Percent (50%) completion for each project.

§ 12.4 SUBSTANTIAL COMPLETION

§ 12.4.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

§ 12.4.2 When the Work or designated portion thereof is substantially complete, the Owner and Construction Manager will make an inspection to determine whether the Work is substantially complete. When the Owner and Construction Manager determines that the Work is substantially complete the Construction Manager shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish the responsibilities of the Owner and Construction Manager, and shall fix the time within which the Construction Manager shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 12.5 FINAL COMPLETION AND FINAL PAYMENT

§ 12.5.1 Upon receipt of a final Application for Payment, the Owner will inspect the Work. When the Owner finds the Work acceptable and the Contract fully performed, the Owner will promptly issue a final Certificate for Payment.

§ 12.5.2 Final payment shall not become due until the Construction Manager submits to the Owner releases and waivers of liens, if requested and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Contract.

§ 12.5.3 Acceptance of final payment by the Construction Manager, 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 13 PROTECTION OF PERSONS AND PROPERTY

The Construction Manager shall be responsible for initiating, maintaining and supervising all safety precautions and programs for any work self-performed by the Construction Manager., including all those required by law in connection with performance of the Contract. The Construction Manager shall take reasonable precautions to prevent damage, injury or loss to employees on the Work, the Work and materials and equipment to be incorporated therein, and other property at the site or adjacent thereto. The Construction Manager shall promptly remedy damage and loss to property caused in whole or in part by the Construction Manager, or by anyone for whose acts the Construction Manager may be liable.

ARTICLE 14 CORRECTION OF WORK

§ 14.1 The Construction Manager shall promptly correct Work reasonable rejected by the Owner as failing to conform to the requirements of the Contract Documents. The Construction Manger shall bear the cost of correcting such rejected Work, including the costs of uncovering, replacement and additional testing.

§ 14.2 In addition to the Construction Manager's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.

§ 14.3 If the Construction Manager fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 7.3.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 ASSIGNMENT OF CONTRACT

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

§ 15.2 TESTS AND INSPECTIONS

§ 15.2.1 At the appropriate times, the Construction Manager shall arrange, and the Owner shall bear cost of tests, inspections and approvals of portions of the Work required by the Contract Documents.

§ 15.2.2 If the Owner requires additional testing, the Construction Manager shall perform those tests and the Owner shall reimburse the Contractor for such testing.

§ 15.2.3 The Owner shall bear cost of tests or reimburse the Construction Manager for inspections or approvals that do not become requirements until after the Contract is executed.

§ 15.3 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

ARTICLE 16 TERMINATION OF THE CONTRACT

§ 16.1 TERMINATION BY THE CONTRACTOR

If the Owner fails to make payment as provided in Section 12.4.1 for a period of 30 days, the Construction Manager may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed including reasonable overhead and profit, and costs incurred by reason of such termination.

§ 16.2 TERMINATION BY THE OWNER FOR CAUSE

§ 16.2.1 The Owner may terminate the Contract if the Construction Manager

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

- .2 fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Construction Manager and the subcontractors;
- .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4 is otherwise guilty of substantial breach of a provision of the Contract Documents.

§ 16.2.2 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 Construction Manager and the Contractor's surety, if any, seven days' written notice, terminate employment of the Construction Manager and may

- .1 take possession of the site and of all materials thereon owned by the Construction Manager, and
- .2 finish the Work by whatever reasonable method the Owner may deem expedient.

§ 16.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 16.2.1, the Construction Manager shall not be entitled to receive further payment until the Work is finished.

§ 16.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Construction Manager. 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.

§ 16.3 TERMINATION BY THE OWNER FOR CONVENIENCE

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Construction Manager shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 17 OTHER TERMS AND CONDITIONS

(Insert any other terms or conditions below.)

Mid-America Technology Center

OWNER *(Signature)*

(Printed name and Title)

Goldsby Construction, L.L.C.

CONTRACTOR *(Signature)*

Chris Goldsby, CEO/President

(Printed name and Title)