

Oklahoma City Arena

Construction Management At Risk Services Agreement

Among

**The City of Oklahoma City,
The Oklahoma City Public Property
Authority**

and

**Flintco, LLC/M. A. Mortenson
Company, an OKC NBA Joint Venture**

Project AE-0002

OKLAHOMA CITY ARENA CONSTRUCTION MANAGEMENT AT RISK SERVICES AGREEMENT

This Oklahoma City Arena Construction Management At Risk Services Agreement (this “**Agreement**”) is entered into as of the “**Effective Date**” set forth herein by and among The City of Oklahoma City, a municipal corporation (herein also referred to as “**Oklahoma City**”), the Oklahoma City Public Property Authority, an Oklahoma City beneficiary trust (herein also referred to as “**OCPPA**” and together with Oklahoma City, collectively, “**Owner**”), and Flintco/Mortenson, an OKC NBA Arena Joint Venture (“**Construction Manager**”) formed by Flintco, LLC, an Oklahoma limited liability company (“**Flintco**”) and M. A. Mortenson Company, a Minnesota corporation (“**Mortenson**”).

RECITALS

- A. The OCPPA is a public trust of which Oklahoma City is the sole beneficiary. Oklahoma City is planning the design, development, permitting and construction of the new arena and associated facilities and amenities in downtown Oklahoma City, Oklahoma (the “**Arena**”) to serve as the home arena of the NBA’s Oklahoma City Thunder and host other professional and amateur sports, entertainment and cultural events (collectively, the “**Project**”).
- B. The City and PBC Sports & Entertainment, LLC (the “**Thunder**”) have entered into a development agreement pursuant to which the City and Thunder have agreed to contribute funds that will be used to design, permit, construct and develop the Project and to agree on governance and the process for decision-making in respect of the Project, including from time to time giving instructions and directions to the Construction Manager, through a development committee (the “**Development Committee**”), on the terms and conditions set out therein.
- C. Owner desires to retain Construction Manager to provide certain preconstruction services for the Project, which services are more particularly described in the attached Exhibit A (the “**Services**”), and Construction Manager is willing and able to perform said Services for the Project as an independent contractor on terms set forth more fully below in this Agreement.
- D. Construction Manager and its officers and employees constitute an organization of professional personnel who are experienced and fully qualified to perform the Services.
- E. Owner has engaged ICON Venue Group, LLC, d/b/a CAA ICON (“**CAA ICON**” or the “**Owner’s Representative**”) to act as the Owner’s representative for the Project to be responsible to Owner.
- F. Owner has engaged an architecture and engineering firm as the architect of record (TVS) and lead design consultant (Manica) (collectively, the “**Architect**”).
- G. Owner also intends to engage Construction Manager to act as at-risk construction manager for the Project (the “**At-Risk Construction Manager**”) at which point, if Owner and Construction Manager so negotiate and agree, this Agreement will be amended and become a part of the Agreement for At-Risk Contractor Management Services between the Owner and At-Risk Construction Manager for delivery of the Project.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Services Construction Manager shall perform the Services upon the terms and conditions set forth herein (and as further outlined in Exhibit A, incorporated herein) for the Fee set forth in Section 2 below.

2. Compensation Owner shall pay to Construction Manager, as total compensation for the performance by Construction Manager of the Services including any expenses, for the fixed fee, of \$2,275,000, (collectively, the “**Fee**”) through the establishment of a control estimate . The Fee will be paid as a lump sum of \$175,000 per month for 13 months, starting in March of 2025. Construction Manager shall not be entitled to any additional payment or compensation for the Services, including but not limited to fees and expenses payable by Construction Manager to Subconsultants for Services provided on behalf of Construction Manager. The Fee shall be inclusive of all applicable taxes, and paid in accordance with Section 11 below.

3. Term Construction Manager shall promptly commence performance of the Services on the Effective Date and shall diligently and continuously proceed to perform the Services to completion in accordance with the Schedule attached as Exhibit D as their primary assignment, unless this Agreement is earlier terminated in accordance with Section 14 below or amended in accordance with Section 36 below (the “**Term**”). The Effective Date shall be upon approval and execution by the last party hereto.

4. Personnel Commitment Construction Manager’s authorized representatives for the Project shall be Kevin Dalager and Kirk Mammen (“**Authorized Representatives**”). Decisions, act and omissions of the Authorized Representative shall be binding on the Construction Manager. In addition, Construction Manager is also assigning the below key personnel (“**Key Personnel**”) in order to provide the Services. Construction Manager shall also utilize their Key Personnel in their proposed role until the Project is completed.

Name	Title	Compensation
Dave Kollmann	President Flintco	\$200,000
Logan Gerken	VP/GM Mortenson	\$200,000
Kirk Mammen	Principal in Charge	\$200,000
Kevin Dalager	VP Operations	\$200,000
Dan Wacker	Director of Preconstruction	\$200,000
Josh Patterson	Project Director	\$200,000
Trevor Delong	General Superintendent (FOM)	\$200,000
Tom Clark	Design Phase Executive and Project Executive	\$100,000
Scott King	Sports Chief Estimator	\$100,000
Bobby Byrd	Chief Estimator	\$100,000
Sean Brummer	Lead Project Superintendent	\$100,000
Ashley Wise	Superintendent	\$100,000

Construction Manager acknowledges that the Development Committee wants to ensure that the Key Personnel are readily available to provide the Services for the Project as outlined in this Agreement regardless of Construction Manager's current or prospective work on any other project. The availability of Key Personnel to provide the Services hereunder for the Project is a material term of this Agreement. The Key Personnel may not be changed without the prior written approval of Development Committee and Construction Manager's payment to OCPPA of the applicable compensation as set forth above; provided, however, that Construction Manager's obligation to provide each member of the Key Personnel to provide the Services hereunder for the Project is only subject to the unavailability of such Key Personnel due to serious illness, or an extraordinary personal or family development or event (*e.g.*, serious spouse, child, or parent illness, etc.), or the termination of such Key Personnel's employment with Construction Manager. If a member of the Key Personnel should be unavailable or their role be diminished, Construction Manager must immediately provide a fully qualified, available and committed replacement reasonably acceptable to the Development Committee. In addition to the foregoing, to the extent Construction Manager is unable to provide a full qualified, available and committed replacement reasonably acceptable to the Development Committee within thirty (30) calendar days, Construction Manager shall compensate OCPPA in the above identified sums for each individual listed as Key Personnel above if the Construction Manager does not maintain the continuous, material involvement of each individual as Key Personnel above on the Project as reasonably determined by the Development Committee. Provided, however, if at any time Construction Manager is required, for any reason, to procure or assign a fully qualified, available and committed replacement reasonably acceptable to the Development Committee, Construction Manager shall not be entitled to additional time or compensation to provide the Services to be performed or to timely provide all Services; and Construction Manager shall be required to timely and fully perform all Services with other Key Personnel or subconsultants at Construction Manager's cost and expense.

5. Standard of Performance; Other Covenants

Notwithstanding anything to the contrary contained in this Agreement, Owner and Construction Manager acknowledge and agree that Owner is entering into this Agreement in reliance on Construction Manager's representations and warranties of its expertise and abilities with respect to performing the Services. Construction Manager also represents and warrants to Owner, and agrees and covenants as follows:

- a. Construction Manager shall timely and fully perform the Services as efficiently, expeditiously and economically as possible consistent with the degree of skill and care and to the professional standards exercised by experienced and qualified professionals, acting diligently, in providing similar services for projects of comparable size, complexity, schedule, nature, and other characteristics of the Project (hereinafter the "**Standard of Care**"). Construction Manager shall use its best efforts to meet the Schedule shown on Exhibit D attached hereto.
- b. Construction Manager shall provide the Services in accordance with the Standard of Care and in compliance with all Applicable Laws (as defined below).
- c. Construction Manager is qualified to provide the Services and has the necessary level of skill, experience, and expertise in projects of the size, complexity, schedule, and nature of this Project to timely and fully perform the Services with the care, skill and diligence consistent with the Standard of Care and otherwise in accordance with the terms of this Agreement and all Applicable Laws. Construction Manager maintains or will obtain, as applicable, as and when necessary, all necessary licenses, permits, or other qualifications necessary to perform same.
- d. Construction Manager's duties as set forth herein shall at no time be in any way diminished or waived by reason of any approval by Development Committee of the Services nor shall

Construction Manager be released from any liability or responsibility by reason of such approval by Development Committee, it being understood that Development Committee at all times is ultimately relying upon Construction Manager's skills and knowledge in performing the Services; *provided, however*, Construction Manager shall be entitled to rely upon the completeness and accuracy of any written information provided to Construction Manager by Development Committee or the Owner's Representative, except to the extent that Construction Manager knows that such information is not complete or accurate, or otherwise contains errors or omissions, or, consistent with the Standard of Care, such incompleteness, inaccuracy, errors or omissions should have been readily observable or known by the Construction Manager in exercising the Standard of Care. Construction Manager shall promptly inform Development Committee in writing of any inaccuracies, incomplete information, or other errors or omissions of which Construction Manager knows or suspects in performing the Services in accordance with the Standard of Care. It is recognized that Construction Manager's review is made in Construction Manager's capacity as a construction manager and not as a licensed design professional.

- e. Construction Manager shall keep fully informed of all Applicable Laws, including but not limited to laws, statutes, codes, ordinances, rules, regulations, judgments, decisions, orders and ordinances relating to the Services, construction or occupancy of the Project, also including but not limited to the Americans with Disabilities Act, any other handicapped access and architectural barriers laws, OSHA, land use, zoning, development, construction, environmental, safety and industrial hygiene laws and regulations promulgated thereunder, including, without limitations, Oklahoma Statutes Title 61 and Oklahoma City's Standard Specifications for the Construction of Public Improvements (collectively, the "**Applicable Laws**") issued by the United States, the State of Oklahoma, Oklahoma City, Oklahoma County (the "**County**"), and every other agency, department, commission, rule-making body, bureau, court, instrumentality, quasi-governmental authority or other political subdivision of government (collectively, the "**Governmental Authorities**"). In the event of any conflict between the provisions of this Agreement, on the one hand, and Applicable Law, on other hand, the provisions of the Applicable Laws shall control. In the event of a change in Applicable Laws after the Effective Date that Construction Manager reasonably believes will materially impact its ability to timely perform the Services or materially increase the costs in performing the Services, Construction Manager shall notify the Development Committee and the Parties agree to discuss such change and the impacts of same in good faith. Construction Manager hereby agrees to provide a certificate from Construction Manager (or Subconsultant, as applicable) that certifies to Owner that Construction Manager (or Subconsultant, as applicable) has completed the Services in compliance with all Applicable Laws, including, without limitation, Oklahoma Statutes Title 61 and Oklahoma City's Standard Specifications for the Construction of Public Improvements. Notwithstanding the foregoing, Construction Manager shall not be responsible for non-compliance with Applicable Laws based on its reliance on written information furnished by the Owner or Owner's design team unless Construction Manager knows, or an experienced construction manager acting in accordance with the Standard of Care, reasonably should have known that such information was contrary to Applicable Laws, and provided further that Construction Manager shall not be responsible for corrections or additions to the Services that are required because the design and/or construction documents provided by Owner or Owner's design team does not comply with Applicable Laws.
- f. Construction Manager shall use commercially reasonable efforts to be informed and aware of any enforceable intellectual property rights, including, without limitation, any patent, license, trademark, or copyright of another, that relate to the Services, and shall not infringe on any such rights.
- g. Construction Manager shall not engage nor employ consultants, contractors, subconsultants or

subcontractors without the prior written approval of Development Committee (collectively, “Subconsultants”; each a “Subconsultant”), which may be withheld in Development Committee’s sole discretion. Construction Manager shall (and shall cause each Subconsultant to) only engage a Subconsultant on the express condition that, and covenants and shall ensure that (i) all of the Services performed by any Subconsultant shall be performed in accordance with the terms and conditions of this Agreement as if all of the terms and conditions of this Agreement were fully set forth in the agreement with such Subconsultant, (ii) such Subconsultant shall not do, cause, suffer or permit to be done any act or thing which would or does (or if done, caused, suffered or permitted by Construction Manager would or does) constitute or cause noncompliance with, or a breach or default under, this Agreement, or be permitted to observe a lesser standard of care in the performance of its obligations to Construction Manager than Construction Manager is obligated to observe under the terms of this Agreement, (iii) Owner shall have no obligation or liability whatsoever to any Subconsultant, including for the payment of any amount due or claimed to be due at any time to or for the benefit of any Subconsultant, (iv) Construction Manager shall be responsible for the acts and omissions of all Subconsultants and all persons directly or indirectly employed by them (none of whom shall be deemed to be an employee, agent or contractor of Owner), and shall not be excused from any of its obligations or liabilities hereunder as a result of any act or omission of any Subconsultant, and (v) upon Development Committee’s request from time to time, Construction Manager shall immediately remove from the Project any Subconsultant as the Development Committee may from time to time deem to be in breach of any of the foregoing or otherwise objectionable.

- h. At the request of the Development Committee, Construction Manager shall organize and attend meetings with Owner and Owner’s design team, Owner’s representatives (including, without limitation, Owner’s Representative), the Thunder, architects, engineers, subcontractors, and/or consultants for the purpose of updating Owner on the status of the Services or any other issues relating to this Agreement. Without limitation of the foregoing, Construction Manager shall keep the Owner, Owner’s Representative and Thunder reasonably informed with respect to the progress of the Services.
- i. Construction Manager shall provide additional services only with prior written authorization by Owner.
- j. Construction Manager shall cooperate with the Development Committee, Owner’s Representative, the Architect, other consultants, contractors, and any subcontractors engaged thereby, and Construction Manager shall coordinate its performance of the Services with those services performed by Owner’s Representative, the Architect, consultants, contractors, and subcontractors. The Construction Manager may communicate with such other parties for the purposes of coordinating and performing the Services in accordance with the construction documents and Applicable Laws. Construction Manager may not communicate with such other parties for the purpose of performing the Services in a manner inconsistent with this Agreement, the construction documents, Applicable Laws, or other written direction of the Owner or Development Committee without the approval of the Owner and Development Committee. The Construction Manager shall keep the Owner, Owner’s Representative and Thunder reasonably informed of its communications with Architect and other parties engaged by Owner for the Project.

6. Construction Manager’s Representations and Warranties

Construction Manager represents and warrants to Owner that:

- a. The Construction Manager has no obligations, commitments, or impediments of any kind that will

conflict with, limit or prevent performance of the Services.

- b. Construction Manager is financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Services and perform all obligations hereunder.
- c. Construction Manager is able to timely and completely furnish the Services within the Project Schedule and milestones and completely perform its obligations hereunder pursuant to the Standard of Care.
- d. Both Flintco and Mortenson are duly organized, validly existing, and in good standing under the laws of the State of Oklahoma, including the registration for, and collection and remitting of Oklahoma taxes, with full power and authority to conduct Construction Manager's business as presently conducted, to execute, deliver, and perform Construction Manager's obligations under this Agreement. By individually executing this Agreement, Flintco and Mortenson agree to be jointly and severally responsible and liable to Owner for their duties and obligations under this Agreement.
- e. Construction Manager has taken all necessary actions to authorize its execution, delivery, and performance of this Agreement. This Agreement constitutes a legal, valid, and binding obligation of Construction Manager, enforceable against Construction Manager in accordance with its terms.
- f. The execution, delivery and performance of this Agreement by Construction Manager does not, and will not, conflict with, or constitute a violation or a breach of, or constitute a default under, or result in the creation or imposition of any lien upon the Project (including the Project site), in whole or in part, by reason of the terms of (i) charter documents of Construction Manager, (ii) any Applicable Laws, or (iii) any agreements to which Construction Manager is a party.
- g. Construction Manager has visited, investigated, and evaluated the Project site and is familiar with the local and special conditions under which the Services and Project construction are to be performed.
- h. Construction Manager possesses the necessary level of experience and expertise in projects of the size, complexity, schedule, nature and other characteristics of this Project, and will perform the Services with the care, skill and diligence consistent with the Standard of Care.
- i. Through the exercise of commercially reasonable diligence, Construction Manager is not aware of any intellectual property rights of others, including, without limitation, any patent, license, trademark, or copyright, of another, upon which the Services may infringe.
- j. The foregoing representations, warranties and agreements shall survive any termination of this Agreement and final completion of the Services and are in addition to, and not in lieu of, any and all other liability imposed upon the Construction Manager by this Agreement, at law, or in equity with respect to the Construction Manager's duties, obligations, and performance hereunder.
- k. Construction Manager has performed all due diligence to inform itself of all Applicable Laws that will or may affect the performance of the Service and the construction of the Project.

7. Indemnification

- a. To the fullest extent permitted by Applicable Laws and not within the indemnity obligations in Section 7(b) or Section 7(c) below, Construction Manager agrees to indemnify, defend, and hold

harmless Owner and any assignee of Owner or of Owner's interest in this Agreement, CAA ICON, Thunder and their respective parents, subsidiaries, representatives, affiliated companies, contractors, members, managers, partners, principals, shareholders, trustees, beneficiaries, agents, invitees, employees, officers, and directors of each of them; and the City, and the OCPPA, and the elected and appointed officials, volunteers, and employees of each of them (collectively, the "Indemnified Parties"; each an "Indemnified Party") from and against all third party claims, damages, penalties imposed on account of the violation of any Applicable Laws, losses, causes of action, suits, judgments, costs, and expenses (including but not limited to reasonable attorney's fees and costs and expenses of litigation or arbitration) of any nature, kind, or description (collectively, the "Claims") arising out of or relating to, or alleged to arise out of or relate to, any of the following: (i) the negligent or grossly negligent act or omission, reckless or intentionally wrongful act, error or omission, or willful misconduct, or strict liability of the Construction Manager or any of its Subconsultants (of any tier), agents, partners, members, managers, employees, and suppliers (collectively, the "Construction Manager Group") in the performance of the Services to be provided hereunder; (ii) any violation of Applicable Laws by Construction Manager Group; (iii) any breach by Construction Manager Group of any of the covenants, warranties, or obligations contained in this Agreement; and (iv) any acts or omissions by Construction Manager or the Construction Manager Group that are beyond the scope of authority granted to Construction Manager pursuant to this Agreement. Construction Manager's indemnification obligations in this Section 7(a) will not apply to Claims to the extent caused by the negligence of the Indemnified Party otherwise to be indemnified under this Section 7(a).

- b. In addition to the indemnity obligations in Section 7(a) above, and to the fullest extent permitted by Applicable Laws, Construction Manager agrees to indemnify, defend, and hold harmless the Indemnified Parties from and against Claims for the bodily injury or death of an employee of Construction Manager or any member of Construction Manager Group, to the extent caused or alleged to be caused in whole or in part by the sole, comparative, or concurrent negligence, strict liability, or gross negligence of Construction Manager or the Construction Manager Group. The indemnification obligation under this Section 7(b) will not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or to Construction Manager (or any of the Construction Manager Group) under insurance policies, workers' compensation acts, disability benefit acts, or other employee benefit acts.
- c. In addition to the indemnity obligations in Section 7(a) and Section 7(b) above, and to the fullest extent permitted by Applicable Laws, Construction Manager further agrees to indemnify, protect, defend, and hold harmless all Indemnified Parties from and against all Claims relating to the infringement or alleged infringement of any intellectual property rights, including, without limitation, any patent, license, copyright, trademark, trade dress, or trade secret right of any person, company, or entity caused or occasioned by, or alleged to be caused or occasioned by, Construction Manager or any member of Construction Manager, in connection with the Services, even to the extent of the negligence of Construction Manager or any member of Construction Manager, provided however, that Construction Manager's obligations shall not apply to Claims arising from particular products, systems, materials, or equipment specified in writing by Owner or those under Owner's control.
- d. In addition to the indemnity obligations in Section 7(a) (b) and (c) above, and to the fullest extent permitted by Applicable Laws, Construction Manager agrees to indemnify, defend, and hold harmless the Indemnified Parties for damages, losses, expenses, fees, penalties, the bodily injury or death incurred by Owner or the Thunder to the extent caused or alleged to be caused in whole or in part by the sole, comparative, or concurrent negligence, strict liability, or gross negligence of Construction Manager or the Construction Manager Group. This indemnification obligation under

will not be defined, waived, conditioned or limited by the amount or type of loss, expenses, fees, penalties, damages, compensation or benefits payable by or to Construction Manager (or any of the Construction Manager Group) under insurance policies, workers' compensation acts, disability benefit acts, or other employee benefit acts or other subparagraphs of Section 7.

Construction Manager's obligations under this Section 7 shall survive termination or expiration of this Agreement.

8. Documents and Reports; Assignment of Intellectual Property Rights; Documents of Third Parties

- a. Upon payment of undisputed Fee due and owing hereunder as of the completion of the Services or the earlier termination of this Agreement, Owner, and any assignees of Owner or of Owner's interest in this Agreement, shall have all ownership rights including, without limitation, all patent, license, copyright, trademark, trade dress, trade secret, or other intellectual property rights (collectively, "**Ownership Rights**") in all work product, including, without limitation, all written, recorded, photographic, or visual materials, all computations, sketches, graphical layouts, blueprints, design documents, construction documents, drawings, forms, worksheets, schematics, memoranda, notes, models, specifications, instructions, instruments of service, reports, test data, survey results, photographs, renderings, and other materials produced in the performance of this Agreement, or necessary for utilization thereof, whether prepared by Construction Manager or Construction Manager's Subconsultant (of any tier) engaged by Construction Manager (collectively, the "**Documents and Reports**"), except for proprietary databases, spreadsheet formulae and data, and any other designed, programmed or coded information gathering or analysis tools, all of which are expressly excluded from the definition of Documents and Reports. Construction Manager understands, acknowledges, and agrees that it shall retain no ownership, interest, or title in the Documents and Reports, and Construction Manager further waives any right it has (or has had) to claim any ownership, interest, or title in the Documents and Reports.
- b. All Documents and Reports shall be for Owner's exclusive and unlimited use and re-use on the Project, and thereafter, at any time without further compensation (including, without limitation, any royalty payment or other consideration) to Construction Manager. Owner shall have the unlimited right to assign or license, including, without limitation, a nonexclusive, perpetual, irrevocable, royalty-free, fully paid-up, worldwide license, to any person or entity of any or all of the Documents and Reports, without further compensation (including, without limitation, any royalty payment or other consideration) to Construction Manager. Construction Manager shall not use any Documents and Reports for marketing purposes without the prior written consent of Development Committee, which consent may be withheld in the Development Committee's sole discretion. Unless otherwise designated by Owner, all Documents and Reports shall be treated by Construction Manager as "Confidential" and shall be kept, maintained, and safeguarded pursuant to the provisions of Section 12 below. Construction Manager's requests for proposals and agreements with its Subconsultants (if any) shall also contain provisions requiring the same standard of confidentiality. Construction Manager hereby assigns to Owner any and all intellectual property rights, including, without limitation, any patent, license, copyright, trademark, trade dress, or trade secret right, produced as part of Construction Manager's scope of Services. Unless otherwise instructed by Owner, Construction Manager shall deliver to Owner all Documents and Reports, in both hard copy and electronic formats, as created and within thirty (30) calendar days of the termination or end of the Term of this Agreement. Construction Manager's requests for proposals and agreements with its Subconsultants (if any) shall also contain provisions whereby such Subconsultants (of any tier) place, assign, and agree that all such Ownership Rights belong to, and are owned by, Owner and waive any legal rights and any moral rights laws. Construction

Manager hereby further agrees to cause any waiver of legal rights or consents granted under the moral rights laws to be granted to Owner, in writing, and to be signed by the individual who created the Documents and Reports or other materials or made contributions to the Documents and Reports. Any such waiver or consent shall identify the specific material(s) to which such waiver or consent relates and shall consent to the modification and incorporation of the Documents and Reports by Owner.

- c. Construction Manager acknowledges that the reports, plans, drawings, specifications, and other documents for the Project, whether prepared by the Development Committee, Architect, other consultants, or subcontractors on the Project, may not be complete and, therefore, Development Committee may, from time to time during the Term, provide Construction Manager with revised reports, plans, drawings and specifications. Construction Manager shall timely review, but in no event more than seven (7) calendar days from its receipt thereof, all such revised drawings and specifications, or other documents, for the purpose of (i) checking their conformance with other information provided to Construction Manager in connection with the Project, the Services, and the design concept expressly conveyed to Construction Manager for the Project, and (ii) informing the Development Committee, as soon as reasonably possible, of any defects, errors, omissions, conflicts, inconsistencies, or ambiguities identified in such documentation, actions that need to be taken, or issues that need to be addressed, as a result of the revised documentation, in order to avoid any delay in the completion of the Services and/or the Project.
- d. If Construction Manager becomes aware of any defect in the Documents or Reports also including any reports, schedules, summaries, or other documents relating to the Services prepared by others under or not under the control of Construction Manager, Construction Manager shall provide the Development Committee with prompt written notice thereof. Failure of Construction Manager to notify the Development Committee of any defects, errors, omissions, conflicts, inconsistencies, or ambiguities in documents of which Construction Manager is aware will be a waiver of any right by Construction Manager, and At-Risk Construction Manager, to any additional compensation or time therefor or related thereto.

9. Insurance

- a. During the term of this Agreement, Construction Manager shall provide and maintain at its own expense and cause any Subconsultants (of any tier) to provide and maintain at their own expense as a part of its Services insurance policies with responsible carriers approved to do business in the State of Oklahoma which have a rating of not less than A-VIII in the most current edition of the Best's Key Rating Guide, or otherwise acceptable to the Owner, of the following types and amounts:
 - i. Commercial General Liability Insurance insuring against claims for bodily injury, property damage, personal injury and advertising injury that shall be the coverage provided by Insurance Services Office (ISO) form for Commercial General Liability (CG 00 01) occurrence form or equivalent. The Additional Insureds (as defined below) will be included as an additional insured under the Commercial General Liability policy of insurance per standard ISO endorsement forms CG 20 10 07/04 and CG 20 37 07/04 or a substitute providing equivalent coverage which shall be maintained for 10 years after completion of this Agreement:

Coverage	Limit
General Aggregate	\$2,000,000
Products Completed Operations Liability	\$2,000,000

Each Occurrence	\$1,000,000
Personal & Advertising Injury	\$1,000,000

ii. Automobile Liability Insurance coverage on all vehicles of the Construction Manager used in connection with the Project, whether owned, non-owned, leased, hired or borrowed with liability not less than \$1,000,000 combined single limit each occurrence for bodily injury and property damage;

iii. Professional Liability Insurance to cover claims arising out of the performance of professional services caused by negligent acts, errors, omissions, with limits of not less than \$2,000,000 per claim and \$2,000,000 per annual aggregate. This insurance shall be carried on a claims-made basis, be maintained for a period of not less than six years after completion of the Services included within the scope of this Agreement, unless otherwise agreed to by Owner. Professional Liability Insurance may be evidenced under an annually renewable corporate program maintained by Construction Manager;

iv. Workers' Compensation Insurance at statutory limits, including employers' liability coverage with limits not less than \$1,000,000 per occurrence limit for bodily injury by accident, \$1,000,000 per employee limit for bodily injury by disease, and \$1,000,000 policy limit for bodily injury by disease for all persons whom it employs or may employ in carrying out the Services called for by the Agreement. The workers' compensation insurance shall be in strict accordance with the requirements of the most current and applicable state worker's compensation insurance laws in effect at the time work commences; and

v. Umbrella coverage in the amount of \$5,000,000 (\$2,000,000 for Subconsultants), each occurrence and \$5,000,000 (\$2,000,000 for Subconsultants) per annual aggregate. Coverage must be excess of the Commercial General Liability, Automobile Liability and Employers Liability and must be written on a follow form basis. Umbrella coverage shall be at least as broad as the primary Commercial General Liability Policy.

vi. Except for professional liability insurance, all policies shall be in the form of an "occurrence" insurance coverage or policy. If any insurance is written in a "claims-made" form, the Construction Manager shall also provide tail coverage that extends a minimum of two years from the expiration of this Agreement. If the Construction Manager is a joint venture, then these insurance requirements must be met by each member of the Construction Manager's joint venture separately and distinctly.

- b. With the exception of Worker's Compensation and Professional Liability Insurance policies, all insurance policies shall (i) include the Indemnified Parties as additional insured (collectively, the **"Additional Insureds"**) with respect to liability caused in whole or in part by Construction Manager's acts or omissions or the acts or omissions of those acting on behalf of Construction Manager, and (ii) contain a waiver of subrogation in favor of the Additional Insureds.
- c. All insurance policies shall contain a provision that 30 calendar days' written notice will be provided to Owner in the event of cancellation. Copies of a certificate of insurance evidencing all insurance policies to be maintained by Construction Manager shall be delivered to and approved by Owner prior to commencement of the Services .

- d. Construction Manager shall comply with all requirements of the insurers issuing said policies.
- e. Except for Workers' Compensation Insurance and Professional Liability Insurance, Owner and CAA ICON must be included as an additional insured and Construction Manager will provide such insurance coverage in the amount provided above, or increased coverage limits in the event of material changes in the scope of the Services or in the circumstance under which the Services are rendered that are mutually acceptable to the Parties.
- f. Notwithstanding anything to the contrary contained herein in this Section 9, (i) Construction Manager's obligation to obtain and carry any of said insurance shall not be interpreted as relieving Construction Manager from any of its obligations under this Agreement or limiting any of Construction Manager's obligations under this Agreement, and (ii) Construction Manager's liability under this Agreement including but not limited to the indemnification and any liquidated damages, shall not be waived or limited by the amount of insurance required to be carried by Construction Manager under this Section 9.

10. Liens

Construction Manager shall not permit or suffer any mechanics' or materialmen's, design professionals', or similar liens filed by any Subconsultant, independent contractor, laborer, supplier, or material vendor of Construction Manager to be asserted or to remain against the Project. In the event any such lien is filed against the Project, Construction Manager shall cause such lien to be removed or released by posting and recording the bond contemplated in accordance with the laws of the State of Oklahoma within thirty (30) calendar days after such lien is filed. **If Construction Manager fails to do so, Owner shall have the right to cause such lien to be satisfied and removed at Construction Manager's sole expense without duty of Owner to defend or challenge, and Construction Manager shall indemnify, defend and hold Owner harmless against all liability, cost and expenses, including reasonable attorney's fees and costs, incurred by Owner in causing such lien to be satisfied and removed. Owner may set off against any payment due Construction Manager hereunder amounts sufficient to reimburse Owner for such liability, cost and expense.**

11. Payments to Construction Manager

Owner shall make periodic payments of the Fee to Construction Manager based on invoices submitted by Construction Manager to Owner in accordance with this Agreement. Construction Manager shall submit to Owner a monthly invoice in accordance with Owner's separate invoicing procedures and policies, which may be changed from time to time in Owner's sole discretion, for Services actually performed during the Term of this Agreement. The invoice shall be in a form acceptable to Owner and shall set forth in reasonable detail the Services rendered and the specific personnel involved. No invoice shall be payable unless Owner has authorized the particular Service(s) rendered by the incorporation of the same on the attached Exhibit A, or as further modified pursuant to Section 36 below. Each invoice must include copies of any applicable receipts and such other evidence as Owner may reasonably require to support the invoice. Construction Manager shall send all invoices to the Owner and Owner's Representative in accordance with Section 27 below. Every invoice shall also include the following: (i) fully-executed interim lien and payment claim waiver and payment releases from Construction Manager in a form reasonably acceptable to Owner; and (ii) if requested by Owner, fully-executed interim lien and payment claim waiver and releases from its Subconsultants (if any) who have performed Services with respect to the invoice, which shall be in a form reasonably acceptable to Owner, and (iii) insurance certificate evidencing current coverage as requested by Section 9.

Within thirty (30) calendar days of the earlier of the completion of the Services under this Agreement or

termination of this Agreement, Construction Manager shall submit to the Development Committee Construction Manager's Documents and Reports, the final report, if any, and any other deliverables not previously delivered to Owner along with Construction Manager's final invoice. Without limiting Construction Manager's obligations pursuant to Section 10 above, if any lien against the Project site created by or through Construction Manager remains unsatisfied after all payments owed to Construction Manager are made, Construction Manager shall refund to Owner all moneys that Owner may pay in discharging such lien, including all costs and reasonable attorneys' fees, and Owner shall have all remedies at law and in equity.

Within thirty (30) calendar days after receipt of the invoice, Owner shall either approve such invoice, in whole or in part, or provide Construction Manager with notice of Owner's disapproval. Owner shall pay the approved amount within forty-five (45) calendar days of receipt of the invoice and all Construction Manager's Documents and Reports, the final report, if any, and all required deliverables. If the Construction Manager should fail to accompany the invoice with all required documentation, only the portion of the invoice in dispute will be withheld from payment, and only until such dispute is resolved. To the extent Owner does not approve a payment to Construction Manager based on a good faith dispute with Construction Manager, Owner shall pay Construction Manager the portion of the payment due to Construction Manager that is not in dispute, and the disputed amount shall be subject to dispute resolution as provided in this Agreement. In the event Owner does not approve a portion of any payment to Construction Manager, Owner shall provide Construction Manager with a written description of the reasons therefor. In no event shall Owner withhold payments to Construction Manager due to disputes between the Architect, the Owner's Representative and Owner. Construction Manager may not terminate this Agreement or suspend performance of its Services in the event of a good faith payment dispute.

Notwithstanding anything to the contrary contained herein, Owner shall not be obligated to make any payment, whether interim or final, to Construction Manager hereunder if any one or more of the following conditions exist:

- i. Construction Manager is in default of any of its material obligations under this Agreement;
- ii. Any part of such payment is attributable to Services which have not been performed in accordance with this Agreement; *provided, however*, such payment shall be made as to the part thereof attributable to those Services which were performed in accordance with this Agreement; or
- iii. Construction Manager has failed to make payments promptly to its Subconsultants or third parties used in connection with the Services, if any, for which Owner has made payment to Construction Manager; *provided, however*, Owner's right to withhold payment pursuant to this Section shall only apply to amount(s) equal to those amounts Construction Manager allegedly failed to make to its Subconsultants or third parties.
- iv. Construction Manager has not timely performed Services in accordance with the Project Schedule or Project Budget; *provided, however*, the Owners will pay Construction Manager within thirty (30) calendar days of becoming compliant and *provided further* that Owner shall only withhold amounts reasonably necessary to protect Owner from loss on account of such deficiency.

No payment made pursuant to this Agreement shall be, or construed to be, final acceptance or approval of

that part of the Services to which such payment relates or relieve Construction Manager of any of its obligations, representations or warranties under this Agreement.

Construction Manager shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the Services.

12. Confidentiality

Construction Manager agrees to keep confidential and not to disclose to any party (other than Development Committee approved Construction Manager's Subconsultants and respondents to Construction Manager's requests for proposal, in accordance with the requirements below) any of Owner's or Thunder's confidential information, including, but not limited to the nature of the Services being performed by Construction Manager, the terms and conditions of this Agreement, any data, information or methodologies submitted to Construction Manager by Owner or Owner's Representative or the Thunder, any data regarding Owner, the Thunder or the Project site obtained by Construction Manager in the course of performing the Services, and all Documents and Reports and any information contained therein, without the prior written approval of Owner or Thunder (as applicable), which may be withheld in their sole discretion (as applicable). Construction Manager's obligations under this Section 12 shall survive termination or expiration of this Agreement. For purposes hereof, "confidential" material shall not include information which (i) is generally available to the public through no breach by Construction Manager or its agents of this Agreement, or (ii) was available to Construction Manager on a non-confidential basis prior to the date of this Agreement from a source other than the Owner or Thunder which is not prohibited from disclosing such information to Construction Manager by a contractual, legal or fiduciary obligation. Construction Manager shall require all Subconsultants (of any tier) and respondents to Construction Manager's requests for proposal to comply with the provisions of this Section 12 by insertion or adaptation of this "Confidentiality" clause into each respective related subcontract, request for proposal, and purchase order relating to the Project. In addition, upon request, Construction Manager shall (and shall require all Subconsultants to) sign a separate non-disclosure agreement provided by the Thunder, which shall further govern the protection of Thunder confidential information.

13. [Reserved]

14. Termination

- a. Owner, in its sole discretion, may terminate this Agreement for any or no reason upon five (5) calendar days written notice to the Construction Manager. In the event of a termination under this Section 14(a), Owner's only remaining obligation shall be to pay Construction Manager for the Services timely and fully performed in accordance with this Agreement that remain unpaid as of the effective date of termination (including Services performed in accordance with this Agreement but not yet invoiced), less and except any liquidated damages or reimbursement for lien satisfaction due under this Agreement.
- b. If Construction Manager defaults under this Agreement or if Construction Manager for any reason whatsoever fails to timely and fully perform the Services in accordance with this Agreement, Owner may terminate this Agreement if Construction Manager has not commenced satisfactory efforts to cure such default or failure within seven (7) calendar days after notice from Owner of such breach or failure. In the event of termination under this Section 14(b), Owner shall not be responsible for further payment to Construction Manager, except for any Services timely and fully performed and invoiced for prior to such termination.
- c. Upon receipt of notice of termination under either Section 14(a) or Section 14(b), Construction

Manager shall promptly deliver to Owner any and all Documents or Reports and other deliverables prepared for Owner prior to the effective date of such termination.

15. Independent Contractor

At all times and in assuming and performing the Services, Construction Manager is an independent contractor and shall not be eligible for any benefits which Owner may provide its employees. Neither Owner nor any of its agents, employees, representatives, or officials shall have control over the conduct of Construction Manager, or Construction Manager's Subconsultants, or any of Construction Manager's officers, agents or employees, except as set forth in this Agreement. Construction Manager shall not, at any time, or in any manner, represent that Construction Manager or any of its agents or employees are in any manner agents, employees, representatives, or officials of Owner. This Agreement shall not in any way create or form a joint venture or partnership with the Thunder, Oklahoma City, Development Committee or OCPPA. At all times, Construction Manager shall represent itself as an independent contractor with respect to any matters relating to the development of the Project. In accordance with the independent contractor relationship established hereunder, Construction Manager shall have no authority (a) to incur any expense or liability on behalf of Owner, (b) to bind Owner to any contract, agreement or other obligation, or (c) to execute any such contract, agreement, or other instrument on Owner's behalf. With respect to the Fee payable hereunder to Construction Manager, Owner shall not withhold any taxes on, nor shall it make and contributions for such taxes based upon payroll or income and Owner shall not provide any benefits to Construction Manager or Construction Manager's Subcontractors or their employees. For clarity, to this end, Owner shall not be responsible for payment of any taxes, fees, contributions or other charges imposed on Construction Manager or applicable to Construction Manager's Services and any work Construction Manager or Construction Manager's Subconsultant performs related to the Project. The Construction Manager is solely responsible for and shall properly account for and pay all unemployment insurance, social security insurance, withholding taxes or any other taxes or royalties of its employees related to the Services.

16. Independent Counsel Each party hereto acknowledges that it has been represented by, or had the opportunity to consult with, independent counsel of its own choosing in connection with the negotiation and execution of this Agreement.

17. Site Safety

Construction Manager will be responsible for supervision and site safety measures for its own employees, agents and subconsultants while present at the Project site.

18. Governing Law; Jurisdiction and Venue; Waiver of Jury Trial The Parties agree that this Agreement shall be governed by and performed in accordance with the laws of the State of Oklahoma without regard to conflicts of laws principles, both as to interpretation and performance. Subject to the provisions of Section 19, (i) the Parties hereby irrevocably consent, for each other and their respective legal representatives, partners, successors and assigns, to the jurisdiction, at Owner's option, of the courts of the State of Oklahoma, the County, or of the United States District Court, located in Oklahoma County, with jurisdiction over the Project site for all purposes in connection with any action or proceeding which arises from or relates to this Agreement; (ii) Construction Manager hereby waives any right it may have to personal service of summons, complaint, or other process in connection therewith, and agrees that service may be made by registered or certified mail addressed to Construction Manager or its agents at its or their last known principal place of business; and (iii) the Parties hereby waive their right to a trial by jury. Pending resolution of any dispute arising under this Agreement, Construction Manager shall proceed diligently with the performance of this Agreement.

Construction Manager further agrees to include in every agreement entered into by Construction Manager with each of its Subconsultants (of any tier) a provision which contains provisions substantially similar to this Section 18.

Nothing contained in this Agreement or any agreement between Construction Manager and any of its Subconsultants (of any tier) shall be construed to permit deviation from the governing law specified in this Section 18.

19. Dispute Resolution All disputes arising hereunder, unless resolved by mutual agreement of the Parties after good faith negotiation and mediation as set forth in this Section 19, shall be resolved in accordance with Section 18. The Parties agree that if a dispute shall arise hereunder, prior to instituting any action, a representative of each party with sufficient authority to resolve such dispute shall, for a period of time not to exceed ten (10) calendar days, meet and use good faith efforts to resolve the dispute, failing which such dispute shall be resolved by a court of law as provided in Section 18. Owner hereby initially designates [David Todd] to act as its representative, and Construction Manager hereby initially designates [Kevin Dalager and Kirk Mammen] to act as its representative for purposes of such good faith negotiations only. Unless otherwise agreed in writing, the Construction Manager shall carry on the Services and maintain progress during any dispute proceedings, and the Owner shall continue to make payments to the Construction Manager in accordance with the terms of this Agreement for undisputed amounts. Dispute resolution may require the final formal approval of the Owner.

20. Non-waiver The waiver by either party of any breach of any term, covenant, or condition contained in the Agreement or any default in the performance of any obligations under the Agreement shall not be deemed to be a waiver of any other or subsequent breach or default of the same or any other term, covenant, condition, or obligation; nor shall any waiver of any incident of breach or default constitute a continuing waiver of same. Payment shall not be deemed a waiver of timelines or acceptance of performance as compliant with this Agreement and all Applicable Laws.

21. Enforceability In the event that any of the provisions or portions of application of any of the provisions of this Agreement are held to be illegal or invalid by a court of competent jurisdiction, such holding shall not affect the legality or enforceability of the remaining provisions of the Agreement.

22. Records

- a. Maintenance of Records. Construction Manager shall keep records of expenses pertaining to the Services on the basis of generally accepted accounting principles, but, in any event, in sufficient detail to allow Owner to fully review, inspect, audit, reproduction, and understand the same.
- b. Audit Rights. Owner shall have the right at any time and from time-to-time to audit Construction Manager's records, billings and supporting documentation hereunder, provided that Owner agrees that (i) rates, multipliers and other fixed percentages and lump sum amounts it has agreed that the Construction Manager may charge are subject to the Owner's audit rights only for the Owner to confirm that such rates, multipliers, percentages or lump sum amounts have been charged by the Construction Manager in accordance with the Agreement, and (ii) the parties' establishment of such rates, multipliers, percentages or amounts is not subject to audit by the Owner or the Owner's auditors. Construction Manager shall maintain and preserve, at Construction Manager's expense, and make available for review, inspection, audit, and reproduction, at Owner's expense of its costs, for twenty-four (24) months following the submission of the final invoice under this Agreement and any amendment hereof, the books, records, agreements, and other documents used in determining any cost incurred and billed to Owner during the performance of this Agreement.

- c. Inaccuracies. If any such audit reveals any inaccuracies in the billings, the necessary adjustment shall be made promptly. Payment of disputed amounts may be withheld pending timely resolution of such audit inaccuracies. Construction Manager shall reimburse Owner within thirty (30) calendar days of determination of any inaccuracy or the Owner may deduct any such amount from any subsequent invoice or payment.

23. Integration This Agreement, along with the written warranties, representations, and submitted materials, in the Construction Manager's response to that certain Notice of Request For At-Risk Construction Manager (CY4010628) , contain the entire agreement and understanding between the Parties as to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements, commitments, representations, writings, and discussions between Construction Manager and Owner, whether oral or written. The provisions of this Agreement shall not be waived or modified except in writing signed by the Parties.

24. Successors and Assigns and Third-Party Beneficiaries
Except as set forth in this Section, this Agreement is binding upon and inure to the benefit of Owner and Construction Manager and their approved successors, permitted assigns, and legal representatives. Construction Manager shall not, and is expressly prohibited from, assigning or transferring any interest in this Agreement without Owner's prior written consent, which consent may be withheld in Owner's sole discretion. Any attempted assignment or transfer in breach of this provision shall be void. Notwithstanding anything to the contrary contained herein, Owner may assign this Agreement without limitation to any persons, entities, or governmental agencies, authorities or units without Construction Manager's consent or approval. The Parties acknowledge that the Thunder shall be an intended third-party beneficiary of this Agreement and shall be entitled to assert any claims and enforce this Agreement in law or in equity the same as if it were party hereto.

25. Time Time is of the essence in respect of Construction Manager's obligations hereunder. Payment for Services shall not be deemed to waive the requirement for timely performance.

26. No Personal Liability Notwithstanding anything to the contrary in this Agreement, Construction Manager shall look solely to the assets of OCPPA and the encumbered funds of the City for payment, and none of the officers, managers, directors, members or affiliated persons of Owner (including Owner's Representative) nor the Thunder shall under any circumstances be liable (whether directly or indirectly) to Construction Manager for any amount that may be due and owing by Owner to Construction Manager or for any judgment that Construction Manager may obtain against Owner. Construction Manager shall not name any officers, managers, directors, members or affiliated persons of Owner (including Owner's Representative) in any suit to enforce this Agreement.

27. Notices. All notices, demands, approvals, and other communications provided for in this Agreement shall be in writing and shall be effective when actually delivered to the recipient by overnight carrier or in a sealed envelope in the U.S. mail, postage prepaid, by registered or certified mail, return receipt requested, addressed to the recipient as set forth below.

All notices to Owner and/or Development Committee shall be sent to:

City Clerk
The City of Oklahoma City
200 N. Walker Avenue, Second Floor
Oklahoma City, Oklahoma 73102

Secretary

Oklahoma City Public Property Authority
200 N. Walker Avenue, Second Floor
Oklahoma City, Oklahoma 73102

MAPS Program Manager
420 W. Main Street, Fourth Floor
Oklahoma City, Oklahoma 73102

with copy to:

CAA ICON
Project Number: 530
5075 S. Syracuse St., Suite 700
Denver, CO 80237
Attn: Office of the General Counsel
Email: GeneralCounsel@caaicon.com

All notices to Construction Manager shall be sent to:

Kate Golden
Senior VP and General Counsel
Mortenson
700 Meadow Lane North
Minneapolis, MN 55422
Kate.Golden@mortenson.com

Chris Warzecha
Asst. General Counsel
Flintco, LLC
323 E Reconciliation Way
Tulsa, OK 74120
Chris.Warzecha@flintco.com

with copy to:

Kevin Dalager
Vice President, Operations
Mortenson
700 Meadow Lane North
Minneapolis, MN 55422
Kevin.Dalager@mortenson.com

Kirk Mammen
VP/Area Manager
Flintco, LLC
1225 N. Broadway Ave., #105
Oklahoma City, OK 73103
Kmammen@flintco.com

If the date on which any notice to be given hereunder falls on a Saturday, Sunday, or legal holiday, then such date shall automatically be extended to the next business day immediately following such Saturday,

Sunday or legal holiday. The foregoing addresses may be changed by notice given in accordance with this Section 27.

28. Press Releases; Advertising and Other Publicity Authorization

- a. Construction Manager shall not make any press releases or other public announcements regarding this Agreement or Construction Manager's involvement in the Project without obtaining the Development Committee's prior written consent, which consent may be withheld in their sole discretion. Construction Manager shall not, without prior written consent of the Development Committee's, publish, assert, or imply that Owner or Thunder endorses the Construction Manager's product or services. Construction Manager shall not use Owner's or Thunder's or any of their respective parent, subsidiary, affiliate, or related entity of Owner's or Thunder's logo, trademarks, service marks, names, fanciful characters, designs, tenant names or logos, or other protected items without the prior written consent of the Owner or Thunder, as applicable. Without limiting the foregoing, Construction Manager acknowledges the proprietary nature of all names, trademarks, service marks, trade dress, including without limitation word marks, logos, uniform designs, mascots, images, colors and color combinations, characters, symbols, designs, likenesses and visual representations owned, controlled or cleared for use by or on behalf of and/or applied for in or registered with the United States Patent and Trademark Office (irrespective of the class or nature of goods or services for which an application has been made or registration issued) or otherwise protected by Applicable Laws, or any combination or derivative of same (collectively, "**Marks**"). Construction Manager acknowledges a license from Owner or Thunder is required to use such Owner Marks or Thunder Marks for any purpose and agrees it will not use any Owner Marks or Thunder Marks without the prior written consent of Owner or Thunder, as applicable. The foregoing shall apply to all persons or entities with which Construction Manager is in contractual privity (or which relates to a relationship for which there is contractual privity) or for which Construction Manager has responsibility or legal control, including, without limitation, all Subconsultants (of any tier), Construction Manager's employees, personnel, officers, directors, owners, parents, subsidiaries, affiliates, and independent contractors. Construction Manager shall cause all persons or entities with which Construction Manager is in contractual privity (or which relates to a relationship for which there is contractual privity) or for which Construction Manager has responsibility or legal control terms to agree to the terms of this Section.
- b. Construction Manager agrees that, at all times throughout and until the completion of the Project, Construction Manager shall comply with Owner's Social Media Policy (attached hereto as Exhibit C). The foregoing Social Media Policy shall also apply to all persons or entities with which Construction Manager is in contractual privity (or which relates to a relationship for which there is contractual privity) or for which Construction Manager has responsibility or legal control, including, without limitation, all Subconsultants (of any tier), Construction Manager's employees, personnel, officers, directors, owners, parents, subsidiaries, affiliates, and independent contractors. Construction Manager shall cause all persons or entities with which Construction Manager is in contractual privity (or which relates to a relationship for which there is contractual privity) or for which Construction Manager has responsibility or legal control terms to agree to and comply with the terms of this Section.

29. Owner's Consents All approvals, consents, waivers, requests, and authorizations by Owner under this Agreement (a) shall not be effective unless in writing and signed by Owner, and (b) except as otherwise expressly provided herein, may be withheld by Owner in its sole discretion.

30. Approval of Authorities To the extent the approval of any authority (including, without limitation, Governmental Authorities) is required in connection with the Services, Construction Manager

shall, as part of the Services, assist Owner and Architect, the Thunder, Owner's Representative, contractors, architects, engineers, and/or other consultants with preparing and filing any and all documents and applications required to obtain such approval and shall timely, but in no event more than forty-eight (48) hours after requested, (i) review and (ii) answer or take other reasonable and appropriate action in response to any requests or requirements from any authorities related to such filings involving either Construction Manager or any of its Subconsultants (of any tier).

31. Rights and Remedies. The duties and obligations of the Construction Manager imposed by this Agreement and the rights and remedies available to the Owner thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available in equity or by law.

32. Equal Employment Opportunity; Nondiscrimination

- a. Community Business Equity Outreach. Subject to the terms of Section 5(g) and Applicable Laws, if Construction Manager engages any Subconsultants in connection with any of the Services to be provided hereunder, Construction Manager shall provide to Owner the outreach plan, results of such outreach, and the outreach goals.
- b. Equal Employment Opportunity. Owner is committed to equal opportunity in employment and in the awarding of contracts for goods and services. It is the policy of Owner to seek and employ the best-qualified individuals for all job and contract opportunities. Owner prohibits unlawful discrimination against any employee or applicant for employment on the basis of race, color, national origin, ancestry, sex, sexual orientation, age, religion, physical or mental disability, medical condition, veteran status, marital status, or any other characteristic protected under federal or state law. This policy applies to all areas of employment, including hiring, awarding contracts, training, promotion, demotion, transfer, layoff, termination, and compensation. Construction Manager will reasonably accommodate employees and applicants with disabilities if the person is otherwise qualified to safely perform all the essential functions of the position. Construction Manager and its Subconsultants (of any tier) are required to abide by the requirements imposed upon Owner pursuant to Applicable Laws, including as a result of the construction of the Project being financed in whole or in part with public funds or owned by any public entity, or any agreement Owner may have with any public entity or any public financing authority. Construction Manager will comply with and execute all non-discrimination and equal employment requirements of any applicable Governmental Authority for public contracting or as might be set forth in any other agreement by and between Owner and any Governmental Authority.
- c. Compliance with Employment Laws. In performing its Services under this Agreement, the Construction Manager shall, and shall cause its Subconsultants (of any tier) to, comply with all applicable federal, state and local employment and wage laws.

33. Mutual Waiver of Consequential Damages. Construction Manager and Owner mutually waive the right to recover against one another consequential damages arising out of or relating to this Agreement, except any consequential damages that may be included within any compensation owed by Construction Manager to Owner pursuant to Section 4 of this Agreement or any amounts owed by Construction Manager to Owner pursuant to Construction Manager's indemnity obligations pursuant to Section 7a(i), but only if arising from bodily injury or property damage, Section 7a(ii), or Section 7(b) of this Agreement., and only to the extent such indemnity obligations arise from third-party claims. This mutual waiver includes:

- a. damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- b. damages incurred by the Construction Manager for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Services.

34. Modification Owner reserves the right to make changes in the scope of Services, the Project, and this Agreement. However, no additional services will be added to the scope of Services, the Project or this Agreement unless authorized in writing by Owner and Construction Manager.

35. Counterparts This Agreement may be executed in one or more counterparts (including electronically), each of which shall be deemed an original, and all of which taken together shall be deemed one Agreement.

36. Agreement for Contractor Management Services
The parties hereby agree that during the Term of this Agreement the parties will in good faith negotiate an Agreement for At-Risk Contractor Management Services that will, among other things, incorporate the salient terms listed on Exhibit E attached hereto. Provided, however, neither this section nor this Agreement shall be deemed to require Owner to execute an amendment to this Agreement or enter an Agreement for At-Risk Contractor Management Services with Construction Manager or any other entity or to use at-risk construction management delivery process for the construction of the Project.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

Approved by the City of Oklahoma City this 11TH day of MARCH, 2025

THE CITY OF OKLAHOMA CITY

ATTEST:

By: Amy K. Simpson
City Clerk



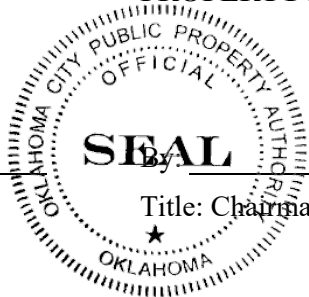
By: David Holt
Title: Mayor

Approved by the Oklahoma City Public Property Authority this 11TH day of MARCH, 2025

**OKLAHOMA CITY PUBLIC
PROPERTY AUTHORITY**

ATTEST:

By: Amy K. Simpson
Secretary



By: David Holt
Title: Chairman

REVIEWED for form and legality:

By: Craig Keith
Title: Deputy Municipal Counselor

Approved by the Construction Manager this _____ day of _____, 2025


CONSTRUCTION MANAGER:

**FLINTCO/MORTENSON, AN OKC NBA
ARENA JOINT VENTURE**
Flintco, LLC, an Oklahoma Limited Liability
Company

By: [Signature]
Name: KIRK MAMMEN
Title: VICE PRESIDENT/APCA MGR.

**FLINTCO/MORTENSON, AN OKC NBA
ARENA JOINT VENTURE**

M. A. Mortenson Company, a Minnesota Corporation

By: 

Name: Maja Rosenquist

Title: Executive Vice President

[Signature page to Agreement for Preconstruction Services]

Exhibit A

Scope of Services

CONSTRUCTION MANAGER'S PRECONSTRUCTION RESPONSIBILITIES AND SERVICES

1. Programming and Planning. Construction Manager shall at least monthly review and comment upon and make recommendations to the Development Committee's program statement, budget, and schedule requirements as set forth in the Preliminary Construction Schedule, attached hereto as **Exhibit D**.
2. Project Schedules.
 - a. The Preliminary Construction Schedule, attached hereto as **Exhibit D**, has been reviewed and approved by the Development Committee. The construction and occupancy portions shall be incorporated into the Construction Schedule by Construction Manager and delivered to the Development Committee and Owner's Representative monthly throughout the duration of the Services.
 - b. Within twenty-one (21) calendar days after Construction Manager's receipt of the concept design documents, Construction Manager shall deliver recommendation for additional efficiencies to the Development Committee for a Preliminary Construction Schedule. Construction Manager shall investigate and recommend a schedule for Project phasing and the purchase of materials and equipment requiring long lead time procurement and project phasing. The Preliminary Construction Schedule shall be updated by the Construction Manager, Architect, Owner's Representative and Owner and distributed monthly to the Development Committee throughout the pre-construction process. The Construction Schedule shall be updated by the Construction Manager, Architect, Owner's Representative and Owner and distributed monthly to the Development Committee throughout the duration of the Services to accurately reflect progress to date, remaining estimated durations and any new or revised logic or activities. Construction Manager shall supply, on a monthly basis to the Development Committee, graphic representation of the Construction Schedule, Project Schedule, Construction Costs, and Project Budget, together with such reports as requested by the Development Committee that are typically available using the most current version of Primavera Project software used by Construction Manager.
 - c. Construction Manager shall propose, review and evaluate various alternative schedules during the preconstruction phase as a part of Construction Manager's responsibilities. Construction Manager shall use reasonable efforts to estimate any schedule related impact on costs during the evaluation of any alternative schedules. Construction Manager shall also provide various conceptual master planning schedules that are to include the Services covered under this Agreement and "other components" of the Project (e.g., off-site transportation improvements, off-site utility extensions, etc.) to allow the Development Committee to plan the overall Project. Owner shall provide Construction Manager with information regarding these "other components," and Construction Manager shall be entitled to rely upon such information for purposes of this scheduling process. Construction Manager shall, from time to time and as requested by the Development Committee, update the Preliminary Construction Schedule to incorporate any such alternative schedules.
 - d. The monthly updates of the Project Budget, Construction Costs, Project Schedule, Preliminary Construction Schedule and Construction Schedule required under this Exhibit shall be included in the monthly Progress Report.
3. Value Engineering. Construction Manager will provide potential cost reduction and value engineering analysis ("**Value Engineering**") on material and labor availability and on major construction systems and their components, including, without limitation, (1) structural system, (2) exterior envelope, (3) mechanical system, (4) lighting and (5) power service. As necessary or appropriate to keep Construction

Costs within the Fixed Limit of Construction Cost, or as otherwise requested by Owner, Construction Manager will conduct Value Engineering analysis workshops during the Concept Design, Design Development, project phasing, subcontractor bid package development and GMP Development phases with the Development Committee to review any proposed Value Engineering ideas for the Project. A formal report analyzing the Value Engineering will be prepared by Construction Manager following each of these workshops and distributed to the Development Committee. The Development Committee shall have the right, but not the obligation, to complete a parallel estimate of the Cost of the Services at each of the referenced design milestones. If the Development Committee completes such estimate, Construction Manager shall participate with the Development Committee in a process to identify, explain, and reconcile differences between the estimates. Construction Manager shall evaluate alternates proposed by the Development Committee. Construction Manager shall not be deemed to have taken on responsibility for design by Construction Manager's role in Value Engineering, offering cost savings ideas or in making other comments on the design documents.

4. Conceptual Design Phase.

- a. The Construction Manager shall review the conceptual design documents at 100% completion. Construction Manager shall advise the Development Committee and provide recommendations on relative feasibility of construction methods, availability and selection of materials, building systems, equipment and labor, time requirements for procurement, installation and construction and factors related to cost, including costs of alternative designs or materials and possible economies by that certain date as referenced in **Exhibit D**.
- b. Owner shall cause the conceptual design documents to be delivered to Construction Manager. After delivery of the conceptual design documents, Construction Manager shall provide Construction Manager's Construction Cost estimate to the Development Committee based upon the conceptual design documents and the Construction Manager's Preliminary Construction Schedule. The Development Committee and Construction Manager shall meet to review Construction Manager's Construction Cost estimate in relation to the then-current Project Budget. Construction Manager and Development Committee shall endeavor to reconcile any questions, discrepancies or disagreements relating thereto. Development Committee shall, in its sole discretion, approve or disapprove any proposed reconciliation. If the reconciled Construction Cost estimates exceed the then-current Project Budget, then Construction Manager shall provide, as part of its Services hereunder, cost estimating, Value Engineering, constructability review and other services as required to meet Owner's budgetary limitations, including the evaluation of alternative designs and systems, with Development Committee and Architect. Development Committee may, in its sole discretion, accept or reject any proposed adjustments to the estimates of Construction Cost, or the Project scope.

5. Schematic Design Phase.

- a. The Construction Manager shall review the schematic design documents at 100% completion. Construction Manager shall advise the Development Committee and provide recommendations on relative feasibility of construction methods, availability and selection of materials, building systems, equipment and labor, time requirements for procurement, installation and construction and factors related to cost, including costs of alternative designs or materials and possible economies by that certain date as referenced in **Exhibit D**.
- b. Owner shall cause the schematic design documents to be delivered to Construction Manager. Construction Manager shall provide Construction Manager's Construction Costs estimate to the Development Committee based upon the schematic design documents and the Construction Manager's Preliminary Construction Schedule. The Development Committee and Construction Manager shall meet to review Construction Manager's Construction Costs estimate in relation to

the then-current Project Budget. Construction Manager and Development Committee shall endeavor to reconcile any questions, discrepancies or disagreements relating thereto. Development Committee shall, in its sole discretion, approve or disapprove any proposed reconciliation. If the reconciled Construction Cost estimates exceed the then-current Project Budget, then Construction Manager shall provide, as part of its Services hereunder, cost estimating, Value Engineering, constructability review and other services as required to meet Owner's budgetary limitations, including the evaluation of alternative designs and systems, with Development Committee and Architect. Development Committee may, in its sole discretion, accept or reject any proposed adjustments to the estimates of Construction Cost or the Project scope.

6. Design Development Phase.

- a. Owner shall cause the design development documents to be delivered to Construction Manager at both 50% and 100% completion. Construction Manager shall review the design development documents after such documents are delivered by Architect. Construction Manager shall advise the Development Committee and provide written recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction and factors related to cost, including Value Engineering analysis, costs of alternative designs or materials and possible economies by that certain date as referenced in **Exhibit D**.
- b. During the preparation of the design development documents, the Construction Manager and Development Committee shall meet weekly with the Architect who shall, at such meetings, notify the Development Committee of any material modifications in quantities or qualities from the documents previously issued by Architect.
- c. After delivery of each of the 50% and 100% design development documents, Construction Manager shall provide Construction Manager's written Construction Costs estimate to the Development Committee based upon the design development documents and the Parties shall meet to review Construction Manager's estimate in relation to the then-current Project Budget and the Construction Manager's Preliminary Construction Schedule. Construction Manager and Development Committee shall endeavor to reconcile any questions, discrepancies or disagreements relating thereto. Development Committee shall, in its sole discretion, approve or disapprove any proposed reconciliation. If the reconciled Construction Cost estimates exceed the then-current Project Budget, then Construction Manager shall provide, as part of its services hereunder, cost estimating, Value Engineering, constructability review and other services as required to meet Owner's budgetary and project schedule limitations, also including project phasing the evaluation of alternative designs and systems, with Development Committee and Architect. Development Committee may, in its sole discretion, accept or reject any proposed adjustments to the Project Budget, the estimates of Construction Cost or the Project scope.

7. Permit Construction Documents Phase.

- a. Owner shall cause the permit construction documents to be delivered to Construction Manager. Construction Manager shall review the permit construction documents after such documents are delivered by Architect. Construction Manager shall advise the Development Committee and provide written recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction and factors related to cost, including Value Engineering analysis, costs of alternative designs or materials and possible economies by that certain date as referenced in **Exhibit D**.
- b. During the preparation of the permit construction documents, the Construction Manager and Development Committee shall meet weekly with the Architect who shall, at such meetings, notify

the Development Committee of any material modifications in design, quantities or qualities from the documents previously issued by Architect.

- c. After delivery of the permit construction documents, Construction Manager shall provide Construction Manager's written Construction Costs estimate to the Development Committee based upon the design development documents and the Construction Manager's Preliminary Construction Schedule. The Development Committee and Construction Manager shall meet to review Construction Manager's estimate in relation to the then-current Project Budget. Construction Manager and the Development Committee shall endeavor to reconcile any questions, discrepancies or disagreements relating thereto. Development Committee shall, in its sole discretion, approve or disapprove any proposed reconciliation. If the reconciled Construction Cost estimates exceed the then-current Project Budget, then Construction Manager shall provide, as part of its services hereunder, cost estimating, Value Engineering, constructability review and other services as required to meet Owner's budgetary and project schedule limitations, also including project phasing and the evaluation of alternative designs and systems, with Development Committee and Architect. Development Committee may, in its sole discretion, accept or reject any proposed adjustments to the Project Budget, the estimates of Construction Cost or the Project scope.
- d. Construction Manager, Development Committee, and Architect shall meet and mutually agree upon a detailed description of the content of the GMP Documents, which description shall be attached to this Agreement as **Exhibit A-1**.

8. [Reserved]

9. [Reserved]

10. Other Preconstruction Services.

- a. In general, Construction Manager shall (1) at least monthly, and more often as provided herein, consult with the Development Committee with respect to constructability, studies, Project site surveys, tests, Project site access and use, selection of materials (as more fully set forth herein), building systems and equipment and means and methods of construction, (2) provide comments and recommendations on the relative feasibility of construction methods, availability of materials, time requirements for procurement, installation and construction and factors related to cost, including costs of alternative designs or materials and possible efficiencies and economies, Value Engineering analysis, constructability analysis and (3) regularly as well as when requested to do so, submit written reports to the Development Committee and Owner's Representative regarding same.
- b. Construction Manager shall regularly advise the Development Committee concerning materials and systems to be used in the Project. Construction Manager shall promptly review potential materials and systems specified by Architect and, if requested by the Development Committee, promptly prepare a written cost analysis of such materials and systems. Where appropriate, Construction Manager shall promptly propose any alternative materials and systems of which Construction Manager is aware that may not have been considered by Architect. If requested by the Development Committee, Construction Manager shall promptly prepare written cost analysis of such alternative materials and systems.
- c. Construction Manager shall draft and verify that the construction drawings, specification, and related items include requirements and assignment of responsibilities for safety precautions and programs and temporary facilities for common use of Construction Manager and trade contractors.
- d. Construction Manager shall, on a continuing basis, review the construction drawings and specifications as they are being prepared, recommend alternative solutions whenever design details adversely affect construction feasibility, time or budget limitations, Construction Cost or the Construction Schedule without, however, assuming responsibilities for design.

- e. Construction Manager shall review the construction drawings and specifications to minimize areas of conflict, inconsistency, ambiguity, errors, gaps, incomplete, and overlapping in the Services to be performed by the various trade contractors. Using all methods as are consistent with the Standard of Care, Construction Manager shall identify in writing any and all areas Construction Manager reasonably believes have conflicting, inconsistent or ambiguous, errant, overlapping, or incomplete documentation or less than fully coordinated multi-discipline Work.
- f. Construction Manager shall investigate, in consultation with the Development Committee, and recommend a schedule for phasing and for Owner's purchase of materials, systems and equipment with particular emphasis on items requiring long lead time procurement. Construction Manager shall coordinate such schedule with the early preparation of portions of the construction drawings, specification, and related items by Architect and, if requested by the Development Committee, assist Development Committee with expediting and coordinating delivery inspection and storage of these purchases.
- g. Construction Manager shall make recommendations to the Development Committee regarding the phasing and prioritization of Construction Manager's expected construction activities and the division of Services and the orderly bidding and awarding of trade contracts. In doing so, Construction Manager shall allow for phased construction and take into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions and provisions for temporary access, workspaces and facilities for the Work, also including hoists and cranes.
- h. With each pricing exercise, Construction Manager shall provide to the Development Committee a summary of the estimated costs and timing of each bid package. This information will be utilized by the Development Committee to ensure appropriate timing and levels of funding are available for the duration of the Project.
- i. Construction Manager shall provide appropriate written instructions clearly describing Project site coordination and staging and storage areas for separate and/or common use of Construction Manager and trade contractors, including applicable rules relative to the operation and coordination of Project facilities.
- j. [reserved]
- k. Construction Manager shall obtain, in coordination with Owner and Architect, the building permits for the Work, including Project site development, shoring and excavation, substructure and superstructure and finishing components as sequenced in negotiation with appropriate building department officials and required for the Work.
- l. Construction Manager shall arrange, obtain and coordinate other permits, licenses or approvals that are necessary for proper execution and completion of the Services and that are required by Governmental Authorities and customarily obtained by construction contractors in City of Oklahoma City.
- m. Construction Manager shall develop and implement, in cooperation with the Development Committee, a plan to mitigate the impacts of construction staging, procedures and practices on surrounding neighborhoods and uses, including the existing downtown Oklahoma City arena.
- n. Develop and implement, for the Development Committee's approval, a plan to achieve the requirements identified by the Owner's existing Small, Local and Minority Business Subcontracting Program.
- o. Construction Manager shall develop, with the cooperation of the Development Committee, a transportation management plan for the construction period, including traffic control, street signage, street closures or diversions, public transportation issues, parking meters and truck routing for the Development Committee's approval. Construction Manager will obtain required permits and approvals.
- p. Construction Manager shall advise on the division of the Project into individual scope of Services packages for various categories of Services and make recommendations as required so that the services of the trade contractors is sequenced and coordinated; all requirements for the Project have been assigned to the appropriate trade contractor; the likelihood of jurisdictional disputes has been

minimized; and proper coordination has been provided for phased construction. Construction Manager will ensure that all Services is performed by licensed and prequalified subcontractor, as applicable. Construction Manager will draft for review by the Architect and Development Committee and Owner approval, the prequalification requirements for trade contractors.

- q. Construction Manager shall coordinate with the Development Committee and Owner's Representative to establish common accounting procedures and program controls consistent with and/or adapted to the procedures and controls of the Development Committee and Owner's Representative. This includes, without limitation, account codes, invoices, and the reporting of commitments and expenditures. Coordinate with the Development Committee and Owner's Representative, as required, to implement procedures for the effective progression of design reviews, design addenda, requests for information ("**RFIs**" or "**Requests for Information**"), change orders, daily reports, pre-installation meetings, and other documentation and activities as may be required by Owner's Representative and the Development Committee.
- r. Construction Manager shall, in consultation with the Development Committee, Owner's Representative, and the Architect, prepare recommendations and information regarding the assignment of responsibility for temporary Project facilities, parking areas, equipment, General Condition materials and services for common use of the trade contractors, and responsibilities for site security, lay down, staging, assembly, and storage locations.
- s. Construction Manager shall, in consultation with the Development Committee, Owner's Representative, and the Architect, prepare a Project site logistics and use plan for common construction operations, allocating space for storage, access, parking, temporary facilities, and the like for the Project. Construction Manager shall plan for Development Committee-approved security procedures to control the common access to and the activities performed on the Project site.
- t. If requested by the Development Committee in its sole discretion, Construction Manager shall provide the materials for presentations or Owner's Documents to any applicable Governmental Authority or other entity as designated by Development Committee or Owner's Representative of the Conceptual Design Documents, as requested by the Development Committee. To the extent applicable, the materials for presentations by the Construction Manager shall be in the form of site logistics plans, schedules, construction photographs, and other documents in sufficient detail necessary to convey the purpose of the document. The materials shall also be provided in an electronic format that allows the Development Committee to insert such materials into its Project website or in other electronic communications or social media supporting the Project. The Construction Manager shall furnish hard copies of all documents produced in connection with the Services at no additional expense to Owner and at Owner's request.
- u. Construction Manager shall develop and present a specific safety program wherein areas of risk are identified and controls are put in place to mitigate any hazards. Establish safety program for all personnel following guidelines of incident and injury free ("**IIF**") and adherent to applicable safety regulations, including, without limitation, local, provincial, regional, and national regulations governing Oklahoma County, Oklahoma.

Exhibit B
[Not Used]

Exhibit C

Social Media Policy

This Social Media policy (the “**Policy**”) is designed to offer practical guidance for responsible, constructive communications via social media for Construction Manager, its Subconsultants (of any tier), and the employees, personnel, officers, directors, owners, parents, subsidiaries, affiliates, and independent contractors of each of them (collectively, “**Construction Manager and Subconsultants**”). An important thing to remember with social media usage is to not only protect you and to protect Oklahoma City and the Thunder’s (collectively, the “**Owner and Thunder**”) brand, but also to be appropriate and promote a good self-image.

Social media includes all means of communicating or posting information or content of any sort on the internet, including, without limitation, to one’s own or someone else’s web log or blog, journal or diary, personal website, social networking or affinity website, web bulletin board or a chat room, whether or not associated or affiliated with Owner and Thunder as well as any other form of electronic communication where accessed through the web, mobile device, text messaging, email, or any other existing or emerging communications platform.

Unless specifically authorized to do so in writing by Owner and Thunder, or upon written request by Owner and Thunder, Construction Manager and Subconsultants are prohibited from discussing or referencing confidential or proprietary Owner and Thunder-related business on any internet site, website, or other social media. Construction Manager and Subconsultants are prohibited from publishing, posting, or releasing information that is considered confidential or not public. Confidential information includes, but is not limited to, Owner and Thunder’s financial and economic information or other proprietary or non-public information. For clarity, any depictions, illustrations, comments, texts, or information relating to any portion of the construction of the Project that is not visible from public areas or already in the public domain shall be considered confidential or proprietary under this Policy and shall not be communicated or posted on any Internet media, unless otherwise authorized by Owner and Thunder in writing.

Owner and Thunder expects high ethical standards in all Construction Manager and Subconsultants’ respective social media usage. By agreeing to its respective agreements, each of the Construction Manager and Subconsultants understand, acknowledge, and agree that each of the Construction Manager and Subconsultants is required to avoid using or making statements, photographs, video, or audio that reasonably could be viewed as malicious, obscene, threatening, or intimidating, that disparages Owner and Thunder (including, without limitation, Owner’s employees, and officials), and Thunder players), Owner and Thunder’s customers and taxpayers, Project team members, other Construction Manager and Subconsultants, Owner’s Representative, Architect, or the Thunder, or that might constitute harassment or bullying. Examples of such conduct might include offensive posts that have the effect of harming someone’s reputation or posts that could contribute to a hostile work environment on the basis of someone’s race, sex, color, national origin, ancestry, sexual orientation, age, disability, religion, or any other status protected by law. In all social media activities relating to the Project, Construction Manager and Subs must post a disclaimer which states that the views expressed by the particular individual or Construction Manager and Subconsultants do not necessarily reflect the views of Owner and Thunder.

The foregoing Policy is not intended to, and should not, be interpreted to interfere with or infringe upon any Construction Manager and Subconsultants’ right to engage in protected activity under Applicable Laws. Construction Manager and Subconsultants understand, acknowledge, and agree that, unless otherwise agreed to by Owner and Thunder in Owner and Thunder’s sole discretion, any of Construction Manager and Subconsultants’, its respective agent, employee or independent contractor who fails to comply with this Policy will not be permitted to continue working at the Project, and any Confidential Information

(including, without limitation, photographs, images, likeness) in that employee or independent contractor's possession will be required to be removed and permanently deleted.

Exhibit D

Schedule

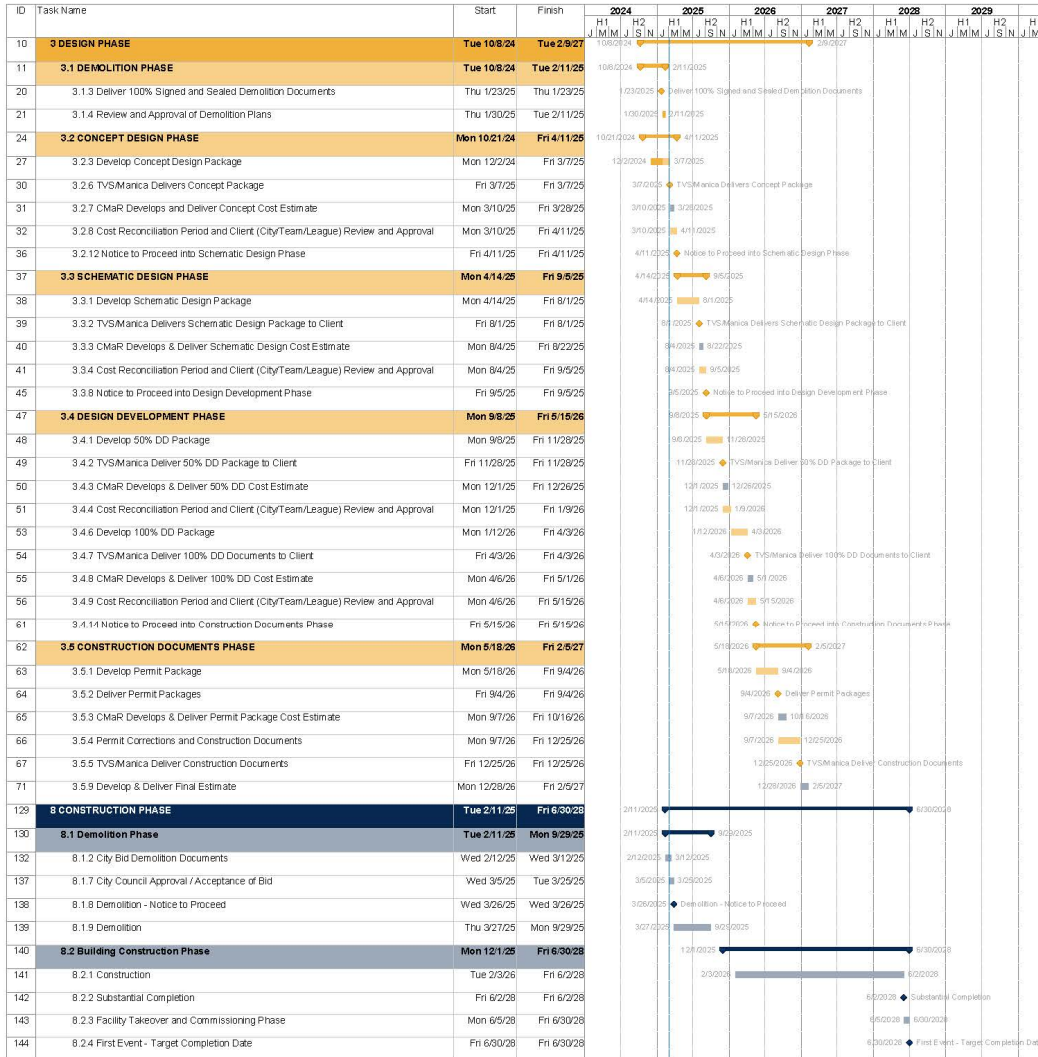


Exhibit E

Salient Terms Related to the Agreement for Contractor Management Services

The Parties hereby agree that the following is an outline of the terms and conditions that the Parties would consider in entering into an Agreement for At Risk Construction Manager Services (“**ARCM Agreement**”) for the Project, as follows:

1. Construction Manager acknowledges that \$688,500,000 (the “**Fixed Limit of Construction Cost**”) constitutes the maximum available funds for Project construction costs. The totality of the GMPs ultimately agreed to in any GMP Amendment cannot exceed the Fixed Limit of Construction Cost. The sum of the cost of the work or any portion of the work, and the Construction Manager’s Fee, shall be guaranteed by the Construction Manager not to exceed the maximum amount set forth in the subject GMP Amendment (the “**Guaranteed Maximum Price**” or “**GMP**”) for the Project or that portion of the Project, subject to additions and deductions by Change Order as provided in the Contract. Costs which would cause the Guaranteed Maximum Price, as may be modified by Change Order, to be exceeded shall be paid timely by the Construction Manager without reimbursement by the Owner. The Construction Manager shall prepare and submit to the Owner and the Development Committee the estimated maximum cost for the performance of the work or a portion of the work, including the Construction Manager’s Fee. The parties hereto agree that there will be more than one GMP for various portions of the work (each a “**Rolling GMP**”), and that all provisions herein related to the GMP shall be applicable to each Rolling GMP, unless as otherwise agreed to by the parties hereto.
2. The Construction Manager fee (“**Construction Manager’s Fee**” or “**Fee**”) shall be 3.0% and shall be applied to all “costs of the work” as that term will be defined in the ARCM Agreement, except for Fee. Construction Manager’s agreement to this Fee is based upon its assumption of mutually agreeable terms being included in the ARCM Agreement, including without limitation a mutually agreeable definition of “costs of the work”. In no event shall Fee be considered a cost of the work.
3. Following execution of the GMP Amendment, Construction Manager shall not be entitled to additional Fee on Change Orders unless and until the net cumulative total of all Change Orders has increased the GMP by \$5,000,000 (the “**GMP Deadband**”); *provided, however*, the foregoing GMP Deadband shall not apply to FF&E Assignment. Once the GMP Deadband has been exceeded, increases to the Construction Manager’s Fee shall be as otherwise set forth in the Agreement.
4. Construction Manager shall commence performance of the work in accordance with the agreed upon construction schedule and any failure to meet certain deadlines would require the Construction Manager to pay liquidated damages for each such failure. Such liquidated damages would be agreed upon in the ARCM Agreement.
5. The same key personnel provisions as set forth in Section 4 will be included. Upon the reasonable request of the Owner or the Development Committee, and the opportunity of Construction Manager to resolve the Owner’s or the Development Committee’s concerns, the Construction Manager agrees to promptly remove any of the Construction Manager’s Key Personnel, key team members or other staff members from the work and replace him or her with another qualified staff member acceptable to the Owner and the Development Committee at Construction Manager’s sole cost. Notwithstanding anything to the contrary contained in this exhibit or this Agreement, the parties hereby agree that, during the construction phase of the Project, Trevor Delong will be physically

on site of the Project for at least 17 business day of each month during such construction phase of the Project.

6. Construction Manager shall keep fully informed of all Applicable Laws, which includes, without limitations, Oklahoma Statutes Title 61 and Oklahoma City's Standard Specifications for the Construction of Public Improvements. In the event of any conflict between the provisions of this ARCM Agreement, on the one hand, and Applicable Law, on other hand, the provisions of the Applicable Laws shall control.



CERTIFICATE OF LIABILITY INSURANCE

Page 1 of 2

DATE (MM/DD/YYYY)
03/05/2025

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).

PRODUCER Willis Towers Watson Midwest, Inc. c/o 26 Century Blvd P.O. Box 305191 Nashville, TN 372305191 USA	CONTACT NAME: WTW Certificate Center PHONE (A/C, No. Ext): 1-877-945-7378 E-MAIL ADDRESS: certificates@wtwco.com FAX (A/C, No): 1-888-467-2378														
INSURED Flintco/Mortenson, an OKC NBA Arena Joint Venture 700 Meadow Lane N P.O. Box 710 Minneapolis, MN 55440	<table><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A: Arch Insurance Company</td><td>11150</td></tr><tr><td>INSURER B: XL Insurance America Inc</td><td>24554</td></tr><tr><td>INSURER C: Arch Indemnity Insurance Company</td><td>30830</td></tr><tr><td>INSURER D: Indian Harbor Insurance Company</td><td>36940</td></tr><tr><td>INSURER E:</td><td></td></tr><tr><td>INSURER F:</td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Arch Insurance Company	11150	INSURER B: XL Insurance America Inc	24554	INSURER C: Arch Indemnity Insurance Company	30830	INSURER D: Indian Harbor Insurance Company	36940	INSURER E:		INSURER F:	
INSURER(S) AFFORDING COVERAGE	NAIC #														
INSURER A: Arch Insurance Company	11150														
INSURER B: XL Insurance America Inc	24554														
INSURER C: Arch Indemnity Insurance Company	30830														
INSURER D: Indian Harbor Insurance Company	36940														
INSURER E:															
INSURER F:															

COVERAGES**CERTIFICATE NUMBER:** W38073263**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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	51PKG8901212	05/01/2024	05/01/2025	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 2,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	51PKG8901212	05/01/2024	05/01/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0	Y	Y	US00084142LI24A	05/01/2024	05/01/2025	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> No	N/A	54WC18919512	05/01/2024	05/01/2025	<input checked="" type="checkbox"/> PER STATUTE E.L. EACH ACCIDENT \$ 2,000,000 E.L. DISEASE - EA EMPLOYEE \$ 2,000,000 E.L. DISEASE - POLICY LIMIT \$ 2,000,000
D	Professional Liability			CEO742110604	05/01/2024	05/01/2025	Each Claim/Agg Retention \$5,000,000 \$1,000,000

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

Project#: 25150002 Project Name: NBA Oklahoma City Thunder New Arena

As respects to Flintco/Mortenson, an OKC NBA Arena Joint Venture operations on the referenced project, The City of Oklahoma City, the Oklahoma City Public Property Authority, and The Indemnified Parties are included as Additional Insureds under the General Liability, Auto Liability and Umbrella/Excess Liability policies as required by written contract.

CERTIFICATE HOLDER**CANCELLATION**

The City of Oklahoma City and the Oklahoma City Public Property Authority 200 N. Walker Avenue, Second Floor Oklahoma City, OK 73102	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
---	---

© 1988-2016 ACORD CORPORATION. All rights reserved.

ACORD 25 (2016/03)

The ACORD name and logo are registered marks of ACORD

SR ID: 27388553

BATCH: 3860371

**ADDITIONAL REMARKS SCHEDULE**Page 2 of 2

AGENCY Willis Towers Watson Midwest, Inc.		NAMED INSURED Flintco/Mortenson, an OKC NBA Arena Joint Venture 700 Meadow Lane N P.O. Box 710 Minneapolis, MN 55440	
POLICY NUMBER See Page 1		EFFECTIVE DATE: See Page 1	
CARRIER See Page 1	NAIC CODE See Page 1		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

As respects to Flintco/Mortenson, an OKC NBA Arena Joint Venture operations on the referenced project, The City of Oklahoma City, the Oklahoma City Public Property Authority, and The Indemnified Parties are included as Additional Insureds on a Primary and Non-Contributory basis under the General Liability policy as required by written contract.

Waiver of Subrogation in favor of The City of Oklahoma City, the Oklahoma City Public Property Authority, and The Indemnified Parties applies to the General Liability, Auto Liability, Umbrella/Excess Liability and Workers Compensation policies as required by written contract or agreement, as permitted by law.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**NOTICE OF CANCELLATION ENDORSEMENT AND NON-RENEWAL**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

We will not cancel or non-renew this policy or make changes that reduce the insurance afforded by this policy until written notice of cancellation, non-renewal or reduction has been mailed or delivered to those listed in the scheduled below at least;

- a) 10 days before the effective date of cancellation, if we cancel for non-payment of premium; or
- b) 120 days before the effective date of the cancellation, non-renewal or reduction if we cancel or reduce the insurance afforded by this policy for any other reason.

NAME

ADDRESS

As required by written contract or agreement

All other terms and conditions of this Policy remain unchanged.


Issued By: ARCH INSURANCE COMPANY

Endorsement Number:

Policy Number: 51PKG8901212

Named Insured: M. A. MORTENSON COMPANIES, INC.

Endorsement Effective Date: 5/1/2024



President

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION ENDORSEMENT AND NON-RENEWAL

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
 EXCESS COMMERCIAL GENERAL LIABILITY COVERAGE PART
 GARAGE COVERAGE PART
 LIQUOR LIABILITY COVERAGE PART
 MOTOR TRUCK CARGO COVERAGE PART
 OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
 POLLUTION LIABILITY COVERAGE PART
 PRINTERS LIABILITY COVERAGE PART
 PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
 RAILROAD PROTECTIVE LIABILITY COVERAGE PART
 SPECIAL PROTECTIVE AND HIGHWAY LIABILITY POLICY – NEW YORK
 WAREHOUSEMAN'S LEGAL LIABILITY COVERAGE PART

We will not cancel or non-renew this policy or make changes that reduce the insurance afforded by this policy until written notice of cancellation, non-renewal or reduction has been mailed or delivered to those scheduled below at least

- a) 10 days before the effective date of cancellation, if we cancel for non-payment of premium; or
- b) 120 days before the effective date of the cancellation, non-renewal or reduction if we cancel or reduce the insurance afforded by this policy for any other reason.

NAME

ADDRESS

As required by written contract
or agreement.

All other terms and conditions of this Policy remain unchanged.

Issued By: ARCH INSURANCE COMPANY

Endorsement Number:

Policy Number: 51PKG8901212

Named Insured: M. A. MORTENSON COMPANIES, INC.

Endorsement Effective Date: 5/1/2024



President

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION ENDORSEMENT AND NON-RENEWAL

We will not cancel or non-renew this policy or make changes that reduce the insurance afforded by this policy until written notice of cancellation, non-renewal or reduction has been mailed or delivered to those listed in the schedule below at least;

- a) 10 days before the effective date of cancellation, if we cancel for non-payment of premium; or
- b) 120 days before the effective date of the cancellation, non-renewal or reduction if we cancel or reduce the insurance afforded by this policy for any other reason.

Schedule

Name:

As required by written contract or agreement.

Address:

All other terms and conditions of this Policy remain unchanged.

Issued By: ARCH INDEMNITY INSURANCE COMPANY

Endorsement Number:

Policy Number: 54WCI8919512

Named Insured: M. A. MORTENSON COMPANIES, INC.

Endorsement Effective Date: 5/1/2024



President