

**PERFORMANCE BOND**

**(61 Okla.Stat. § 113 B.2.)**

\_\_\_\_\_, as surety (the "Surety"), and ("the Bond"), and \_\_\_\_\_, as principal (the "Construction Manager"), enter into and execute this bond ("the Bond"), and bind themselves in favor of the Board of Regents of the Regional University System of Oklahoma, an agency of the State of Oklahoma, as obligee (the "Owner"), in the penal sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) as of the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

WHEREAS, the Construction Manger has entered into an agreement with the Owner (the "Agreement for At Risk construction Management Services") for the \_\_\_\_\_ project at East Central University in Ada, Oklahoma (the "Project"; and,

WHEREAS, the Owner has required the Construction Manager to furnish this Bond containing the terms and conditions set forth herein as a condition of the Agreement for At Risk Construction Management Services with the Construction Manager;

NOW THEREFORE, the Surety and the Construction Manager, both jointly and severally, and for themselves, their heirs, administrator, executors and successors agree:

1.

The Agreement for At Risk Construction Management Services is hereby incorporated herein and by reference made a part hereof to the same extent and effect as though it wee copied verbatim herein. The Surety and the Construction Manager are bound for the full and proper performance and prompt completion of the Agreement for At Risk Construction Management Services including without exception all of its terms and conditions, both express and implied. In the event the Lump Sum Price as set forth to the Agreement for At Risk Construction Management Services exceeds the amount of the is bond as set forth hereinabove, the penal sum of this bond shall be deemed increased to said Lump Sum Price. If thereafter Lump sum Price is increase by amendment, the penal sum of this bond shall be deemed increase by the same amount as such increase in the Lump Sum Price.

2.

If the Construction Manager is in default of the Agreement for At Risk Construction Management Services, the Owner, by letter to the Construction Manager and the Surety, shall declare the Construction Manager to be in default.

3.

Within thirty (30) days after the Owner has satisfied the requirements of Paragraph 2, the Surety shall take the following action:

(a) Proceed itself, or through others acting on its behalf, to promptly complete and fully and properly perform the Agreement for At Risk Construction Management Services including, without limitation, correction or defective and nonconforming work performed by or on behalf of the Construction Manager. During such performance by the Surety, the Owner shall pay the Surety from its own funds only such sums as would have been due and payable to the Construction Manger under the Agreement for At Risk Construction Management Services as and when they would have been due and payable in the absence of default by the Construction Manager; and,

(b) Take any and all other acts mutually agreed upon in writing by the Owner and the Surety.

4.

In addition to those duties set forth hereinabove, the Surety shall promptly pay the Owner all loss, costs and expenses resulting from the Construction Manager's default(s), including without limitation, fees, expenses and costs for architects, engineers, consultants, testing, surveying and attorneys, liquidated or actual damages for delay in completion of the Project, and fees, expenses and costs incurred at the direction or request of the Surety.

5.

In no event shall the Surety be obligated to the Owner hereunder for sums in excess of the penal sum.

6.

The Surety waives notice of any changes to the Agreement for At Risk Construction Management Services including, without limitation, changes in the contract time, the contract price, or the work to be performed.

7.

This Bond is executed pursuant to the terms, conditions and provisions of 61 Okla. Stat. § 113 B.2. which statute is incorporated herein by reference.

8.

Any and all notices to the Surety, the Construction Manager or the Owner shall be given by Certified Mail, Return Receipt Requested, to the address set forth for each party below:

Surety: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Construction Manager: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Owner: Board of Regents of the Regional University System of Oklahoma  
East Central University  
1100 E. 14<sup>th</sup> Street  
Ada, OK 74820

Construction Manager's Signature: \_\_\_\_\_ SEAL

By: \_\_\_\_\_  
Title \_\_\_\_\_

Surety's Signature: \_\_\_\_\_ SEAL

By: \_\_\_\_\_  
Title \_\_\_\_\_