AIA® Document A201™ – 1997

General Conditions of the Contract for Construction

~~**for the following PROJECT:**~~
~~*(Name and location or address):*~~

all State of Tennessee, Department of Finance and Administration General Work
RPA 00 72 13.29 July 2009

THE OWNER:
~~(Name, legal status and address):~~State of Tennessee, Department of Finance and Administration

~~**THE ARCHITECT:**~~
~~*(Name, legal status and address):*~~

THE DESIGNER:
THE **DESIGNER:**
as identified in the agreement

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document has been approved and endorsed by The Associated General Contractors of America

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the ~~Architect.~~ Designer. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements).

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the ~~Architect~~ Designer and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor, (3) between the Owner and ~~Architect~~ Designer or (4) between any persons or entities other than the Owner and Contractor. The ~~Architect~~ Designer shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the ~~Architect's~~ Designer's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 THE PROJECT MANUAL

The Project Manual is a volume or set assembled for the Work which may include the bidding requirements, sample forms, Conditions of the ~~Contract and Specifications.~~ Contract, schedules, tables, drawings, and Specifications.

§ 1.1.8 PROVIDE OR PROVIDED:

"Provide" or "Provided" as used in Contract Documents includes furnishing and installing a thing, product, system or the like.

§ 1.1.9 STATE

The term "State" means the State of Tennessee.

§ 1.1.10 GOVERNMENT

Unless otherwise indicated, the word "Government" shall mean the Government of the State.

§ 1.1.11 USPFO

The term "USPFO" means the United States Property and Fiscal Officer assigned to the State.

§ 1.1.12 CONTRACTING OFFICER

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The term "Contracting Officer" means the person executing this contract on behalf of the State and any other officer or employee who is properly designated contracting officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a contracting officer acting within the limits of established authority.

§ 1.1.13 GOVERNOR
The term "Governor" means the Governor of the State or his duly appointed representative, other than the contracting officer.

§ 1.1.14 "FAR"
"FAR" refers to Federal Acquisition Regulations. FAR provisions referenced in Conditions are matters of Public Record and are a part of the Contract Documents the same as if copied verbatim herein.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS
§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 Within the Specifications, the sections of Division One (01) are General Requirements, and apply to all sections of the Specifications.

§ 1.3 CAPITALIZATION
§ 1.3.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of ~~Architects.~~Designers.

§ 1.4 INTERPRETATION
§ 1.4.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 EXECUTION OF CONTRACT DOCUMENTS
§ 1.5.1 The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the ~~Architect~~ Designer shall identify such unsigned Documents upon request.

§ 1.5.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 1.6
~~OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE~~OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS
§ 1.6.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the ~~Architect~~ Designer and the ~~Architect's~~ Designer's consultants are ~~Instruments of Service~~ Documents through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the ~~Architect~~ Designer or the ~~Architect's~~

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Designer's consultants, and unless otherwise indicated the ~~Architect~~ Designer and the ~~Architect's~~ Designer's consultants shall be deemed the authors of ~~them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service,~~ them. All copies of Documents, except the Contractor's record set, shall be returned or suitably accounted for to the ~~Architect,~~ Designer, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the ~~Architect~~ Designer and the ~~Architect's~~ Designer's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, ~~Architect~~ Designer and the ~~Architect's~~ Designer's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the ~~Architect~~ Designer and the ~~Architect's~~ Designer's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the ~~Architect~~ Designer and the ~~Architect's~~ Designer's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the ~~Architect's or Architect's~~ Designer's or Designer's consultants' copyrights or other reserved rights.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the ~~person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number.~~ State of Tennessee. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval ~~or authorization.~~ or authorization except as otherwise provided in this subparagraph. For the purposes described in this subparagraph relating to approval of modifications described in Article 7, the signature of the following will constitute the signature of the Owner:

.1 the State Architect or the head of Tennessee Department of Finance & Administration Real Property Administration; and,

.2 the head, or the designee thereof, of the Contracting Agency identified as such in the Agreement if not the Department of Finance and Administration.

Except as otherwise provided in Section 4.2.1, the ~~Architect~~ Designer does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 ~~The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~ Public construction projects are not subject to mechanics liens in Tennessee. The remedy afforded to laborers and furnishers of material on State projects is referenced in subparagraph 4.4.8.

§ 2.1.3 RELATIONSHIP OF THE FEDERAL GOVERNMENT

This contract is funded in part by the Federal Government. The Federal Government is not party to this contract. As a condition to receiving and expending Federal Funds, there are certain rights of Federal approval of settlements or dispute actions that the Federal Government will exercise prior to authorization of Federal Funds. Therefore, no inspection or acceptance, change, modification, settlement, dispute claim payment, or dispute action will be considered binding until the required Federal approval is obtained. This paragraph does not abrogate any rights conferred on the Federal Government by law or other provision required due to the use of Federal Funding.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 The ~~Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~ Owner's project number constitutes verification that funding has been established as a matter of public record.

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§ 2.2.2 Except for permits and fees, including those required under Section 3.7.1, which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

§ 2.2.5 ~~Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.~~Refer to SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION provisions contained in FAR 52.236-21, Feb 1997, or latest revision. Unless otherwise provided in Contract Documents, Government:

.1 will furnish the Contractor, free of charge, five (5) sets of large-scale contract drawings and specifications except publications incorporated into the technical provisions by reference;

.2 will furnish additional sets on request at the cost of reproduction; and,

.3 may at its option, furnish the contractor one set of reproducible or half size drawings, in lieu of the drawings in clause 2.2.5.1.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

§ 2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

§ 2.4.1 If ~~the~~ Contractor defaults or neglects to carry out ~~the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall~~ Work in accordance with Contract Documents or fails to fulfill requirements of Contract, then Owner may, after ten (10) days written notice to Contractor and without prejudice to any other remedy that Owner may have, make good such deficiencies. In such case, appropriate modification will be issued deducting from payments then or ~~thereafter due the~~ thereafter-due Contractor the ~~reasonable~~ cost of correcting such deficiencies, including ~~Owner's expenses and compensation for the Architect's~~ costs of Designer's additional services made necessary by such default, ~~neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect.~~ neglect, or failure. Designer will approved both such action and the amount charged to Contractor. If payments then or thereafter due ~~the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the~~ Contractor are insufficient to cover such amount, Contractor shall pay difference to Owner.

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ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the ~~Architect~~ Designer in the ~~Architect's~~ Designer's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

§ 3.1.4 At the time of bid and award, Contractor shall not be currently disqualified from participating in State construction projects under the supervision of the State Building Commission. Such disqualification extends to succeeding or related corporations, partnerships, joint ventures, and other business organizations having substantial factual or legal connections, continuity, or identity with those that have been disqualified.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the ~~Architect~~ Designer as a request for information in such form as the ~~Architect~~ Designer may require.

§ 3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the ~~Architect,~~ Designer, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the ~~Architect.~~Designer.

§ 3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the ~~Architect~~ Designer in response to the Contractor's notices or requests for information pursuant to Sections 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Sections 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Sections 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. ~~The~~ Contractor shall not be liable to ~~the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.~~Owner or Designer for damage resulting from error, inconsistency, or omission in Contract Documents, unless Contractor discovered, or in the exercise of reasonable diligence should have discovered such error, inconsistency, or omission and failed to report it to Designer. If contractor performs construction activity when Contractor knows, or should know in exercise of reasonable diligence that the activity involves error, inconsistency, or omission in Contract Documents, Contractor shall assume responsibility for such performance and shall bear the attributable costs for correction.

§ 3.2.4 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

§ 3.2.4.1 Refer to FAR 52.236-3, Apr 1984, or latest revision.

§ 3.2.4.2 The contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its costs, including but not limited to:

- **.1** conditions bearing upon transportation, disposal, handling, and storage of materials;
- **.2** the availability of labor, water, electric power, and roads;

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.3 uncertainties of weather, river stages, tides, or similar physical conditions at the site;
.4 the conformation and conditions of the ground; and
.5 the character of equipment and facilities needed preliminary to and during work performance.

§ 3.2.4.3 The contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expenses to the Government.

§ 3.2.4.4 The Government assumes no responsibility for any conclusions or interpretations made by the contractor based on the information made available by the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

§ 3.2.5 Contractor shall:
.1 Check all drawings furnished immediately upon receipt.
.2 Compare all drawings and verify the figures before laying out the work.
.3 Promptly notify the Contracting Officer of any discrepancies; and
.4 Be responsible for any errors that might have been avoided by complying with this paragraph.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice and a proposal of corrective changes to the Owner and ~~Architect~~ Designer and shall not proceed with that portion of the Work without further written instructions from the ~~Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.~~Designer.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Contractor shall not receive material nor labor from one who submitted a competing general bid for the same Contract and subsequently withdrew, reneged, or otherwise failed to enter into contract.

§ 3.4.2 ~~The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order.~~Specified materials, equipment, and systems are essential elements of the Contract. If Contractor desires to use another material, equipment, or system in lieu thereof, Contractor shall request approval in writing and shall submit samples and data as required for Designer's consideration. Designer and

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Owner will be final judge of acceptability of substitution. No substitution shall be made without authority in writing from Designer. Not later than twenty-one (21) days after award of contract, Contractor shall provide a list showing names of manufacturers proposed for each specified product, and applicable name of installer, whether Contractor or subcontractor. Designer will within fourteen (14) days reply in writing to Contractor stating whether Owner or Designer, after due investigation, has reasonable objection to any such manufacturer or installer. If adequate data on proposed manufacturer or installer is not available, Designer may state that action will be deferred until Contractor provides further data. Contractor shall not make use of a manufacturer, or installer to which Owner or Designer has reasonably objected. Contractor will receive adjustment in Contract Sum, Contract Time, or both for making such change unless objection was based on failure of manufacturer or installer to meet requirements of Contract Documents, in which case neither Contract Sum nor Contract Time shall be adjusted. Failure to object to a manufacturer shall not constitute waiver of requirements of Contract Documents. Products furnished by listed manufacturers must conform to such requirements.

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

§ 3.4.4 Contractor shall disclose existence and extent of financial interests, whether direct or indirect, which Contractor has in proposed subcontractors and material suppliers.

§ 3.4.5 NON-DISCRIMINATION IN EMPLOYMENT:

§ 3.4.5.1 Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, sex, age, or national origin as defined in Tennessee Code Annotated (TCA) §4-21-401, et seq., nor because of handicap, in accordance with TCA § 8-50-103.

§ 3.4.5.2 Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to handicap, race, creed, color, religion, sex, age, or national origin, including but not limited to practices in recruitment, recruitment advertising, employment, selection for training or apprenticeship, rates of pay or other forms of compensation, upgrading, demotion, transfer, layoff, or termination.

§ 3.4.5.3 Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these policies of non-discrimination.

§ 3.4.5.4 Solicitations or advertisements for employees placed by or in behalf of Contractor shall state that qualified applicants shall receive consideration for employment without regard to handicap, race, creed, color, religion, sex, age, or national origin.

§ 3.4.6 PREVAILING WAGE SCALE

§ 3.4.6.1 Contractor is required to comply with policies, conditions and rules of the Tennessee Department of Labor pursuant to TCA §12-4-401, et seq, which include that if the Contract Sum exceeds fifty thousand dollars ($50,000.00), Contractor is required to pay Prevailing Wage Scale current in the area of the project to laborers and mechanics employed on the Work, as set forth in said rules, policies, and statute, and to furnish weekly payrolls with the decision number noted on each to the Tennessee Department of Labor.

§ 3.4.6.2 When a Federal Wage Scale will apply to the Project, it will be included in Contract Documents, and Contractor shall pay not less than rates set forth. If both Federal and State wage rates apply to project, Contractor shall pay the higher of the two wage scales for each craft or trade.

§ 3.4.6.3 Current Prevailing Wage Scale Determination(s) for this project will have been bound herein, or issued by addendum, if Owner's estimate of the value of Work indicates that it is required. Failure of Owner or Designer to provide current wage scale decision prior to bidding does not relieve Contractor of obligations set forth above.

§ 3.4.6.4 If applicability or values of Prevailing Wage Rates applicable to the project change during the course of the Contract, or differ from those provided in Contract Documents, equitable adjustment in Contract Sum shall be made.

§ 3.4.7 PROHIBITION OF ILLEGAL IMMIGRANTS

§ 3.4.7.1 The requirements of Public Acts of 2006, Chapter Number 878, of the State of Tennessee, addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the State of Tennessee,

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shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

§ 3.4.7.2 The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of any illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the Owner a completed and signed copy of the standard form entitled "Personnel Used in Contract Performance" with each application for payment. This form is provided in the Contract Documents. Such attestations shall be maintained by the Contractor and made available to state officials upon request.

§ 3.4.7.3 Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.

§ 3.4.7.4 The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the Owner.

§ 3.4.7.5 The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a Contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a Contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.

§ 3.4.7.6 For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the Department of Homeland Security and who, under Federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

§ 3.4.8 Refer to CONVICT LABOR provisions contained in FAR 52.222-3, June 2003, or latest revision.

§ 3.4.8 REPORTING OF SUBCONTRACTORS

§ 3.4.8.1 If the total Contract Sum equals or exceeds $100,000 (whether under the terms of the original contract or by Amendment), and the time of performance is more than six (6) months, Contractor shall fully comply with its obligations under Tennessee Code Annotated 50-7-404(g) including but not limited to the subcontractor reporting requirements of subsection (g)(1).

§ 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner and ~~Architect~~ Designer that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the ~~Architect,~~ Designer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 Refer to MATERIAL AND WORKMANSHIP provisions contained in FAR 52.236-5, Apr 1984, or latest revision.

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§ 3.6 TAXES

§ 3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.6.2 Subparagraph 3.6.1 notwithstanding, if after bids are received or negotiations concluded, the State of Tennessee enacts a change in a sales, consumer, use, or similar state tax for the Work or a portion thereof provided by the Contractor, the Contract Sum shall be accordingly adjusted by appropriate modification or the Owner may make other lawful provision to mitigate the change.

§ 3.6.3 Neither Contract Sum nor Contract Time shall be adjusted for impacts resulting from a change in a tax by a governmental body other than the State of Tennessee, regardless of when the tax is enacted or goes into effect.

§ 3.7 PERMITS, FEES AND NOTICES

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

§ 3.7.2 ~~The~~ Except as provided in subparagraph 3.7.5, the Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 ~~It~~ Except as provided in subparagraph 3.7.5, it is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the ~~Architect~~ Designer and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

§ 3.7.4 ~~If~~ Except as provided in subparagraph 3.7.5, if the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the ~~Architect~~ Designer and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.5 This subparagraph applies to any applicable local governmental permit. The Owner is an agency of state government, and as such has sovereign immunity from the laws, ordinances, rules, regulations and lawful orders of local governments within the state; however, the Contractor shall obtain all normal permits whenever possible as if the Owner had no such immunity. If a delay or denial in securing a local permit occurs, the Contractor shall inform the Designer and the Owner of the situation, propose corrective measures, continue to pursue the customary permits, and continue the Work upon approval of the Designer.

§ 3.7.6 Refer to PERMITS AND RESPONSIBILITY provisions contained in FAR 52.236-7, Nov 1991, or latest revision.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents:

- **.1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- **.2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;

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.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by ~~Change Order.~~ Modification. The amount of the ~~Change Order~~ Modification shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ and designate a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. Contractor shall not change such designation without consent of Owner; and, Owner's consent shall not be unreasonably withheld. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

§ 3.9.2 Refer to SUPERINTENDENCE BY THE CONTRACTOR provisions contained in FAR 52.236-6, Apr 1984, or latest revision.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and ~~Architect's~~ Designer's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare and keep current, for the ~~Architect's~~ Designer's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the ~~Architect~~ Designer reasonable time to review submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and ~~Architect.~~ Designer.

§ 3.10.4 SCHEDULING AGENT

At any time during the course of the Work, Owner may provide the services of a Construction Scheduling Agent. If provided, such services will be set forth in the specification of Progress Schedules. If provided, the purpose of such services is to assist in producing a progress schedule for the Work; however, no express or implied guarantee or warrantee is provided by the Owner regarding the suitability of the derived schedules, and the Contractor retains full responsibility for the suitability of the schedules and for conforming to them. Contractor shall cooperate fully in developing a schedule, and shall require the necessary forces assisting the Contractor to likewise cooperate fully.

§ 3.10.5 COMMISSIONING AGENT

At any time during the course of the Work, Owner may utilize the services of a Commissioning Agent to have selected building systems commissioned. If utilized, such services and systems will be set forth in the specifications of Commissioning Requirements. If utilized, the purpose of such services is to ensure that all building systems perform interactively according to the design intent as indicated by the Contract Documents and the Owner's operational needs. The Commissioning Agent will direct the commissioning process. Contractor shall cooperate fully in the commissioning process, and shall require the necessary forces assisting the Contractor to likewise cooperate fully.

§ 3.10.6 HAZARDOUS MATERIALS AGENT

At any time during the course of the Work, Owner may utilize the services of a Hazardous Materials Agent to perform assessment of possible hazardous materials encountered by the Contractor in performance of the Work. If utilized, such services will be set forth in the specifications of Hazardous Materials Assessment Requirements. If utilized, the purpose of such services is to determine the appropriate course of action to contend with such materials in accordance with the Contract Documents. Contractor shall cooperate fully in the assessment process, and shall require the necessary forces assisting the Contractor to likewise cooperate fully.

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§ 3.10.7 DISASTER RECOVERY AGENT

At any time during the course of the Work, Owner may utilize the services of a Disaster Recovery Agent to perform emergency disaster recovery services at the project site relating to Contractor performance of the Work, or other circumstances. Time being of the essence, such work will be to mitigate material damages that has occurred with the intent to lessen costs potentially to the Contractor and Owner. Contractor shall cooperate fully in the disaster recovery process, and shall require the necessary forces assisting the Contractor to likewise cooperate fully.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

§ 3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the ~~Architect~~ Designer and shall be delivered to the ~~Architect~~ Designer for submittal to the Owner upon completion of the Work.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the ~~Architect~~ Designer is subject to the limitations of Section 4.2.7. Informational submittals upon which the ~~Architect~~ Designer is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the ~~Architect~~ Designer without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the ~~Architect~~ Designer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the ~~Architect~~ Designer without action.

§ 3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, prior to providing that which is the subject of the submittal and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the ~~Architect.~~Designer.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the ~~Architect's~~ Designer's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the ~~Architect~~ Designer in writing of such deviation at the time of submittal and (1) the ~~Architect~~ Designer has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility

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for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the ~~Architect's~~ Designer's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the ~~Architect~~ Designer on previous submittals. In the absence of such written notice the ~~Architect's~~ Designer's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the ~~Architect~~ Designer will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the ~~Architect.~~ Designer. The Owner and the ~~Architect~~ Designer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and ~~Architect~~ Designer have specified to the Contractor all performance and design criteria that such services must satisfy. ~~Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.~~ The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

§ 3.13 USE OF SITE

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 Refer to OPERATIONS AND STORAGE AREAS provisions contained in FAR 52.236-10, Apr 1984, or latest revision.

§ 3.13.3 Contractors shall comply with the STATE ENERGY CONSERVATION PLAN issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

§ 3.14 CUTTING AND PATCHING

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

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

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§ 3.15.2 ~~If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.~~Refer to CLEANING UP provisions contained in FAR 52.236-12, Apr 1984, or latest revision.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

§ 3.16 ACCESS TO WORK

§ 3.16.1 The Contractor shall provide the Owner and ~~Architect~~ Designer access to the Work in preparation and progress wherever ~~located.~~located, so that each may perform functions and exercise rights under the Contract Documents.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

§ 3.17.1 The Contractor ~~shall~~ shall, subject to approval by the Attorney General of the State of Tennessee with respect to suits or claims against Owner, defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and ~~Architect~~ Designer harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or ~~Architect.~~ Designer. However, if the Contractor knows or has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the ~~Architect.~~Designer.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by ~~law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Section 11.3,~~ law, the Contractor shall indemnify and hold harmless the Owner, ~~Architect, Architect's~~ Designer, Designer's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible ~~property (other than the Work itself),~~ property, including loss of use resulting therefrom, but only to the extent caused by willful or the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.19 RELATIONS WITH OWNER'S REPRESENTATIVES

§ 3.19.1 Contractor, subcontractors, material suppliers, and sub-subcontractors shall neither offer nor give a product, service, payment, negotiable instrument, gift, gratuity, or other compensation in connection with this project to a representative or employee of the State of Tennessee, the Designer, or the Designer's consultants without Owner's consent. Evidence of a violation of this requirement may be cause for termination of this Contract.

§ 3.19.2 refer to GRATUITIES provisions contained in FAR 52.203-3, Apr 1984, or latest revision.

§ 3.19.3 refer to COVENANT AGAINST CONTINGENT FEES provisions contained in FAR 52.203-5, Apr 1984, or latest revision.

§ 3.19.4 refer to ANTI-KICKBACK PROCEDURES provisions contained in FAR 52.203-7, July 1995, or latest revision.

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§ 3.20 PARTICIPATION OF ~~MINORITY~~ DIVERSITY-OWNED BUSINESSES:

§ 3.20.1 To the extent that the Contractor or a subcontractor is a ~~Minority~~ Diversity-owned Business, the Contractor shall report to the State its own status in this regard and the names and amounts of contracts entered into with ~~minority~~ diversity-owned businesses on State projects in order for the State to collect data on such participation.

§ 3.20.2 "~~Minority~~ Diversity -owned Business" means a business which is solely owned, or at least fifty-one percent (51%) of the assets of outstanding stock of which is owned, by an individual who personally manages and controls the daily operations of such business, and who is impeded from normal entry into the economic mainstream because of past practices of discrimination based on race, religion, ethnic background, sex, or disability.

§ 3.20.3 To be a "~~Minority~~ Diversity -owned Business" for the purposes of this contract, a business must be certified as a "~~Minority~~ Diversity -owned Business" by an agency of the Federal Government or the Government of the State of Tennessee which is normally engaged in the practice of providing such certification.

§ 3.21 SECURITY OF PROTECTED INFORMATION

§ 3.21.1 Contractor is required to comply with policies, conditions and rules of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, which includes protection of the security of information identified as protected health information (PHI).

§ 3.21.2 If Contractor is notified of the presence of PHI contained in facilities identified in the Work, then Contractor shall transmit such notice to all employees, subcontractors, material suppliers, and other affiliates of the Contractor allowed access to such facilities during the course of the Work.

§ 3.21.3 All individuals notified per the requirements of this paragraph shall not read, examine, remove, or otherwise interfere with PHI. They shall not allow access to PHI, or disclose the contents of PHI, to any other person. All such individuals with knowledge of an unauthorized disclosure of PHI shall notify either an appropriate State official or a manager of the Contractor with responsibility for notifying the appropriate State official.

§ 3.22 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION

§ 3.22.1 refer to provisions contained in FAR 52.222-4, Sept 2000, or latest revision.

§ 3.22.2 OVERTIME REQUIREMENTS:

No contractor or subcontractor employing laborers or mechanics [refer to FAR 22.300] shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and ½ times the basic rate of pay for each hour worked over 40 hours.

§ 3.22.3 VIOLATION, LIABILITY FOR UNPAID WAGES, AND LIQUIDATED DATMAGES:

The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in subparagraph 3.22.2 of this paragraph. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The contracting officer will assess liquidated damages at the rate of $10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by paragraph 3.22

§ 3.22.4 WITHHOLDING FOR UNPAID WAGES AND LIQUIDATED DAMAGES:

The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to paragraph 3.22.

§ 3.22.5 PAYROLLS AND BASIC RECORDS:

.1 The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR

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5.5(a)(3) implementing the Davis-Bacon Act.

.2 The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under subparagraph 3.22.5.1 of this paragraph. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

§ 3.22.6 SUBCONTRACTS

The Contractor shall insert the provisions set forth in subparagraphs 3.22.2 through 3.22.5 of this paragraph in subcontracts exceeding $100,000 and require subcontractors to include these provisions in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in subparagraphs 3.22.2 through 3.22.5 of this paragraph.

§ 3.23 DAVIS-BACON ACT

§ 3.23.1 refer to provisions contained in FAR 52.222-6, Feb 1995, or latest revision.

§ 3.23.2 All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CRF Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringes benefits under section 1 (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of subparagraph 3.23.8; of this paragraph; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the paragraph 3.26. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employers payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under subparagraph 3.23.3 of this paragraph) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

§ 3.23.3 The Contracting Officer shall require than any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

.1 The work to be performed by the classification requested is not performed by a classification in the wage determination.

.2 The classification is utilized in the area by the construction industry.

.3 The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

§ 3.23.4 If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Office to the Administrator of the

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within

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the 30-day period that additional time is necessary.

§ 3.23.5 In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

§ 3.23.6 The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs 3.23.4 and 3.23.5 of this paragraph shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

§ 3.23.7 Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefits as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

§ 3.23.8 If the contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account asset for the meeting of obligations under the plan or program.

§ 3.24 WITHHOLDING OF FUNDS

§ 3.24.1 Refer to provisions contained in FAR 52.222-7, Feb 1988, or latest revision.

§ 3.24.2 The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

§ 3.25 PAYROLLS AND BASIC RECORDS

§ 3.25.1 Refer to provisions contained in FAR 52.222-8, Feb 1988, or latest revision.

§ 3.25.2 Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section (1.b.2.B.) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under subparagraph 3.23.8 of the paragraph entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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§ 3.25.3 The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph 3.25.2. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington DC 20402. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

§ 3.25.4 Each payroll submitted shall be accompanied by a "Statement of Compliance" signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify:

.1 That the payroll for the payroll period contains the information required to be maintained under subparagraph 3.25.2, of this paragraph and that such information is correct and complete;

.2 That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29CFR Part 3; and

.3 That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract

§ 3.25.5 The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph 3.25.4 of this paragraph.

§ 3.25.6 The falsification of any of the certifications in this paragraph 3.25 may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States code.

§ 3.25.7 The Contractor or subcontractor shall make the records required under subparagraph 3.25.2 of this paragraph available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

§ 3.26 APPRENTICES AND TRAINEES

§ 3.26.1 Refer to provisions contained in FAR 52.222-9, Feb 1988, or latest revision.

§ 3.26.2 APPRENTICES:

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall not be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeymen hourly rate) specified in the Contractors or

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subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentices level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

§ 3.26.3 TRAINEES:
Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainees level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

§ 3.26.4 EQUAL EMPLOYMENT OPPORTUNITY:
The utilization of apprentices, trainees, and journeymen under this paragraph shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

§ 3.27 EQUAL OPPORTUNITY:
§ 3.27.1 refer to FAR 52.222-26, Apr 2002, or latest revision.

§ 3.28 COMPLIANCE WITH COPELAND ACT REQUIREMENTS:
§ 3.28.1 refer to FAR 52.222-10, Feb 1988, or latest revision.

§ 3.28.2 The Contractor shall comply with requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

§ 4.1 ~~ARCHITECT~~DESIGNER

§ 4.1.1 ~~The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.~~
"Designer" is the licensed prime design professional or firm lawfully practicing architecture, landscape architecture, or engineering, identified in the Bidding Documents and Agreement form for project. The term "Designer" means the Designer or the Designer's authorized representative.

§ 4.1.2 Duties, responsibilities and limitations of authority of the ~~Architect~~ Designer as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and ~~Architect.~~ Designer. Consent shall not be unreasonably withheld.

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§ 4.1.3 If the employment of the ~~Architect~~ Designer is terminated, the Owner shall employ a new ~~Architect against whom the Contractor has no reasonable objection and~~ Designer whose status under the Contract Documents shall be that of the former ~~Architect.~~Designer.

§ 4.1.4 CONTRACT ADMINISTRATION:
The State shall maintain a contract administration system ensuring that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

§ 4.2 ~~ARCHITECT'S ADMINISTRATION OF THE CONTRACT~~DESIGNER'S ADMINISTRATION OF THE CONTRACT
§ 4.2.1 The ~~Architect~~ Designer will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) ~~with the Owner's concurrence, from time to time~~ at the Owner's request during the one-year period for correction of Work described in Section 12.2. The ~~Architect~~ Designer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 4.2.2 The ~~Architect,~~ Designer, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the ~~Architect~~ Designer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The ~~Architect~~ Designer will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, ~~since these~~ all of which are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 The ~~Architect~~ Designer will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The ~~Architect~~ Designer will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the ~~Architect~~ Designer about matters arising out of or relating to the Contract. Communications by and with the ~~Architect's~~ Designer's consultants shall be through the ~~Architect.~~ Designer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the ~~Owner.~~Owner or the Owner's designee.

§ 4.2.5 Based on the ~~Architect's~~ Designer's evaluations of the Contractor's Applications for Payment, the ~~Architect~~ Designer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The ~~Architect~~ Designer will have authority to reject Work that does not conform to the Contract Documents. Whenever the ~~Architect~~ Designer considers it necessary or advisable, the ~~Architect~~ Designer will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the ~~Architect~~ Designer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the ~~Architect~~ Designer to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The ~~Architect~~ Designer will review and ~~approve or~~ take ~~other~~ appropriate action upon the Contractor's submittals such as Shop Drawings, Product ~~Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's~~ Data, and Samples, checking for compliance with the requirements of, and conformance with the intent of, the Contract Documents. The Designer's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the

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~~Architect's~~ Designer's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The ~~Architect's~~ Designer's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The ~~Architect's~~ Designer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the ~~Architect,~~ Designer, of any construction means, methods, techniques, sequences or procedures. The ~~Architect's~~ Designer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The ~~Architect will~~ Designer will help the Owner prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4.

§ 4.2.9 The ~~Architect~~ Designer will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

§ 4.2.10 If the Owner and ~~Architect~~ Designer agree, the ~~Architect~~ Designer will provide one or more project representatives to assist in carrying out the ~~Architect's~~ Designer's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be ~~as set forth in an exhibit to be incorporated in the Contract Documents.~~ incorporated in the Contract Documents if requested by the Contractor.

§ 4.2.11 The ~~Architect~~ Designer will interpret and decide matters concerning performance under and requirements of, the Contract Documents on written request of either the Owner or Contractor. The ~~Architect's~~ Designer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the ~~Architect~~ Designer shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the ~~Architect~~ Designer to furnish such interpretations until 15 days after written request is made for them.

§ 4.2.12 Interpretations and decisions of the ~~Architect~~ Designer will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the ~~Architect~~ Designer will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in ~~good faith.~~ accordance with a reasonable and professional standard of care.

§ 4.2.13 The ~~Architect's~~ Designer's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.3 CLAIMS AND DISPUTES

§ 4.3.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 4.3.2 Time Limits on Claims. Claims by either ~~party~~ party, except claims of Liquidated Damages, must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. If the impact of the condition giving rise to the Claim cannot be fully evaluated, a preliminary notice of a pending claim shall be made within the stated time limit subject to further action in a timely manner. Claims must be initiated by written notice to the ~~Architect~~ Designer and the other party.

§ 4.3.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in ~~Section 9.7.1 and~~ Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

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§ 4.3.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract ~~Documents~~ Documents, taking into account that unless otherwise stipulated in Contract Documents, excavations and other subsurface construction activity shall be considered unclassified down to design depth, regardless of substrate and abandoned or inactive infrastructures or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The ~~Architect~~ Designer will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the ~~Architect~~ Designer determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the ~~Architect~~ Designer shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the ~~Architect~~ Designer has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the ~~Architect~~ Designer for initial determination, subject to further proceedings pursuant to Section 4.4.

§ 4.3.5 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as ~~provided herein shall be given before proceeding to execute the Work.~~ required by the Contract Documents shall be given to the Owner by the Contractor, and written notice received by the Contractor from Owner acknowledging the claim and authorizing construction activity to proceed, before the Contractor shall proceed to execute the construction activity giving rise to the claim; thence, the claim shall be addressed under provisions of paragraph 4.4. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.6. Documentation of claims shall conform to the requirements of Article 7.

§ 4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the ~~Architect,~~ Designer, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the ~~Architect,~~ Designer, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 4.3.

§ 4.3.7 Claims for Additional Time

§ 4.3.7.1 ~~If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the~~ To make claim for an increase in Contract Time, Contractor shall give written notice as provided herein, and include an estimate of cost, which shall be limited to that allowed by 8.3.3, and an explanation of the cause and probable effect on progress of Work. In the case of a continuing ~~delay only one Claim is necessary.~~ delay, only one claim is necessary, and Contractor shall subsequently detail the full scope of the delay.

§ 4.3.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 4.3.8 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 4.3.9 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably ~~adjusted.~~ adjusted subject to limitations and requirements contained in the Contract Documents.

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§ 4.3.10 Claims for Consequential Damages. The Contractor ~~and Owner waive Claims against each other for~~ waives claims against the Owner for all consequential damages arising out of or relating to this ~~Contract. This mutual waiver includes:~~

~~.1 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~~

~~.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business~~ Contract due to either party's termination in accordance with Article 14, including principal office expenses, the compensation of personnel stationed at the principal office, and any damages for losses of financing, business, and reputation, and for loss of ~~profit except anticipated profit arising directly from the Work.~~

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 4.3.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.~~profit.

§ 4.4 RESOLUTION OF CLAIMS AND DISPUTES

§ 4.4.1 Decision of ~~Architect.~~ Designer. Claims, including those alleging an error or omission by the ~~Architect but excluding those arising under Sections 10.3 through 10.5,~~ Designer, shall be referred initially to the ~~Architect~~ Designer for decision. An initial decision by the ~~Architect~~ Designer shall be required as a condition precedent to mediation, arbitration or litigation of ~~all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the Owner.~~action pursuant to remedies provided by law for claims between Owner and Contractor.

§ 4.4.2 The ~~Architect~~ Designer will review Claims and within ten days of the receipt of the Claim or information preliminary or pursuant to a Claim or a modification to a Claim, and shall take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the ~~Architect~~ Designer is unable to resolve the Claim if the ~~Architect~~ Designer lacks sufficient information to evaluate the merits of the Claim or if the ~~Architect~~ Designer concludes that, in the ~~Architect's~~ Designer's sole discretion, it would be inappropriate for the ~~Architect to resolve the Claim.~~Designer to resolve the Claim. If Designer recommends approval or rejection of the Claim, Owner and Contractor shall have ten (10) days after receipt to protest. If Designer suggests compromise, parties shall have ten (10) days after receipt to protest. If the Designer declines to resolve the claim, the Owner may, but is not obligated to, then take the lead in resolving the claim.

§ 4.4.3 In evaluating Claims, the ~~Architect~~ Designer may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the ~~Architect~~ Designer in rendering a decision. The ~~Architect~~ Designer may request the Owner to authorize retention of such persons at the Owner's expense.

§ 4.4.4 If the ~~Architect~~ Designer requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either provide a response on the requested supporting data, advise the ~~Architect~~ Designer when the response or supporting data will be furnished or advise the ~~Architect~~ Designer that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the ~~Architect~~ Designer will either reject or approve the Claim in whole or in part.

§ 4.4.5 The ~~Architect~~ Designer will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the ~~Architect~~ Designer shall be final and binding on the parties but subject to mediation ~~and arbitration.~~with the consent of both parties and to remedies as otherwise provided by law.

§ 4.4.6 ~~When a written decision of the Architect states that (1) the decision is final but subject to mediation and arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration~~

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~~within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.~~As a matter of law, claims by or against the State of Tennessee are not subject to arbitration.

§ 4.4.7 Upon receipt of a Claim against the Contractor or at any time thereafter, the ~~Architect~~ Designer or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the ~~Architect~~ Designer or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 4.4.8 ~~If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by the Architect, by mediation or by arbitration.~~As a matter of law, the State of Tennessee and its property are not subject to mechanics' and materialmen's liens. Subcontractors, suppliers, and other claimants are protected through the Contract Bond as required by TCA § 12-4-201, et. seq., TCA § 4-15-102 (f)(2), and paragraph 11.5 of these Conditions. Specific requirements for notice of claims on the Bond are set forth in TCA § 12-4-205.

§ 4.5 THE STATE OF TENNESSEE IS NOT SUBJECT TO MEDIATION

~~**§ 4.5.1** Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5 shall, after initial decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.~~

~~**§ 4.5.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.~~

~~**§ 4.5.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

§ 4.6 THE STATE OF TENNESSEE IS NOT SUBJECT TO MANDATORY ARBITRATION

§ 4.7 DISPUTES

§ 4.7.1 Refer to FAR 52.222-1, Feb 1997, or latest version.

§ 4.8 DISPUTES CONCERNING FEDERAL LABOR STANDARDS

§ 4.8.1 Refer to FAR 52.222-14, Feb 1988, or latest version.

§ 4.8.2 The United States Department of Labor has set forth in 20 CFR Parts 5, 6, and 7, procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes paragraph of this contract. Disputes within the meaning of this paragraph include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees of their representatives.

~~**§ 4.6.1** Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5, shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section 4.5.~~

~~**§ 4.6.2** Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration~~

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~~Association currently in effect. The demand for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Architect.~~

~~**§ 4.6.3** A demand for arbitration shall be made within the time limits specified in Sections 4.4.6 and 4.6.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Section 13.7.~~

~~**§ 4.6.4** Limitation on Consolidation or Joinder. No arbitration arising out of or relating to the Contract shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor, a separate contractor as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner, Contractor or a separate contractor as described in Article 6 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described therein or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

~~**§ 4.6.5** Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

~~**§ 4.6.6** Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, ~~as soon as practicable~~ within twenty-one (21) days after award of the Contract, shall furnish in writing to the Owner through the ~~Architect~~ Designer the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The ~~Architect~~ Designer will promptly reply to the Contractor in writing stating whether or not the Owner or the ~~Architect,~~ Designer, after due investigation, has reasonable objection to any such proposed person or entity. ~~Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.~~No construction activity shall be commenced by a person or entity in question until all objections have been resolved. If required, Contractor shall furnish evidence satisfactory to Designer, showing each proposed subcontractor is competent to execute work covered by the subcontract. Subcontractors identified as a part of Contractor's bid for this project shall be used in the capacity listed, unless otherwise approved by the Owner in accordance with State Building Commission policy.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or ~~Architect~~ Designer has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

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§ 5.2.3 If the Owner or ~~Architect~~ Designer has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or ~~Architect~~ Designer has no reasonable objection. If the proposed but rejected Subcontractor was able to meet requirements of Contract Documents and reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or ~~Architect~~ Designer makes reasonable objection to such substitute.

§ 5.2.5 Contractor shall not award subcontract to one who submitted a competing general bid for the same Contract and subsequently withdrew, reneged, or otherwise failed to enter into contract.

§ 5.2.6 Contractor shall not allow work under the Contract to be performed by a contractor or subcontractor that has been disqualified from participating in State construction projects under the supervision of the State Building Commission. Such disqualification extends to succeeding or related corporations, partnerships, joint ventures, and other business organizations having substantial factual or legal connections, continuity, or identity with those that have been disqualified. If such a participant is discovered, Contractor shall immediately discontinue the participation and provide a suitable substitute at no additional cost to the Owner, and provide documentation to the Owner of the action taken to comply with this requirement.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By appropriate agreement, written where ~~legally required for validity,~~ in the written agreement between the Contractor and Subcontractor, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and ~~Architect.~~ Designer. Each subcontract agreement shall preserve and protect the rights of the Owner and ~~Architect~~ Designer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. In no event shall Subcontractor have any claim against Owner.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

- **.1** assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- **.2** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension. Upon any such assignment, Owner is not responsible for past breaches, monetary or otherwise, of the Contractor.

§ 5.4.3 Assignment is at the option of Owner. The Owner has no duty or obligation to exercise this option, nor is any right created for any subcontractor to expect or rely upon such assignment.

§ 5.4.4 Refer to provisions contained in FAR 52.222-11, Feb 1988, or latest version.

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§ 5.4.5 The Contractor or subcontractor shall insert in subcontracts the paragraphs entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act - Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination and Debarment, Disputes Concerning Labor Standards, Compliance with Davis-Bacon and Related Acts Regulations, and Certification of Eligibility, and such other paragraphs as the Contracting Officer may, by appropriate instructions, require, and also a paragraph requiring subcontractors to include these paragraphs in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all contract paragraphs cited in this paragraph.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to ~~insurance and waiver of subrogation.~~ insurance. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Section 4.3.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.1.5 Refer to OTHER CONTRACTS provisions in FAR 52.236-8, Apr 1984, or latest version.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the ~~Architect~~ Designer apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of ~~delays,~~ improperly timed construction activities, damage to the ~~Work~~ Work, or defective construction of a separate contractor.

§ 6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

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§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

§ 6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the ~~Architect~~ Designer will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and ~~Architect;~~ Designer; a Construction Change Directive requires agreement by the Owner and ~~Architect~~ Designer and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the ~~Architect~~ Designer alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.1.4 Refer to CHANGES provisions contained in FAR 52.243-4, Aug 1987, or latest version.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument ~~prepared by the Architect and~~ signed by the Owner, Contractor and ~~Architect,~~ Designer, stating their agreement upon all of the following:

- **.1** change in the Work;
- **.2** the amount of the adjustment, if any, in the Contract ~~Sum;~~ Sum, and that the price includes overhead and profit, and represents all direct and indirect costs associated with the change; and
- **.3** the extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 ~~Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.~~Unless otherwise agreed in writing by Owner and Contractor, the method of determining adjustments in Contract Sum shall be by one or more of the methods set forth in 7.3.3, and shall be based on reasonable expenditures and savings as set forth in subparagraph 7.3.6.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order ~~prepared by the Architect and~~ signed by the Owner and ~~Architect,~~ Designer, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- **.1** mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- **.2** unit prices stated in the Contract Documents or subsequently agreed upon;
- **.3** cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- **.4** as provided in Section 7.3.6.

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§ 7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the ~~Architect~~ Designer of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the ~~proposed~~ adjustment in the Contract Sum or Contract Time.

§ 7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the ~~Architect~~ Designer on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, ~~a reasonable~~ an allowance for overhead and ~~profit.~~ profit in accordance with subparagraph 7.3.10. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the ~~Architect~~ Designer may prescribe, an itemized accounting together with appropriate supporting data. ~~Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.6 shall be limited to the following:~~

§ 7.3.6.1 Costs for the purpose of this subparagraph 7.3.6 shall be limited to the following:

- **.1** ~~costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;~~Direct Payroll Expense of labor;
- **.2** costs of materials, ~~supplies~~ supplies, and equipment, including cost of ~~transportation,~~ transportation thereof, whether incorporated or consumed;
- **.3** rental costs of machinery and ~~equipment, exclusive of hand tools, whether rented from the Contractor or others;~~equipment rented from others, and not more than eighty percent (80%) of the Associated Equipment Distributors Nationally Averaged Rental Rates for Construction Equipment for machinery and equipment belonging to Contractor;
- **.4** costs of premiums for ~~all bonds and insurance, permit fees, and sales, use or~~ bonds and insurance to the extent required by Contract Documents, permit fees, and sales, use, or other similar taxes related to the Work; and
- **.5** ~~additional costs of supervision and field office personnel directly attributable to the change.~~additional Direct Payroll Expense of superintendence directly attributable to authorized overtime.

§ 7.3.6.2 The following items are "Class 1 Time-Related Expenses", and shall be considered as costs when Contract Time is extended due to additional work or due to a Class 1 cause defined in 8.3, and solely to the extent directly attributable to extension of time. In all other instances, the following items shall be considered fixed costs already included in the general requirements of the Work for the duration of the Contract Time:

- **.1** On-site field offices, sheds, phones, sanitary facilities, utilities, drinking fountains, cleaning, safety programs, and other construction facilities and temporary controls not specifically required for additional work;
- **.2** costs of project superintendence;
- **.3** Superintendent's and other general use vehicles.
- **.4** Other general use vehicles, being those requiring a class D, H, or M license, and excluding those requiring a class A, B, or C license, as set forth in the Tennessee Driver Handbook or comparable current successor publication of the Tennessee Department of Safety.

§ 7.3.6.3 Direct payroll expense (DPE) costs delineated in 7.3.6.1.1, 7.3.6.1.5, 7.3.6.1.6, and 7.3.6.2.2 shall be limited to base salary or hourly wage plus a maximum of thirty percent (30%) of base salary or hourly wage, and further limited to a maximum of One hundred twenty-five dollars ($125) per hour, to cover social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance.

§ 7.3.6.4 Specifically excluded from costs and included in overhead are:

- **.1** Corporate, home office, and branch office overhead, rent, mortgage, off-site utilities, project management, and personnel not otherwise mentioned;
- **.2** capital expenses and interest on capital;
- **.3** hand tools.

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§ 7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the ~~Architect.~~ Designer. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, ~~amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 4.~~eligible amounts included in the Contract Sum by the Construction Change Directive for such changes shall be included in the Schedule of Values.

§ 7.3.9 When the Owner and Contractor agree with the determination made by the ~~Architect~~ Designer concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ 7.3.10 In paragraph 7.3, the allowance for overhead and profit, included in the total cost to Owner, shall be limited to the following:

- **.1** For Contractor performing work with its own forces, or Subcontractor performing work with its own forces or with a sub-subcontractor, allowance shall be 10% overhead and 5% profit.
- **.2** For Contractor, for Work performed by Contractor's Subcontractor, allowance shall be 5% profit on the amount due Subcontractor.
- **.3** Cost to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.6.
- **.4** To facilitate checking for increases or decreases in the Contract Sum, proposals shall be accompanied by Contractor's complete itemization of costs of work including labor, materials and equipment, plus allowance for overhead and profit.

§ 7.4 MINOR CHANGES IN THE WORK

§ 7.4.1 The ~~Architect~~ Designer will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

§ 7.5 MODIFICATIONS PROPOSALS PRICE BREAKDOWN

§ 7.5.1 The Contractor, in connection with any proposals he makes for a contract modification, shall furnish a price breakdown, itemized as required by the Contracting Officer. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract, and overhead costs, as well as profit, and shall cover all work involved in the modification whether such work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown and time extension justification, shall be furnished by the date specified by the contracting officer.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the ~~Architect~~ Designer in accordance with Section 9.8.

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§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. ~~Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.~~

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion ~~within the Contract Time.~~in accordance with the Agreement.

§ 8.3 ~~DELAYS AND EXTENSIONS OF TIME~~DELAYS, EXTENSIONS OF TIME, AND FORCED ACCELERATION

§ 8.3.1 ~~If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of~~ The basis exists for an extension of time if Contractor is delayed in performing Work, but solely to the extent that delays are unforeseeable, unavoidable, and beyond the control and without fault or negligence, in whole or in part, of Contractor, subcontractors, sub-subcontractors, and suppliers at every tier, and said delays directly impact the Contractor's ability to achieve Substantial Completion in accordance with the Contract Time requirements, and said delays cannot be made up by reasonable efforts otherwise, and said delays stem from the following causes:

.1 Class 1 causes: an act or failure to act on the part of Owner or Designer or an employee of either, or of a separate contractor employed by ~~the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.~~Owner, or an injunction against Owner or Owner's representatives.

.2 Class 2 causes: abnormal weather, acts of God, riots, civil commotion, acts of War, fire, unavoidable casualties, epidemics, quarantine restrictions, labor disputes, unusual delay in transportation, freight embargoes, or insolvency of subcontractors, sub-subcontractors, or suppliers.

§ 8.3.2 ~~Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.~~If the basis exists for an extension of time under subparagraph 8.3.1, Owner may at its option:

.1 in the case of additional work or a Class 1 cause, assign the Class 1 Time-Related Expenses, defined in 7.3.6.2, plus the overhead and profit allowed in 7.3.10, to a special allowance that can be earned based upon the extent of actual use of the related Time Extension in completion of the Work;

.2 accept the reasonable and appropriate time extension as determined by Designer to cover such delay, and in the case of a Class 2 cause, there will be no corresponding adjustment in Contract Sum, and the sole recourse of Contractor will be entitlement to time extension as provided by Designer regardless of actual source or cause of delay;

.3 order Contractor to accelerate construction activity by working overtime and by adding extra forces in order to overcome such delays, and adjusting the Contract Sum in accordance with Article 7 to compensate Contractor for such directed acceleration; however, direct costs used in determining such compensation shall be limited to properly substantiated and documented premium or overtime labor costs; or,

.4 employ a combination of the above remedies.

§ 8.3.3 ~~This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.~~Neither Owner nor Designer will be obligated or liable to Contractor for, and Contractor hereby expressly waives claims against Owner and Designer on account of damages, costs, expenses, or related impacts which Contractor, subcontractors, sub-subcontractors, suppliers, or other persons may incur as a result of a

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Class 2 cause enumerated in 8.3.1; Contractor's sole and exclusive remedy and full compensation in such event shall be extension of Contract Time in accordance with provisions of the Contract Documents. Contractor likewise waives claims of damages, costs, or expenses due to a delay resulting from a Class 1 cause except and solely to the extent of costs allowed under 7.3.6.

§ 8.3.4 Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.3 or shall receive no consideration. If monthly Weather Delay Reports are required by the specifications, then claims for time extension based upon weather delays will be denied if a submitted report does not corroborate the claim or if no report was submitted when it was required, and Contractor waives the right to such claims.

§ 8.3.5 Extensions of time shall be implemented in accordance with Article 7.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.2 SCHEDULE OF VALUES

§ 9.2.1 Before the first Application for Payment, the Contractor shall submit to the ~~Architect~~ Designer a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the ~~Architect~~ Designer may require. This schedule, unless objected to by the ~~Architect,~~ Designer, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 ~~At least ten days before~~ Prior to the date established for each progress payment, the Contractor shall submit to the ~~Architect~~ Designer an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be ~~notarized, if required,~~ notarized and supported by such data substantiating the Contractor's right to payment as the Owner or ~~Architect~~ Designer may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change ~~Directives, or by interim determinations of the Architect,~~ Directives but not yet included in Change Orders.

§ 9.3.1.2 Such applications ~~may~~ shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the ~~site for such materials and equipment stored off the site.~~extent those costs have been included in the Contract Sum and actually incurred. Additional costs, which may be attendant to off-site storage, are the responsibility of the Contractor, and cannot be claimed by Contractor against Owner.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner ~~no later than the time of payment.~~ at the time payment is received by the Contractor. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

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§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The ~~Architect~~ Designer will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the ~~Architect~~ Designer determines is properly due, or notify the Contractor and Owner in writing of the ~~Architect's~~ Designer's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the ~~Architect~~ Designer to the Owner, based on the ~~Architect's~~ Designer's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the ~~Architect's~~ Designer's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the ~~Architect.~~ Designer. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the ~~Architect~~ Designer has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, ~~(3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment,~~ or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The ~~Architect~~ Designer may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the ~~Architect's~~ Designer's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the ~~Architect~~ Designer is unable to certify payment in the amount of the Application, the ~~Architect~~ Designer will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and ~~Architect~~ Designer cannot agree on a revised amount, the ~~Architect~~ Designer will promptly issue a Certificate for Payment for the amount for which the ~~Architect~~ Designer is able to make such representations to the Owner. The ~~Architect~~ Designer may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the ~~Architect's~~ Designer's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of:

- **.1** defective Work not remedied;
- **.2** third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- **.3** failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- **.4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- **.5** damage to the Owner or another contractor;
- **.6** reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- **.7** ~~persistent~~ failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the ~~Architect~~ Designer has issued a Certificate for Payment, the Owner shall make payment in ~~the manner and within the time provided in the Contract Documents, and shall so notify the Architect.~~accordance with TCA § 12-4-701 et seq, as may from time to time be amended.

§ 9.6.1.1 Payment is due not later than forty five (45) days after an undisputed Certificate for Payment has been received by Owner. Owner will endeavor to make payment within twenty-one (21) days, but shall not be obligated to do so.

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§ 9.6.1.2 Based upon Applications for Payment submitted to the Designer by the Contractor and Certificates for Payment issued by the Designer, the Owner shall make progress payments monthly to the Contractor as provided in the Contract Documents as follows: Ninety five percent (95%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the Work and materials and equipment suitably stored in accordance with subparagraph 9.3.2, less the aggregate of previous payments made; and, upon Substantial Completion of the entire Work, a sum sufficient to increase the total payments to ninety eight percent (98%) of the Contract Sum, less such amounts as the Designer shall determine for incomplete work and unsettled claims and liquidated damages.

§ 9.6.1.3 Refer to PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS provisions contained in FAR 52.232-5, Sept 2002, or latest version.

§ 9.6.1.4 Refer to PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS provisions contained in FAR 52.232-27, Oct 2003, or latest version.

§ 9.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The ~~Architect~~ Designer will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the ~~Architect~~ Designer and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 Neither the Owner nor ~~Architect~~ Designer shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

§ 9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

§ 9.6.7 ~~Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.~~Provisions regarding retainage of TCA § 66-11-144 are applicable to contracts for improvement of real property when Contract Sum is five hundred thousand dollars ($500,000) or more. Contractor shall comply with these provisions and the procedures pursuant thereto established by the Tennessee State Treasurer and Department of Finance & Administration for establishment of an escrow account.

~~**§ 9.7 FAILURE OF PAYMENT**~~

~~**§ 9.7.1** If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.~~

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§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. In order to occupy or utilize the Work for its intended use, Owner must have received complete Product Data, Operating & Maintenance Data, orientation, and training, as may be required by specifications, and use and occupancy permits.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the ~~Architect~~ Designer a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the ~~Architect~~ Designer will make an inspection to determine whether the Work or designated portion thereof is substantially complete. ~~If the Architect's~~ Not later than at the time of this inspection, the Contractor will submit its application for payment commensurate with Substantial Completion. If the Designer's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the ~~Architect.~~ Designer. In such case, the Contractor shall then submit a request for another inspection by the ~~Architect~~ Designer to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the ~~Architect~~ Designer will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying ~~the Certificate.~~ the Certificate subject to the provisions of subparagraph 9.12.2. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and submission by Contractor and certification by Designer of an application for payment with consent of surety, if any, the Owner shall make ~~payment of~~ appropriate reduction in retainage applying to such Work or designated portion ~~thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.~~of it. Such payment shall be in accordance with clause 9.6.1.2.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.4.1.5 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the ~~Architect~~ Designer as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the ~~Architect.~~Designer.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and ~~Architect~~ Designer shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

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§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the ~~Architect~~ Designer will promptly make such inspection and, when the ~~Architect~~ Designer finds the Work acceptable under the Contract Documents and the Contract fully performed, the ~~Architect~~ Designer will promptly issue a final Certificate for Payment stating that to the best of the ~~Architect's~~ Designer's knowledge, information and belief, and on the basis of the ~~Architect's~~ Designer's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The ~~Architect's~~ Designer's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the ~~Architect~~ Designer (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and ~~waivers of liens,~~ waivers, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor ~~may furnish a bond~~ shall furnish acknowledgement of the matter from the Surety satisfactory to the Owner to indemnify the Owner against such ~~lien.~~ matter. If such ~~lien~~ matter remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such ~~lien,~~ matter, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the ~~Architect~~ Designer so confirms, the Owner shall, upon application by the Contractor and certification by the ~~Architect,~~ Designer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the ~~Architect~~ Designer prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall not constitute a waiver of ~~Claims~~ claims by the Owner ~~except those arising from:~~ for the following:

- **.1** ~~liens,~~ Claims, security interests or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract ~~Documents;~~ Documents irrespective of when such failure is discovered; or
- **.3** terms of special warranties required by the Contract Documents.

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

§ 9.10.6 Final Payment constituting the entire unpaid balance of Contract Sum, shall be paid by Owner to Contractor when Work has been completed, the Contract fully performed, and a final Certificate for Payment issued by Designer.

§ 9.11 METHOD OF PAYMENT

§ 9.11.1 Payments to Contractor shall be made through Owner's automated clearinghouse wire transfer system. Contractor shall have completed an Authorization Agreement for Automatic Deposits ACH Credits Form prior to commencing Work and prior to submitting a first application for payment.

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§ 9.11.2 Debit entries to correct errors authorized by the Authorization Agreement for Automatic Deposits ACH Credits Form shall be limited to those errors detected prior to the effective date of the credit entry. The remittance advice shall note that a correcting entry was made. Corrections shall be made within two banking days of the effective date of the original transaction. Other errors detected at a later date shall take the form of a refund, or in some instances, a credit memo if additional payments are to be made.

§ 9.11.3 The Owner reserves the right to deduct from amounts which are or shall become due and payable to Contractor under this or any contract between the parties any amounts which are or shall become due and payable to the State by the Contractor.

§ 9.12 LIQUIDATED DAMAGES

§ 9.12.1 Time being of the essence, Contractor further agrees to accept conditions for liquidated damages in the amount set forth in Contract Documents for each calendar day in excess of allotted time for Substantial Completion, or approved extension thereof, parties agreeing that the amount of damages resulting from delay would be uncertain and difficult to prove, and further agreeing that such liquidated damages set forth in the Owner-Contractor Agreement are a reasonable estimate of those damages which could result from delay.

§ 9.12.2 If a portion of the Work is certified Substantially Complete, the amount of Liquidated Damages applicable to the remaining Work may be reduced by written mutual agreement.

§ 9.12.3 Secondary Liquidated Damages shall be twenty-five percent (25%) of that originally required by the Contract Documents, and shall accrue until such time that Work has been completed and the Contract fully performed if:

- **.1** the time for completion stipulated in the Certificate of Substantial Completion has passed; or, if no such time was stipulated, then thirty (30) calendar days has passed following the certified date of Substantial Completion; and,
- **.2** the Contract Time, including approved extensions, plus thirty (30) calendar days, has passed.

§ 9.12.4 Refer to FAR 52.211-12, Sept 2000, or latest revision. If the Government terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

§ 9.12.5 Refer to FAR 52.211-12, Sept 2000, or latest revision. If the Government does not terminate the contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ 10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- **.1** employees on the Work and other persons who may be affected thereby;
- **.2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- **.3** other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

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§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or ~~Architect~~ Designer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and ~~Architect.~~Designer.

§ 10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

§ 10.2.8 Refer to PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES AND IMPROVEMENTS provisions contained in FAR 52.236-9, Apr 1984, or latest revision.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the ~~Contractor,~~ Contractor which has neither been rendered harmless nor specified as inherent in the Work, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and ~~Architect in writing.~~Designer in writing. Reasonable precautions shall include, but not be limited to, precautions inherent in the Work.

§ 10.3.2 Under circumstances described in 10.3.1, Owner will have the option to either terminate the contract as provided in Article 14, proceed with Contractor in a mutually agreed plan of action, or as follows: The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and ~~Architect~~ Designer the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the ~~Architect~~ Designer will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or ~~Architect~~ Designer has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the ~~Architect~~ Designer have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided for claims in Article 4 and for changes in the Work in Article 7.

~~**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or~~

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~~death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.~~

§ 10.4 The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

~~**§ 10.5** If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.~~

§ 10.6 EMERGENCIES

§ 10.6.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.3 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor and the Owner from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- **.1** claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- **.2** claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- **.3** claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- **.4** claims for damages insured by usual personal injury liability coverage;
- **.5** claims for damages, ~~other than~~ including to the Work itself, because of injury to or destruction of tangible ~~property,~~ property on or away from the site, including loss of use resulting therefrom;
- **.6** claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- **.7** claims for bodily injury or property damage arising out of completed operations; and
- **.8** claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment. Specific lines of coverage and limits of liability provided by Contractor shall be written in a comprehensive form, satisfactory to Owner in the following minimum requirements:

- **.1** Comprehensive General Liability, including:
  - **.a** Premises / Operations;
    Underground / Explosion / Collapse;
    Products / Completed Operations;
    Contractual;
    Independent Contractors;
    Owner / Contractor Protective;
    Broad Form Property Damage;
    Personal Injury (Employment Exclusion deleted)
  - **.b** Combined single limits for bodily injury and property damage:

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Each Occurrence:$1,000,000
Aggregate:$2,000,000

.c Products and Completed Operations to be maintained for one year after final payment.

.d Asbestos Abatement Insurance

.1 Non-friable Asbestos: If removal or abatement of non-friable asbestos is included in the Work, and Contractor's General Liability Insurance coverage excludes risks associated with asbestos, then Contractor shall provide evidence of a Special Endorsement.

.2 Friable Asbestos: If removal or abatement of friable asbestos is included in the Work, then Contractor shall provide evidence of a Special Endorsement.

.3 Special Endorsement: Evidence of a Special Endorsement shall be in the form of a Certificate of Insurance certifying a special endorsement for asbestos abatement insurance with a minimum $500,000 limit of liability. If Contractor is performing no portion of the asbestos removal or abatement with its own forces, then Contractor, in lieu of its own such endorsement, may substitute a Certificate showing such special endorsement covering the subcontractor or sub-subcontractor actually performing the asbestos removal or abatement.

.2 Comprehensive Automobile Liability:

.a Including owned, hired, and non-owned vehicles; or, if there are no owned vehicles, Contractor may provide written certification of such and provide coverage limited to hired and non-owned vehicles.

.b Bodily injury and property damage combined single limits:
Each Occurrence:$500,000

.3 Workers Compensation and Employer's Liability, (without restriction as to whether covered by Workmen's Compensation law):

.a Workers Compensation:
according to statute

.b Employer's Liability: $100,000

.4 If an exposure exists, Aircraft and Watercraft Liability (owned & non-owned), with limits approved by Owner, shall be provided.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. ~~These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner.~~ Certificate(s) of insurance provided to attest to coverages shall specifically cite each element of coverage and not less than limits set forth in subparagraph 11.1.2, as confirmation of complete coverage, and shall identify Contractor, Producer, insurance Carrier, Project, and certificate holder, and state Producer's notice requirements as set forth in 11.1.4. The term "Commercial General Liability" shall mean all of the coverages listed in 11.1.2.1.a unless specifically noted otherwise in the certificate. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

§ 11.1.4 Contractor shall notify Owner in writing of changes in coverage or carrier not later than ten (10) days after notification of Contractor by Producer, or 10 days before Contractor makes a change, whichever occurs first. Contractor shall require that if policies are cancelled or modified before expiration date thereof, Producer shall endeavor to mail 10 days prior written notice to certificate holder named therein.

§ 11.2 OWNER'S LIABILITY INSURANCE

§ 11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

~~**§ 11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE**~~

~~**§ 11.3.1** Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with~~

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~~such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Sections 11.1.1.2 through 11.1.1.5.~~

~~**§ 11.3.2** To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.~~

~~**§ 11.3.3** The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Liability Insurance coverage under Section 11.1.~~

§ 11.4 PROPERTY INSURANCE

§ 11.4.1 ~~Unless otherwise provided, the~~ Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications ~~and cost of materials supplied or installed by others, comprising total value for the entire~~ for the covered Project at the site on a replacement cost ~~basis without optional deductibles.~~ basis. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.4 to be covered, whichever is later. This insurance shall include interests of the ~~Owner, the Contractor, Subcontractors and Sub-subcontractors~~ Owner as the named insured, and, the Contractor, Subcontractors and Sub-subcontractors, as additional insureds in the Project.

§ 11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, ~~falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements,~~ and debris removal, and shall cover reasonable compensation for ~~Architect's and Contractor's~~ Designer's services and expenses required as a result of such insured loss. Such insurance carried by the Owner will include a $10,000 deductible clause. The deductible is the responsibility of the Contractor.

§ 11.4.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Owner as a named insured, Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

~~**§ 11.4.1.3** If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.~~

§ 11.4.1.4 ~~This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.~~ The Owner's property insurance shall exclude portions of the Work stored off-site or in transit; and, Contractor shall provide insurance upon such portions to protect the Owner's interest.

§ 11.4.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.4.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the ~~Work, and the Owner and Contractor shall be named insureds.~~ Work.

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§ 11.4.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. ~~The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.~~

~~**§ 11.4.4** If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.~~

~~**§ 11.4.5** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.~~

§ 11.4.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the ~~policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.~~issuing company will endeavor to mail ten (10) days written notice to the Contractor should the policy be canceled prior to the expiration date. Failure to mail such notice shall impose no obligation or liability of any kind upon the Owner or issuing company.

~~**§ 11.4.7** Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.~~

§ 11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.4.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.4.9 If ~~required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Section 4.6. If after such~~ after an insured loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.4.10 The Owner as fiduciary shall have power to adjust and settle a loss with ~~insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Sections 4.5 and 4.6. The Owner as fiduciary shall, in~~

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~~the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.~~insurers.

§ 11.5 PERFORMANCE BOND AND PAYMENT BOND

§ 11.5.1 ~~The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.~~If the initial Contract Sum as awarded exceeds $100,000, Contractor shall provide Contract Bond, in the amount of one hundred percent (100%) of Contract Sum covering faithful performance of contract and payment of obligations arising thereunder. If a Contract Bond is required, and a Three-Year Roof Bond is also stipulated in the Bidding Documents, then the Three-Year Roof Bond shall be provided as stipulated. Bond(s) shall be executed on Tennessee State Building Commission Standard Form(s) exhibited in Bidding Documents for project, and subject to provisions of subparagraph 11.5.3.

§ 11.5.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

§ 11.5.3 Surety is the person or entity identified as such in a bond and is referred to throughout the Contract Documents as if singular in number. The term "Surety" means the Surety or the Surety's authorized representative. Surety Company issuing bond shall be licensed to transact business in Tennessee by Department of Commerce and Insurance. Bonds shall have certified and current Power-of-Attorney for the Surety's Attorney-in-Fact attached. Attorney-in-fact who executes bond on behalf of Surety shall be one who is licensed by Tennessee as a resident agent, and shall affix license number to bond; or, countersignature by and license number of a licensed resident agent shall be affixed to the bond in addition to the signature of the Attorney-in-Fact.

§ 11.5.4 Refer to ADDITIONAL BOND SECURITY provisions contained in FAR 52.228-2, Oct 1997, or latest revision.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the ~~Architect's~~ Designer's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the ~~Architect,~~ Designer, be uncovered for the ~~Architect's~~ Designer's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered which the ~~Architect~~ Designer has not specifically requested to examine prior to its being covered, the ~~Architect~~ Designer may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, ~~correction~~ uncovering, correction, and recovering shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

§ 12.2.1.1 The Contractor shall promptly correct Work rejected by the ~~Architect~~ Designer or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the ~~Architect's~~ Designer's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor

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shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If ~~the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.~~Three Year Roof Bond has been provided, then with regard only to the roofing system, its installation, and materials, the one year time period hereunder is extended for two (2) additional years for a total period of three (3) years. Until such time as the three (3) years hereunder have expired, Contractor's obligations hereunder shall be joint and several with Company as defined and set forth in the Roofing System Warranty. For the purpose of Subparagraph 12.2.2, all of Company's actions, whether of omission or commission, pursuant to the Roofing System Warranty are likewise actions of Contractor hereunder and shall in no way negate or reduce the responsibilities of Contractor hereunder.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section ~~12.2.2 relates~~ 12.2.2, and time periods of applicable special warranties, relate only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

§ 12.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

§ 13.1.1 The Contract shall be governed by the law of the ~~place where the Project is located.~~State of Tennessee.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. ~~Except as provided in Section 13.2.2, neither~~ Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

~~**§ 13.2.2** The Owner may, without consent of the Contractor, assign the Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations~~

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~~under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.~~

§ 13.3 WRITTEN NOTICE

§ 13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, ~~Architect~~ Designer or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 13.4.3 If normal procedures within the Contract fail to satisfy a claim against the Owner, further action is to be taken up with the Tennessee Claims Commission, pursuant to TCA § 9-8-101, et seq. Damages recoverable against the State shall be limited expressly to claims awarded by the Commission.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the ~~Architect~~ Designer timely notice of when and where tests and inspections are to be made so that the ~~Architect~~ Designer may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

§ 13.5.2 If the ~~Architect,~~ Designer, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the ~~Architect~~ Designer will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the ~~Architect~~ Designer of when and where tests and inspections are to be made so that the ~~Architect~~ Designer may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the ~~Architect's~~ Designer's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the ~~Architect.~~Designer.

§ 13.5.5 If the ~~Architect~~ Designer is to observe tests, inspections or approvals required by the Contract Documents, the ~~Architect~~ Designer will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5.7 Refer to INSPECTION OF CONSTRUCTION provisions contained in FAR 52.246-12, Aug 1996, or latest revision.

§ 13.6 INTEREST

§ 13.6.1 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is ~~due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to~~

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~~time at the place where the Project is located.~~past due as stated in subparagraph 9.6.1 in accordance with TCA § 12-4-704, as may from time to time be amended.

§ 13.7 ~~COMMENCEMENT OF STATUTORY LIMITATION PERIOD~~Refer to DESCRIPTIVE LITERATURE provisions contained in FAR 52.214-21, Apr 2002, or latest revision.

§ 13.8 Refer to AUDIT-SEALED BIDDING provisions contained in FAR 52.214-26, Oct 1997, or latest revision.

~~**§ 13.7.1** As between the Owner and Contractor:~~

- ~~**.1** Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;~~
- ~~**.2** Between Substantial Completion and Final Certificate for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and~~
- ~~**.3** After Final Certificate for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Section 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.~~

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- **.1** issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- **.2** an act of government, such as a declaration of national emergency which requires all Work to be stopped; or
- **.3** because the ~~Architect~~ Designer has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract ~~Documents; or~~
- ~~**.4** the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.~~Documents.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and ~~Architect,~~ Designer, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and ~~damages.~~costs as defined in 7.3.6.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract

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with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the ~~Architect,~~ Designer, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor:

- **.1** ~~persistently~~ refuses or repeatedly ~~refuses or~~ fails to supply enough properly skilled workers or proper materials;
- **.2** fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- **.3** ~~persistently disregards~~ disregards or repeatedly fails to comply with laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- **.4** otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the ~~Architect~~ Designer that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- **.1** take possession of all Work in place and of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- **.2** accept assignment of subcontracts pursuant to Section 5.4; and
- **.3** finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the ~~Architect's~~ Designer's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the ~~Architect,~~ Designer, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.5 Refer to DEFAULT (FIXED-PRICE CONSTRUCTION) provisions contained in FAR 52.249-10, Apr 1984, or latest revision.

§ 14.2.6 Refer to CONTRACT TERMINATION AND DEBARMENT under federal guidelines provisions contained in FAR 52.222-12, Feb 1988, or latest revision. A breach of the contract paragraphs entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act - Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and Subcontractor as provided in 29 CFR 5.12.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- **.1** that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- **.2** that an equitable adjustment is made or denied under another provision of the Contract.

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§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

- **.1** cease operations as directed by the Owner in the notice;
- **.2** take actions necessary, or that the Owner may direct, for the protection and preservation of the ~~Work;~~ Work, including materials for which Owner has paid and which are stored off-site; and
- **.3** except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for ~~Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.~~the completed portion of Work plus a fraction of five percent (5%) of the remaining balance of the Contract Sum, which fraction shall be equal to the value of the Work completed divided by the Contract Sum.

§ 14.4.4 Refer to TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT provisions contained in FAR 52.249-1, Apr 1984, or latest revision.

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