
REQUEST FOR QUALIFICATIONS

For the Project Titled:

Middle Tennessee Mental Health Institute Energy Savings Generators Replacements SBC Project No. 344/001-XX-2025

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Release Date: 02/24/2025

1. INTRODUCTION

1.1. Statement of Procurement Purpose

The State of Tennessee Department of General Services, an agency of the State, hereinafter referred to as "the State," has issued this Request for Qualifications (RFQ) to define the State's minimum service requirements, solicit responses, detail response requirements, and outline the State's process for evaluating responses and selecting Energy Service Companies (ESCOs) to provide the services outlined in this RFQ.

Through this RFQ, the State seeks to contract for the requested services and to give pre-qualified businesses in the ESCO pool an opportunity to do business with the State.

1.2. Project Description

An ESCO will be selected through this RFQ to enter into an agreement to provide Energy Savings Performance Contracting services to the **Department of Mental Health and Substance Abuse Services** that may choose to participate in the Energy Savings Performance Contracting program.

New generators and associated automatic transfer switches are needed to replace aged equipment, provide a current code-compliant solution, and provide sufficient system capacity to power the Main Hospital and Forensic Services Building. Upgrades to each facilities normal power infrastructure may also be required.

The selected ESCO will commit to the Energy Savings Performance Contracting Program guidelines provided in the Investment Grade Audit (IGA) and Energy Savings Performance Contract (ESPC) Project Development Proposal Agreement (RFQ Attachment 6.3.) and the Energy Savings Performance Contract (RFQ Attachment 6.4).

1.3. Contracts

1.3.1 Investment Grade Audit (IGA) and Energy Savings Performance Contract (ESPC) Project Development Proposal Agreement (RFQ Attachment 6.3.) details the State's requirements for the development of the IGA and ESPC Project Development Proposal.

1.3.2 Energy Savings Performance Contract (ESPC) (RFQ Attachment 6.4) details the State's requirements for the ESPC services.

The Contracts above substantially represent the contract documents that the successful Respondent must sign.

1.4. Nondiscrimination

No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a contract pursuant to this solicitation or in the employment practices of the Vendor on the grounds of handicap or disability, age, race, color, religion (subject to *Tennessee Code Annotated*, Sections 4-21-401 and 405), sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Vendor pursuant to this solicitation shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

1.5. RFQ Communications

- 1.5.1 The State has assigned the following RFQ identification number that shall be referenced in all communications regarding this RFQ:

SBC PROJECT No. 344/001-XX-2025

- 1.5.2 **Unauthorized contact about this RFQ with employees or officials of the State of Tennessee, except as detailed below, may result in disqualification from consideration under this procurement process.**

- 1.5.2.1 Any entity or individual responding or intending to respond to this RFQ ("Respondent") must direct communications concerning this RFQ to the following person designated as the Procurement Officer:

Allen Ray, Procurement Officer
Department of General Services
Phone: (615) 571-5620
Email: STREAMDesigner.Interest@tn.gov

- 1.5.2.2 **Notwithstanding the foregoing, prospective Respondents may alternatively contact:**

- a. Staff of the Governor's Office of Diversity Business Enterprise for assistance available to minority-owned, woman-owned, Tennessee service-disabled veteran owned, and small businesses as well as general, public information relating to this RFQ (visit www.tn.gov/businessopp/ for contact information); and
- b. Daphne.hall@tn.gov is the individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and associated federal regulations.

- 1.5.3 Only the State's official, written responses and communications with Respondents are binding with regard to this RFQ. Oral communications between a State official and one or more Respondents are unofficial and non-binding.
- 1.5.4 Potential Respondents shall ensure that the State receives all written questions and comments, including questions and requests for clarification, no later than the Written Questions & Comments Deadline detailed in the RFQ Section 2, Schedule of Events.
- 1.5.5 Respondents shall assume the risk of the method of dispatching any communication or response to the State. The State assumes no responsibility for delays or delivery failures resulting from the Respondent's method of dispatch. Actual or digital "postmarking" of a communication or response to the State by a specified deadline is not a substitute for the State's actual receipt of a communication or response.
- 1.5.6 The State will convey all official responses and communications related to this RFQ to the prospective Respondents from whom the State has received a Notice of Intent to Respond (refer to RFQ Section 1.9).
- 1.5.7 The State reserves the right to determine, at its sole discretion, the method of conveying official, written responses and communications related to this RFQ. Such written communications may be transmitted by mail, hand-delivery, facsimile, electronic mail, Internet posting, or any other means deemed reasonable by the State.

- 1.5.8 The State reserves the right to determine, at its sole discretion, the appropriateness and adequacy of responses to written comments, questions, and requests related to this RFQ. The State's official, written responses will constitute an amendment of this RFQ.
- 1.5.9 Any data or information provided by the State (in this RFQ, an RFQ amendment, or any other communication relating to this RFQ) is for informational purposes only. The State will make reasonable efforts to ensure the accuracy of such data or information; however, it is the Respondent's obligation to independently verify any data or information provided by the State. The State expressly disclaims the accuracy or adequacy of any information or data that it provides to prospective Respondents.

1.6. Assistance to Respondents with a Handicap or Disability

Prospective Respondents with a handicap or disability may receive accommodation relating to the communication of this RFQ and participation in the RFQ process. Prospective Respondents may contact the Procurement Officer to request such reasonable accommodation no later than the Disability Accommodation Request Deadline detailed in the RFQ Section 2, Schedule of Events.

1.7. Respondent Required Review & Waiver of Objections

- 1.7.1 Each prospective Respondent shall carefully review this RFQ, including but not limited to, attachments, amendments, questions, comments, defects, objections, or any other matter requiring clarification or correction (collectively called "Questions and Comments").
- 1.7.2 Any prospective Respondent having Questions and Comments concerning this RFQ must provide them in writing to the State no later than the written Questions & Comments Deadline detailed in the RFQ Section 2, Schedule of Events.
- 1.7.3 Protests based on any objection to the RFQ will be considered waived and invalid if the objection has not been brought to the attention of the State, in writing, by the Written Questions & Comments Deadline.

1.8. Pre-Response Conference

A Pre-Response Conference will be held at the time and date detailed in the RFQ Section 2, Schedule of Events. Pre-Response Conference attendance is not mandatory. The Pre-Response Conference will take place via Microsoft Teams (see details below):

Meeting Link: [Join Meeting Now](#)

Meeting Number: **273 876 618 090**

Meeting Password: **zz9vC23d**

The purpose of the conference is to discuss the RFQ Scope of Services. The State will entertain questions, however, prospective Respondents understand that the State's oral response to any question at the Pre-Response Conference are unofficial and non-binding. Prospective Respondents must submit all questions, comments, or other concerns regarding the RFQ in writing prior to the Written Questions & Comments Deadline date detailed in the RFQ Section 2, Schedule of Events. The State will send the official response to these questions and comments to prospective Respondents and on the date detailed in the RFQ Section 2, Schedule of Events.

1.9. Response Deadline

A Respondent must ensure that the State receives a response no later than the Response Deadline time and date detailed in the RFQ Section 2, Schedule of Events. A response must respond, as required, to this RFQ (including its attachments) as may be amended. The State will not accept late responses, and a Respondent's failure to submit a response before the Response Deadline will result in disqualification of the response. It is the responsibility of the Respondent to ascertain any additional security requirements with respect to packaging and delivery to the State of Tennessee. Respondents should be mindful of any potential delays due to security screening procedures, weather, or other filing delays whether foreseeable or unforeseeable.

2. RFQ SCHEDULE OF EVENTS

2.1. The following RFQ Schedule of Events represents the State's best estimate for this RFQ.

EVENT	TIME (central time zone)	DATE (all dates are State business days)
RFQ Issued		02/24/2025
Disability Accommodation Request Deadline		02/28/2025
Pre-Response Conference (VIRTUAL ONLY – PLEASE REFER TO RFQ SECTION 1.8)	10:00 a.m.	03/04/2025
Written “Questions & Comments” Deadline	2:00 p.m.	03/11/2025
State Response to Written “Questions & Comments”		03/14/2025
Response Deadline	2:00 p.m.	03/28/2025
State Completion of Technical Response Evaluations		04/08/2025
Notification of Respondents Invited to Interview (if Necessary)		04/09/2025
Interviews (if necessary)	TBD	04/22/2025 - 04/24/2025
State Issues Notice of Intent to Award and RFQ Files Opened for inspection		04/25/2025
ESCO and Agency executes Investment Grade Audit (IGA) and Energy Savings Performance Contract (ESPC) Project Proposal Agreement		05/09/2025
Anticipated State Building Commission (SBC) Approval		09/11/2025
Anticipated Energy Savings Performance (ESPC) Contract Signature Deadline		11/26/2025

2.2. **The State reserves the right, at its sole discretion, to adjust the RFQ Schedule of Events as it deems necessary.** Any adjustment of the Schedule of Events shall constitute an RFQ amendment, and the State will communicate such to potential Respondents.

3. RESPONSE REQUIREMENTS

3.1. Response Contents: A response to this RFQ should address the following:

- 3.1.1. **Technical Response.** RFQ Attachment 6.2., Technical Response & Evaluation Guide provides the specific requirements for submitting a response. This guide includes mandatory requirement items, general qualifications and experience items, and technical qualifications, experience, and approach items all of which must be addressed with a written response and, in some instances, additional documentation.

NOTICE: A technical proposal must not include any pricing or cost information related to this project. If any pricing or cost information amounts related to this project are included in any part of the technical proposal, the State may deem the proposal to be non-responsive and reject it.

- 3.1.1.1. A Respondent shall use the RFQ Attachment 6.2., Technical Response & Evaluation Guide to organize, reference, and draft the Technical Response by duplicating the attachment, adding appropriate page numbers as required, and using the guide as a table of contents covering the Technical Response.
- 3.1.1.2. A response should be economically prepared, with emphasis on completeness and clarity. A response, as well as any reference material presented, must be written in English, and shall be written on standard 8 ½" x 11" pages (although oversize exhibits are permissible) and use a 12-point font for text. All response pages shall be numbered. Maximum Attachment file size should be less than 8 mb, to ensure delivery.
- 3.1.1.3. All information and documentation included in a Technical Response shall respond to or address a specific requirement detailed in the RFQ Attachment 6.2., Technical Response & Evaluation Guide. All information shall be incorporated into a response to a specific requirement and clearly referenced. Any information not meeting these criteria will be deemed extraneous and will not contribute to evaluations.
- 3.1.1.4. The State may determine a response to be non-responsive and reject it if:
- a. The Respondent fails to organize and properly reference the Technical Response as required by this RFQ and the RFQ Attachment 6.2., Technical Response & Evaluation Guide; or
 - b. The Technical Response document does not appropriately respond to, address, or meet all the requirements and response items detailed in the RFQ Attachment 6.2., Technical Response & Evaluation Guide.

3.2. Response Delivery

- 3.2.1. A Respondent must ensure that the State receives a Response to this RFQ no later than the Response Deadline time and dates detailed in the RFQ Section 2, Schedule of Events.

- 3.2.2. The **Technical Response** document must be e-mailed to the Procurement Officer (contact information listed below) in an **e-mail** with the attachment clearly labeled as indicated in section 3.3.2 below.

Allen Ray, Procurement Officer
Department of General Services
Email: STREAMDesigner.Interest@tn.gov

3.3. Response Format

- 3.3.1. A Respondent must ensure that the original Technical Response document meets all form and content requirements, including all required signatures, as detailed within this RFQ.
- 3.3.2. A Respondent must submit, **via e-mail**, the **Technical Response** document as specified below. The Technical Response **MUST** be sent as an e-mail.

3.3.2.1. The subject of the Technical Response e-mail should be:

"SBC No. 344/001-XX-2025 TECHNICAL RESPONSE FROM [RESPONDENT LEGAL ENTITY NAME]"

Technical Response document with the file name:

"SBC No 344/001-XX-2025 TECHNICAL RESPONSE FROM [RESPONDENT LEGAL ENTITY NAME]"

3.4. Non-Responsive

The State may determine a response to be non-responsive and reject it if

- a. The Respondent fails to organize and properly reference the Proposal as required by the RFQ and RFQ Attachment 6.2, or;
- b. The Respondent's document does not appropriately respond to, address, or meet all the requirements and proposal items detailed in RFQ Attachment 6.2.

3.5. Response & Respondent Prohibitions: A response to this RFQ should not:

- 3.5.1. A Respondent shall not include the Respondent's own contract terms and conditions. If a response contains such terms and conditions, the State, at its sole discretion, may determine the proposal to be a non-responsive counter-offer and reject it.
- 3.5.2. A Respondent shall not restrict the rights of the State or otherwise qualify offer to deliver services as required by this RFQ. The State, at its sole discretion, may determine the proposal to be a non-responsive counter-offer and reject it.
- 3.5.3. A Respondent shall not propose alternate services (*i.e.*, offer services different from those requested and required by this RFQ). The State may consider a proposal of alternate services to be non-responsive and reject it.
- 3.5.4. A Respondent shall not provide, for consideration in this RFQ process or subsequent contract negotiations, incorrect information that the Respondent knew or should have known was materially incorrect. If the State determines that a Respondent has provided

such incorrect information, the State may deem the Respondent's proposal non-responsive and reject it.

- 3.5.5. A Respondent shall not submit more than one Proposal in response to this RFQ. If a Respondent submits more than one Proposal, the State may deem all the proposals non-responsive and reject them.
- 3.5.6. A Respondent shall not submit a Proposal as a prime contractor while also permitting one or more other Respondents to offer the Respondent as a subcontractor in their own Proposals. Such may result in the disqualification of all Respondents knowingly involved. This restriction does not, however, prohibit different Respondents from offering the same subcontractor as a part of their proposals (provided that the subcontractor does not also submit a proposal as a prime contractor).
- 3.5.7. A Respondent shall not be (and the State will not award a contract to):
- a. an individual who is, or within the past six months has been, an employee of the State of Tennessee or who is a volunteer member of a State board or commission that votes for, lets out, overlooks, or any manner superintends the services being procured in this RFQ;
 - b. a company, corporation, or any other contracting entity in which an ownership of 2% or more is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee (this will not apply either to financial interests that have been placed into a "blind trust" arrangement pursuant to which the employee does not have knowledge of the retention or disposition of such interests or to the ownership of publicly traded stocks or bonds where such ownership constitutes less than 2% of the total outstanding amount of the stocks or bonds of the issuing entity);
 - c. a company, corporation, or any other contracting entity which employs an individual who is, or within the past six months has been, an employee of the State of Tennessee in a position that would allow the direct or indirect use or disclosure of information, which was obtained through or in connection with his or her employment and not made available to the general public, for the purpose of furthering the private interest or personal profit of any person; or,
 - d. any individual, company, or other entity involved in assisting the State in the development, formulation, or drafting of this RFQ or its scope of services (such person or entity being deemed by the State as having information that would afford an unfair advantage over other Respondents).

For the purposes of applying the requirements of this RFQ subsection 3.5.7., the State will deem an individual to be an employee of the State of Tennessee until such time as all compensation for salary, termination pay, and annual leave has been paid, but the term "employee of the State of Tennessee" shall not include individuals performing volunteer services for the State of Tennessee.

3.6. **Conflict of Interest**

- 3.6.1. This RFQ is also subject to *Tennessee Code Annotated*, Section 12-4-101.
- 3.6.2. This RFQ is also subject to State Building Commission Policy and Procedure 12.02, and the duties and obligations of the State are subject to Policy 12.02.

3.7. **Response Errors & Revisions**

A Respondent is responsible for all errors or omissions in its response to this RFQ. A Respondent will not be allowed to alter or revise its response after the Response Deadline time and date as detailed in RFQ Section 2, Schedule of Events, unless such is formally requested in writing by the State (e.g., through a request for clarification, etc.).

3.8. Response Withdrawal

A Respondent may withdraw a response at any time before the Response Deadline time and date as detailed in RFQ Section 2, Schedule of Events, by submitting a written signed request by an authorized representative of the Respondent. After withdrawing a response, a Respondent may submit another Response at any time before the Response Deadline time and date as detailed in RFQ Section 2, Schedule of Events.

3.9. Response Preparation Costs

The State will not pay any costs associated with the preparation, submittal, or presentation of any response. Each Respondent is solely responsible for the costs it incurs in responding to this RFQ.

4. GENERAL CONTRACTING INFORMATION & REQUIREMENTS

4.1. RFQ Amendment

The State reserves the right to amend this RFQ at any time, provided that it is amended in writing. However, prior to any such amendment, the State will consider whether it would negatively impact the ability of potential Respondents to meet the deadlines and revise the RFQ Schedule of Events if deemed appropriate. If a RFQ amendment is issued, the State will convey it to potential Respondents. A Respondent shall respond, as required, to the final RFQ (including its attachments) as may be amended.

4.2. RFQ Cancellation

The State reserves the right, at its sole discretion, to cancel the RFQ or to cancel and reissue this RFQ in accordance with applicable laws and regulations.

4.3. State Right of Rejection

- 4.3.1. Subject to applicable laws and regulations, the State reserves the right to reject, at its sole discretion, all responses.
- 4.3.2. The State may deem as non-responsive and reject any response that does not comply with all terms, conditions, and performance requirements of this RFQ. Notwithstanding the foregoing, the State reserves the right to waive, at its sole discretion, minor variances from full compliance with this RFQ. If the State waives variances in a response, such waiver shall not modify the RFQ requirements or excuse the Respondent from full compliance, and the State may hold any Respondent to strict compliance with this RFQ.

4.4. Assignment

The Respondent may not subcontract, transfer, or assign any portion of the Contract awarded as a result of this RFQ without prior approval of the State. The State reserves the right to refuse approval, at its sole discretion, of any subcontract, transfer, or assignment.

4.5. Insurance

The State will require the apparent successful Respondent to provide proof of insurance coverage as required by the Contracts (attached as RFQ Attachment 6.3 and 6.4.). Failure to provide evidence of such insurance coverage is a material breach and grounds for termination of the contract negotiations. Any insurance required by the State shall be in form and substance acceptable to the State.

4.6. Professional Licensure and Department of Revenue Registration

- 4.6.1. Before the response to this RFQ is submitted, the apparent successful Respondent (and Respondent employees and subcontractors, as applicable) must hold all necessary, appropriate business and professional licenses to provide service as required. The State may require any Respondent to submit evidence of proper licensure.
- 4.6.2. All persons, agencies, firms, or other entities that provide legal or financial opinions, which a Respondent provides for consideration and evaluation by the State as a part of a response to this RFQ, must be properly licensed to render such opinions.
- 4.6.3. Before the Contract resulting from this RFQ is signed, the apparent successful Respondent must be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. The State will not award a contract unless the Respondent is registered or provides documentation from the Department of Revenue that the Respondent is exempt from this registration requirement. The foregoing is a mandatory

requirement of an award of a contract pursuant to this solicitation. For purposes of this registration requirement, the Department of Revenue may be contacted at:
TN.Revenue@tn.gov.

4.7. Contract Approval and Contract Payments

- 4.7.1. After contract award, the ESCO who is awarded the contract must submit appropriate documentation with the Department of Finance and Administration, Division of Accounts.
- 4.7.2. This RFQ and its ESCO selection processes do not obligate the State and do not create rights, interests, or claims of entitlement in either the Respondent with the apparent best-evaluated response or any other Respondent. State obligations pursuant to a contract award will commence only after the contract is signed by the State agency head and the ESCO and after the Contract is approved by all other state officials as required by applicable laws and regulations.
- 4.7.3. No payment will be obligated or made until the relevant contract is approved as required by applicable statutes and rules of the State of Tennessee.
 - 4.7.3.1. The State will not be liable for payment of any type associated with the contract resulting from this RFQ (or any amendment thereof) or responsible for any goods delivered or services rendered by the ESCO, even goods delivered or services rendered in good faith and even if the ESCO is orally directed to proceed with the delivery of goods or the rendering of services, if it occurs before the contract start date or after the contract end date.
 - 4.7.3.2. All payments relating to this procurement will be made in accordance with the Payment Terms and Conditions of the contracts resulting from this RFQ.

4.8. Severability

If any provision of this RFQ is declared by a court to be illegal or in conflict with any law, said decision will not affect the validity of the remaining RFQ terms and provisions, and the rights and obligations of the State and Respondents will be construed and enforced as if the RFQ did not contain the particular provision held to be invalid

4.9. Joint Ventures

The State will not allow joint ventures for this procurement.

5. PROCUREMENT PROCESS & CONTRACT AWARD

5.1. Evaluation Categories & Maximum Points

The State will consider qualifications, experience, technical approach, and interviews. The evaluation process is designed to determine those responses having the highest total scores. Each category is weighted as follows and one hundred points is the maximum total number of points which may be awarded:

PHASE	EVALUATION CATEGORY	MAXIMUM POINTS POSSIBLE
I	Mandatory Requirements	Pass/Fail
II	General Qualifications & Experience Refer to RFQ Attachment 6.2., Section B	60
	Technical Qualifications, Experience & Approach Refer to RFQ Attachment 6.2., Section C	40
III	Interviews Refer to RFQ Attachment 6.2., Section D	Interviews will be scored on a -5 to +5 point scale where the combined points will be used to modify the Section B and C scores from 0.80x to 1.25x. A score of 0 for this part will cause no relative modification to be made.

5.2. Evaluation Process:

The evaluation process is designed to award the contracts resulting from this RFQ to the Respondent deemed by the State to be Responsive and Responsible who offer the best combination of attributes based upon the evaluation criteria. ("Responsive Respondent" is defined as a Respondent that has submitted a response that conforms in all material respects to the RFQ. "Responsible Respondent" is defined as a Respondent that has the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.)

The proposal evaluation will be three phase process; Mandatory Requirements, a Technical Response Evaluation (containing Qualifications, Experience, and Technical Approach), and Interviews. The apparent successful Respondent will be identified by the Qualified Proposal having the highest Total Response Scores from all phases.

5.2.1. Phase I – Mandatory Requirements

The Procurement Officer will review each Mandatory Requirements (attached as RFQ Attachment 6.2., Section A) to determine compliance. If the Procurement Officer determines that a response failed to meet one or more of the mandatory requirements, the Procurement Officer shall seek the advice of an attorney on the staff of the Department of General Services who will review the proposal and document his/her determination of whether:

- a. the response adequately meets RFQ requirements for further evaluation;

- b. the State will request clarifications or corrections for consideration prior to further evaluation; or,
- c. the State will determine the response to be non-responsive to the RFP and reject it.

5.2.2. **Phase II- Technical Response Evaluation**

The Procurement Officer and the Proposal Evaluation Team, consisting of three or more State employees, will use the RFQ Attachment 6.2., Technical Response & Evaluation Guide to manage the Technical Response Evaluation and maintain evaluation records.

5.2.2.1. The State reserves the right, at its sole discretion, to request Respondent clarification of a Technical Response or to conduct clarification discussions with any or all Respondents. Any such clarification or discussion will be limited to specific sections of the response identified by the State. The subject Respondent shall put any resulting clarification in writing as may be required and in accordance with any deadline imposed by the State

5.2.2.2. Proposal Evaluation Team members will independently evaluate each Technical Response (that is responsive to the RFQ), against the evaluation criteria in this RFQ, and will score each in accordance with the RFQ Attachment 6.2., Technical Response & Evaluation Guide.

5.2.2.3. For each response evaluated, the Procurement Officer will calculate the average of the Proposal Evaluation Team member scores for RFQ Attachment 6.2., Technical Response & Evaluation Guide, and record each average as the response score for the respective Technical Response section.

5.2.2.4. Procurement Office will then calculate a Respondent's Initial Technical Score in accordance with the formula below:

Section B Respondent Average + Section C Respondent Average = Initial Technical Score

5.2.3. **Phase III - Interviews**

The State may conduct interviews with all Respondents having a minimum Initial Technical Score of 75 points; selected Respondents, in a ranked order having a minimum Initial Technical Score of 75 points; or may waive interviews. The RFQ Procurement Officer will invite each responsive and responsible Short-Listed Respondent to interview. If your firm is invited to interview, questions will be directed solely to the proposed Project Team. The Respondent's interview team should only include the people that will work on this Project. The interview response will be scored by the Evaluation Team, according to the Interview Evaluation Guide (RFQ Attachment 6.2., Section D). The state reserves the right to limit the number of interviews provided.

5.2.3.1. If interviews are requested, the interviews are mandatory. The RFQ Procurement Officer will schedule Respondent interviews during the period indicated by the RFQ Section 2, Schedule of Events.

- 5.2.3.2. Respondent interviews are only open to the invited Respondent, Proposal Evaluation Team members, the RFQ Procurement Officer, and any technical consultants who are selected by the State to provide assistance to the Proposal Evaluation Team.
- 5.2.3.3. The State will maintain an accurate record of each Respondent's interview session. The record of the Respondent's interview will be available for review when the State opens the procurement files for public inspection.
- 5.2.3.4. Proposal Evaluation Team members will independently evaluate each interview in accordance with the RFQ Attachment 6.2., Interview Evaluation Guide, Section D.
- 5.2.3.5. The RFQ Procurement Officer will calculate and document the average of the Proposal Evaluation Team member scores for RFQ Attachment 6.2., Interview Evaluation Guide, Section D.
- 5.2.3.6. Interviews will be individually scored on a -5 to +5 point scale with -5 being a poor interview, 0 being an average interview, and +5 being an outstanding interview. The individual interview scores will be average to produce the Interview Score. The Modified Technical Evaluation Score will be calculated as follows:

$$\text{Initial Technical Score} \times \left(1 + \frac{\text{Interview Score}}{25}\right) = \text{Modified Technical Score}$$

The Modified Technical Score will be used in the following formula to determine the Final Technical Score a Respondent will receive for the Technical Proposal:

$$\left(\frac{\text{Modified Technical Score}}{\text{Highest Modified Technical Score}}\right) \times 100 = \text{Final Technical Score}$$

5.3. Selection Process

- 5.3.1. The State reserves the right, at its sole discretion, to request clarification of response documents or to conduct clarification discussions with any or all Respondents to the RFQ. Any such clarification or discussion may be limited to specific sections of the responses identified by the State. The subject Respondents shall submit any resulting clarification in writing as may be required by the State.
- 5.3.2. The State will issue a Notice of Intent to Award to all Respondents. Respondent with highest Final Technical Score will be recommended for contract award.
- 5.3.3. ESCO and Agency executes Investment Grade Audit (IGA) and Energy Savings Performance Contract (ESPC) Project Proposal Agreement.

5.4. Contract Award

- 5.4.1 The awarded Respondent **must** sign the Investment Grade Audit (IGA) and Energy Savings Performance Contract (ESPC) Project Proposal Agreement drawn by the State pursuant to this RFQ and substantially the same as the contract attached as RFQ Attachment 6.3.

5.42 Upon agreement by all parties of the final Investment Grade Audit report and Energy Savings Performance Contract Project proposal, the awarded Respondent **must** sign the Energy Savings Performance Contract (ESPC) drawn by the State pursuant to this RFQ. And substantially the same as the contract attached as RFQ Attachment 6.4.

5.5. Protest Process

Any protests or appeals of protests pursuant to this RFQ or the Evaluation Notice shall be handled in accordance with the SBC By-laws, Policy and Procedure Item 18.

STATEMENT OF CERTIFICATIONS AND ASSURANCES

The Respondent shall sign and complete the Proposal Statement of Certifications and Assurances below as required, and it shall be included in the Technical Proposal (as required by RFQ Attachment 6.2., Technical Proposal & Evaluation Guide, Section A, Item A.2).

The Respondent does, hereby, expressly affirm, declare, confirm, certify, and assure ALL of the following:

1. The Respondent will comply with all of the provisions and requirements of the RFQ.
2. The Respondent will provide all specified goods or services as required by the contract awarded pursuant to this RFQ.
3. The Respondent accepts and agrees to all terms and conditions set out in the contract awarded pursuant to this RFQ.
4. The Respondent acknowledges and agrees that a contract resulting from the RFQ shall incorporate, by reference, all Response responses as a part of the contract.
5. The Respondent will comply, as applicable, with:
 - a) the laws of the State of Tennessee;
 - b) the policies and procedures of the State Building Commission and the Office of the State Architect;
 - c) Title VI of the federal Civil Rights Act of 1964;
 - d) Title IX of the federal Education Amendments Act of 1972;
 - e) the Equal Employment Opportunity Act and the regulations issued there under by the federal government; and,
 - f) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government.
6. To the best of the undersigned's knowledge, information or belief, the information detailed within the Response to the RFQ is accurate.
7. The Response submitted to the RFQ was independently prepared, without collusion, and under penalty of perjury.
8. No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Respondent in connection with the request or any potential resulting contract.
9. The Response submitted in response to the RFQ shall remain valid for at least 120 days subsequent to the date of the Response opening and thereafter in accordance with any contract pursuant to the RFQ.
10. The Respondent affirms the following statement, as required by the Iran Divestment Act Tenn. Code Ann. § 12-12-111 "By submission of this response, each Respondent and each person signing on behalf of any Respondent certifies, and in the case of a joint response each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each Respondent is not on the list created pursuant to § 12-12-106."
11. The Respondent affirms the following statement as required by the Boycott of Israel, Code Ann. § 12-4-119. "By submission of this response, each Respondent and each person signing on behalf of any Respondent certifies, and in the case of a joint response each party thereto certifies as to its own organization, under penalty of perjury, that it is not currently engaged in, and will not for the duration of the Contract, engage in a boycott of Israel, as identified by Code Ann. § 12-4-119.

By signature below, the signatory certifies legal authority to bind the responding entity to the provisions of this RFQ and any contract awarded pursuant to it. The State may, at its sole discretion and at any time, require evidence documenting the signatory's authority to be personally bound or to legally bind the responding entity.

DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO DO SO BY THE ENTITY RESPONDING TO THIS RFQ.

SIGNATURE AND DATE:

PRINTED NAME AND TITLE:

RESPONDENT LEGAL ENTITY NAME:

QUALIFICATIONS & EVALUATION GUIDE

SECTION A: MANDATORY REQUIREMENTS. The Respondent shall address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent shall also detail the proposal page number for each item in the appropriate space below.

The RFQ Procurement Officer will review the proposal to determine if the General Business Requirement Items are addressed as required and mark each with Yes (Y) or No (N). For each item that is not addressed as required, the Proposal Evaluation Team shall review the proposal and attach a written determination. In addition to the General Business Requirement Items, the RFQ Procurement Officer will review each proposal for compliance with all RFQ requirements.

RESPONDENT LEGAL ENTITY NAME:			
Proposal Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirements	State Use Only
			Responsive Y/N
		The response must be delivered to the State no later than the Technical Response Deadline specified in the RFQ Section 2, Schedule of Events.	
		The response must not contain cost or pricing information of any type.	
		The response must not contain any restrictions of the rights of the State or other qualification of the response.	
		A Respondent must not submit alternate responses.	
		A Respondent must not submit multiple responses in different forms (e.g. as a prime and a subcontractor).	
	A.1	Detail the name, e-mail address, mailing address, and telephone number(s), of the person the State should contact regarding the <u>response</u> . Detail the name, e-mail address, mailing address, and telephone number(s), of the person the State should contact regarding the <u>contract</u> , if awarded the contract.	
	A.2	<u>Statement of Certifications and Assurances:</u> Provide the Statement of Certifications and Assurances (RFQ Attachment 6.1.) completed and signed by an individual empowered to bind the Respondent to the provisions of this RFQ and any resulting contract. The document must be signed without exception or qualification.	

RFQ ATTACHMENT 6.2. — Section A

RESPONDENT LEGAL ENTITY NAME:			
Proposal Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirements	State Use Only
			Responsive Y/N
	A.3	Provide a statement of whether there have been any mergers, acquisitions, or sales of the Respondent within the last five years. If so, include an explanation providing relevant details.	
	A.4	<p>Provide a statement and any relevant details addressing whether the Respondent is any of the following:</p> <ol style="list-style-type: none"> 1) is presently debarred, suspended, proposed for debarment, or involuntarily excluded from covered transactions by any federal or state department or agency; 2) has within the past three years, had a civil judgment rendered against the contracting party for commission of fraud, or within the past three years has been convicted of a criminal offense in connection with: obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction, or in connection with a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; <p>is presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and has within a three year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.</p>	
	A.5	<p><u>Conflict of Interest:</u> Provide a statement, based upon reasonable inquiry, of whether the Respondent or any individual who will perform work under the contract has a possible conflict of interest (e.g., employment by the State of Tennessee, or other conflict as set forth in Item 12 of the SBC By-Laws, Policy & Procedures) and, if so, the nature of that conflict.</p> <p><i>NOTE: Any questions of conflict of interest will be solely within the discretion of the State, and the State reserves the right to cancel any award.</i></p>	
	A.6	Provide a statement of whether the Respondent or, to the Respondent's knowledge, any of the Respondent's employees, agents, independent contractors, or subcontractors, proposing to provide work on a contract pursuant to this RFQ, have been	

RFQ ATTACHMENT 6.2. — Section A

RESPONDENT LEGAL ENTITY NAME:			
Proposal Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirements	State Use Only
			Responsive Y/N
		convicted of, pled guilty to, or pled nolo contendere, to any contract crime as defined in TCA §12-4-601, et. seq. If so, include an explanation providing relevant details.	
	A.7	List jurisdictions and trade categories in which your organization is legally qualified to do business, and include registration or license numbers, if applicable.	
	A.8	<p>Provide a statement of whether there is any material, pending litigation against the Respondent that the Respondent might reasonably believe could adversely affect its ability to meet contract requirements pursuant to this RFQ or is likely to have a material adverse effect on the Respondent's financial condition. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it would impair the Respondent's performance in a contract pursuant to this RFQ.</p> <p><i>NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The Owner may require the Respondent to submit proof of such licensure detailing the state of licensure and licensure number for each person or entity that renders such opinions.</i></p>	
<i>State Use – RFQ Procurement Officer Signature, Printed Name & Date:</i>			

End of Section A

QUALIFICATIONS & EVALUATION GUIDE

SECTION B: GENERAL QUALIFICATIONS & EXPERIENCE. The Respondent shall address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent shall also detail the proposal page number for each item in the appropriate space below. Proposal Evaluation Team members will evaluate and assign one score for all responses to Section B— General Qualifications & Experience Items.

RESPONDENT LEGAL ENTITY NAME:		
Proposal Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
	B.1	Provide a personnel roster listing the names of the key personnel proposed for the Respondent's project team. The proposed project team shall consist of the key personnel from the Respondent's team, the designer's team, the contractor's team, and any other team deemed necessary by the Respondent to meet the scope of services provided in RFQ Section 1.2. Follow the personnel roster with a resume for each of the people listed detailing the individual's title, education, current position with the Respondent, and employment history. Provide the project organizational structure along with an organizational chart identifying the key personnel. If a member of the project team is a subcontractor, provide a statement specifying that each proposed subcontractor has expressly assented to being proposed as a subcontractor in the Respondent's response to this RFQ.
	B.2	<p>For the individuals included in the personnel roster listing provided under B.1, submit a narrative outlining their experience on relevant projects including professional qualifications and description of involvement/experience for proposed project staff. This should include the degree of apparent relevant competencies of the principal professional(s) and lead staff relevant to the project and services required, and evidence of competence.</p> <p>Include the Respondent's experience and qualifications in a consultant role while working with designers and contractors during phases of planning, preconstruction, design, construction, branding and successful operation for similar projects. Include information on your team's performance with an emphasis on adherence to schedules and budgets.</p> <p>Include any certifications, industry ratings, and national or international achievement recognitions, etc., to attest to the level of experience and success.</p> <p>Identify any challenges experienced while running the multiple concurrent tasks and the approaches made to overcome these challenges.</p>
	B.3	<p>Indicate which accreditation category the Respondent has obtained (if any) through the National Association of Energy Service Companies (NAESCO):</p> <ul style="list-style-type: none"> • Energy Service Company (ESCO) • Energy Service Provider (ESP) • Energy Efficiency Contractor (EEC)
	B.4	Provide an Executive Summary providing a brief overview of your company's expertise, qualifications, and experience specific to this project. Include highlights from your

RFQ ATTACHMENT 6.2. — Section B

RESPONDENT LEGAL ENTITY NAME:														
Proposal Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items												
		responses including company background and market sectors served. Also include your company's strengths, areas of expertise, and your general approach to performance contracting.												
	B.5	Describe the Respondent's proposed team's recent expertise (within the past five years) with a similar scope of work as this project.												
	B.6	<p>List in one table the Energy Savings Performance Contracting projects (as per the definition in RFQ Section 1) developed and implemented by your company within the past five years. Only include projects where work was directly managed or conducted by your company.</p> <table border="1"> <thead> <tr> <th>Project Name</th> <th>Facility Type</th> <th>City & State</th> <th>Project Size (Dollars)</th> <th>Project Size (Square Feet)</th> <th>Year Completed</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table> <p>If your company has ESPC projects performed by staff members of your team within the past five years, while they were an employee by another company, clearly identify the company with overall responsibility for that project, the individual's name, and their role in the project.</p>	Project Name	Facility Type	City & State	Project Size (Dollars)	Project Size (Square Feet)	Year Completed						
Project Name	Facility Type	City & State	Project Size (Dollars)	Project Size (Square Feet)	Year Completed									
	B.7	<p>Provide detailed information for a maximum of three ESPC projects your company completed or were completed by members of your company, which can be used for references. Expand on the information provided in the previous section to give details on individual projects. Projects must be with non-K-12 government customers (including state, local, and higher education) located in any of the following regional states: Georgia, Alabama, Mississippi, Arkansas, Kentucky, Ohio, Virginia, North Carolina, or South Carolina. Include the following information on each project as a minimum.</p> <p>Project Identification: Owner name, city/state, and facility type (hospital, school, college, city, county, etc.).</p> <p>Contact Information: Names and contact information of owner(s) representatives who can serve as references.</p> <p>Project Size: Number of buildings and total project square footage.</p> <p>Project Dollar Amount: Total contract amount and the total project capital expenditure amount.</p> <p>Source of Funding: A description of the source of funding used for the project and the company's role (if any) in securing that funding.</p> <p>Project Dates: Actual dates of audit start and acceptance; actual construction starting and ending dates.</p> <p>Contract Terms: A description of the type of contract, financing arrangement, and contract term.</p>												

RESPONDENT LEGAL ENTITY NAME:																																																		
Proposal Page # (Respondent completes)	Item Ref.	<p align="center">Section B— General Qualifications & Experience Items</p> <p>Project Personnel: A list of the name(s) of individuals involved in the project, their role(s) and if these personnel will be assigned to projects in this program. (Attach their resumes in the personnel and staffing section).</p> <p>Project Schedule: Indicate if project was completed on schedule and an explanation if not.</p> <p>List of Improvements: The types of retrofits and operational improvements implemented related to energy, water, and other cost savings.</p> <p>Project Performance: The amounts of projected annual savings, guaranteed annual savings, and at least one year of actual annual savings for each project, as applicable, in a table as shown below.</p> <table border="1"> <thead> <tr> <th>Units</th> <th>Projecte d Annual Savings</th> <th>Guarantee d Annual Energy Savings</th> <th>Actual Energy Savings Year 1</th> <th>Actual Energy Savings Year 2</th> <th>Actual Energy Savings Year 3</th> <th>Actual Energy Savings Year 4</th> <th>Actual Energy Savings Year 5</th> </tr> </thead> <tbody> <tr> <td>kWh</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>kW</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>MMBT U</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Gallons</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>(Other)</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table> <p>Measurement and Verification (M&V): A brief description of the M&V approach for each project including which savings were stipulated, if any.</p> <p>Performance Guarantee: A description of the savings guarantee for each project and, if the guaranteed savings were not achieved, how the company compensated the facility owner for any annual shortfall (e.g., pay funds to meet the guarantee, etc.).</p> <p>Project Status: Post M&V, Closed (M&V term completed), ESPC Phase in Progress (audit or construction), Non-ESPC Work in Progress, other (explain).</p> <p>Additional Comments: Comments on any special features, services, conditions, creative approaches, special needs of customer, etc. that may be relevant to the this program.</p>	Units	Projecte d Annual Savings	Guarantee d Annual Energy Savings	Actual Energy Savings Year 1	Actual Energy Savings Year 2	Actual Energy Savings Year 3	Actual Energy Savings Year 4	Actual Energy Savings Year 5	kWh								kW								MMBT U								Gallons								(Other)							
Units	Projecte d Annual Savings	Guarantee d Annual Energy Savings	Actual Energy Savings Year 1	Actual Energy Savings Year 2	Actual Energy Savings Year 3	Actual Energy Savings Year 4	Actual Energy Savings Year 5																																											
kWh																																																		
kW																																																		
MMBT U																																																		
Gallons																																																		
(Other)																																																		
	B.8	<p>Does your company hold an Indefinite Delivery Indefinite Quantity (IDIQ) contract for the 2017 U.S. Department of Energy (DOE) ESPC program?</p> <p>Is your company pre-qualified with any states for as-needed ESPC services? If so, indicate which states.</p>																																																
	B.9	<p>Does your company hold any other industry qualifications such as:</p> <ul style="list-style-type: none"> ISO 50,001 for Energy Management ISO 9001 for Quality Management <p>Or any others?</p>																																																
	B.10	<p>Provide a table to show your personnel pool of individuals who will potentially be assigned responsibility for each task and phase of a project under this program. Also include any</p>																																																

RFQ ATTACHMENT 6.2. — Section B

RESPONDENT LEGAL ENTITY NAME:																
Proposal Page # (Respondent completes)	Item Ref.	<div>Section B— General Qualifications & Experience Items</div> <div>added expertise and capability of staff available through other branch offices, subcontracts, etc., that you can provide back-up strengths.</div> <table><tr><td>Name</td><td>Title</td><td>Staff or Sub-contractor</td><td>Potential Role</td><td>Academic / Professional Qualifications</td><td>Level of Expertise</td><td>Base Location</td></tr><tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table> <div>Legend: Potential role: technical analysis, engineering design, construction management, construction, training, post-construction M&V, support, and other services. Level of expertise: years in industry or other brief description Base Location: Permanent office in Tennessee; On assignment from other state; Out-of-state support.</div>	Name	Title	Staff or Sub-contractor	Potential Role	Academic / Professional Qualifications	Level of Expertise	Base Location							
Name	Title	Staff or Sub-contractor	Potential Role	Academic / Professional Qualifications	Level of Expertise	Base Location										
SCORE (for <u>all</u> Section B—Qualifications & Experience Items above): (maximum possible score = (60)																
State Use – Evaluator Identification:																

End of Section B

QUALIFICATIONS & EVALUATION GUIDE

SECTION C: TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH. The Respondent shall address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent shall also detail the proposal page number for each item in the appropriate space below. Proposal Evaluation Team members will evaluate and assign one score for all responses to Section C— General Qualifications & Experience Items.

RESPONDENT LEGAL ENTITY NAME:		
Proposal Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items
	C.1	Provide a brief, descriptive statement detailing evidence of the Respondent's ability to deliver and manage the services sought under this RFQ, as outlined in RFQ Section 1 and the Investment Grade Audit and ESPC Project Proposal Agreement (RFQ Attachment 6.3.).
	C.2	Provide a narrative that illustrates how the Respondent will manage the services sought under this RFQ, as outlined in RFQ Sections 1 to ensure completion of the scope of services.
	C.3	Describe how the State would benefit from your company's services and expertise. Please provide other information that you think the State should consider in evaluating this proposal.
	C.4	Provide a summary on the Respondent's approach for this project's Investment Grade Audit (IGA) (one page or less) and include a sample of an IGA completed within the last five years representative of a recent energy performance contracting project in a government facility. Include the IGA as an attachment to your response.
	C.5	Provide a summary of the standards of comfort the Respondent generally uses for light levels, space temperatures, ventilation rates, etc. in a government facility and any flexibility for specific client needs as appropriate for this project. Include a discussion of how your standards will meet Tennessee's High Performance Building requirements (HPBrS).
	C.6	Provide a detailed description of the methodology the Respondent will use to compute the baseline of energy and water use for a facility on this project. Include a discussion of how the facility owner is engaged for development of an agreement on the baseline.
	C.7	Provide a summary of typical factors that can impact the calculated baseline and the Respondent's general approach to adjusting the calculated baseline if one or more of these factors are present. Include how the facility owner is involved for agreement on any adjustments.
	C.8	Provide a summary of the Respondent's approach to developing and implementing a Measurement and Verification (M&V) plan as part of the ESPC.

RESPONDENT LEGAL ENTITY NAME:		
Proposal Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items
		Provide an overview of the approach to using IPMVP methodology, educating the client on M&V, integration of M&V into project development, and selection of M&V options for energy conservation measures. Please see Tenn. Code Ann § 12-4-118(c) regarding requirements for M&V of ESPC projects.
	C.9	Describe how the Respondent will implement quality control throughout the project phases, including how quality control will be implemented without significantly increasing the overall length of the project's schedule. Identify qualified personnel who will be responsible for quality control on this project.
SCORE (for <u>all</u> Section C—Qualifications & Experience Items above): (maximum possible score = (40))		
State Use – Evaluator Identification:		
State Use – RFQ Procurement Officer Signature, Printed Name & Date:		

End of Section C

INTERVIEW EVALUATION GUIDE

SECTION D – Interviews: Interviews will be scored on a -5 to +5 point scale where the combined points will be used to modify the Section B and C scores from 0.80x to 1.25x. A score of 0 for this part will cause no modification to be made.

RESPONDENT LEGAL ENTITY NAME:

SECTION D - Interviews

A. Presentation (30 minutes)

- Introductions
 - What is your role on this project?
 - What experience do you bring that supports this role?
- Investment Grade Audit Approach and Philosophy
- Project Oversight: Approach and Philosophy
 - Design
 - Construction
 - Post-Construction Audit Period
- Project Schedule: Approach and Philosophy
 - Design
 - Construction
 - Post-Construction Audit Period
- Project Communication
- Why should we choose you?

B. Questions and Answer Session (30 minutes) The questions asked in this session will include both standard questions for all short-listed Respondents and specific questions relative to the Respondent's proposal and presentation. The interview presentation and question/answer scoring will be based on the following criteria:

Program Understanding
 Program Approach
 Experience & Presentations by the Proposed Key Members
 Communication Skills
 Understanding of ESPC delivery method

SCORE (for Section D — Interviews):
 (Score Range: -5 to +5)

State Use – Evaluator Identification:

State Use – RFP Procurement Officer Signature, Printed Name & Date:

SBC Project No. 344/001-XX-2025

IGA and ESPC Project Development Proposal Agreement

The Contract detailed in following pages of this exhibit contains some “blanks” (signified by descriptions in capital letters) that will be completed with appropriate information in the final contract resulting from the RFQ

INVESTMENT GRADE AUDIT (IGA) AND ENERGY SAVINGS PERFORMANCE CONTRACT (ESPC) PROJECT PROPOSAL AGREEMENT

PARTIES

This IGA and ESPC Project Proposal Agreement (the "Agreement") is by and between the Department of **Agency** (the "Agency") and **Insert Vendor Name** (the "ESCO" (as defined below)).

RECITALS

WHEREAS, authority to enter into this Agreement exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment,

WHEREAS, required approvals, clearance and coordination have been accomplished from and with appropriate agencies,

WHEREAS, the Agency desires to enter into a Contract to have the ESCO identify utility cost savings measures and other facility improvement measures listed in T.C.A. 12-4-118(b), to conduct an IGA, develop an ESPC proposal, and if the Agency determines that implementation of the measures identified is in the best interest of the Agency to negotiate an Energy Savings Performance Contract (ESPC) in Attachment E to the Master Contract; and

WHEREAS, the ESCO was selected and determined to be the most qualified in accordance with the provisions as required by T.C.A. 12-4-118(a).

NOW, Therefore, in consideration of the premises and mutual agreements and covenants hereinafter set forth, and intending to be legally bound, the Agency and the ESCO hereby agree to the terms and conditions in this Agreement.

EFFECTIVE DATE AND NOTICE OF NON-LIABILITY

This Agreement shall not be valid or enforceable until it is approved and signed by the Agency and the ESCO (hereinafter called the "Effective Date"). The Agency shall not be bound by any provision of this Agreement before the Effective Date or after the expiration or sooner termination of this Agreement.

All references in this Agreement to "article", "section", spelled out, exhibits or other attachments, are references to Articles, sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

RFQ Attachment 6.3

ARTICLE 1 - DEFINITIONS

A. Agency

"Agency" means the Tennessee State executive branch agency identified in the first paragraph above. The Agency may delegate authority. The ESCO shall have the right to inquire regarding the delegated authority of any of the Agency's representatives on the project and shall be provided with a response in writing when requested.

B. Calendar Day

"Calendar Day" means any and all calendar days. All contract time will be issued in Calendar Days taking into consideration weekends and holidays.

C. ESCO's Intellectual Property

"ESCO's Intellectual Property" means the items purchased, licensed or developed by the ESCO prior to or outside of the Agreement or purchased, licensed or developed by the ESCO or its Subcontractors as a tool for their use in performing the Services, plus any modifications or enhancements thereto and derivative works based thereon.

D. Exhibits and other Attachments

The following "Exhibits and other Attachments" are attached hereto and incorporated by reference herein: this Attachment D, Exhibit A - Scope of Work, and Attachment D, Exhibit B – Buildings and Infrastructure Included in Scope of Work included in the IGA.

E. Facility

"Facility" means a state-owned building or utility.

F. Goods

"Goods" means the tangible material acquired, produced, or delivered by the ESCO either separately or in conjunction with the Work performed by, and the subcontractor renders hereunder.

G. Incident

"Incident" means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the Agency, without limitation:

- i. successful attempts to gain unauthorized access to a State system or State Records regardless of where such information is located;
- ii. unwanted disruption or denial of service; or
- iii. the unauthorized use of a State system for the processing or storage of data;
- iv. changes to State system hardware, firmware, or software characteristics without the State's knowledge, instruction, or consent.

H. Investment Grade Audit Contract (IGA)

IGA means a detailed audit of the Agency's Premises, conducted by the ESCO or another party pursuant to the IGA, and which serves as the basis for the ESPC. The IGA shall determine the feasibility of whether to enter into an ESPC to provide for the implementation of Facility Improvement Measures, Operation and Maintenance Cost Savings and Utility Cost Savings measures at the Premises of the Agency.

I. Owner

"Owner" means the Agency, the Commissioner of a state agency or such Commissioner's

RFQ Attachment 6.3

designee.

J. Party or Parties

“Party” means the Agency or the ESCO and “Parties” means both the Agency and the ESCO.

K. Personally Identifiable Information (PII)

“PII” means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.

L. Premises

“Premises” means the Facilities owned or controlled by the Agency as identified in this Attachment D, Exhibit B Buildings and Infrastructure Included in Scope of Work.

M. Services

“Services” means the required services to be performed by the ESCO pursuant to this Agreement.

N. State Confidential Information

“State Confidential Information” means any and all State Records not subject to disclosure under TPRA. State Confidential Information shall include, but is not limited to, State personnel records not subject to disclosure under TPRA.

O. State Fiscal Year

“State Fiscal Year” means a twelve month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.

P. State Records

“State Records” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under TPRA.

Q. Subcontractor

“Subcontractor” means third-parties, if any, engaged by the ESCO to aid in performance of the Work.

R. Tax Information

“Tax Information” means federal and State of Tennessee tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.

S. Tennessee Public Records Act (TPRA)

“TPRA” means the Tennessee Public Records Act, T.C.A. 10-7-503, et. seq.

T. Work

“Work” means the tasks and activities the ESCO is required to perform to fulfill its obligations under this Agreement and in this Attachment D, Exhibit A including the performance of the

RFQ Attachment 6.3

Services and delivery of the Goods.

U. Work Product

“Work Product” means the tangible or intangible results of the ESCO’s Work, including, but not limited to, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type (but not including software), including drafts. Work Product does not include the ESCO’s Intellectual Property.

Any other term used in this Agreement that is defined in an exhibit shall be construed and interpreted as defined in that exhibit.

ARTICLE 2 – TERM, PAYMENT TERMS, AND EARLY TERMINATION

A. Initial Term-Work Commencement

The Parties’ respective performances under this Agreement shall commence on the later of either the Effective Date or [Month Day, Year]. This Agreement shall terminate on [Month Day, Year] unless sooner terminated or further extended as specified elsewhere herein.

B. Payment Terms and Conditions

There are no funds and no payments with this Agreement.

C. Early Termination in the Public Interest

The Agency is entering into this Agreement for the purpose of carrying out the public policy of the State of Tennessee, as determined by its Governor, General Assembly, and/or Courts. If this Agreement ceases to further the public policy of the Agency, the Agency, in its sole discretion, may terminate this Agreement in whole or in part. Exercise by the Agency of this right shall not constitute a breach of the Agency’s obligations hereunder. This subsection shall not apply to a termination of this Agreement by the Agency for cause or breach by the ESCO, which shall be governed by Section 9.A in this Attachment D, or as otherwise specifically provided for herein.

i. Method and Content

The Agency shall notify the ESCO of such termination in accordance with Section 12 in this Attachment D. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement.

ii. Obligations and Rights

Upon receipt of a termination notice, the ESCO shall be subject to and comply with the same obligations and rights set forth in Section 10.A.i in this Attachment D.

ARTICLE 3 - STATEMENT OF WORK

A. Work

The ESCO shall perform an IGA in accordance with in this Attachment D, Exhibit A – Scope of Work. The IGA shall be performed at the location(s) listed in this Attachment D, Exhibit B – Buildings and Infrastructure included in Scope of Work included in IGA. If the Agency, in its sole discretion, desires to accept ESCO’s IGA and ESPC Project proposal, such acceptance shall be made within sixty days of the Agency’s receipt of such proposal. The Parties shall then enter into a new contract, entitled “Energy Savings Performance Contract”, based on such ESPC Project Proposal, the form of which shall be supplied by the State.

B. Time of Performance

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The Work shall be completed during the initial term or any extension thereof, which is set forth in Section 2 in this Attachment D.

C. Goods and Services

The ESCO shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the contract funds and shall not increase the maximum amount payable hereunder by the Agency.

D. Employees or Agents

All persons employed by the ESCO or Subcontractors to perform Work under this Contract shall be the ESCO's or Subcontractors' employee(s) or agents for all purposes hereunder and shall not be employees or agents of the Agency for any purpose as a result of this Contract.

ARTICLE 4 - REPORTING AND NOTIFICATION

Reports, Evaluations, and Reviews required under this Article 4 shall be in accordance with the procedures of and in such form as prescribed by the Agency and in accordance with Section 12 in this Attachment D, if applicable.

A. Litigation Reporting

If the ESCO is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect the ESCO's ability to perform its obligations under this Contract, the ESCO shall, within ten days after being served, notify the Agency of such action and deliver copies of such pleading or document to the Agency contact identified in Section 12 in this Attachment D.

B. Noncompliance

The ESCO's failure to provide reports and notify the Agency in a timely manner in accordance with this Section 4 in this Attachment D may result in the delay of payment of funds and/or termination as provided under this Contract.

ARTICLE 5 - ESCO RECORDS

A. Maintenance

The ESCO shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "ESCO Records"). The ESCO Records shall include all documents, records, communications, notes and other materials maintained by the ESCO that relate to any Work performed by Subcontractors, and the ESCO shall maintain all records related to the Work performed by the Subcontractors required to ensure proper performance of that Work. The ESCO shall maintain ESCO Records until the last to occur of:

- i. the date five years after the date this Agreement expires or is terminated,
- ii. the resolution of any pending matters, or
- iii. if a IGA is occurring, or the ESCO has received notice that a IGA is pending, the date such IGA is completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

The ESCO shall permit the State to audit, inspect, examine, excerpt, copy and transcribe ESCO Records during the Record Retention Period. ESCO shall make ESCO Records available during normal business hours at the ESCO's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two business days' notice from the State,

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unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The Agency, in its discretion, may monitor the ESCO's performance of its obligations under this Agreement using procedures as determined by the Agency. The Agency shall monitor the ESCO's performance in a manner that does not unduly interfere with the ESCO's performance of the Work.

D. Final Proposal Audit Report

The ESCO shall promptly submit to the Agency a copy of any final IGA performed on the ESCO's records that relates to or affects this Agreement or the Work, whether the IGA is conducted by the ESCO or a third party.

ARTICLE 6 - CONFIDENTIAL INFORMATION AND STATE RECORDS

The ESCO shall comply with the provisions of this Section 6 in this Attachment D if it becomes privy to confidential information in connection with its performance hereunder. Confidential information includes, but is not necessarily limited to, any state records, personnel records, and information concerning individuals. Such information shall not include information required to be disclosed pursuant to the Tennessee Public Records Act T.C.A. 10-7-503, et. seq.

A. Confidentiality

The ESCO shall keep confidential, and cause all the Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. The ESCO shall not, without prior written approval of the Agency, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Agreement, permitted by law, or approved in writing by the Agency. The ESCO shall provide for the security of all State Confidential Information in accordance with all applicable laws, rules, policies, publications, and guidelines. The ESCO shall immediately forward any request or demand for State Records to the Agency.

B. Other Entity Access and Nondisclosure Agreements

The ESCO may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Agreement. The ESCO shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force at all times the agent, employee, assign or the Subcontractor has access to any State Confidential Information. The ESCO shall provide copies of those signed nondisclosure provisions to the Agency upon execution of the nondisclosure provisions if requested by the Agency.

C. Use, Security, and Retention

The ESCO shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations only in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information. The ESCO shall provide the Agency with access, subject to the ESCO's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, the ESCO shall return State Records provided to the ESCO or destroy such State Records and certify to the State that it has done so, as directed by the Agency. If the ESCO is prevented by law or regulation from returning or destroying State

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Confidential Information, the ESCO warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If the ESCO becomes aware of any Incident, it shall notify the Agency immediately and cooperate with the Agency regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the Agency. Unless the ESCO can establish that the ESCO and its Subcontractors are not the cause or source of the Incident, the ESCO shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, the ESCO shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the Agency, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the Agency at no additional cost to the Agency. The Agency may adjust or direct modifications to this plan in its sole discretion, and the ESCO shall make all modifications as directed by the Agency. If the ESCO cannot produce its analysis and plan within the allotted time, the Agency, in its sole discretion, may perform such analysis and produce a remediation plan, and the ESCO shall reimburse the Agency for the actual costs thereof.

E. Data Protection and Handling

The ESCO shall ensure that all State Records and Work Product in the possession of the ESCO or any Subcontractors are protected and handled in accordance with the requirements of this Agreement at all times.

F. Compliance

The ESCO shall review, on a semi-annual basis, all Tennessee Strategic Technology Solutions (STS) policies and procedures to ensure compliance with the standards and guidelines published therein. The ESCO shall cooperate, and shall cause its Subcontractors to cooperate, with the performance of security audit and penetration tests by STS or its designee.

G. Safeguarding PII

If the ESCO or any of its Subcontractors will or may receive PII under this Agreement, the ESCO shall provide for the security of such PII, in a manner and form acceptable to the Agency, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits.

ARTICLE 7 - CONFLICTS OF INTEREST

The ESCO warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or contractor to the ESCO in connection with any work contemplated or performed relative to this Contract.

The ESCO acknowledges, understands, and agrees that this Contract shall be null and void if the ESCO is, or within the past six months has been, an employee of the State of Tennessee or if the ESCO is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.

The ESCO acknowledges, understands, and agrees that it and its performance under this Contract are subject to State Building Commission Policy and Procedure 12.02, "Organizational Conflicts of Interest," (the "SBC Conflict Policy"), and that ESCO has read and understands all of the provisions and requirements of same.

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ARTICLE 8 - INSURANCE

The ESCO shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agency shall be issued by insurance companies with an AM Best rating of A-VIII or better.

A. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all ESCO or Subcontractor employees acting within the course and scope of their employment.

B. General Liability

Commercial general liability insurance written on an Insurance Services Office occurrence form, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

\$1,000,000 each occurrence;

\$2,000,000 general aggregate; and,

\$1,000,000 products and completed operations aggregate.

C. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

D. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

\$1,000,000 each occurrence; and

\$2,000,000 general aggregate.

E. Additional Insured

The Agency shall be named as additional insured on all commercial general liability policies required of the ESCO.

F. Primacy of Coverage

Coverage required of the ESCO and each Subcontractor shall be primary over any insurance or self- insurance program carried by the ESCO or the Agency.

G. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least thirty days prior notice to the ESCO and the ESCO shall forward such notice to the Agency in accordance with Section 12 in this Attachment D within seven days of the ESCO's receipt of such notice.

H. Subrogation Waiver

All insurance policies secured or maintained by the ESCO or its Subcontractors in relation to this Agreement shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against the ESCO or the Agency, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

I. Certificates

The ESCO shall provide to the Agency certificates evidencing the ESCO's insurance coverage required in this Agency within seven business days following the Effective Date. The ESCO

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shall provide to the Agency certificates evidencing the Subcontractor insurance coverage required under this Agency within seven business days following the Effective Date, except that, if the ESCO's subcontract is not in effect as of the Effective Date, the ESCO shall provide to the Agency certificates showing the Subcontractor insurance coverage required under this Agency within seven business days following the ESCO's execution of the subcontract. No later than fifteen days before the expiration date of the ESCO's or any Subcontractor's coverage, the ESCO shall deliver to the Agency certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by the Agency, the ESCO shall, within seven business days following the request by the Agency, supply to the Agency evidence satisfactory to the Agency of compliance with the provisions of this Article 8.

ARTICLE 9 - BREACH

A. Defined

In addition to any breaches specified in other sections of this Agency, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against the ESCO, or the appointment of a receiver or similar officer for the ESCO or any of its property, which is not vacated or fully stayed within twenty days after the institution or occurrence thereof, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in Section 12 in this Attachment D. If such breach is not cured within thirty days of receipt of written notice, or if a cure cannot be completed within thirty days, or if cure of the breach has not begun within thirty days and pursued with due diligence, the Agency may exercise any of the remedies set forth in Section 10 in this Attachment D. Notwithstanding anything to the contrary herein, the Agency, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Agreement in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

ARTICLE 10 - REMEDIES

If ESCO is in breach under any provision of this Agreement, the Agency shall have all of the remedies listed in this Article 10 in addition to all other remedies set forth in other sections of this Contract following the notice and cure period set forth in Section 9.B in this Attachment D. The Agency may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

The Agency may terminate this entire Agreement or any part of this Agreement. Exercise by the Agency of this right shall not be a breach of its obligations hereunder. The ESCO shall continue performance of this Agreement to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, the ESCO shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, the ESCO shall complete and deliver to the Agency all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Agreement's terms. At the sole discretion of the Agency, the ESCO shall assign to the Agency all of the ESCO's right, title, and interest under such terminated orders or subcontracts; provided that the ESCO's obligations with respect to the ESCO's Intellectual

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Property are set forth in Section 12 in this Attachment D. Upon termination, the ESCO shall take timely, reasonable and necessary action to protect and preserve property in the possession of the ESCO in which the Agency has an interest. All materials owned by the Agency in the possession of the ESCO shall be immediately returned to the Agency. All Work Product, at the option of the Agency, shall be delivered by the ESCO to the Agency and shall become the Agency's personal property.

ii. Damages and Withholding

Notwithstanding any other remedial action by the Agency, the ESCO shall remain liable to the Agency for any damages sustained by the Agency by virtue of any breach under this Agreement by the ESCO and the Agency may withhold any payment to the ESCO for the purpose of mitigating the Agency's damages, until such time as the exact amount of damages due to the Agency from the ESCO is determined. The Agency may withhold any amount that may be due the ESCO as the Agency deems necessary to protect the Agency against loss, including loss as a result of outstanding liens, claims of former lien holders, or for the excess costs incurred in procuring similar goods or services. The ESCO shall be liable for excess costs incurred by the Agency in procuring from third parties replacement Work, Services or substitute Goods as cover.

B. Early Termination for Insufficient Cost Savings

The ESCO is entering into this Agreement for the purpose of carrying out an IGA. The ESCO shall notify the Agency in writing that ESCO is unable to guarantee savings which exceeds the costs associated with performing the audit, installing the improvements, and related maintenance and monitoring services. Exercise by the ESCO of this Early Termination for Insufficient Cost Savings, shall not be deemed a breach of the ESCO's obligations hereunder.

i. Method and Content

The ESCO shall notify Agency of such termination in accordance with Section 12 in this Attachment D. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement.

ii. Obligations and Rights

Upon receipt of a termination notice, the ESCO shall take timely, reasonable and necessary action to protect and preserve property in the possession of the ESCO in which the Agency has an interest. All materials owned by the Agency in the possession of the ESCO shall be immediately returned to the Agency.

C. Remedies Not Involving Termination

The Agency, at its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance

Suspend the ESCO's performance with respect to all or any portion of this Agreement pending necessary corrective action as specified by the Agency. The ESCO shall promptly cease performance.

ii. Removal

Notwithstanding any other provision herein, the Agency may demand immediate removal of any of the ESCO's employees, agents, or subcontractors whom the Agency deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Agreement is deemed to be contrary to the public interest or the Agency's best interest.

iii. Intellectual Property

If the ESCO infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Agreement, the ESCO shall, at

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the Agency's option:

- a. Obtain for the Agency or the ESCO the right to use such products and services;
- b. Replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or,
- c. If neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the Agency.

D. ESCO's Remedies

If the Agency is in breach of any provision of this Agreement and does not cure such breach, the ESCO, following the notice and cure period in Section 9.B in this Attachment D, and the dispute resolution process in Section 11 in this Attachment D, shall have all remedies available at law and equity.

ARTICLE 11 - DISPUTE RESOLUTION

The State of Tennessee is not subject to mandatory mediation or mandatory arbitration.

ARTICLE 12 - NOTICES AND REPRESENTATIVES

Each individual identified below shall be the agent of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered:

- A. By hand with receipt required;
- B. By certified or registered mail to such Party's agent at the address set forth below;
- C. As an email with read receipt requested to the agent at the email address; or,
- D. By overnight courier to the address set forth below, if any, set forth below.

If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's agent at the address set forth below. Either Party may change its agent or contact information by notice submitted in accordance with this Section 12 in this Attachment D without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

A. Agency:

Agency Contact Name and Title
Agency
Address
City, State Zip
Email Address
Telephone Number
Mobile Number

B. ESCO:

Contactor Name & Title
Firm Name
Address
City, State Zip
Email Address
Telephone Number
Mobile Number

ARTICLE 13 - RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Except for the ESCO's Intellectual Property, any research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by ESCO in the performance of its obligations under this Agreement shall be the nonexclusive personal property of the Agency and, all Work Product shall be delivered to the Agency by ESCO upon completion or termination hereof. The Agency's nonexclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works.

ARTICLE 14 - GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the State of Tennessee, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Tennessee Claims Commission Act, T.C.A. 9-8-301 through 9-8-311, as amended.

ARTICLE 15 - GENERAL PROVISIONS

A. Assignment

The ESCO's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the Agency. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of the ESCO's rights and obligations approved by the Agency shall be subject to the provisions of this Agreement, except in the event that any third party acquires substantially all of the assets and obligations of the ESCO, at which point the Agency may choose, in its sole discretion, to either provide consent to the assignment or terminate this Agreement without further obligation to the ESCO.

B. Subcontracts

The ESCO shall not enter into any subcontract in connection with its obligations under this Agreement without the prior, written approval of the Agency. The ESCO shall submit to the Agency a copy of each such subcontract upon request by the Agency. All subcontracts entered into by the ESCO in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Tennessee, and shall be subject to all provisions of this Agreement.

C. Binding Effect

All provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections, subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same

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agreement.

G. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or affect whatsoever, unless embodied herein.

H. Jurisdiction and Venue

All suits or actions related to this Agreement shall be filed in, and proceedings held in, the State of Tennessee.

I. Modification

Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Tennessee State law and the Policy and Procedure of the State Building Commission.

J. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Agreement to a statute, regulation, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

K. Order of Precedence

In the event of conflicts or inconsistencies between this Agreement and any Exhibits or other Attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. Master Contract for Energy Savings Performance Contracting Services,
- ii. The provisions of the other sections of the main body of this Agreement,
- iii. Attachment D, Exhibit A - Scope of Work, and
- iv. Attachment D, Exhibit B – Buildings and Infrastructure Included in Scope of Work.

L. Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of the Agreement.

M. Survival of Certain Agreement Terms

Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of the Agreement shall survive the termination or expiration of the Agreement and shall be enforceable by the other Party.

N. Third Party Beneficiaries

This Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

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O. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

P. TPRA Disclosure

To the extent not prohibited by federal law, this Agreement is subject to public release through the TPRA.

Q. Standard and Manner of Performance

The ESCO shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in the ESCO's industry, trade, or profession.

R. Licenses, Permits, and Other Authorizations.

The ESCO shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

S. Indemnification

i. General Indemnification

The ESCO shall indemnify, save, and hold harmless the Agency, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any negligent or willful act or omission by the ESCO, or its employees, agents, Subcontractors, or assignees in connection with this Agreement.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by the ESCO in violation of Section 6 in this Attachment D, may be cause for legal action by third parties against the ESCO, the State, or their respective agents. The ESCO shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the Agency in relation to any act or omission by ESCO, or its employees, agents, assigns, or Subcontractors in violation of Section 6 in this Attachment D.

iii. Intellectual Property Indemnification

The ESCO shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

T. Boycott of Israel

Pursuant to Tenn. Code Ann. § 12-4-119, Contractor certifies that it is not currently engaged in, and will not for the duration of the Contract, engage in a boycott of Israel, as defined by Tenn. Code Ann. § 12-4-119(a)(1).

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This instrument may be executed in one or more counterparts. It shall be fully executed when each party whose signature is required has signed at least one counterpart, even though no one counterpart contains the signatures of all parties to this instrument. Electronic, scanned or facsimile signatures shall have the same force and effect as original signatures.

IN WITNESS WHEREOF:

ESCO LEGAL ENTITY NAME:

ESCO Signatory, ESCO Title

DATE: _____

STATE OF TENNESSEE,

DEPARTMENT OF AGENCY:

Agency Commissioner, Commissioner

DATE: _____

SCOPE OF WORK

This Scope of Work exhibit is a general outline of the process from the initial Pre-Audit Conference to an accepted IGA. The Scope of Work outlines the information collected, how it is analyzed, the methodology used for calculations, an initial but not exclusive list of Energy Conservation Measures (ECMs) and other Facility Improvement Measures to consider, format for the report IGA. The Energy Savings Performance Contract Project proposal should include proposed equipment (or equal) to be installed, proposed facility modifications, expected utility savings, expected project costs, proposed project design and construction schedule, a measurement and verification plan, and long-term ESCO and Agency maintenance requirements.

The ESCO shall conduct all necessary conference(s) and produce associated documentation to initiate and complete Work under the Agreement. The ESCO will facilitate all reviews and collect all the comments starting with the Pre-Audit Conference (reference Section 2 of this [Exhibit A](#)) through the Post-Audit Conference (reference Section 7 of this [Exhibit A](#)). The ESCO will develop the draft and final Investment Grade Audit report and develop the Energy Savings Performance Contract Project proposal.

If the Agency and the ESCO (with State review) determine that any of the following services detailed below are not required for a given project, the Scope of Work can be modified by the Agency by striking through the identified services.

SECTION 1 Definitions and Terms

The following terms shall be construed and interpreted as follows:

- A. Adjusted-baseline energy**
“Adjusted-Baseline Energy” means the energy use of the baseline period, adjusted to a different set of operating conditions.
- B. American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE)**
“American Society of Heating, Refrigeration, and Air Conditioning Engineers” or “ASHRAE” means the recognized professional organization with standards and guidelines that may be referenced for additional definitions, procedures, and technical information as necessary in this Scope of Work.
- C. Baseline Energy**
“Baseline Energy” means the energy use (units) occurring during the Baseline Period without adjustments.
- D. Baseline Period**
“Baseline Period” means the period of time chosen to represent operation of the facility or system before implementation of an ECM or any applicable FIM. This period may be as short as the time required for an instantaneous measurement of a constant quantity, or long enough to reflect one full operating cycle of a system or facility with variable operations.
- E. Baseline**
“Baseline” means and pertains to the baseline period.
- F. Commissioning**
“Commissioning” means a process for achieving, verifying and documenting the performance of equipment to meet the operational needs of the facility within the capabilities of the design, and to meet the design documentation and the Agency's functional criteria, including preparation of operating personnel. Retro-commissioning is the application of the Commissioning process to existing buildings.
- G. Cost-Weighted Average Service Life**
“Cost-Weighted Average Service Life” means the calculation is based upon the service life of the equipment (ASHRAE Handbook - HVAC Applications or other approved source), the cost of each

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ECM (excluding the audit cost and the Agency's contingency), and the total cost of all the ECMs. The formula is the sum of each ECM cost divided by the total cost multiplied by its service life. Cost- Weighted Average Service Life = $\sum \text{each ECM} \div \text{total cost} \times \text{service life}$.

H. **Energy**

"Energy" means electricity (both usage and demand), natural gas, steam, water (potable or non-potable), or any other Utility charged service.

I. **Energy Conservation Measure (ECM)**

"Energy Conservation Measure" means an activity or set of activities designed to increase the efficiency (energy, water, or other utility) of a facility, system or piece of equipment. ECMs may also conserve energy without changing efficiency. An ECM may involve one or more of: physical changes to facility equipment, revisions to operating and maintenance procedures, software changes, or new means of training or managing users of the space or operations and maintenance staff. An ECM may be applied as a retrofit to an existing system or facility, or as a modification to a design before construction of a new system or facility. An ECM is a Utility Cost-Savings Measure as defined.

J. **Energy Cost-Savings Contract**

"Energy Cost-Savings Contract" means a Utility Cost-Savings Contract.

K. **Energy Cost-Savings Measure**

"Energy Cost-Savings Measure" means a Utility Cost-Savings Measure.

L. **Energy Management Program (EMP)**

"Energy Management Program" is a program within the Tennessee Department of Environment and Conservation.

M. **Energy Savings Performance Contract (ESPC)**

"Energy Savings Performance Contract" is a contract for evaluations, recommendations or implementation of one or more Energy Cost-Savings Measures designed to produce Utility Cost-Savings, Operation and Maintenance Cost Savings, or Vehicle Fleet Operational and Fuel Cost-Savings, which:

- i. Sets forth savings attributable to calculated Utility Cost-Savings or Operation and Maintenance Cost Savings for each year during the Contract Term;
- ii. Provides that the amount of actual savings for each year during the Contract Term shall exceed annual contract payments, including maintenance costs, to be made during such year by the State agency contracting for the Energy Cost-Savings Measures. Except that, "annual contract payments" does not include moneys received by the state from rebates, gifts, grants, or donations specifically designated by the gifting, granting, or donating party for the design or implementation of an Energy Cost-Savings Measure or State moneys that have been specifically appropriated in a distinct line item, or, in the case of the department of transportation, otherwise set aside in the department's budget, for the design or implementation of an energy cost-savings measure that is wholly addressed within the scope of the energy cost-savings contract;
- iii. Requires the party entering into the Energy Savings Performance Contract with the State to provide a written guarantee that the sum of Energy Cost-Savings and Operation and Maintenance Cost Savings for each year of the Contract period shall not be less than the calculated savings for that year; and,
- iv. Requires payments by a state agency to be made within twelve years after the date of the execution of the ESPC; except that the maximum term of the payments shall be less than the Cost-Weighted Average Service Life of energy cost-savings equipment for which the ESPC is made, not to exceed twenty years.

N. **Energy Service Company**

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“Energy Service Company” (ESCO) means the energy service company entity entering into a contract to design and construct the Project with the State of Tennessee acting by and through the Agency.

O. Facility Improvement Measure (FIM)

“Facility Improvement Measure” is an activity or set of activities designed to improve the structural or operational conditions of a facility, system or piece of equipment. A FIM may be an activity associated with an Energy Cost-Savings Measure and funded as part of an ESPC. A FIM may be an activity requested by the Agency, but is not an Energy Cost-Savings Measure, even if funds have been budgeted, appropriated and otherwise made available to be included in an ESPC. Within this Agreement, FIMs and ECMs shall be interchangeable as necessary.

P. Federal Energy Management Program (FEMP) Measurement & Verification Guidelines

“Federal Energy Management Program M&V Guidelines” means the current M&V Guidelines prepared by the U.S. Department of Energy. The FEMP M&V Guidelines contains specific procedures for applying concepts originating in the International Performance Measurement and Verification Protocol (IPMVP). The FEMP M&V Guideline represents a specific application of the IPMVP to ESPC projects. It outlines procedures for determining M&V approaches, evaluating M&V plans and reports, and establishing the basis of payment for energy savings during the Agreement. These procedures are intended to be fully compatible and consistent with the IPMVP.

Q. Guarantee Period

“Guarantee Period” means a period of time commencing upon M&V Commencement Date and terminating on the termination of the M&V Term. The Guarantee Period is a mutually agreed to time period after the M&V Commencement Date, during which Guaranteed Annual Cost Savings resulting from the Project are measured and verified by the ESCO set forth in Attachment E, Exhibit D.

R. International Performance Measurement and Verification Protocol (IPMVP)

“International Performance Measurement and Verification Protocol” means the current document prepared by the Efficiency Valuation Organization on the Effective Date of this Agreement. It is the industry standard for current best practice techniques available for verifying results of energy efficiency, water efficiency, and renewable energy projects associated with the IGA Report and ESPC Project Proposal.

S. kW

“kW” is Kilowatt (abbreviation)

T. kWh

“kWh” is Kilowatt-hour (abbreviation)

U. Measurement and Verification (M&V)

“Measurement and Verification” means the process of using measurements to reliably determine and verify the actual savings created within buildings, infrastructure, or systems resulting from an energy management program. Savings cannot be directly measured since they represent the absence of energy use. Instead, savings are determined by comparing measured use before and after implementation of a project, making appropriate adjustments for changes in conditions. M&V follows the standards and definitions in the current IPMVP, as may be amended prepared by the Efficiency Valuation Organization on the Effective Date of this Agreement.

V. M&V Commencement Date

“M&V Commencement Date” means the first day of the month following the completion by ESCO and acceptance by the Agency of the Project.

W. M&V Fee

“M&V Fee” means an annual fee paid to the ESCO by the Agency for the ESCO’s satisfactory performance of the M&V Services, as set forth in Attachment E, Section 13. The M&V Fee is

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included as a part of the ESPC Maximum Contract Price.

X. M&V Plan

“M&V Plan” defines how savings will be calculated and specifies any ongoing activities that will occur during the Contract Term. The details of the M&V Plan are in Attachment E, Exhibit D.

Y. M&V Services

“M&V Services” means Services or activities relating to the measurement and verification by the ESCO of the efficiency and effectiveness of the Project, pursuant to this Agreement and the State Measurement and Verification Policy as applied.

AA. M&V Term

“M&V Term” has the meaning as described to it in Attachment E, Section 13.

BB. MMBtu

“MMBtu” means 1 Million British thermal unit (abbreviation).

CC. O&M

“O&M” means Operations and Maintenance (abbreviation).

DD. Operations and Maintenance Cost Savings

“Operation and Maintenance Cost Savings” means the measureable decrease in operation and maintenance (O&M) costs that is a direct result of the implementation of one or more Utility Cost-Savings Measures. Such savings shall be calculated in comparison with an established baseline of operation and maintenance costs.

EE. Rebate

“Rebate” means funds used for the ESCO’s compensation which are not the Agency funds and which are not funds from a Third-Party Lessor, and shall include solar Renewable Energy Credits (REC’s) and utility rebates, and as described in ESPC appropriate contract Schedule.

FF. Repair and Replace

“Repair or Replace” means to repair or replace equipment or components as necessary based upon the age, usage, O&M cost, potential efficiency improvement, etc.

GG. Savings Calculations

“Savings Calculations” means the manner in which Savings is calculated, as set forth in Attachment E, Exhibit C.

HH. Simple Payback

“Simple Payback” means the length of time, typically presented in years, required to recover the cost of a measure or project.

II. Utility or Utilities

“Utility” or “Utilities” means the water, sewer services, electricity, payments to energy service companies, purchase of energy conservation equipment, and all heating fuels. Utility may include compressed air, chilled water, or other systems or services as agreed to with the Agency.

JJ. Utility Cost Savings

“Utility Cost Savings” means the combination of either or both of the following:

- i. A cost savings caused by a reduction in metered or measured physical quantities of a bulk fuel or Utility resulting from the implementation of one or more Energy Conservation Measures when compared with an established baseline of usage; or
- ii. A decrease in utility costs as a result of changes in applicable utility rates or utility

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service suppliers.

The savings shall be calculated in comparison with an established baseline of utility costs.

KK. Utility Cost-Savings Contract

“Utility Cost-Savings Contract” means an Energy Savings Performance Contract or any other agreement in which Utility Cost Savings are used to pay for services or equipment.

LL. Utility Cost-Savings Measure

“Utility Cost-Savings Measure” means the installation, modification or service that is designed to reduce energy and water consumption and related operating costs in buildings and other facilities and includes, but is not limited to, the following:

- i. Insulation in walls, roof, floors and foundations, and in heating and cooling distribution systems;
- ii. Heating, ventilating or air conditioning and distribution system modifications or replacements in buildings or central plants;
- iii. Automatic energy control systems;
- iv. Replacement or modification of lighting fixtures;
- v. Energy recovery systems;
- vi. Renewable energy and alternate energy systems;
- vii. Cogeneration systems that produce steam or forms of energy, such as heat or electricity, for use primarily within a building or complex of buildings;
- viii. Devices that reduce water consumption or sewer charges;
- ix. Changes in operation and maintenance practices;
- x. Procurement of low-cost energy supplies of all types, including electricity, natural gas and other fuel sources, and water;
- xi. Indoor air quality improvements that conform to applicable building code requirements;
- xii. Daylighting systems;
- xiii. Building operation programs that reduce utility and operating costs including, but not limited to, computerized energy management and consumption tracking programs, staff and occupant training, and other similar activities;
- xiv. Services to reduce utility costs by identifying utility errors and optimizing existing rate schedules under which service is provided; and,
- xv. Any other location, orientation, or design choice related to, or installation, modification of installation or remodeling of, building infrastructure improvements that produce utility or operational cost savings for their appointed functions in compliance with applicable state and local building codes.

SECTION 2 Pre-Audit Conference

The Pre-Audit Conference is the initial meeting including the Agency’s key staff and all critical ESCO staff to present and discuss the IGA approach, its activities, individual and mutual responsibilities, and proposed schedule.

ESCO shall prepare an agenda and conference record to include, but not be limited to, the following agenda outline and topics:

A. Introductions/Roles

- i. Roles of key representatives
- ii. Preferred means of communication and protocols
- iii. Contact Information

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B. Objectives and Goals

- i. Agency's interests, goals, objectives and priorities (Owner's Project Requirements (OPR)).
- ii. Level of management, facility, and staff support.
- iii. Discussion by ESCO of their approach to the project.
- iv. Review of Agency program support documents, process, and forms.

C. Technical Expectations

- i. General discussion on ESPC scope, buildings and potential ECMs to be considered.
- ii. Discussion of any Federal, State, Local, or Agency environmental, occupancy, construction specifications, performance or other reporting or certification requirements.
- iii. Long-term plans at the facilities including additional capacity, demolition, new construction.
- iv. Operations and maintenance, training and educational needs and expectations.
- v. Commissioning (Cx) and Retro-Commissioning (RCx) priorities for ESPC scope and the existing facilities.
- vi. Controlled maintenance and deferred maintenance project priorities of the facilities.
- vii. Code Compliance: local jurisdiction code requirements as applicable.
- viii. Hazardous materials and other considerations/issues.
- ix. Other studies, reports information available.

D. Summary of Project Financial Parameters

- i. Simple payback, contract term, utility escalation rates, inflation rate, and necessary capital and other financial contributions.
- ii. Potential cost of Agency's Maintenance Responsibilities (as indicated in an ESPC schedule) or any other long-term Operation and Maintenance (O&M) services as applicable and the Agency's desire or ability to support these cost.
- iii. M&V savings verification options and extent.
- iv. Rebates and other financial incentives.

E. IGA Process and Schedule

- i. Logistics and access; testing/metering to be accomplished.
- ii. Security and access requirements to restricted areas, escorts, tool control, etc.
- iii. Safety requirements, training, hazards.

F. Schedule/timeline with significant milestones

- i. Action Items & next steps.
- ii. Recap of action items including directives from the Agency.
- iii. Set next meeting or conference call time.

SECTION 3 Data Collection and Building/Equipment Schedules

ESCO shall coordinate collection of the Agency provided facility data and additional information with the goal of developing the existing conditions, operating schedules and utility usage/cost to determine the Agency's accepted baselines. The Agency shall provide the necessary and available information referenced in this Section 3 or as required for ESCO to perform Work under this Agreement concerning facility operation and energy use.

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A. **Building Data** (by Building/infrastructure as listed in, Exhibit B in Attachment D)

- i. Construction date(s) of buildings and major additions including building envelope.
- ii. Infrastructure information as necessary (tunnels, steam lines, chiller water lines, water treatment plants, etc).
- iii. Inventory and description of the existing facilities and their major mechanical, electrical, water systems and any others systems as necessary (itemized by energy source, equipment type, capacity, services years, and condition.
- iv. Building operation/occupancy schedules, equipment operation schedules (including weekly and seasonal use schedules, unoccupied buildings and areas).
- v. Drawings of mechanical, plumbing, electrical, building automation and temperature controls, structural, architectural, infrastructure, modifications and remodels, etc., as available.
- vi. Original construction submittals and factory data such as, equipment specifications pump curves, etc., as available.
- vii. Operating engineer logs, maintenance work orders, etc., as available.
- viii. Records of maintenance expenditures on energy-using equipment, including service contracts.
- ix. Prior energy audits or studies.

B. **Utility Data**

The Office of Energy Programs shall provide at a minimum, twenty-six months of actual historical utility invoices. The Agency shall obtain the historical utility invoices by accessing its relevant utility accounts in the State's Utility Data Management Platform, which is managed by the Department of Environment and Conservation's Office of Energy Programs, State Facility Utility Management Section.

C. **Energy Management**

- i. Description of energy management program.
- ii. Description of any building automation systems and other control systems/procedures.
- iii. Description of any energy or water-related improvement projects, completed or in progress.
- iv. Description of any changes in the facility or energy-using or water-using equipment.

D. **Capital Construction Projects**

- i. Description of existing capital construction projects.
- ii. Description of future plans regarding building modifications, renovations, repairs, decommissioning, or equipment modifications, replacements.

E. **Interviews:**

ESCO shall coordinate and conduct in conjunction with the Agency the interviews. The Agency shall make available individuals with knowledge of the facility such as the facility or plant manager, maintenance staff, and occupants of each building regarding:

- i. Facility operation, including energy management systems and procedures,
- ii. Equipment maintenance problems including deferred and un-scheduled maintenance,
- iii. Occupant comfort problems and standards of comfort requirements,
- iv. Equipment reliability including frequency of un-scheduled or emergency maintenance and potential loss-of-use of facility, building, or portions thereof,
- v. Projected equipment needs including upgrade, replacement, and/or repairs,
- vi. Occupancy and weekly use schedules for the facility and specific equipment, and
- vii. Facility improvements – past, planned and desired.

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F. Systems Survey:

Agency shall provide site-knowledgeable escorts and facility access to ESCO who shall identify major utility-impacting components, which may include, but is not limited to, lighting both indoor and outdoor; heating and heat distribution systems, cooling systems and related equipment, central plants, automatic temperature control systems and equipment, air distribution systems and equipment, outdoor ventilation systems and equipment; exhaust systems and equipment; hot water generation and distribution systems, electric motors, transmission and drive systems, special systems such as kitchen/dining equipment, laundry equipment, renewable energy systems, other energy using systems, water consuming systems, such as restroom fixtures, water treatment plant, wastewater treatment plant, water features and irrigation systems; and building envelope.

SECTION 4 Establish Baseline Period Consumption

Establish appropriate baseline period consumption by evaluation of appropriate utility meter data, and utility bills (reference Section 3 in this [Exhibit A](#)) for electricity, natural gas, propane, steam, water, and any other applicable utilities. Compile baseline period consumption in terms of:

A. Utility provider accounts:

Prepare summary of all utility bills for all fuel types and water. Develop description and itemization of current accounts, billing rates, schedules, riders, and related terms or agreements that affect consumption and energy costs. Consult with the Agency to account for any anomalous schedule or operating conditions on billings that could skew the Baseline. The ESCO shall account for periods of time when equipment was broken or malfunctioning in calculating the Baseline Period, provided this information is available from the Agency.

- i. Energy and Water Units: Units of energy in kWh, kW, ccf, "Therms", thousand gallons, or other units used in bills. List appropriate, supplier verified conversion factors and convert natural gas, methane, fuel oil, biomass, and propane to MMBtu; show electricity in both kW and kWh and the MMBtu equivalent. Units of water (kgal).
- ii. Energy and Water Units per building square foot per year.
- iii. Energy Cost (in dollars) per building square foot per year.

- B. Describe the process used to determine the baseline period and baseline energy.
- C. Describe the process to reconcile the proposed utility baseline information with the actual consumption.
- D. Describe the process to normalize the baseline for weather-adjusted factors, if applicable.

SECTION 5 Detailed Analysis of ECM and other ESCO Services

ESCO shall conduct detailed analysis of recommended measures for further analysis, including construction cost and schedule, utility and other savings, code compliance estimate and permit costs (reference Section 2.C. of this [Exhibit A](#)), measurement and verification plan, training, operation and maintenance cost impacts, and other items as requested (mutual agreement between Agency/ESCO) to complete the final IGA and the negotiated ESPC Project proposal.

ESCO shall evaluate facility and equipment schedules and baseline utility use and costs relative to the Work and including, but not limited to:

A. Weekly Use and Operational Schedule:

ESCO to perform "late-night", weekend trend monitoring devices, and field surveys outside of normal business hours or on weekends to confirm building system and occupancy schedules "impacting measures for further analysis".

- B. Evaluate actual operation schedules, conditions for the facilities, equipment and buildings (hours, temperatures, air flows, humidity, etc.).

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- i. Estimate loads as necessary and applicable. Equipment loads can change over time. Changes in load can show up as increases or decreases in “savings” depending on the M&V Services. Clarify whether equipment loads are to be measured or stipulated and what the impact will be if they change.
- ii. Where loading or usage are highly uncertain (including variable loads such as cooling), ESCO will use its best judgment, spot measurements or short-term monitoring. ESCO should not assume that equipment run hours equal the operating hours of the building(s) or facility staff estimates.

C. **Description of ECM:**

Provide a technical description for each ECM. Consider the following parameters for each system, component, and associated conservation measure:

- i. Comfort and maintenance problems,
- ii. Energy or water source, use, loads, proper sizing, efficiencies and hours of operation,
- iii. Current existing systems, controls, and operating condition,
- iv. Remaining service life,
- v. Feasibility of system replacement,
- vi. Hazardous materials and other environmental concerns,
- vii. Agency's future plans for equipment replacement or building renovations,
- viii. Facility operation and maintenance procedures that could be affected, and
- ix. Procedure to measure and verify savings (M&V) (necessary M&V equipment including meters, sub-meters, data-loggers, and control system monitoring/reporting capabilities).

D. **Cost Estimate Analysis:**

ESCO shall identify and perform next-level analysis on measures which appear potentially cost-effective. The analysis may consider the following sources of data for design and construction cost, potential operation and maintenance costs or other categories as identified by the ESCO or the Agency:

- i. Agency list of acceptable/preferred manufacturers or vendors,
- ii. Agency's construction specifications, requirements, standards,
- iii. ESCO's Subcontractor material and labor cost estimates,
- iv. ESCO's Subcontractor professional design firm's cost estimates,
- v. ESCO's pricing information from historical projects,
- vi. ESCO's product specification information, and
- vii. ESCO's or Agency's pricing information for hazardous/environmental work.

E. **Cost Savings Analysis:**

For each potentially cost-effective measure, prepare an estimate of energy and operational cost savings including description of analysis methodology, supporting calculations and assumptions used to estimate savings.

- i. Follow the methodology of the ASHRAE or other nationally recognized authorities following the engineering principle(s) identified for each retrofit option.
- ii. Utilize assumptions, projections and the baseline period energy consumption and/or the mutually agreed-upon adjusted baseline energy, whichever best represents the value of future energy or operational savings.
- iii. Include accurate energy unit costs at the time the analysis is performed, documentation of material and labor cost savings, adjustments to the baseline to reflect current conditions at the facility, and calculations which account for the interactive effects of the recommended measures.
- iv. Use best judgment regarding the employment of instrumentation and recording durations so as to achieve an accurate and faithful characterization of energy use.
- v. Develop a preliminary measurement and verification plan for each measure.

F. **Finalize Project Financial Parameters**

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- i. Discuss an acceptable escalation rate for each utility for each year. The escalation rates may be different each year.
- ii. Discuss an acceptance of any operation or maintenance savings. Discuss how these would be determined, escalated, and the maximum number of years allowed.
- iii. List any known utility rebates, grants, or other financial incentives that effect cost of insulation or final maximum project cost.

SECTION 6 Draft IGA Report

ESCO shall prepare a draft IGA. The draft IGA shall follow this outline format including, but not limited to:

A. Executive Summary:

- i. Project Background and Introduction
- ii. Agency's Owner Project Requirements (OPR)
- iii. Summary of Recommended Facility Improvement Measures
- iv. Summary of Total Savings (energy, (units and cost by utility) water, maintenance or other Agency approved items)
- v. Summary of Project Financial Parameters including completed schedules from eProject Builder, initial total project cost, and capital contributions (projected or identified). Total project cost is the maximum, not-to-exceed amount the Agency shall pay for the project and ESCO's services.
- vi. Conclusions and Recommendations

B. Facility and Building Data:

For each facility identified in Attachment D, Exhibit B, the ESCO shall provide a brief building description, including the use, square footage, hours of operation and lighting, mechanical and water systems and building envelope/construction.

C. Baseline Period Utility Consumption:

Compile and provide a concise and well organized analysis and written report of the data gathered and necessary to provide baseline utility consumption pursuant to the baseline period consumption Section 4 of this Exhibit A which may include, but not limited to:

- i. Description and itemization of current billing rates, including schedules and riders;
- ii. Summary of all utility bills for all energy types;
- iii. Identification and definition of baseline energy and period and description of how established, including any weather-adjusted baseline normalization, if applicable; and,
- iv. Reconciliation of estimated end use consumption (i.e. lighting, cooling, heating, fans, plug loads, etc) with base year (include discussion of any unusual findings).

D. ECM:

Update, compile, and provide comprehensive analysis of recommended ECM and other FIM for consideration, review and comments by the Agency which include, but are not limited to the following:

Conservation Measure List – Prepare a summary, in table format of recommended ECM as referenced in Section 5 of this Exhibit A. The summary shall include an itemization for each measure of total design and construction cost, annual operation and maintenance costs, the first year savings (cost avoidance), (in dollars and appropriate utility units), Simple Payback and major equipment service life. The summary shall further include tabulated utility consumption savings per system, building, or facility separated out by contributing ECM. For each recommended energy and utility saving conservation measures, provide a summary of the following:

- i. **Existing Conditions** Describe existing conditions, systems, etc. to be affected by the proposed utility conservation measures, and the specific benefits of each to modify each condition, including but not limited to, energy, water or resource conservation, capital improvement, deferred maintenance, long-term performance and reduction of operating

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- costs, etc.
 - ii. **Project Scope of Work:** Description of improvements, equipment, etc. to be installed and how it shall function.
 - iii. **O&M Procedures:** Include discussion of facility operations and maintenance procedures that shall be affected by installation or implementation.
 - iv. **Implementation Plan:** Present a conceptual plan for the proposed ESPC project indicating design and construction timeframes for the ECMs. Indicate any potential installation time constraints or critical start/completion dates.
 - v. **Utility Savings Calculations:**
 - a. **Base -Year Consumption:** base year utility use and cost.
 - b. **End-Use Consumption Estimate:** Post-retrofit utility use and cost.
 - c. **Annual Savings Estimates:** The Utility Cost Savings and Operation and Maintenance Cost Savings shall be determined for each year during the contract period. Savings shall be achieved by the implementation of such measures on an annual basis. Savings shall be limited to savings allowed by the State Statute or the Agency.
 - d. **O&M Savings:** Operation and maintenance savings, including detailed calculations and description. Ensure that maintenance savings are only applied in the applicable years and only during the lifetime of the particular equipment. Operation and Maintenance Cost Savings if considered in the ESPC Project proposal will require Agency approval and signature on the Record of Reviews.
 - e. **Methodology for Savings Estimates:**
 - 1. Savings estimates including the methodology used in analysis, supporting calculations and assumptions used. Analysis and methodology shall also include description and calculations for any proposed rate changes. Analysis shall further include an explanation of how savings between retrofit options are accounted for in calculations.
 - 2. If computer simulation is used, include a short description and indicate key input data. If requested by the Agency access shall be provided to the program and all assumptions and inputs used. Printouts shall also be provided of all input files and important output files and included in the IGA with documentation that explains how the final savings figures are derived from the simulation program output printouts.
 - 3. If manual calculations are employed, formulas, assumptions and key data shall be stated.
 - vi. **Conclusions and Analysis: Provide other observations, caveats, etc.**
- E. **M&V Plan:**
Summary of the M&V Plan. Cost of the M&V services per year through the Contract term. M&V shall be in accordance with requirements of T.C.A. 12-4-118(c).
- F. **Cost Estimate Analysis:**
Summary and update of cost assessment initiated under Section 5.D. of this Exhibit A.
- G. **Cost Savings Analysis:**
Summary and update of analysis initiated under Section 5.E. of this Exhibit A, including calculation of cost savings expected if all recommended measures are implemented and total percentage savings of total facility utility cost.
- H. **Excluded Measures:**
List all ECMS considered but not recommended with a short paragraph on why it was not included.
- I. **Agency Review, Comments, and Prioritization:**
Summary of documentation or conference records of Agency priorities, stipulations, and designated compliance with statute, requirements and policies.
- J. **Draft IGA Report:**
Pursuant to this Section 6 the ESCO shall comply with the following items when developing the

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draft IGA:

- i. Draft IGA Report shall be submitted in a format acceptable to the Agency labeled to include the project title "Investment Grade Audit and Energy Savings Performance Contract Project Proposal", the Agency facility name, name of the ESCO, and date of issuance or revision. Provide additional sets of these documents as requested or required by the Agency.
- ii. Contents shall be formatted and tabbed in the exact form and alphanumeric sequence of the outline of this Sections 6.A. – 6.H. of this Exhibit A, with additional outlined formats for other referenced sections of this Exhibit A. Content elements not otherwise referenced or required in this Exhibit A, if provided, shall appear at the end of the IGA under its own tab(s) or in separate document(s).
- iii. Contents contained in the IGA shall be complete. ESCOs are encouraged to respond in a concise manner. The use of charts and spreadsheets to summarize certain information is especially encouraged; said information may be accompanied by an explanatory narrative.
- iv. An electronic version of the draft IGA Report and any additional provided or requested information shall be submitted with the written report.

SECTION 7 Post-Draft IGA Report Conference

A. The ESCO shall prepare an agenda consistent with the format of the Pre-Audit Conference in Section 2 of this Exhibit A, including any modifications as a result of the Pre-Audit Conference. ESCO shall conduct all necessary conference(s) and produce associated documentation to engage the Agency to review the recommendations, savings calculations and impact of the measures on the operations of the facility. Describe how the projected project economics meet the Agency's terms for completing the IGA. Revise IGA as directed by the Agency.

B. Agency Review and Comments

- i. ESCO shall provide all services and deliverables to include, but not be limited to, draft, project proposal(s), supplemental documents and ESCO's responses, etc. necessary to support written acceptance by the Agency.
- ii. The Agency and the State shall perform concurrent reviews and all comments are shared by all parties, including State third party reviews.
- iii. The Agency and the State may submit written comments at any time during the review of the IGA and the ESCO shall provide supplemental responses.

C. Responses to the Agency Comments – Revise IGA as directed by the Agency which shall be included in the final ESPC Project proposal.

SECTION 8 Final IGA and ESPC Project Proposal

A. Present Final IGA. ESCO to complete and deliver final documents defined in this Section 8 to the Agency for approval in a format pursuant to Section 6 of this Exhibit A.

B. ESPC Project Proposal. Pending approval of the final IGA, and the execution of the Notice of Acceptance, prepare an ESPC using State's ESPC documents, subject to terms and provisions of this Agreement, and subject to negotiation and agreement between the Parties pursuant to applicable Federal and State regulatory requirements. ESCO shall prepare the applicable schedules from eProject Builder to be incorporated in an ESPC Proposal that includes the following:

- i. Description of Work: This schedule should include at minimum the following and any other critical information from the ESPC project proposal (as this is not included in the ESPC documents).
 - a. Executive Summary: Provide an executive summary which includes: key participants, the final energy conservation measures and facility improvement measures, a table of the ECM/FIMs by building/location, a table of the ECM/FIMs indicating annual savings (usage and dollars), installation cost (soft fees and construction cost), and simple payback or return on investment value. Include any

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- other financial factors that support the project (potential grants, rebates, other sources of funds).
- b.** Building and Infrastructure data only for the locations included in the Work in a format similar to the IGA Exhibit B tables.
 - c.** By ECM/FIM explain the scope of the Work.
 - 1.** As appropriate, include equipment (controls, lighting, heating, cooling, other) to be installed, modified, removed, and any associated important items necessary to describe the Work.
 - 2.** As known, list any manufacturer (or pre-approved equal), size, types, quantities as necessary for clarity.
 - 3.** Include occupancy schedules, temperature setpoints, standards of comfort and all other important variables that impact the performance of the measure. In particular are parameters that could be modified after installation and impact the long term performance of the measure.
 - 4.** If a measure has operation or maintenance savings, indicate how they are determined, verified, and term of the savings.
 - 5.** Measurement and Verification option.
 - 6.** Include specific exclusions or assumptions as applicable.
 - 7.** Warranty: by manufacturer, ESCO, contractor, sub-contractor, or national distributor.
 - d.** Design and Construction Schedule, also any particular or known:
 - 1.** construction process,
 - 2.** normal or after-hours work,
 - 3.** unique access requirements, etc.
 - e.** Training: by manufacturer, ESCO, or contractor, sub-contractor; on-site, web based, electronic media, other.
 - f.** Known Environmental Problems: indicate if the ESCO or the State needs to remediate the problem.
- ii.** Total Project Cost Proposal: the maximum, not-to-exceed amount the State shall pay for the project and ESCO's services.
 - iii.** Cost Estimate: Include all anticipated costs associated with the fixed limit of design, fixed limit of construction, and the sum of all M&V fees as defined in Section 4 of Attachment E.
 - iv.** Base-Year Consumption: Disclose baseline basis for cost savings. Summary of annual utility use by type and costs of existing or base year condition.
 - v.** Cost Savings Calculations: Calculation of cost savings expected if all recommended utility conservation measures are implemented and total percentage savings of total facility utility cost.
 - vi.** End-Use Consumption Estimate: Outline the proposed utility use reduction and end use consumption for the system or facility.
 - vii.** Contract Term: Years of the ESPC.
 - viii.** Utility Rate Escalation Factor: Escalation or decline based on historical trends, utility provider rate forecasts, and economic forces of supply and demand (global, national, local or regional), natural resource availability, technology, utility capital investment, and environmental requirements.
 - ix.** Weather Adjustments: If applicable, proposed modification to how the savings shall be calculated and adjusted due to weather (such as heating and cooling degree days), occupancy or other factors.
 - x.** M&V Plan: Proposal consistent with Section 4 of Attachment E.
 - xi.** Commissioning Plan: Preliminary Commissioning plan.
 - xii.** Operations and Maintenance Plan.
 - xiii.** Implementation Plan and Schedule: The ESCO shall propose a milestone schedule with activity durations of all ESPC phases, including, but not limited to, ESCO services, commissioning, M&V activities, etc. to include written acceptance by the Agency, as follows:
 - a.** The ESCOs shall submit an implementation plan for all Utility Savings and Cost Savings measures with a narrative describing design-build and bidding strategies and recommended delivery options; and
 - b.** Training, operation and maintenance activities, interim and milestone responsibilities for maintenance, etc.

RFQ Attachment 6.3

END OF EXHIBIT A – SCOPE OF WORK

Buildings and Infrastructure Included in Scope of Work

Agency/Customer Name: _____

The following tables list the buildings included in the IGA Scope of Work. Add additional rows as necessary to list all buildings and non-typical facilities. Since building names may change over time, any unique agency building number or other identifier shall be included. The building number could be attached the building name or as a new column. The ESCO will update the Tables as necessary to reflect and support their IGA and ESPC Project Proposal.

EXHIBIT B, TABLE 1 - BASE COST TABLE

[illegible]

Indicate Non-Typical facilities (buildings or infrastructure) where the Gross Square Feet (GSF) may not be appropriate, e.g., water treatment plants, wastewater treatment plants, warehouses, arenas, and others.

EXHIBIT B, TABLE 2 - NON-TYPICAL FACILITY COST TABLE

[illegible]

ESPC

The Contract detailed in following pages of this exhibit contains some “blanks” (signified by descriptions in capital letters) that will be completed with appropriate information in the final contract resulting from the RFQ.

ENERGY SAVINGS PERFORMANCE CONTRACT

PARTIES

This Energy Savings Performance Contract (the “Contract” or the “ESPC”), by and between the State of Tennessee, the Department of **Agency** hereinafter referred to as the “State” and **ESCO Legal Entity Name**, hereinafter referred to as the “ESCO”,

RECITALS

WHEREAS, the State is authorized to enter into a contract for the design and implementation of energy analysis and recommendations pertaining to measures that would significantly increase Utility Cost Savings and Operations and Maintenance Cost Savings;

WHEREAS, the ESCO or other entity and the State entered into a certain Investment Grade Audit (IGA) and Energy Savings Performance Contract (ESPC) Project Proposal Agreement dated **Insert Execution Date**, whereby ESCO provided an analysis and recommendations in the form of an IGA and an ESPC Project Proposal. Such audit and project proposal provided estimates of the amounts by which Utility Cost Savings and Operation and Maintenance Cost Savings would increase and estimates of all costs of such Utility Cost-Savings Measures or Energy-Savings Measures, including, but not limited to, itemized costs of design, engineering, equipment, materials, installation, maintenance, repairs;

WHEREAS, the ESCO was selected by the State as the party to analyze and recommend measures to significantly increase utility cost, operation and maintenance cost, through an IGA, pursuant to competitive negotiations;

WHEREAS, the State has approved ESCO’s energy analyses and recommendations in the IGA;

WHEREAS, the Utility analysis and recommendations provided by the ESCO pursuant to the IGA indicate that the expected annual payments by the State required under this Contract which payments shall include any annual maintenance costs, for the implementation of one or more Utility Cost- Savings Measures is required to be equal to or less than the sum of the Utility Cost Savings and Operation and Maintenance Cost Savings achieved by the implementation of such Utility Cost-Savings Measures on an annual basis;

WHEREAS, the ESCO and the State have developed a finalized ESPC description of work derived from the IGA and ESPC Project Proposal Agreement Scope of Work; and

WHEREAS, authority exists in the law, funds have been budgeted, appropriated and otherwise made available for the purposes set forth in this Contract and a sufficient unencumbered balance thereof remains available for payment, and required approval, clearance, and coordination has been accomplished from and with appropriate agencies.

NOW, THEREFORE, in consideration of the premises and mutual agreements and covenants hereinafter set forth, and intending to be legally bound, the State and ESCO hereby agree to the terms and conditions in this Contract.

EFFECTIVE DATE AND NOTICE OF NON-LIABILITY

This Contract shall not be effective or enforceable until it is approved and signed by all necessary State entities/individuals (hereinafter called the “Effective Date”). The State shall not be liable to pay or reimburse ESCO for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

All references in this Contract to “section”, exhibits or other attachments, are references to Sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

SECTION 1 DEFINITIONS

Energy Savings Performance Contract

The following terms as used herein shall be construed and interpreted as follows:

- A. Adjusted-Baseline Energy**
“Adjusted-Baseline Energy” means the energy use of the baseline period, adjusted to a different set of operating conditions.
- B. American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE)**
“American Society of Heating, Refrigeration, and Air Conditioning Engineers” or “ASHRAE” means the recognized professional organization with standards and guidelines that may be referenced for additional definitions, procedures, and technical information as necessary.
- C. Baseline Energy**
“Baseline Energy” means the energy use (units) occurring during the Baseline Period without adjustments.
- D. Baseline Period**
“Baseline Period” means the period of time chosen to represent operation of the facility or system before implementation of an ECM or any applicable FIM. This Baseline Period may be as short as the time required for an instantaneous measurement of a constant quantity, or long enough to reflect one full operating cycle of a system or facility with variable operations.
- E. Baseline**
“Baseline” means and pertains to the Baseline Period.
- F. Calendar Day**
“Calendar Day” means any and all calendar days. All contract time will be issued in Calendar Days taking into consideration weekends and holidays.
- G. Commissioning**
“Commissioning” means a process for achieving, verifying and documenting the performance of equipment to meet the operational needs of the facility within the capabilities of the design, and to meet the design documentation and the owner's functional criteria, including preparation of operating personnel.
- H. Compensation**
“Compensation” means the funds payable to ESCO by the State related to the performance of ESCO's obligations hereunder, including, but not limited to, the Project and the M&V Services.
- I. Construction Commencement Date**
“Construction Commencement Date” means the date the State issues a written Notice to Proceed to commence Construction Phase.
- J. Construction Documents**
“Construction Documents” means the documents set forth in Section 6.A of this Attachment E.
- K. Construction Term**
“Construction Term” means the period of time in which ESCO shall complete the Project, pursuant to Section 6.F of this Attachment E.
- L. Contract Documents**
“Contract Documents” means this Contract, the Exhibits, the Schedules, and the Construction Documents. Section 25 of this Attachment E lists the Schedules attached hereto and incorporated by reference herein.
- M. Contract Term**
“Contract Term” means the definition set forth in Section 2.B of this Attachment E.

N. Deliverable

"Deliverable" means any document, material, data, information, specification or other deliverable that results from or is provided through the Services or that ESCO is required to deliver to the State under this Contract, the Exhibits, Schedules or other document or report which is required to be delivered by ESCO to the State pursuant to this Contract and is created after the Effective Date.

O. Design Documents (DDs)

"DDs" means documents supplied by ESCO consisting of drawings, specifications, and other documents that fix and describe the size and character of the entire Project as to architectural, structural, mechanical, and electrical systems, materials, and such other elements as may be appropriate, and include design plans and documentation for each ECM that may become part of the Project, and as further described in Section 5.C of this Attachment E. All Design Documents shall be in accordance with the most current version of the State of Tennessee, Designers' Manual.

P. Energy

"Energy" means electricity (both usage and demand), natural gas, steam, water (potable or non-potable), or any other Utility charged service.

Q. Energy Conservation Measure (ECM)

"ECM" means an Energy Cost-Savings Measure, and may include, but not limited to, those listed in T.C.A. §12-4-118(b). An ECM is an activity or set of activities designed to increase the efficiency (energy, water, or other utility) of a facility, system or piece of equipment. ECMs may also conserve energy without changing efficiency. An ECM may involve one or more of: physical changes to facility equipment, revisions to operating and maintenance procedures, software changes, or new means of training or managing users of the space or operations and maintenance staff. An ECM may be applied as a retrofit to an existing system or facility, or as a modification to a design before construction of a new system or facility. An ECM is a Utility Cost-Savings Measure as defined below.

R. Energy Cost-Savings Contract

"Energy Cost-Savings Contract" means a Utility Cost-Savings Contract.

S. Energy Cost-Savings Measure

"Energy Cost-Savings Measure" means a Utility Cost-Savings Measure.

T. Energy Management Program (EMP)

"EMP" means a program within the Tennessee Department of Environment and Conservation. It shall refer to the division of the executive department of State government responsible for the "High Performance Certification Program" and the "Energy Savings Performance Contract Program."

U. Energy Savings Performance Contract (ESPC)

"ESPC", is a contract for evaluations, recommendations, or implementation of one or more Utility Cost-Savings Measures designed to produce Utility Cost Savings or Operation and Maintenance Cost Savings, which

- i. Sets forth savings attributable to calculated Utility Cost-Savings or Operation and Maintenance Cost Savings for each year during the Contract Term;
- ii. Provides that the amount of actual savings for each year during the Contract Term shall exceed annual contract payments, including maintenance costs, to be made during such year by the State contracting for the Energy Cost-Savings Measures. Except that, "annual contract payments" does not include moneys received by the State from rebates, gifts, grants, or donations specifically designated by the gifting, granting, or donating party for the design or implementation of an Energy Cost-Savings Measure or State monies

that have been specifically appropriated in a distinct line item for the design or implementation of an energy cost-savings measure that is wholly addressed within the scope of the Energy Cost-Savings Contract;

- iii. Requires the party entering into the Energy Savings Performance Contract with the State to provide a written guarantee that the sum of Utility Cost-Savings and Operation and Maintenance Cost Savings for each year during the first three years of the Contract period shall not be less than the calculated savings for that year; and,
- iv. Requires payments by the State to be made within twelve years after the date of the execution of the contract; except that the maximum term of the payments shall be less than the Cost-Weighted Average Useful (Service) Life of energy cost-savings equipment for which the contract is made, not to exceed twenty years.

V. Energy Service Company (ESCO)

"ESCO" means the energy service company entity entering into a contract to design and construct the Project with the State. The Energy Service Company may be the Architect/Engineer for the ECMs or may contract out these professional services with approval by the State. If the ECM does not require the professional services of an Architect/Engineer as approved by the State, then the ESCO shall have the authority of the Architect/Engineer on such ECMs. The ESCO is responsible for the M&V of the Guarantee through the M&V Term.

W. ESCO's Intellectual Property

"ESCO's Intellectual Property" means any formulas, patterns, devices, secret inventions or processes, copyrights, patents, or other intellectual property purchased, licensed or developed by ESCO prior to or outside of this Contract or purchased, licensed or developed by ESCO or its Subcontractors as a tool for their use in performing the Services, plus any modifications or enhancements thereto and derivative works based thereon.

X. Equipment

"Equipment" means the equipment, systems and associated services set forth in the Work, together and with any and all replacements, repairs, restorations, Modification of and improvements to such Equipment and improvements to such Equipment.

Y. Evaluation

"Evaluation" means the process of examining ESCO's Work and rating such ESCO's Work based on criteria established in this Contract.

Z. Excluded Materials and Activities

"Excluded Materials and Activities" means asbestos, materials containing asbestos, or the existence, use, detection, removal, containment or treatment thereof, pollutants, hazardous wastes, hazardous materials, or the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal, or containment thereof.

AA. Exhibits

"Exhibits" means the Exhibits as identified in Section 25 of this Attachment E which are hereby incorporated into the Contract.

BB. Facility

"Facility" means a state-owned building or utility.

CC. Facility Improvement Measure (FIM)

"FIMs" is an activity or set of activities designed to improve the functional or operational conditions of a facility, system or piece of equipment. A FIM may be an activity associated with an Energy Cost-Savings Measure and funded as part of an ESPC. A FIM may be an activity request by the State, but is not an Energy Cost-Savings Measure, but funds have been budgeted, appropriated and otherwise made available to be included in an ESPC. Within this Contract, FIMs and ECMs shall be interchangeable as necessary.

DD. Federal Energy Management Program (FEMP) M&V Guidelines

Energy Savings Performance Contract

“FEMP” M&V Guidelines” means the current M&V Guidelines prepared by the U.S. Department of Energy. The FEMP M&V Guidelines contains specific procedures for applying concepts originating in the IPMVP. The FEMP M&V Guidelines represents a specific application of the IPMVP to ESPC projects. It outlines procedures for determining M&V approaches, evaluating M&V plans and reports, and establishing the basis of payment for energy savings during the contract. These procedures are intended to be fully compatible and consistent with the IPMVP.

EE. Fixed Limit of Design and Construction Cost (FLDCC)

“FLDCC” means the total amount to be paid by the State to the ESCO for ESCO’s satisfactory performance, construction, and installation of all elements of the Work, which shall include, but not be limited to, costs and expenses, permits, performance bonds, materials, labor, auditing, IGA, design, engineering, project construction management costs, commissioning, training, profit, travel expenses, communications, code work, including review, inspection, and compliance unless otherwise noted, acquisition and installation of Equipment. The FLDCC is included as a part of the maximum contract price and all costs comprising the FLDCC shall be identified in this Attachment E, Exhibit F which shall be executed after this Contract is effective. The FLDCC does not include any contingency funds or the M&V Fee.

FF. Guarantee

“Guarantee” means ESCO hereby warrants and guarantees that for each year of the Guarantee Period, the Project shall result in annual cost savings equal to or greater than the Guaranteed Annual Cost Savings presented in this Attachment E, Exhibit C. Failure to meet the Guaranteed Annual Cost Savings in any year during the Guarantee Period shall result in ESCO directly remunerating the State the dollar amount equal to the cost value of that year’s Guaranteed Annual Cost Savings shortfall. Alternatively, subject to the State’s consent, which shall not be unreasonably withheld, ESCO may implement additional ECMs, at no cost to the State, which may generate additional annual cost savings in future years of the Guarantee Period to offset future Guaranteed Annual Cost Savings shortfall.

GG. Guarantee Period

“Guarantee Period” means a period of time commencing upon M&V Commencement Date and terminating on the termination of the M&V Term. The Guarantee Period shall equal the length of the duration of the ESPC, during which Guaranteed Annual Cost Savings resulting from the Project are measured and verified by the ESCO set forth in this Attachment E, Exhibit D.

HH. Guaranteed Annual Cost Savings

“Guaranteed Annual Cost Savings” means measurable and verifiable aggregate of Guaranteed Annual Utility Cost Savings and Guaranteed Annual Operations and Maintenance Cost Savings guaranteed by ESCO resulting from the Project that shall occur for each year of the Guarantee Period pursuant to this Attachment E, Exhibit C. Guaranteed Annual Utility Cost Savings shall be determined by ESCO’s M&V of annual utility unit use reductions and the application of mutually agreed to baseline and escalated utility unit costs for each year of the Guarantee Period as defined in this Attachment E, Exhibit C.

II. Guaranteed Annual Operations and Maintenance Cost Savings

“Guaranteed Annual Operations and Maintenance Cost Savings” means annual cost savings resulting from a verifiable reduction in the State’s operation and maintenance budget.

JJ. Guaranteed Annual Utility Cost Savings

“Guaranteed Annual Utility Cost Savings” means annual Utility Cost Savings resulting from a reduction of usage and the application of the mutually agreed to baseline and escalated utility unit rates as presented in this Attachment E, Exhibit C.

KK. International Performance Measurement and Verification Protocol (IPMVP)

“IPMVP” means the current document prepared by the Efficiency Valuation Organization on the effective date of the IGA and ESPC Project Proposal Agreement, as the industry standard for current best practice techniques available for verifying results of energy efficiency, water efficiency, and renewable energy projects.

LL. Investment Grade Audit (IGA)

"IGA" means a detailed audit of State facilities, including the Premises, conducted by ESCO or another party pursuant to the IGA and ESPC Project Proposal Agreement.

MM. kW

"kW" means "Kilowatt" (abbreviation)

NN. kWh

"kWh" means "Kilowatt-hour" (abbreviation)

OO. Material Change

"Material Change" means any change or cumulative changes in or to the Premises, whether structural, operational or otherwise in nature as determined by the State and ESCO, to increase or decrease annual energy consumption in accordance with the provisions and procedures set forth in the Work and is correlated with such change in energy usage, and as described in Section 17 of this Attachment E.

PP. Maximum Contract Price (MCP)

"MCP" means the maximum amount of total allowable costs under this Contract, as set forth in Section 4.A. of this Attachment E, which shall be the total amount paid by the State to the ESCO, and which shall include, but not be limited to, the FLDC, the M&V Fee, and any contingency funds. It is the maximum amount payable to ESCO pursuant to this Contract.

QQ. Measurement and Verification (M&V)

"M&V" means the process of using measurements to reliably determine and verify the actual savings created within buildings, infrastructure, or systems resulting from an energy management program. Savings cannot be directly measured, since they represent the absence of energy use. Instead savings are determined by comparing measured use before and after implementation of a project, making appropriate adjustments for changes in conditions. M&V follows the standards and definitions in the current IPMVP, as may be amended prepared by the Efficiency Valuation Organization on the Effective Date of this Contract.

RR. M&V Commencement Date

"M&V Commencement Date" means the first day of the month following the issuance of final completion as defined in this Attachment E, Exhibit A.

SS. M&V Fee

"M&V Fee" means an annual fee paid to ESCO by the State for ESCO's satisfactory performance of the M&V Services, as set forth in Section 13 of this Attachment E. The M&V Fee is included as a part of the MCP.

TT. M&V Plan

"M&V Plan" defines how savings will be calculated and specifies any ongoing activities that will occur during the Contract Term. The details of the M&V Plan are in this Attachment E, Exhibit D.

UU. M&V Services

"M&V Services" means annual services or activities relating to the Measurement and Verification by ESCO of the efficiency and effectiveness of the Project, pursuant to this Contract and the M&V Plan as applicable.

VV. M&V Term

"M&V Term" has the meaning ascribed to it in Section 13 of this Attachment E.

WW. MMBtu

"MMBtu" means 1 Million British thermal unit (abbreviation).

XX. Modification of Equipment

“Modification of Equipment” means a field installable upgrade, feature, addition, accessory, or modification to Equipment, which is made by or for the original manufacturer of such Equipment.

YY. Modification

“Modification means a written amendment to this Contract signed by all parties.

ZZ. Open Book Pricing

“Open Book Pricing” means as set forth in Section 6.H of this Attachment E.

AAA. Operation and Maintenance (O&M) Cost Savings

“O&M Cost Savings” means the measurable decrease in O&M costs that is a direct result of the implementation of one or more Utility Cost-Savings Measures. Such savings shall be calculated in comparison with an established baseline of operation and maintenance costs.

BBB. Personally Identifiable Information (PII)

“PII” means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.

CCC. Premises

“Premises” is the Facilities owned or controlled by the State as set forth in the IGA in this Attachment E, Exhibit N and finalized in this ESPC.

DDD. Project

“Project” means ESCO’s design, acquisition, construction, and installation of the ECMs, and all Equipment and Services related thereto, as set forth in the Work and the Contract Documents but does not include M&V Services.

EEE. Rebate

“Rebate” means funds used for ESCO’s compensation which are not State funds and shall include solar Renewable Energy Certificates (REC’s) and utility rebates.

FFF. Review

“Review” means the State examining the ESCO’s Work to ensure that it is adequate, accurate, correct and in accordance with this Contract.

GGG. Services

“Services” means all services performed by ESCO hereunder, including, but not limited to, engineering, design, project management, construction management, design, training, and M&V Services, and tangible material produced either separately or in conjunction with the Work performed.

HHH. Simple Payback

“Simple Payback” means the length of time, typically presented in years, required to recover the cost of a measure or project.

III. State Confidential Information

“State Confidential Information” means any and all State Records not subject to disclosure under TPRA. State Confidential Information shall include, but is not limited to, PII, Tax Information, and State personnel records not subject to disclosure under TPRA.

JJJ. State Fiscal Year

“State Fiscal Year” means a twelve month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.

KKK. State Records

“State Records” means any and all State of Tennessee data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under TPRA.

LLL. Tax Information

“Tax Information” means federal and State of Tennessee tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.

MMM. T.C.A.

“T.C.A.” means the Tennessee Code Annotated, as amended.

NNN. Tennessee Public Records Act (TPRA)

“TPRA” means the Tennessee Public Records Act, T.C.A. 107-7-503, et. seq.

OOO. Utility or Utilities

“Utility” or “Utilities” means the water, sewer services, electricity, payments to energy service companies, purchase of energy conservation equipment, and all heating fuels. Utility may include compressed air, chilled water, or other systems or services as agreed to with the State.

PPP. Utility Cost Savings

“Utility Cost Savings” is the combination of either or both of the following:

- i. A cost savings caused by a reduction in metered or measured physical quantities of a bulk fuel or utility resulting from the implementation of one or more energy conservation measures when compared with an established baseline of usage; or
- ii. A decrease in utility costs as a result of changes in applicable utility rates or utility service suppliers. The savings shall be calculated in comparison with an established baseline of utility costs.

QQQ. Utility Cost-Savings Contract

“Utility Cost-Savings Contract” means an ESPC or any other agreement in which Utility Cost Savings are used to pay for Services or Equipment.

RRR. Utility Cost-Savings Measure

“Utility Cost-Savings Measure” is the installation, modification or service that is designed to reduce energy and water consumption and related operating costs in buildings and other facilities and includes, but is not limited to, the following:

- i. Insulation in walls, roof, floors and foundations, and in heating and cooling distribution systems;
- ii. Heating, ventilating or air conditioning and distribution system modifications or replacements in buildings or central plants;
- iii. Automatic energy control systems;
- iv. Replacement or modification of lighting fixtures;
- v. Energy recovery systems;
- vi. Renewable energy and alternate energy systems;
- vii. Cogeneration systems that produce steam or forms of energy, such as heat or electricity, for use primarily within a building or complex of buildings;
- viii. Devices that reduce water consumption or sewer charges;

- ix. Changes in operation and maintenance practices;
- x. Procurement of low-cost energy supplies of all types, including electricity, natural gas and other fuel sources, and water;
- xi. Indoor air quality improvements that conform to applicable building code requirements;
- xii. Daylighting systems;
- xiii. Building operation programs that reduce utility and operating costs including, but not limited to, computerized energy management and consumption tracking programs, staff and occupant training, and other similar activities;
- xiv. Services to reduce utility costs by identifying utility errors and optimizing existing rate schedules under which service is provided; and,
- xv. Any other location, orientation, or design choice related to, or installation, modification of installation or remodeling of, building infrastructure improvements that produce utility or operational cost savings for their appointed functions in compliance with applicable state and local building codes.
- xvi. As well as items listed in T.C.A. §12-4-118(b).

SSS. Work

“Work” means all of the labor, materials, equipment, and other services required by the Contract Documents or otherwise required to be provided by ESCO to meet ESCO’s obligations under this Contract.

TTT. Work Product

“Work Product” means the tangible or intangible results of ESCO’s Work, including, but not limited to, equipment, software not identified as ESCO’s Intellectual Property, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type including drafts. Work Product does not include ESCO’s Intellectual Property.

SECTION 2 ORGANIZATION AND TERM

A. Contract Sections

This Contract shall be performed in accordance with its provisions and contains the following Sections:

- i. Definitions (Section 1)
- ii. Organization and Term (Section 2)
- iii. Funding (Section 3)
- iv. Compensation (Section 4)
- v. Pre-Construction Services (Section 5)
- vi. Construction (Section 6)
- vii. Contractor Performance (Section 7)
- viii. Start-Up, Commissioning, Inspection, and Acceptance (Section 8)
- ix. Environmental Requirements (Section 9)
- x. Training and Follow-Up Activities by ESCO (Section 10)
- xi. Malfunctions and Emergencies (Section 11)
- xii. Ownership (Section 12)
- xiii. M&V Plan (Section 13)

B. Contract Term

The Contract Term shall commence on the Effective Date and the ESCO shall complete the Work and its other obligations as described herein on or before **Insert Date**. The State shall not be liable to compensate ESCO for any Work performed prior to the Effective Date or after the termination of this Contract. The term of this Contract (“Contract Term”) shall be divided into three separate components:

- i. The “Planning Term”, which shall commence on the Effective Date and upon delivery by the State to ESCO of a Notice to Proceed to Commence Design Phase under Section 5.C of this Attachment E;
- ii. The “Construction Term”, which shall commence upon delivery by the State to the ESCO

Energy Savings Performance Contract

- of a Notice to Proceed to commence Construction phase under Section 6.E. of this Attachment E, and terminate no more than **insert number of days** after the Construction Commencement Date, unless sooner terminated as provided in this Contract; and,
- iii. The “M&V Term” shall begin on the M&V Commencement Date and continue for the remainder of this Contract Term, not to exceed twenty years. The M&V Term shall terminate pursuant to this Attachment E, Exhibit D unless sooner terminated as provided in this Contract.

SECTION 3 FUNDING

Energy Policy Act

Please make this edit. Upon Notice of Final Acceptance, the ‘designer’ shall complete a Written Allocation in accordance with the Office of the State Architect policy for Energy Efficient Commercial Building Tax Deduction and submit it to the State Architect for approval.

https://www.tn.gov/content/dam/tn/statearchitect/policy-&-procedures/OSA_Policy_EnergyTaxCredits.pdf.

SECTION 4 COMPENSATION

The State will in accordance with the provisions of this Section 4, pay ESCO in the amounts and using the methods set forth below:

A. Maximum Contract Price (the “MCP”)

The MCP from of this Attachment E, Exhibit F is: **\$Amount**

The MCP reflects the maximum amount of compensation payable to ESCO pursuant to this Contract. The MCP may include, without limitation,

The Fixed Limit of Design Cost	\$
The Fixed Limit of Construction Cost	\$
The sum of all M&V Fees	\$
Maximum Contract Price	\$

B. Changes to MCP

The State may decrease the amount available for the MCP with the mutual consent of the ESCO and assuring that the decrease in the MCP does not adversely affect the ESCO’s requirement to meet the Guaranteed Annual Cost Savings. A change in the Guaranteed Annual Cost Savings may be considered a Material Change to this Contract, pursuant to Section 17 in this Attachment E. The decrease in MCP may be based on the actual costs of labor and materials to ESCO. The MCP shall not be increased without an amendment to this Contract.

C. Invoicing

- i. Invoicing during the planning term shall be in accordance with the State of Tennessee Real Estate Asset Management’s (STREAM) Designers’ Manual, Chapter 2.04, A.
- ii. Invoicing during the construction term shall be in accordance with Attachment E, Exhibit A. The ESCO shall use the categories in this Attachment E, Exhibit F to demonstrate all costs categories, shall demonstrate all subcontractor costs, and shall allow the State to review any records relating to the Project. The ESCO shall provide ECM-specific information and Project-level information in this Attachment E, Exhibit F. For each ECM and for the Project the profit shall be clearly explained and referenced in each invoice.
- iii. Invoicing during the M&V term shall be invoiced in a format and manner acceptable to the State.

D. Payments

The ESCO shall be paid in increments as detailed below.

Payments During Planning Term

Energy Savings Performance Contract

Completion of Schematic Design (21% of Fixed Limit of Design)	\$
Completion of Design Development (36% of Fixed Limit of Design)	\$
Completion of Construction Documents (43% of Fixed Limit of Design)	\$
Fixed Limit of Design	\$
Payments During Construction Term	
As indicated in this Attachment E, Exhibit A Totalling	\$
Fixed Limit of Construction	\$
Payments During M&V Term	
As indicated in this Attachment E, Exhibit D Totalling	\$
Fixed Limit of M&V	
Maximum Contract Price	\$

E. Availability of State Funds

The State is prohibited by law from making commitments beyond the term of the State's current fiscal year. Therefore, ESCO's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State funds. If federal funds are used to fund this Contract, in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Contract shall be made only from available funds encumbered for this Contract and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may terminate this Contract, in whole or in part, without further liability in accordance with the provisions hereof.

F. Erroneous Payments and Excess Funds

At the State's sole discretion, payments made to ESCO in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by ESCO, may be recovered from ESCO by deduction from subsequent payments under this Contract or other contracts, grants or agreements between the State and the ESCO or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

G. Notice to Proceed to Commence Design Phase

If the State obtains funding from any and all sources in the amount of the MCP for the purposes set forth herein, upon terms and conditions satisfactory to the State in its sole discretion, or obtains funds sufficient for a revised Project scope, price, and Guarantee, the State shall deliver to ESCO a Notice to Proceed to Commence Design Phase instructing ESCO to commence with the Pre-Construction Services, as described in Section 5 in this Attachment E.

SECTION 5 PRE-CONSTRUCTION SERVICES**A. Professional Design Services****i. Qualifications**

Design services shall be performed by properly licensed and qualified architects, engineers and other professionals selected and paid by ESCO, and subject to review by the State. The professional obligations of such persons shall be undertaken and performed on behalf of the ESCO. Nothing contained herein shall create any contractual relationship with the State between subcontractors, architects, engineers or suppliers. Prior to designating a professional to perform any of these services, the ESCO shall submit the name, together with a resume of training and experience in the work of like character and magnitude to the Project being contemplated to the State. All drawings, specifications, calculations, certifications and submittals prepared by such design professionals shall bear the signature and seal of such design professionals and the State shall be entitled to rely upon the adequacy, accuracy and completeness of such design services.

ii. **Designation of Professionals**

All Work performed by the ESCO that constitutes the practice of architecture or the practice of engineering shall be performed by properly qualified and licensed professionals employed by the ESCO in accordance with its proposal, subject to review by the State, and shall be performed in accordance with applicable Tennessee law including, but not limited to, T.C.A. 62-2-101, et. seq. and 12-4-107.

iii. **Conflict of Interest**

Any subcontractor, architect, engineer, or supplier not already approved by the State, shall not be engaged to perform Work wherein a conflict of interest exists provided, however, that with full disclosure to the State of such interest, the State may provide a waiver, in writing, in respect to the particular subcontractor, architect, engineer, or supplier.

iv. **Pre-Construction Meeting**

The ESCO and its architect and/or engineer shall conduct pre-construction meetings, as deemed necessary by the ESCO and the State and such additional meetings as the State may request. All pre-construction meetings shall be scheduled by the ESCO with the approval of the State.

v. **Minutes**

The ESCO shall record minutes of all meetings and distribute them to all participants of the meetings within thirty days after each meeting.

B. Design Documents (DDs)

i. Based on the ESPC scope of work the ESCO shall prepare, for the State's acceptance, the DDs defined in Section 1.O in this Attachment E. The DDs may be waived or modified per ECMs/FIMs as mutually agreed in writing between the Parties. Such DDs may include the following, where applicable:

- a. Analysis of the proposed Work and the structure as such relates to any laws, codes, ordinances, and regulations;
- b. As necessary, provide site development drawings for each proposed ECM, defining the proposed scope of the Project. Include earthwork, surface development, and utility infrastructure as applicable;
- c. Plans in one-line format of the proposed structural, mechanical, and electrical systems as necessary to define size, location and quality of Equipment, equipment, materials, and constructions, for each proposed ECM;
- d. Floor plans including proposed equipment;
- e. Cut-sheets and/or samples of proposed materials, equipment and system components;
- f. Proposed architectural schedule, HVAC, plumbing and electrical fixture schedules;
- g. Specifications, which, identifying conditions of the Contract, materials, and standards for each proposed ECM;
- h. Design plans and documentation for each ECM that requires a design as agreed to with the State;
- i. Submittal of final equipment list; Construction and Installation Schedule; systems start-up and equipment commissioning plan; ESCO's maintenance responsibilities, State's maintenance responsibilities; and the ESCOs training responsibilities; and,
- j. Submittal of an updated construction cost estimate as applicable, in substantially the same form as in this Attachment E, Exhibit F; and

ii. A written review of code requirements for each ECM. The DDs shall show that either

- a. the ECM has a code compliance notice with recommended inspections, or
- b. that for listed ECMs, a written declaration that code review is not required.

iii. During development of the DDs, ESCO shall follow the building codes as stated in this Attachment E, Exhibit A.

iv. At the completion by the ESCO and acceptance by the State of the DDs, ESCO shall provide electronic or printed drawings and such other documents as necessary to fully illustrate the DD Phase to the State. Electronic drawing files should be in a form acceptable to the State.

v. The ESCO shall be responsible for ensuring that the DDs prepared by the ESCO are in full compliance with applicable codes, regulations, laws, and ordinances, including both

technical and administrative provisions thereof. If ESCO deviates from such codes, regulations, law or ordinance, without written authorization from the State, ESCO shall make such corrections in the Construction Documents as may be necessary for compliance.

- vi. The State shall notify ESCO of acceptance or denial of the DDs in writing within thirty days of receipt.

C. Fixed Limit of Design Cost (FLDC)

ESCO shall complete the project work design responsibilities and be reimbursed an amount not to exceed the FLDC cost per Section 4.A in this Attachment E. ESCO shall design the project and shall furnish all of the labor and materials to perform the Work for the complete and prompt execution of the project in accordance with the Contract. The FLDC cost includes all of ESCO's project work design responsibilities including code review. The State may unilaterally decrease the amount available for the FLDC based on the actual costs of labor and materials to ESCO with the mutual consent of the ESCO and assuring that the decrease in the FLDC does not adversely affect the ESCO's requirement to meet the Guaranteed Annual Cost Savings. A change in the Guaranteed Annual Cost Savings may be considered a Material Change to this Contract, pursuant to Section 17 in this Attachment E. However, the FLDC and the Maximum Contract Price shall not be changed without modification to this Contract.

SECTION 6 CONSTRUCTION

A. Construction Documents

The Construction Documents, if required, shall consist of the following:

- i. All Design Documents applicable to the Project as reviewed and approved by the State; and
- ii. Any appendices, addenda, clarifications, and allowances.

B. Construction and Installation Schedule

ESCO shall prepare a Construction and Installation Schedule, which shall provide the timetable for the execution and completion of the Project. Such Construction and Installation Schedule shall be subject to the approval of the State, be accordance with this Attachment E, Exhibit A and shall be consistent with previously issued schedules, not exceed time limits under the Contract Documents and shall provide a schedule for the entire Project, to the extent required by the Contract Documents.

C. Schedule of Values

ESCO shall prepare a schedule of the cost of construction in accordance with this Attachment E, Exhibit A which shall be delivered to the State for approval, and which shall be in substantially similar format as the attached in this Attachment E, Exhibit F and which such ESCO-submitted Schedule of Values shall be subject to review and approval by the State. The Schedule of Values shall include, without duplication:

- i. All labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Project, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Project;
- ii. The compensation for services and the cost of work provided by ESCO;
- iii. All bond premiums and costs of insurance;
- iv. All Design and drafting Services;
- v. All other allowable compensable services pursuant to this Contract as approved by the State; and,
- vi. Contingency funds if any.

D. Approval and Completion of Construction Documents

Except as otherwise provided in this Section, the Construction Documents shall be subject to the final approval by the State. The State's approval shall be issued in the form of the Notice to Proceed to Commence Construction Phase.

E. Notice to Proceed to Commence Construction Phase

Upon receipt of Notice to Proceed to Commence Construction Phase, ESCO shall commence the Project. Notice to Proceed to Commence Construction may be issued per ECM/FIM.

F. Construction Term

The Construction Term shall commence on the Construction Commencement Date and shall terminate upon the date according to Section 2 in this Attachment E or the date on which:

- i. ESCO has completed the Project Work;
- ii. ESCO has finalized and delivered to the State all necessary, updated, and final documents, including schedules, exhibits, and completed punch lists, at the State's determination;
- iii. ESCO has delivered to the State a Notice of Substantial Completion, which indicates that ESCO has constructed, installed, and commenced operating the ECMs;
- iv. The State has inspected and accepted the Project, according to Section 8 and in this Attachment E, Exhibit A including the design, construction, installation, and operation of the Project and accepted ESCO's submittal of a Notice of Substantial Completion as demonstrated by signing and executing such Notice of Substantial Completion; and,
- v. The State has issued a Notice of Final Acceptance.

G. Fixed Limit of Construction Cost (FLCC)

ESCO shall complete the Project Work construction responsibilities and be reimbursed an amount not to exceed the FLCC per Section 4.A in this Attachment E. ESCO shall construct the Project and shall furnish all of the labor and materials to perform the Work for the complete and prompt execution of the Project in accordance with the Contract. The FLCC includes all of ESCO's Project Work construction responsibilities, including acquisition of required permits and conducting code review. The State may unilaterally decrease the amount available for the Fixed Limit of Construction Cost based on the actual costs of labor and materials to ESCO with the mutual consent of the ESCO and assuring that the decrease in the FLCC does not adversely affect the ESCO's requirement to meet the Guaranteed Annual Cost Savings. A change in the Guaranteed Annual Cost Savings may be considered a Material Change to this Contract, pursuant to Section 17 in this Attachment E. However, the FLCC and the Maximum Contract Price shall not be changed without a modification to this Contract.

H. Cost Reporting

ESCO shall fully disclose all costs as per the open book pricing requirements to the State through applications for ESCOs payments and in such detail as the State may request. ESCO shall maintain cost accounting records on authorized work performed. Such accounting records shall identify all costs for materials, labor, including all costs of subcontractor's, vendors, and services received during the Contract Term, Section 2.B in this Attachment E. Upon request by the State, ESCO shall supply a list of hourly rates and position descriptions for labor or services provided by the ESCO and for all subcontractors and vendors and supply information on any other basis as specified by the State. The State may evaluate all costs through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical prices to ensure the ESCO's prices are reasonable and acceptable. Upon request by the State, ESCO shall provide the State complete access to such records at reasonable times and locations. The records shall be consistent with the Schedule of Values, in this Attachment E, Exhibit F. Any disputes shall be subject to the terms of this Contract.

I. Progress Meetings

ESCO shall schedule and conduct regular progress meetings at which meetings the State and ESCO shall discuss such matters as procedures, progress, schedule, costs, quality control and problems relating to the Project. ESCO shall record and distribute minutes of all such progress construction meetings within thirty days of the meeting.

SECTION 7 ESCO PERFORMANCE

A. Performance of Project

ESCO shall perform the Project in accordance with the Contract Documents. ESCO shall

construct and install the Project in accordance with the Construction and Installation Schedule. ESCO shall supervise and direct the Project and be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Project under this Contract, subject to the review and approval of the State and the Construction and Installation Schedule. ESCO shall design, construct and install the ECMs/FIMs. Before purchasing any major Equipment not specified within the Construction Documents, ESCO shall consult with, and if necessary, receive the written or electronic approval of the State regarding the price, specifications, warranty, and manufacturer of the Equipment.

B. ESCO's Duty of Proper Performance

ESCO shall perform the Project so as to maintain and not degrade the structural integrity of the Premises or its operating systems. ESCO shall provide the Equipment and all Services, and complete all Work contemplated under this Contract with skill and diligence to the satisfaction of the State and in strict accordance with the provisions of the Contract Documents.

C. Standards of Comfort

ESCO's performance of the Project shall maintain and provide the standards of heating, cooling, ventilation, hot water supply, and lighting quality.

D. Security

ESCO shall meet the State's requirements for security and access to the Premises.

SECTION 8 START-UP, COMMISSIONING, INSPECTION, AND ACCEPTANCE

A. ESCO, in conjunction with the State's selected personnel, shall direct the testing of installed utilities, operations, systems and Equipment for readiness.

B. Systems Startup and Equipment Commissioning

ESCO shall conduct systematic commissioning of all Equipment in accordance with the procedures specified in this Attachment E, Exhibit A and Exhibit K any operating parameters of Equipment from Equipment manufacturers, and this Contract. ESCO shall test the Project and the Equipment to ensure it is functioning in accordance and compliance with any published specifications and this Contract and to determine if modified building systems, subsystems or components are functioning properly within the Project Work. ESCO shall provide notice to the State of the scheduled test(s) and the State and/or its designees may be present at any or all such tests.

C. Acceptance by the State

ESCO's Work shall be subject to acceptance by the State pursuant to this Contract and in this Attachment E, Exhibit A.

D. Correction of Deficiencies

ESCO shall correct all deficiencies in the operation of the Project and the Equipment. Prior to State acceptance, ESCO shall also provide the State with reasonably satisfactory evidence that the Equipment installed is the Equipment specified in the Work and any subsequently necessary and accepted design or construction documents.

E. Inspection and Disputes

- i. The State may inspect the Work provided under this Contract at all reasonable times and places. If any Work does not conform to this Contract, the State may require ESCO to perform the Work again in conformity with this Contract's requirements, with no additional compensation. When defects in the quality or quantity of Work cannot be corrected by re-performance, the State may:
 - a. Require ESCO to take necessary action to ensure that the future performance conforms to Contract requirements; and/or
 - b. Equitably reduce the payment due ESCO to reflect the reduced value of the Work performed.
- ii. Such remedies in no way limit the remedies available to the State in the termination provisions of this Contract, or remedies otherwise available at law. Disputes under this

Contract shall be subject to the terms of this Contract and in this Attachment E, Exhibit A.

SECTION 9 ENVIRONMENTAL REQUIREMENTS

A. Excluded Material and Activities

Pursuant to its performance of the Project, ESCO may encounter, but is not responsible for, any work relating to Excluded Materials and Activities, as defined in Section 1 in this Attachment E. If performance of Work involves any Excluded Materials and Activities, the State may terminate this Contract without penalty, liability, or responsibility, and no further performance may be required, per this Attachment E, Exhibit A. If, in the State's sole discretion, the State requires continued performance of this Contract, and the performance of any Project involves any Excluded Materials and Activities, the State shall perform or arrange for the performance of such work and shall bear the sole cost, risk, and responsibility, therefor.

B. Discovery of Excluded Materials and Activities

i. Notice - Work Stoppage

If ESCO discovers Excluded Materials and Activities, ESCO shall immediately cease work and remove all ESCO personnel or subcontractors from the site and notify the State. ESCO shall undertake no further work on the Premises except as authorized by the State in writing. Notwithstanding anything in this Contract to the contrary, any such event of discovery or remediation by the State or ESCO shall not constitute a default. In the event of such stoppage of Work by ESCO, the time for the completion of the Work shall be automatically extended by the amount of time of the work stoppage and any additional costs incurred by ESCO as a result shall be added by Modification.

ii. Other Hazardous Materials

ESCO shall be responsible for safely handling, installing, and/or disposing of any other hazardous or other materials that it may bring to the Premises, pursuant to this Attachment E, Exhibit A.

iii. Polychlorinated Biphenyl (PCB) Ballasts; Mercury Lamps

ESCO is specifically responsible for the proper handling and disposal of Polychlorinated Biphenyl (PCB) Ballasts and Mercury Lamps. Upon discovery of PCB Ballasts and Mercury Lamps, ESCO shall enter into an agreement with an approved PCB ballast disposal vendor who shall provide an informational packet, packing receptacles and instructions, labels and shipping materials, transportation, and recycling or incineration services such materials. All capacitors and asphalt potting compound materials removed from the PCB Ballasts shall be incinerated in a federally approved facility. After proper disposal, a Certificate of Destruction shall be provided by the approved facility to the State. ESCO's responsibility shall be for the proper and legal management of any of the PCB Ballasts removed as a result of the Work. ESCO shall enter into an agreement with an approved Mercury Lamp disposal vendor who shall provide approved containers, materials required to label, transportation, recycling or incineration in accordance with EPA requirements, and a copy of the Manifest of Ownership.

iv. Manifest of Ownership

The State will sign a Manifest of Ownership for any PCB Ballasts and Mercury Lamps encountered and removed from the Premises.

SECTION 10 TRAINING AND FOLLOW-UP ACTIVITIES BY ESCO

A. Training

ESCO shall provide training to the State and to State personnel regarding operation of all new and upgraded Equipment. Training shall be conducted simultaneously with Project Work and commissioning Work and shall include, but not be limited to, any HVAC equipment installed, controls, utilities, lighting, safety, manufacturer's warranties, and operation and maintenance manuals per this Attachment E, Exhibit L - Demonstration and Training. All training performed by ESCO shall:

- i.** meet the standards established by the Equipment manufacturers,
- ii.** be included in the MCP, and
- iii.** be completed per this Attachment E, Exhibit L in order for the State to issue a Notice of Final Acceptance of the Project.

B. Emissions Reductions Documentation and Reporting

ESCO shall include information about environmental savings, not any Guaranteed Annual Cost Savings as described in Section 14.B. in this Attachment E, in each annual report and advise the State about opportunities to achieve monetary benefit from such credits.

C. Application for Certifications

The ESCO shall provide information related to and necessary for the State to submit any required Federal, State, Local performance or other applicable certifications.

SECTION 11 MALFUNCTIONS AND EMERGENCIES**A. The State will use its best efforts to notify ESCO within twenty-four hours of the State's actual knowledge and occurrence of:**

- i. any malfunction in the operation of the Equipment or any pre-existing energy related equipment that might materially impact the Guaranteed Annual Cost Savings,
- ii. any interruption or alteration to the energy supply to the Premises, or
- iii. any alteration or modification in any energy-related equipment or its operation. When the State exercises reasonable due diligence in attempting to assess the existence of a malfunction, interruption, or alteration it shall be deemed not at fault in failing to correctly identify any such conditions as having a material impact upon the Guaranteed Annual Cost Savings.

B. If such malfunction, interruption, or alteration occurs during the ESCO's one-year warranty period, ESCO shall use commercially reasonable efforts to respond to any such notice within twenty-four hours of receipt of notice and shall promptly thereafter proceed with corrective measures. The State will provide ESCO with written memorialization of any telephone notice within three business days after the notice was given.**C. ESCO shall provide a written record of all service work performed for each malfunction or emergency. This record shall indicate the reason for the service, description of the problem and the corrective action performed.****D. The State may take reasonable steps to protect the Equipment if, due to an emergency, it is not possible or reasonable to notify ESCO before taking any such actions. The State agrees to maintain the Premises in good repair and to protect and preserve all portions thereof, which may in any way affect the operation or maintenance of the Equipment, all in accordance with the same standard of care the State applies to the Premises generally.****SECTION 12 OWNERSHIP****A. Ownership of Documents (Instruments of Service)**

Upon completion or termination of the Contract, the documents provided by the ESCO to the State as instruments of professional services shall be the property of the State of Tennessee and may be used again by the ESCO only for the benefit of the State and on the authority of the State. Originals of these documents may remain in the files of the ESCO. The ESCO or ESCO's consultants may reuse any portion of the work prepared for this Project for other projects. Except as set forth in the Contract or any subsequent contracts between the State and the ESCO, the ESCO shall have no liability for any future use by the State of the instruments of professional service provided by the ESCO under the Contract where the ESCO is not engaged to provide services for such future use.

B. As-Built Drawings/Record Drawings

The ESCO's designer and its consultants shall, upon completion of the Construction Term, receive redline as-built drawings from any contractors, subcontractors or vendors. These redline changes shall describe the as-built condition of the Project. This information and all of the incorporated changes directed shall be incorporated by the ESCO's designer and its consultants into a record drawings document provided to the State in the form of an electro-media format and a reproducible format as agreed between the parties. The ESCO's designer shall also provide the

State with the as-built drawings as received from the ESCO contractors, subcontractors, or vendors.

C. Ownership of Existing Equipment

- i. Property owned by the State located at the Premises on the Effective Date shall remain the property of State even if it is replaced or its operation made unnecessary by Work ESCO performs pursuant to this Contract. ESCO shall advise the State in writing of any equipment and materials to be replaced at the Premises and the State shall within thirty days designate in writing to ESCO which equipment and materials should not be disposed of off-site by ESCO.
- ii. The State shall designate the location and storage for any equipment and materials that it designates to be disposed of by ESCO. ESCO shall dispose of all equipment and materials designated by the State as disposable off-site and in accordance with all applicable disposal laws and regulations.
- iii. Except as otherwise indicated, ESCO shall not be obligated to dispose of or be responsible for any Equipment and materials not included in the Work.

SECTION 13 MEASUREMENT AND VERIFICATION PLAN

A. M&V Plan

ESCO shall provide the M&V Plan as required. The M&V Plan shall outline the M&V Option for each ECM/FIM. The ESCO M&V Plan is presented in this Attachment E, Exhibit D.

B. M&V Services

ESCO shall provide M&V Services and all other services required to be performed by it pursuant to this Attachment E, Exhibit D i during the M&V Term.

C. Energy Usage Records and Data

The State shall furnish, or authorize its utility suppliers to furnish, to ESCO or its designee upon ESCO's written request, all records and data regarding energy, water, or other utilities usage and related maintenance at the Premises no later than forty-five days from date of request.

D. M&V Term

The M&V Term shall begin on the M&V Commencement Date and continue for the duration of the Contract Term. Upon termination of the M&V Term, the State shall have no further liability or responsibility for any further payment to ESCO for M&V Services. Upon termination of the M&V Term the ESCO shall have no further liability or responsibility for any M&V Services or Guarantee.

E. M&V Fee

The State shall pay to ESCO for performance of the M&V Services a maximum not-to-exceed amount as indicated in Section 4 in this Attachment E and as specified in this Attachment E, Exhibit D and shall be included in the MCP.

F. M&V Information Procedure

Measurement and Verification of Savings shall be verified as outlined in this Attachment E, Exhibit D i.

G. Monitoring Equipment

ESCO shall provide all additional necessary equipment required to perform the M&V Services. The ESCO may utilize existing equipment, systems, utility meters if applicable or provide the necessary equipment as described in this Attachment E, Exhibit D.

H. Independent Monitor

The State, at its sole expense, may hire an independent third-party monitor to review ESCO's measurement and verification reports, including verifying the prorated share of the Guarantee in any event of contract termination. The State shall pay the cost of any independent monitoring through a separate contract.

SECTION 14 GUARANTEE

A. Guarantee

The Guarantee for the first year of the Guarantee Period is **Insert \$ Amount** as indicated in this Attachment E, Exhibit C. ESCO hereby warrants and guarantees that during the Guarantee Period, the Project shall result in annual cost savings equal to or greater than the Annual Guaranteed Cost Savings presented in this Attachment E, Exhibit C which shall be equal to or greater than the State's annual and aggregate payments used to repay the project funding, as provided in this Attachment E, Exhibit C. Failure to meet Guaranteed Annual Cost Savings in any year during the Guarantee Period shall be as defined in Section 1 in this Attachment E. Cost savings in excess of the Guaranteed Annual Cost Savings shall be solely retained by the State.

B. Sufficiency of Savings

ESCO hereby warrants, guarantees, and represents that the Guaranteed Annual Cost Savings is accurately represented in this Attachment E, Exhibit C.

C. Termination

If this Contract is terminated by the State for any reason, the Guarantee shall be cancelled and ESCO shall have no further obligations hereunder, except to guarantee the State the prorated portion of the annual amount of Guarantee up to the date of termination. The prorated portion shall include any Savings incurred prior to the termination date. The ESCO shall have all of the remedies listed in Section 20 in this Attachment E in addition to all other remedies set forth in other sections of this Contract and in this Attachment E, Exhibit A.

SECTION 15 MODIFICATION, UPGRADE OR ALTERATIONS OF EQUIPMENT

A. Modification of Equipment

Without ESCO's prior written approval, which shall not be unreasonably withheld, during the term of this Contract, the State shall not affix or install any accessory equipment or device on any of the Equipment if such addition changes or impairs the originally intended savings, functions, value or use of the Equipment.

B. Upgrade or Alteration of Equipment

- i. During the performance of this Contract, ESCO may, subject to the State's prior written approval, change the Equipment, revise any procedures for the operation of the Equipment or implement other energy saving actions in the Premises, provided that:
 - a. ESCO maintains standards of comfort;
 - b. Such modifications or additions to, or replacement of the Equipment, and any operational changes, or new procedures enable ESCO to achieve a greater amount of energy and cost savings;
 - c. Any cost incurred relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures are solely borne by ESCO; and,
 - d. Any such action complies with State and federal law and is in the public interest of the State, in the State's sole discretion. Any such upgrade or alteration shall not result in any additional cost to the State.
- ii. All modifications, additions or replacements of the Equipment or revisions to operating or other procedures shall be described at that time in supplemental schedules provided to the State for approval; provided that any replacement of the Equipment shall, unless otherwise agreed, be new and shall reduce energy consumption at the Premises more than the Equipment being replaced. ESCO shall update any and all software it owns which is necessary for the operation of the Equipment. Upon the State's approval thereof, all replacements of and alterations or additions to the Equipment shall become part this Contract and the Equipment described in the Work.

SECTION 16 LOCATION AND ACCESS

ESCO Access

The State shall provide access to the Premises for ESCO to perform any function related to this Contract during regular business hours, or such other reasonable hours requested by ESCO that are acceptable to the State. ESCO shall be granted immediate access to make emergency repairs or corrections as ESCO determines are needed. ESCO shall provide a written memorialization within three business days of the access specifying the emergency action

taken, the reasons therefore, and the impact on the Premises.

SECTION 17 MATERIAL CHANGES

A Material Change as defined could be the result of the State not fulfilling its responsibilities from actions including to but not limited to one or more of the following:

- i. manner of use of the Premises by the State; or
- ii. occupancy of the Premises; or
- iii. modifications, alterations or overrides of the energy management system schedules or hours of operation, set back/start up or holiday schedules; or
- iv. facility modifications, renovations, new construction, including the replacement, addition or removal in types and quantities of energy and water consuming equipment, including plug load items, used at the Premises; or
- v. changes in utility provider or utility rate classification; or
- vi. any other conditions, other than climate substantially affecting energy or water use at the Premises.

A. Reported Material Changes; Notice by State

The State shall use commercially reasonable efforts to deliver to ESCO a written notice describing all actual or proposed Material Changes in the Premises or in the operations of the Premises at least fourteen days before any actual or proposed Material Change is implemented or as soon as is practicable after an emergency or other unplanned event. Notice to ESCO of Material Changes which result because of a bona fide emergency or other situation precluding advance notice shall be deemed sufficient if given by the State within five business days after the State discovers the event constituting the Material Change or receives actual knowledge thereof.

B. Other Adjustments

ESCO shall work with the State to investigate, identify and correct any Material Changes that prevent the Savings from being realized. As a result of any such investigation, ESCO and the State shall determine what, if any, adjustments to the baseline shall be made in accordance with the provisions set forth in this Contract. Any disputes between the State and the ESCO concerning any such adjustment shall be resolved in accordance with the provisions in this Attachment E, Exhibit A.

C. Force Majeure

Neither party will be responsible to the other for damages, loss, injury, or delay caused by conditions that are beyond the reasonable control, and without the intentional misconduct or negligence of that party. Such conditions (each, a "Force Majeure") include, but are not limited to: acts of God; strikes; labor disputes; fires; explosions or other casualties; thefts; vandalism; riots or war; acts of terrorism; electrical power outages; interruptions or degradations in telecommunications, computer, or electronic communications systems; or unavailability of parts, materials or supplies.

SECTION 18 INSURANCE

Design:

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

\$1,000,000 each occurrence; and

\$2,000,000 general aggregate.

Construction:

ESCO shall obtain and maintain at all times during this Contract, insurance in the kinds and amounts as specified in Article 11 in this Attachment E, Exhibit A throughout the course of construction until final inspection.

Post Construction throughout the length of the ESPC:

The ESCO shall post a performance bond, letter of credit, or similar surety with the State for a term of up to three years and that may be renewed for subsequent terms of up to three years to

insure the guaranteed savings over the Contract Term.

SECTION 19 BREACH

A. Defined

In addition to any breaches specified in other sections of this Contract, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against ESCO, or the appointment of a receiver or similar officer for ESCO or any of its property, which is not vacated or fully stayed within twenty days after the institution or occurrence thereof, also constitutes a breach.

Each of the following events or conditions may constitute a breach by ESCO:

- i. ESCO does not provide the standards of comfort and service due to failure of ESCO to properly design, install, maintain, repair or adjust the Equipment except that such failure, if corrected or cured within thirty days after written notice by the State to ESCO demanding that such failure be cured, shall be deemed cured for purposes of this Contract; or
- ii. Any representation or warranty furnished by ESCO in this Contract is false or misleading in any material respect when made; or
- iii. The existence of any lien or encumbrance upon the Equipment by any subcontractor, laborer or materialman which is not released or otherwise cured within thirty days after notice of said filing; or
- iv. Any failure by the ESCO to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein except that such failure, if corrected or cured within thirty days after written notice by the State to the ESCO demanding that such failure to perform be cured, shall be deemed cured for purposes of this Contract; or
- v. The creation or submittal by ESCO of any data related to this Contract that is intentionally inconsistent or incorrect, or the inability to verify ESCO's reports regarding the Guarantee as determined by any independent third-party monitor retained by the State if such third-party monitor determines that such inability is due to intentional acts of ESCO. Except as provided herein, any creation or submittal by ESCO of any data related to this Contract that is inconsistent, incorrect, or unable to be verified shall be considered a breach and is subject to the cure period discussed herein; or
- vi. The savings is less than the Guaranteed Annual Cost Savings and the ESCO fails to reconcile the difference as provided herein.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party. If such breach is not cured within thirty days of receipt of written notice, or if a cure cannot be completed within thirty days, or if cure of the breach has not begun within thirty days and pursued with due diligence, the State may exercise any of the remedies set forth in Section 20 in this Attachment E. The ESCO may also exercise its' rights as specified in this Attachment E, Exhibit A. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Contract in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

SECTION 20 REMEDIES

A. Remedies Not Involving Termination

If ESCO is in breach under any provision of this Contract, the State, in its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance

Suspend ESCO's performance with respect to all or any portion of this Contract pending necessary corrective action as specified by the State without entitling ESCO to an adjustment in price/cost or performance schedule. ESCO shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by ESCO after the suspension of performance under

this provision.

ii. **Withhold Payment**

Withhold payment to ESCO until corrections in ESCO's performance are satisfactorily made and completed pursuant to this Attachment E, Exhibit A.

iii. **Deny Payment**

Deny payment for those obligations not performed due to ESCO's actions or inactions, or that cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed pursuant to this Attachment E, Exhibit A.

iv. **Removal**

Notwithstanding any other provision herein, the State may demand immediate removal of any of ESCO's employees, agents, or subcontractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Contract is deemed to be contrary to the public interest or the State's best interest.

v. **Intellectual Property**

If ESCO infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Contract, ESCO shall, at the State's option:

- a. obtain for the State or ESCO the right to use such products and services;
- b. replace any goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or,
- c. if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

B. Termination Prior to M&V Commencement Date

If ESCO is in breach under any provision of this Contract, in addition to all other remedies set forth in other sections of this Contract the State may terminate this entire Contract or any part of this Contract as provided herein or pursuant to this Attachment E, Exhibit A. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively. Exercise by the State of this right shall not be a breach of its obligations hereunder. ESCO shall continue performance of this Contract to the extent not terminated, if any.

To the extent specified in any termination notice, ESCO shall complete and deliver to the State all Work not cancelled by the termination notice and may incur obligations as are necessary to do so within this Contract's terms. At the sole discretion of the State, ESCO shall assign to the State all of ESCO's right, title, and interest under such terminated orders or subcontracts. Upon termination, ESCO shall take timely, reasonable and necessary action to protect and preserve property in the possession of ESCO in which the State has an interest. All materials owned by the State in the possession of ESCO shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by ESCO to the State and shall become the State's personal property.

C. Termination of M&V Term

Notwithstanding anything to the contrary herein, the State may terminate this Contract after the first three years of the M&V Term, and if so terminated, ESCO shall have no further obligations hereunder thereafter.

SECTION 21 REPRESENTATIONS AND WARRANTIES

A. Representations

ESCO makes the following specific representations and warranties, each of which was relied on by the State in entering into this Contract.

i. **Standard and Manner of Performance**

ESCO shall perform its obligations under this Contract in accordance with the highest standards of care, skill and diligence in ESCO's industry, trade, or profession.

ii. **Legal Authority – ESCO Signatory**

ESCO warrants that it possesses the legal authority to enter into this Contract and that

it has taken all actions required by its procedures, and by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract, or any part thereof, and to bind ESCO to its terms. If requested by the State, ESCO shall provide the State with proof of ESCO's authority to enter into this Contract within fifteen days of receiving such request.

iii. Licenses, Permits, Etc.

ESCO represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. ESCO warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Contract, without reimbursement by the State or other adjustment in MCP. Additionally, the ESCO shall ensure that all employees, agents and subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Contract. ESCO, if a foreign corporation or other foreign entity transacting business in the State of Tennessee, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Tennessee and has designated a registered agent in Tennessee to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for ESCO to properly perform the terms of this Contract is an event of default by ESCO and constitutes grounds for termination of this Contract. ESCO shall use employees, agents, and subcontractors who are qualified and licensed in this State to perform the work so subcontracted pursuant to the terms hereof.

iv. Equipment

The Equipment is or shall be compatible with, or functional with, and or an upgrade to all other Premises mechanical and electrical systems, subsystems, or components with which the Equipment interacts, and that, as installed, neither the Equipment nor such other systems, subsystems, or components shall materially adversely affect each other as a direct or indirect result of Equipment installation or operation except in cases where that State has directed, or approved, ESCO to install such equipment.

That ESCO is financially solvent, able to pay its debts as they mature and possesses sufficient working capital to complete the installation and perform its obligations under this Contract.

B. Warranties

The warranties set forth in this section and such other warranties as may be set forth in this Contract are a part of the minimum work requirements of this Contract and all remediation or other actions required by such warranties shall be performed or delivered without additional cost to the State.

i. Warranties Generally Applicable

In addition to the Warranties provided in this Attachment E, Exhibit A during the Construction phase, Section 2.A in this Attachment E. of this Contract and for a period of one year following the State's submission of either the Notice of Substantial Completion or Notice of Partial Substantial Completion for each ECM, whichever is longer, ESCO warrants that:

- a. The Work shall meet the Specifications set forth in the Contract Documents and be acceptable to the State;
- b. There are not any pending suits, claims, or actions of any type with respect to the Equipment or Work;
- c. All Equipment and Work provided are free and clear of any liens, encumbrances or claims arising by or through ESCO or any party related to ESCO;
- d. ESCO will perform all of its obligations in accordance with Section 7 in this Attachment E, ESCO Performance;
- e. the Equipment is new, unless otherwise agreed in writing;
- f. shall be materially free from defects in materials; and,

- g. shall function properly.
- ii. **Equipment**
Specific equipment and/or material warranties that exceed the equipment one-year warranty period shall be provided directly by the Equipment or material manufacturers and ESCO shall assign such warranties to the State, after the one-year warranty period.
- iii. **Obligations**
During the One-Year Warranty period, ESCO shall remedy any defects due to faulty materials and shall pay for, repair and replace any resulting damage to other work or any other resulting damage directly associated with the Work. Only new and not reconditioned parts may be used as a remedy. The State shall give written notice to ESCO of observed defects or other Work requiring correction with reasonable promptness.

ESCO shall pursue rights and remedies against any Equipment manufacturers under the warranties in the event of Equipment malfunction or improper or defective function, defects in parts, workmanship and performance during the One-Year Warranty period. ESCO shall, during the One-Year Warranty period, notify the State whenever defects in Equipment parts or performance arise that may provide a warranty claim. During the One-Year Warranty period, the cost of any risk of damage or damage to the Equipment and its performance, including damage to property, equipment of the State or the Premises, or Equipment, due to ESCO's failure to exercise its warranty rights shall be borne solely by ESCO.

Notwithstanding the above, nothing in this section shall be construed to abrogate ESCO's duty to perform its other obligations under this Contract.

SECTION 22 STATE M&V TERM RESPONSIBILITIES

The State is responsible during the M&V Term for:

- i. Hours of operation of the Premises or for any equipment or systems operating at the Premises; or
- ii. Notifying the ESCO about equipment performance issues as they are noticed; or
- iii. Permanent changes in the comfort and service parameters; or
- iv. Failure to provide maintenance of and repairs to the Equipment; or
- v. Providing ESCO the right once a month, with prior notice, to inspect the Premises to determine if the State is complying with appropriate schedules. A checklist is to be created, completed and recorded by the ESCO, during its monthly inspection, shall be used to measure and record the State's compliance. The State shall make the Premises available to ESCO for and during each monthly inspection and shall have the right to witness each inspection and ESCO's recordation on the checklist. The State may complete its own checklist at the same time. ESCO shall not interfere with State operations during any monthly inspection.

SECTION 23 RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by ESCO in the performance of its obligations under this Contract shall be the nonexclusive property of the State and, all Work Product shall be delivered to the State by ESCO upon completion or termination hereof. The State's nonexclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. ESCO shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of ESCO's obligations hereunder without the prior written consent of the State.

SECTION 24 GENERAL PROVISIONS

A. Assignments

ESCO's rights and obligations under this Contract are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of ESCO's rights and obligations approved by the State shall be subject to the provisions of this Contract, except in the event

that any third party acquires substantially all of the assets and obligations of ESCO, at which point the State may choose, in its sole discretion, to either provide consent to the assignment or terminate this contract without further obligation to the contractor.

B. Subcontracts

ESCO shall not enter into any subcontract in connection with its obligations under this Contract without the prior, written approval of the State. ESCO shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by ESCO in connection with this Contract shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Tennessee, and shall be subject to all provisions of this Contract.

C. Binding Effect

Except as otherwise provided in Section 24.A. in this Attachment E, all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors, and assigns.

D. Counterparts

This Contract may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

E. Entire Understanding

This Contract represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract shall not have any force or affect whatsoever, unless embodied herein.

F. Modification By the Parties

Except as specifically provided in this Contract, any modifications to this Contract shall only be effective if agreed to in a formal amendment to this Contract, properly executed and approved in accordance with applicable Tennessee State law and State Building Commission Policies and Procedures.

G. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Contract to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Contract.

H. Survival of Certain Contract Terms

Any provision of this Contract that imposes an obligation on a Party after termination or expiration of the Contract shall survive the termination or expiration of the Contract and shall be enforceable by the other Party.

I. Taxes

The ESCO shall follow all requirements as indicated in Section 3.6 in this Attachment E, Exhibit A.

J. Conflict of Interest

ESCO shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of ESCO's obligations hereunder. ESCO acknowledges that with respect to this Contract, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, ESCO shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of ESCO's obligations to the State hereunder. If a conflict or appearance exists, or if ESCO is uncertain whether a conflict or the appearance of a conflict of interest exists, ESCO shall submit to the State a disclosure statement setting forth the relevant

details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Contract.

K. Reporting – Notification

Reports, Evaluations, and reviews required under this Section 24.K in this Attachment E, shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with this Attachment E, Exhibit A, if applicable.

i. Performance, Progress, Personnel, and Funds

State shall submit a report to the ESCO upon expiration or sooner termination of this Contract, containing an Evaluation and Review of ESCO's performance and the final status of ESCO's obligations hereunder. In addition, ESCO shall comply with all reporting requirements, as set forth in this Attachment E, Exhibit M – Project Metrics Report for the State.

ii. Litigation Reporting

Within ten days after being served with any pleading in a legal action filed with a court or administrative State, related to this Contract or which may affect ESCO's ability to perform its obligations hereunder, ESCO shall notify the State of such action and deliver copies of such pleadings to the State.

iii. Noncompliance

ESCO's failure to provide reports and notify the State in a timely manner in accordance with this Section 24.K. may result in the delay of payment of funds and/or termination as provided under this Contract.

iv. Subcontracts

Copies of any and all subcontracts entered into by ESCO to perform its obligations hereunder shall be submitted to the State in accordance with this Attachment E, Exhibit A. Any and all subcontracts entered into by ESCO related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subcontracts be governed by the laws of the State of Tennessee, without regard to its conflicts or choice of law rules.

L. ESCO Records

i. Maintenance

ESCO shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes, and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services or goods hereunder. ESCO shall maintain such records until the last to occur of:

- a. a period of five years after the date this Contract expires or is sooner terminated, or
- b. final payment is made hereunder, or
- c. the resolution of any pending Contract matters, or
- d. if an audit is occurring, or ESCO has received notice that an audit is pending, until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period").

ii. Inspection

ESCO shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe ESCO's records related to this Contract during the Record Retention Period to assure compliance with the terms hereof or to evaluate performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Contract, including any extensions or renewals. If the Work fails to conform with the requirements of this Contract, the State may require ESCO promptly to bring the Work into conformity with Contract requirements, at ESCO's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require ESCO to take necessary action to ensure that future performance conforms to Contract requirements and exercise the remedies available under this Contract, at law or in equity, in lieu of or in conjunction with such corrective measures.

iii. Monitoring

ESCO shall permit the State, the federal government, and governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by ESCO pursuant to the terms of this Contract using any reasonable procedure, including, but not limited to: internal valuation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with ESCO's performance hereunder.

iv. Final Audit Report

If an audit is performed on ESCO's records for any fiscal year covering a portion of the term of this Contract, ESCO shall submit a copy of the final audit report to the State at the address specified herein.

M. Order of Precedence

In the event of conflict or inconsistency between this Contract and its schedules, exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. The provisions of the main body of this Contract,
- ii. The Attachment E, Exhibit A and Exhibit B,
- iii. Construction Documents as defined in Section 6.A. in this Attachment E,
- iv. The remaining schedules as required in Section 6.B in this Attachment E and Section 3.10 in this Attachment E, Exhibit A.
- v. Any other attachment or exhibit.

SECTION 25 LIST OF EXHIBITS

The following Exhibits are attached hereto and incorporated by reference herein:

<u>Exhibit A</u>	General Conditions for Construction
<u>Exhibit B</u>	Supplementary Conditions
<u>Exhibit C</u>	Guarantee
<u>Exhibit D</u>	Measurement and Verification Plan
<u>Exhibit E</u>	Regulatory Requirements
<u>Exhibit F</u>	Schedule of Values (Initial)
<u>Exhibit G</u>	Performance Period Cash Flow
<u>Exhibit H</u>	Personnel Used in Contract Performance Attestation Form
<u>Exhibit I</u>	Certificate of Insurance (Including Professional Errors And Omissions Liability Insurance)
<u>Exhibit J</u>	Contract Bond
<u>Exhibit K</u>	General Commissioning Requirements
<u>Exhibit L</u>	Demonstration and Training
<u>Exhibit M</u>	Project Metrics Report for the State
<u>Exhibit N</u>	IGA and ESPC Project Proposal Agreement
<u>Exhibit O</u>	ESPC Project Proposal

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SECTION 26 NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required, sent by certified or registered mail, or by overnight courier service with an asset tracking system to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. State:

Name and Title
State Agency
Address
City, State Zip
E-Mail Address: E-Mail Address
Mobile Phone Number: Mobile Phone Number

B. ESCO:

Name and Title
Company Name
Address
City, State Zip
E-Mail Address: E-Mail Address
Mobile Phone Number: Mobile Phone Number

RFQ Attachment 6.4

This instrument may be executed in one or more counterparts. It shall be fully executed when each party whose signature is required has signed at least one counterpart, even though no one counterpart contains the signatures of all parties to this instrument. Electronic, scanned or facsimile signatures shall have the same force and effect as original signatures.

IN WITNESS WHEREOF:

ESCO LEGAL ENTITY NAME:

ESCO Signatory, ESCO Title

DATE: _____

STATE OF TENNESSEE,

DEPARTMENT OF AGENCY:

Commissioner Name, Commissioner

DATE: _____

OFFICE OF THE STATE ARCHITECT:

Ann McGauran, State Architect

DATE: _____

APPROVED AS TO COMPLIANCE WITH POLICY AND STATUTE:

Jason E. Mumpower, Comptroller of the Treasury

DATE: _____

APPROVED AS TO COMPLIANCE WITH FORM AND LEGALITY:

Jonathan Skrmetti, Attorney General and Reporter

DATE: _____



AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

~~(Name and location or address)~~ **all State of Tennessee, Department of General Services General Work.**
STREAM 00 72 13 May 2022

THE OWNER:

~~(Name, legal status and address)~~ **State of Tennessee, Department of General Services**

THE ARCHITECT: THE DESIGNER:

~~(Name, legal status and address)~~ **as identified in the agreement**

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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User Notes:

(1666082101)

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ARTICLE 1 GENERAL PROVISIONS**§ 1.1 Basic Definitions****§ 1.1.1 The Contract Documents**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of 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 the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal 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 Contractor and the ~~Architect-Designer~~ or the ~~Architect's-Designer's~~ consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the ~~Architect-Designer~~ or the ~~Architect's-Designer's~~ consultants, or (4) between any persons or entities other than the Owner and the 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 and 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.

§ 1.1.5 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 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the ~~Architect-Designer~~ and the ~~Architect's-Designer's~~ consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

~~The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.~~ Designer.

§ 1.1.9 Project Manual

The Project Manual includes the Contract Documents and other informational documents as applicable to the Project.

§ 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.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such ~~case~~ case, the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings ~~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 that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of ~~brevity~~ 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 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 ~~The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights.~~ design and the Contract Documents are property of the State of Tennessee, and may be used again only for the benefit of the State and on authority of the State Building Commission (SBC). The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of ~~Service~~ Service, the design, or the Contract Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the ~~Architect's or Architect's Designer's or Designer's~~ Architect's or Designer's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. ~~All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service.~~ The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the ~~Owner, Architect, and the Architect's consultants.~~ Owner.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered ~~in person, by certified mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.~~ transmission.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall ~~agree upon protocols governing the transmission and use of~~ transmit Instruments of Service or any other information or documentation in digital form ~~form for which they shall establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.~~ The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data ~~Exhibit, Exhibit and standards as provided by the State of Tennessee,~~ and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

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. 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. 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. As a matter of law, the State of Tennessee and its property are not subject to mechanics' and material suppliers liens. Subcontractors, suppliers, and other claimants are protected through the Contract Bond as required by Tennessee Code Annotated (T.C.A.) §12-4-201 et seq., the policies of the State Building Commission, and Section 11.4 of these Conditions. Specific requirements for notice of Claims on the bond are set forth in the T.C.A §12-4-205.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

Init.

~~§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~

~~§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.~~

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, 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.

~~§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.~~ a Designer. "Designer" is the licensed prime design professional or firm lawfully practicing architecture, landscape architecture, or engineering, identified in the the Bidding Documents and Agreement form for the project.

§ 2.3.3 If the employment of the ~~Architect~~ Designer terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the ~~Architect~~ Designer.

§ 2.3.4 The Owner shall furnish land 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.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one electronic copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by ~~Section 12.2~~ Section 12.2, or repeatedly 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.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of ~~notice~~ notice, in accordance with Section 1.6.1, from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the ~~Architect~~ Designer and the ~~Architect~~ Designer may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and

compensation for the ~~Architect's Designer's~~ additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the ~~Architect, Designer,~~ or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

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 Contractor shall be lawfully ~~licensed, if required in the jurisdiction where the Project is located,~~ licensed in the State of Tennessee. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. 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 its 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 or entities other than the Contractor.

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, 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 coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the ~~Architect-Designer~~ any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the ~~Architect-Designer~~ may require. 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.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the ~~Architect-Designer~~ any nonconformity discovered by or made known to the Contractor as a request for information in such form as the ~~Architect-Designer~~ may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the ~~Architect-Designer~~ issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, ~~subject to Section 15.1.7,~~ as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or ~~Architect-Designer~~ for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 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. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be 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 notice to the Owner and ~~Architect-Designer~~, and shall propose alternative means, methods, techniques, sequences, or procedures. The ~~Architect-Designer~~ shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the ~~Architect-Designer~~ objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 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. The Contractor shall track deficiencies associated with their Work noted under this Section as well as deficiencies associated with their Work noted by any other parties, including the Designer, the Owner, inspectors, and other reviewing parties.

§ 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.

§ 3.4.2 Except in the case of minor changes in the Work approved by the ~~Architect-Designer~~ in accordance with Section 3.12.8 or ordered by the ~~Architect-Designer~~ in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the ~~Architect and in accordance with a Change Order or Construction Change Directive-Designer~~. Unless a specified product is not available, any substitution requests shall be requested and approved prior to bidding in accordance with the Instructions to Bidders. If a product is not available during the Work of the Project, the Contractor shall request approval in writing and shall submit samples and data, including an estimate of difference in cost, as required for the Designer's consideration. The Designer and Owner will be final judge of acceptability of substitution. No substitution shall be made without authority in writing from the Designer. The Contractor shall provide a list showing names of manufacturers proposed for each specified product, and applicable name of installer, whether the Contractor or a subcontractor. The Designer will within 14 days reply in writing to the Contractor stating whether the 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, the Designer may state that action will be deferred until the Contractor provides further data. The Contractor shall not make use of a manufacturer or installer to which the Owner or Designer has reasonably objected. The Contractor shall receive appropriate adjustment in the Contract Sum, Contract Time, or both for making such a change unless objection was based on failure of manufacturer or installer to meet requirements of the Contract Documents, in which case neither the Contract Sum nor Contract Time shall be adjusted. Projects furnished by listed Contractor's manufacturers must conform to the requirements of the Contract Documents.

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

§ 3.4.4 Contractor shall disclose existences and the extent of financial interests, whether director of indirect, which Contractor has in proposed subcontractors and material suppliers.

§ 3.4.5 Prohibition of Illegal Immigrants

§ 3.4.5.1 The requirements of T.C.A. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, 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.

§ 3.4.5.2 The Contractor agrees 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 an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State 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.

§ 3.4.5.3 Prior to the use of any subcontractor in the performance of this Contract, and with each Application and Certificate for payment 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.

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

§ 3.4.5.5 The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of T.C.A. § 12-3-309 for acts or omissions occurring after its effective date.

§ 3.4.5.6 For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the United States Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.

§ 3.4.6 Non-Discrimination in Employment

§ 3.4.6.1 The 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 T.C.A. §4-21-401, et seq., nor because of handicap, in accordance with T.C.A. §8-50-103.

§ 3.4.6.2 The 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.

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

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

§ 3.4.7 Reporting of Subcontractors

If the total Contract Sum equals or exceeds \$100,000 (whether under the terms of the original contract or by modification), and the time of performance is more than six months, the Contractor shall fully comply with its obligations under T.C.A. 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 the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free

from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work 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 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

§ 3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that 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 Section 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 tax for the Work of 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.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 ~~The~~ Except as provided in Subparagraph 3.7.4, the Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 ~~If~~ Except as provided in Subparagraph 3.7.4, if the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

~~If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that 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, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that 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 that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect 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 shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15. This Subparagraph applies to any applicable local government permit. The Owner is an agency of the 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 continue the Work, inform the Designer and Owner of the situation, propose corrective measures, and continue to pursue the customary permits.~~

§ 3.7.5 ~~If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated~~ If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found

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to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15. promptly provide notice to the Owner and the Designer before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Designer will promptly investigate such conditions and, if the Designer determines that 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 that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the 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 Designer shall promptly notify, in accordance with Section 1.6.1, the Owner and Contractor, stating the reasons. If either party disputes the Designer's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.6 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Designer. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 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, 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; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order 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; and,
- .4 the Contractor shall monitor the costs included in allowances, and shall not exceed costs without first obtaining a Change Order adjusting the allowance amount sufficient for the excess.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect Designer of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect Designer may notify the Contractor, stating whether the Owner or the Architect Designer (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect Designer to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a ~~proposed superintendent~~ superintendent for this project to whom the Owner or ~~Architect-Designer~~ Architect-Designer has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and ~~Architect's~~ Architect's Designer's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the ~~Architect's-Designer's~~ Architect's Designer's approval. The ~~Architect's~~ Architect's Designer's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the ~~Architect-Designer~~ Architect-Designer reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of 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~~ Architect-Designer.

§ 3.10.4 Reserved for 00 73 15 Supplementary Conditions

§ 3.10.5 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.

§ 3.10.6 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.

§ 3.10.7 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.

§ 3.10.8 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

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the ~~Architect-Designer~~ and Owner, and delivered to the ~~Architect-Designer~~ for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 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 that 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. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. 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 that 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, in accordance with the submittal schedule approved by the ~~Architect-Designer~~ or, in the absence of an approved submittal schedule, 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.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and ~~Architect-Designer~~ that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) 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 the 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 notified the ~~Architect-Designer~~, in accordance with Section 1.6.1, 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 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 notice, the ~~Architect's-such~~, in accordance with Section 1.6.1, notice, the 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 that 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.

§ 3.12.10.1 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 be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately 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 and accuracy~~ adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and ~~Architect-Designer~~ have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the ~~Architect-Designer~~ will review and 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.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the ~~Architect~~ Designer at the time and in the form specified by the ~~Architect-Designer~~.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 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. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 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 construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its 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 and rubbish caused by operations under the Contract. ~~At~~ Upon completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do ~~so~~ so, and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and ~~Architect-Designer~~ with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. 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 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 an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the ~~Architect-Designer~~.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by 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~~ property, including loss of use resulting therefrom, (other than the Work itself), but only to the extent caused by the willful or 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 that 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

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 the Owner's consent. A violation of this requirement may be cause for termination of this Contract.

§ 3.20 Participation of Diversity Owned Businesses

§ 3.20.1 To the extent that the Contractor or a subcontractor is a 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 diversity-owned businesses on State projects in order for the State to collect data on such participation.

§ 3.20.2 "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 "Diversity-Owned Business" for the purposes of this Contract, a business must be certified as a "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 The 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 the 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 Records

The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

§ 3.23 through § 3.29 RESERVED

ARTICLE 4 — ARCHITECT

ARTICLE 4 DESIGNER

§ 4.1 General

§ 4.1.1 The Architect-Designer is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 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.

§ 4.2 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 during construction until the date the Architect issues the final Certificate for Payment. The Architect through the one-year period for correction of Work described in Section 12.2. The Designer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect-Designer will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed 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 not have control over, charge of, or responsibility for for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect-Designer will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. 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

The Owner and Contractor shall include the Architect-Designer in all communications that relate to or affect the Architect's-Designer's services or professional responsibilities. The Owner shall promptly notify the Architect-Designer of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's-Designer's consultants shall be through the Architect-Designer. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 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 has 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 13.4.2 and 13.4.3, whether or not the 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~~ authority, shall give rise to a duty or responsibility of the ~~Architect~~ Designer to the Contractor, Subcontractors, 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~~ Designer's action will be taken in accordance with the submittal schedule approved by the ~~Architect~~ Designer or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the ~~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 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 prepare~~ Designer will assist the Owner in preparing Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The ~~Architect~~ Designer will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The ~~Architect~~ Designer will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; 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 pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 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 Owner shall ~~notify~~ notify, in accordance with Section 1.6.1, the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 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.

§ 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 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 rendered in good faith.

§ 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.

§ 4.2.14 The ~~Architect~~ Designer will review and respond to requests for information about the Contract Documents. The ~~Architect's~~ Designer's response to such requests will be made in writing within any time limits agreed upon or

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otherwise with reasonable promptness. If appropriate, the ~~Architect-Designer~~ will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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 the 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, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and ~~Architect-Designer~~ of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the ~~Architect-Designer~~ may notify the Contractor whether the Owner or the ~~Architect-Designer~~ (1) has reasonable objection to any such proposed person or ~~entity~~ entity, or (2) requires additional time for review. Failure of the ~~Architect-Designer~~ to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 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.

§ 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 reasonably capable of performing the Work, able to meet requirements of the Contract Documents, 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 substitute a Subcontractor, person, or entity for one previously selected if the Owner or ~~Architect-Designer~~ makes reasonable objection to such substitution.

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

§ 5.2.6 The Contractor shall not knowingly allow work under the Contract to be performed contrary to the requirements of Section 3.4.5, nor by an individual or entity 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 participant is discovered, the 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

By appropriate ~~written~~ agreement, 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 that the Contractor, by these Contract 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 that 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.

§ 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~~ 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 that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

Assignment is at the option of the Owner, and creates no duty or obligation upon Owner to exercise this option, nor is any right created for any subcontractor to expect or rely upon such assignment. When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 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.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

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 term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 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 any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its 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 or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 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 notify the ~~Architect-Designer~~ of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the ~~Architect-Designer~~ of apparent discrepancies or defects prior to proceeding with the Work 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. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have ~~the same~~ 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

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~~ Directive, or order for a minor change in the ~~Work~~ Work in accordance with Section 7.4, 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. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.1.4 The amounts included in the Contract Sum by the Construction Change Directive or Change Order for such changes shall be included in the Schedule of Values.

§ 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 ~~The~~ the change in the Work;
- .2 ~~The~~ the amount of the adjustment, if any, in the Contract Sum; and
- .3 ~~The~~ the extent of the adjustment, if any, in the Contract Time.

§ 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~~ accordingly, if required.

§ 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~~ mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- ~~.2 Unit~~ unit prices stated in the Contract Documents or subsequently agreed upon;
- ~~.3 Cost~~ cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- ~~.4 As~~ as provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the ~~Architect~~ Designer shall determine the adjustment 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, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. 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 7.3.4 shall be limited to the following:

- ~~.1 Costs~~ costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the ~~Architect;~~ Designer;
- ~~.2 Costs~~ costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- ~~.3 Rental~~ rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- ~~.4 Costs~~ costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- ~~.5 Costs~~ costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 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.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement 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.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that 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~~ amount for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The

~~Architect-Designer~~ will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the ~~Architect-Designer~~ determines, in the ~~Architect's-Designer's~~ professional judgment, to be reasonably justified. The ~~Architect's-Designer's~~ interim 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 15.

§ 7.3.10 When the Owner and Contractor agree with a 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 the ~~Architect-Designer~~ will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The ~~Architect-Designer~~ may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The ~~Architect's-Designer's~~ order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the ~~Architect-Designer~~ and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the ~~Architect's-Designer's~~ order for a minor change without prior notice to the ~~Architect-Designer~~ that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

§ 7.5 Allowable Costs

§ 7.5.1 Overhead and Profit

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

- .1 for the 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 the Contractor, or for Work performed by the 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 Section 7.5.2.

§ 7.5.2 Costs for the purpose of this Section 7 shall be limited to the following:

- .1 payroll Expense of labor;
- .2 costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 rental costs of machinery and equipment rented from others and not more than 80 percent of the latest Associated Equipment Distributors Nationally Averaged Rental Rates for Construction Equipment (AED Green Book) for machinery and equipment belonging to the Contractor;
- .4 costs of premiums for all bonds and insurance to the extent required by the Contract Documents; permit fees; and sales, use, or other similar taxes, directly related to the change;
- .5 additional Direct Personnel Expense of superintendence directly attributable to authorized overtime;
- .6 reasonable Direct Personnel Expense of project manager and clerical work attributable to estimating and coordinating the change;
- .7 the following items are "Class 1 Time-Related Expenses", and shall be considered as costs when the Contract Time is extended due to additional work or a Class 1 cause defined in Section 15.1.6.3, and solely to the extent directly attributable to extension of time: field offices, shed, phones, sanitary facilities, on-site utilities, drinking fountains, cleaning, safety programs, and other construction facilities and temporary controls not specifically required for additional work; costs of superintendence; superintendent's vehicle; and other general use vehicles, being those requiring 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; and,
- .8 specifically excluded from costs and included in overhead or general requirements are: corporate, home office, and branch office overhead, rent, mortgage, and off-site utilities; project management; and personnel not otherwise mentioned; capital expenses and interest on capital; and hand tools when Contract Time is not extended due to additional work or a Class 1 clause.

§ 7.5.3 Direct Personnel Expense (DPE)

Direct Personnel Expense (DPE) Costs delineated in Sections 7.5.2.1, 7.5.2.5, 7.5.2.6, and 7.5.2.7 shall be limited to base salary or hourly wage plus a maximum of 39 percent of base salary or hourly wage, and further limited to a maximum of \$175 per hour, including all labor burden.

§ 7.5.4 Contractor's Proposals

To facilitate checking for increases or decreases in the Contract Sum, proposals shall be accompanied by the Contractor's complete itemization of costs of work including labor, materials, and equipment, plus an amount for overhead and profit.

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.

§ 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, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or ~~Architect-Designer~~, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the ~~Architect-Designer~~ determines, justify delay, then the Contract Time shall be extended for such reasonable time as the ~~Architect-Designer~~ may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 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.

ARTICLE 9 PAYMENTS AND COMPLETION**§ 9.1 Contract Sum**

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized ~~adjustments, modifications~~, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Contract Sum is not subject to change due to commodity, equipment, labor, or other cost fluctuations.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated ~~sum or Guaranteed Maximum Price, sum,~~ the Contractor shall submit a schedule of values to the ~~Architect-Designer~~ before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the ~~Architect-Designer~~. This schedule, unless objected to by the ~~Architect-Designer~~, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the ~~Architect-Designer~~ and supported by such data to substantiate its accuracy as the ~~Architect-Designer~~ may require, and unless objected to by the ~~Architect-Designer~~, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

~~§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect-Designer~~ The Contractor shall submit to the Designer an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or ~~Architect-Designer~~ require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

~~§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders. All pay applications must be submitted by the 10th day of the month. All Work performed prior to June 30th of each year must be contained in a pay application to be submitted to the Designer by July 5th.~~

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or 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 interest.

§ 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. 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, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 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 (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the ~~Architect-Designer~~ determines is properly due, and notify the Contractor and Owner of the ~~Architect's-Designer's~~ reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the ~~Architect's-Designer's~~ reason for withholding certification in whole 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 in the Application for Payment, that, to the best of the ~~Architect's-Designer's~~ knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. 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~~. 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 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 suppliers 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 a Separate Contractor; Contractor, including, but not limited to, potential liquidated damages and other unsettled claims;
- .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 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the ~~Architect's-Designer's~~ decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

§ 9.5.4 If the ~~Architect-Designer~~ withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier-material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the ~~Architect-Designer~~ and the Contractor shall reflect such payment on its next Application for Payment.

§ 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 T.C.A. §12-4-701 et seq. as may from time to time be amended.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the 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.

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§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor ~~Architect-Designer~~ shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to 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 or provided by 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, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.~~ **Retainage**

Provisions regarding retainage of T.C.A. §66-34-104 are applicable to contracts for improvement of real property when the Contract Sum is five hundred thousand dollars (\$500,000) or more. The Contractor shall comply with these provisions and the procedures pursuant thereto established by the Tennessee State Treasurer and Department of Finance and Administration for establishment of an escrow account. 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 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 Section 9.3.2, less the aggregate of previous payment made upon Substantial Completion and final completion less amounts as the Designer shall determine for incomplete Work and unsettled claims and liquidated damages.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

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 binding dispute resolution, then the Contractor may, upon seven additional days' 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 shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 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, the Owner must have occupied the building and must have received the complete Product Data, Operating and Maintenance Data, orientation, and training, as may be required by specifications, all use and occupancy certificates, passed regulatory requirements, and all remaining outstanding items shall be able to be completed within 15 days.

§ 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

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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-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 that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 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 the Certificate. ~~Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the 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.~~

§ 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 and authorized by public authorities having jurisdiction over the Project. 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.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's 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. 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 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

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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~~, 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 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, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, 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 satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance 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 the lien, claim, security interest, or encumbrance, 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, corrected, 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 the 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 constitute a waiver of Claims by the Owner except those arising ~~from~~from:

- .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;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of ~~claims~~ 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.

§ 9.11 Method of Payment

§ 9.11.1 Payments to the Contractor shall be made through the Owner's Authorization Agreement for Supplier Direct Deposit Form direct deposit system. The Contractor shall have completed an Authorization Agreement for Supplier Direct Deposit Form prior to commencing Work and prior to submitting a first application for payment.

§ 9.11.2 Debit entries to correct errors authorized by the Authorization Agreement for Supplier Direct Deposit 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 the 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 under this or any other contract between the parties.

§ 9.12 Liquidated Damages

§ 9.12.1 Time being of the essence, the Contractor further agrees to accept conditions for liquidated damages in the amount set forth in the Contract Documents for each calendar day in excess of allotted time for Substantial Completion, or approved extension thereof, the 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 of that originally required by the Contract Documents, and shall accrue until such time that the 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 calendar days has passed following the certified date of Substantial Completion; and,
- .2 the Contract Time, including approved extensions, plus thirty calendar days, has passed.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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~~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, a Subcontractor, or a Sub-subcontractor; 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 comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, 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 the owners and users of adjacent sites and utilities of the safeguards.

§ 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. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is 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 Owner reserves the right to effect repairs to, or to replace, the damaged property and deduct all costs from Contract Sum. 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 permit any part of the ~~construction Work~~ or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party 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, notice of the 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.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and 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, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and ~~Architect-Designer~~ of the condition.

§ 10.3.2 Upon receipt of the Contractor's ~~notice~~, notice pursuant to circumstances described in Section 10.3.1, the Owner will have the option to either terminate the Contract as provided in Article 14, proceed with the 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 cause it to be 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 the material or substance or who are to perform the task of removal or safe containment of the 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. By Change Order, Following Modification processes in accordance with Article 7, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 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 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), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.~~

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 ~~If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency 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 reimburse the Contractor for all cost and expense thereby incurred.~~

§ 10.4 Emergencies

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 Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS**§ 11.1 Contractor's Insurance and Bonds**

§ 11.1.1 The Contractor shall purchase from and maintain insurance of the types and limits of liability, containing the endorsement, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the State of Tennessee. The Owner shall be named as additional insured under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents. If required by the policy an endorsement naming the State as an additional insured must be provided to the Owner. The Contractor shall purchase the following 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, including to the Work itself, because of injury to or destruction of tangible 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:
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 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. Certificate(s) of insurance provided to attest to coverage 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.

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 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 authorize a copy to be furnished.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2 Waivers of Subrogation

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Designer and Designer's consultants; and (3) Separate Contractors, 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 those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or

Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Designer, Designer's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.2.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 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; (2) the Architect and Architect's consultants; and (3) Separate Contractors, 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 those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss.

§11.4 Adjustment and Settlement of Insured Loss

§ 11.4.1 A loss insured under the property insurance required by the Agreement 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 11.4.2. The Owner shall pay the Designer and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Designer and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.4.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

~~§ 11.3.2 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, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~
11.5 Property Insurance

§ 11.5.1 The Contractor shall purchase and maintain, with a company or companies licensed to do business in Tennessee by the Department of Commerce and Insurance, 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 for the covered Project at the site on a replacement cost 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 11.5 to be covered, whichever is later. This insurance shall include interests of the Owner as the named insured, and, the Contractor, Subcontractors and Sub-subcontractors, as additional insured in the Project.

§ 11.5.1.1 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, and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and debris removal, and shall cover reasonable compensation for the Designer's services and expenses required as a result of such insured loss. Any deductibles shall be the responsibility of the Contractor.

§ 11.5.1.2 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit. The Contractor shall present a certificate of insurance demonstrating coverage of the property stored off the site or in transit at the time payment for that portion of the Work is presented.

§ 11.5.1.3 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.

§ 11.5.2 Boiler and Machinery Insurance. The Contractor 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.

§ 11.5.3 Before an exposure to loss may occur, the Contractor shall file with the Owner a copy of each policy that includes insurance coverages required by this Section 11.5. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that issuing company will endeavor to mail three days written notice to the Owner 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 Contractor or issuing company.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement 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 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

§11.5.5 If 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.

§11.5.6 A loss insured under the 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 11.5.7. The Contractor shall pay the Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require the Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.5.7 The Owner as fiduciary shall have power to adjust and settle a loss with insurers.

§ 11.6 Performance Bond and Payment Bond

§ 11.6.1 If the initial Contract Sum as awarded exceeds \$100,000, the Contractor shall provide a 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 the project, and subject to provisions of Section 11.6.3.

§ 11.6.2 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.

§ 11.6.3 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 a 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 an agent, and shall affix license number to bond, or a countersignature by and license number of a licensed agent shall be affixed to the bond in addition to the signature of the Attorney-in-Fact.

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 requested 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 that 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, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work**§ 12.2.1 Before Substantial Completion**

The Contractor shall promptly correct Work rejected by the ~~Architect-Designer~~ or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, 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 any 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 shall correct it promptly after receipt of 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, Designer,~~ the Owner may correct it in accordance with Section 2.5. If Three Year Roof Bond has been provided, then with regard to the total roofing system, its installation, and materials, the one year time period hereunder is extended for two additional years for a total period of three years. Until such time as the three 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 this Section 12.2.2, all of the Company's actions, whether of omission or commission, pursuant to the Roofing System Warranty are likewise actions of Contractor hereunder and shall 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 shall be extended by the period of time between Substantial Completion and the actual completion of that portion 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 that are not in accordance with the requirements of the Contract Documents and that 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 of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that 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 the Contractor has under the Contract Documents. Establishment of the one-year period for

correction of Work as described in Section 12.2.2 relates 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

If the Owner prefers to accept Work that 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

The Contract shall be governed by ~~the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern~~ Section 15.4, substantive the law of the State of Tennessee, without reference to its conflicts or choice of law rules.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives 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 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 a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.~~

§ 13.3 Rights and Remedies

§ 13.3.1 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.

§ 13.3.2 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 upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. 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 that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 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 13.4.1, 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 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 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 services and expenses, shall be at the Contractor's expense.

~~§ 13.4.4 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.~~

~~§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing. 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 Designer.~~

~~§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work. If the Designer is to observe tests, inspections, or approvals required by the Contract Documents, the Designer will do so promptly and, where practicable, at the normal place of testing.~~

~~§ 13.4.7 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.~~

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located, past due in accordance with Section 9.6.1 in accordance with T.C.A. §12-4-704 as may from time to time be amended.

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, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- ~~1 Issuance~~ issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- ~~2 An~~ an act of government, such as a declaration of national emergency, that requires all Work to be stopped; or,
- ~~3 Because the Architect because the 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 reasonable evidence as required by Section 2.2.~~ Documents.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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, as well as reasonable overhead and profit on Work not executed, and costs executed including eligible overhead, profit, and costs defined in Section 7.3.4 incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly 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.

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§ 14.2 Termination by the Owner for Cause**§ 14.2.1** The Owner may terminate the Contract if the ~~Contractor~~Contractor:

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

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the ~~Architect~~Designer that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 ~~Exclude~~exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 ~~Accept~~accept assignment of subcontracts pursuant to Section 5.4; and
- .3 ~~Finish~~finish the Work by whatever reasonable method the Owner may deem expedient. Upon written 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 Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.**§ 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 under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the ~~extent~~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.

§ 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 written receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor ~~shall~~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;~~and the Work including materials for which the 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 ~~Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.~~Contractor shall be entitled to receive

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payment for the completed portion of the Work, eligible costs as defined in Section 7.3.4 incurred by reason of such termination, plus a fraction of 5 percent of the remaining balance of the Contract Sum. The said fraction shall be equal to the value of Work completed divided by the Contract Sum.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract 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. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the ~~Work set forth in Section 12.2.2, Work~~, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the ~~Architect, Designer~~, if the ~~Architect Designer~~ is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall 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.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the ~~Work set forth in Section 12.2.2, Work~~, shall be initiated by written notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 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.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 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.

§ 15.1.6.3 Claims for Class 1 causes: an act or failure to act that is contrary to the Contract Documents on the part of the Owner or Designer or an employee of either, or of a separate Contractor employed by the Owner, or an injunction against the Owner or Owner's representatives.

§ 15.1.6.4 Claims for Class 2 causes: adverse weather as defined in the specifications, 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.

§ 15.1.6.5 If the basis exists for an extension of time under Section 8.3.1, the Owner may either:

§ 15.1.6.5.1 In the case of additional work or a Class 1 cause, assign the Class 1 Time-Related Expenses, defined in Section 7.5.2, plus the overhead and profit allowed in Section 7.5.1, 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; or accept the reasonable and appropriate time extension as determined by the Designer to cover such delay, and in the case of a Class 2 cause, there will be no corresponding adjustment in the Contract Sum, and the sole recourse of the Contractor will be entitlement to a time extension as provided by the Designer regardless of actual source of cause of delay;

§ 15.1.6.5.2 Order the 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 the Contractor for such directed acceleration; however, direct costs used in determining such compensation shall be limited to properly substantiated and documented premium or overtime costs; or,

§ 15.1.6.5.3 Employ a combination of the above remedies.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for 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 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 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.1.6.6 Neither the Owner nor Designer will be obligated or liable for, and the Contractor hereby expressly waives Claims against the Owner and Designer on account of, damages, costs, expenses, or related impacts which the Contractor, subcontractors, sub-subcontractors, suppliers, or other persons may incur as a result of a Class 2 cause enumerated in Section 15.1.6.4; the Contractor's sole and exclusive remedy and full compensation in such event shall be an extension of Contract Time in accordance with provisions of the Contract Documents. The 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 Section 7.5.

§ 15.1.6.7 Claims relating to time shall be made in strict accordance with applicable provisions of this Article 15 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 the Contractor waives the right to all such claims.

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

§ 15.1.7 Claims for Consequential Damages

The Contractor waives Claims against Owner for consequential damages arising out of or relating to this Contract including, but not limited to, either party's termination in accordance with Article 14; principal office expenses,

including the compensation of personnel stationed at the principal's office; and any damage for losses of financing, business reputation, and for loss of profit.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The ~~Architect-Designer~~ will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim 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 Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker 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 Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker 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 the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the ~~Architect-Designer~~, if the ~~Architect-Designer~~ is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 ~~Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1. The Contractor shall be responsible to the Owner for all damages incurred as a result of the Contractor's breach of the Agreement, or any portion thereof, including all reasonable attorneys' fees and other other claim or litigation expenses.~~

~~§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

§ 15.2.7 In the event of a Claim against the Contractor, 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 Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If normal procedures within the Contract fail to satisfy a Claim against the Owner, further action is within the exclusive jurisdiction of the Tennessee Claims Commission, pursuant to T.C.A. §9-8-101, et seq. Damages recoverable against the State shall be limited expressly to claims awarded by the Commission.

§ 15.2.8 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.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

The State of Tennessee Is Not Subject To Mandatory Mediation

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution 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. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 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.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. 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. The State of Tennessee Is Not Subject To Mandatory Arbitration

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 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.

§ 15.4.3 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.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

Init.

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

State of Tennessee Real Estate Asset Management

SUPPLEMENTARY CONDITIONS**MODIFICATIONS
to the
CONDITIONS OF THE CONTRACT**

The following supplements modify, change, delete from or add to the Conditions of the Contract:

AIA Document A201

GENERAL CONDITIONS
of the Contract for Construction,
2017

Where an Article, Paragraph, Subparagraph or Clause of Conditions is modified or deleted by Supplementary Conditions, unaltered provisions of that Article, Paragraph, Subparagraph or Clause shall remain in effect.

**ARTICLE 3
CONTRACTOR**

3.4.8 Add section in its entirety. Pursuant to Tenn. Code Ann. § 12-4-119, Contractor certifies that it is not currently engaged in, and will not for the duration of the Contract, engage in a boycott of Israel, as defined by Tenn. Code Ann. § 12-4-119(a)(1).

**ARTICLE 9
PAYMENTS AND COMPLETION**

9.6.7 Delete section in its entirety.

END OF SECTION

GUARANTEE

Guaranteed Annual Cost Savings

Measureable and verifiable aggregate of Guaranteed Annual Utility Cost Savings and Guaranteed Annual Operations and Maintenance Cost Savings guaranteed by ESCO resulting from the Project shall occur for each year of the Guarantee Period pursuant to this Exhibit C. Guaranteed Annual Utility Cost Savings shall be determined by ESCO's measurement and verification of annual utility unit use reductions and the application of mutually agreed to baseline and escalated unit costs for each year of the Guarantee Period as defined in this Exhibit C.

Guarantee

ESCO hereby warrants and guarantees that for each year of the Guarantee Period, the Project shall result in annual cost savings equal to or greater than the Annual Guaranteed Cost Savings presented in this Exhibit C which shall be equal to or greater than the State's annual and aggregate payments used to repay the project funding. Failure to meet Guaranteed Annual Cost Savings in any year during the Guarantee Period shall result in ESCO directly remunerating the State the dollar amount equal to the cost value of that year's Guaranteed Annual Cost Savings shortfall. Alternatively, subject to the State's consent, which shall not be unreasonably withheld, ESCO may implement additional ECMs, at no cost to the State, which may generate additional annual cost savings in future years of the Performance Period to offset the Guaranteed Annual Cost Savings shortfall.

Guarantee Period

The mutually agreed to time period after the M&V Commencement Date, during which Guaranteed Annual Cost Savings resulting from the Project are measured and verified by the ESCO under a mutually agreed upon M&V Plan as presented in this Attachment E, Exhibit D.

ESCO guarantees that the Project shall result in Guaranteed Annual Cost Savings to the State, as indicated, for each year of the Guarantee Period, as presented in the following Table C1.

[Complete this table, or present equivalent information, for each year of the statutory required Guarantee Period as requested by the State. The M&V Term determines the ESCO's guarantee requirements. Annually escalated cost savings should reflect the annual escalation factors presented in Table C2 as per ESPC M&V Policy per Tenn. Code Ann. 12-4-118(c).]

Table C1: Guaranteed Annual Cost Savings

Year	Guaranteed Annual Utility Cost	Guaranteed Annual O&M Cost Savings	Guaranteed Annual Cost Savings
1			
2			
3			
4			
5			

Table C2: Annual Dollar Savings Escalation Rates

ANNUAL DOLLAR SAVINGS ESCALATION RATES								
Performance Period (year)	Electric Energy	Electric Demand	Natural Gas	Other Savings Type 1: Other	Other Savings Type 2: Other	Water	O&M	Other Non-energy Savings
Implementation start through first year								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
20								
21								
22								
23								
24								
25								

IMPORTANT INFORMATION:

(1) "Implementation start through first year" reflects cumulative escalation occurring during the length of the implementation period through the first year of savings. This may represent an annual escalation figure that is compounded or another formulation (e.g., actual forecasts from utility companies).

(2) All estimated cost savings numbers reported in Schedule 4 ("First year estimated cost savings by ECM") are assumed to have already incorporated the "Implementation start through first year" escalation rates reported above.

(3) Please select other savings types from dropdown menu provided above, if applicable.

ADDITIONAL NOTES:



Guarantee

MEASUREMENT AND VERIFICATION PLAN

M&V Services

This schedule shall use the following documents as a standard for presentation and reporting purposes.

ESPC M&V Policy

Per Tenn. Code Ann. 12-4-118 (c) for the duration of the contract an annual M&V audit and report shall be conducted by a third party at the expense of the ESCO executing the project.

[ESCOs provide the annual M&V cost for each year of the Guarantee Period by IPMVP Option.]

Year	Guaranteed Annual Cost Savings	Annual Cost for M&V Services (Option A)	Annual Cost for M&V Services (Option B)	Annual Cost for M&V Services (Option C)	Annual Cost for M&V Services (Option D)	Annual Cost for M&V Services (Total)	M&V Cost Percent of Guaranteed Annual Savings
1							
2							
3							
4							
5							

PART 1 - GENERAL**1.01 CODES AND REGULATIONS**

The Regulatory Requirements used for State Building Commission projects are listed below as a convenience and may not be inclusive of all that apply. Others may also apply. Comply with all pertinent codes, standards, regulations, and laws.

	DOCUMENT	PHONE
1.	<p>International Building Code (IBC), 2012 except for: Chapter 11 Accessibility; and, Chapter 34, Section 3411 Accessibility For Existing Buildings.</p> <p>The International Fuel Gas Code (IFGC), 2012</p> <p>The International Mechanical Code (IMC), 2012</p> <p>The International Plumbing Code (IPC), 2012</p> <p>The International Property Maintenance Code (IPMC), 2012</p> <p>The International Fire Code (IFC), 2012</p> <p>The International Energy Conservation Code (IECC), 2012 except that the provisions of the International Energy Conservation Code, 2006 Edition, shall apply to the following occupancy classification as defined by the International Building Code (IBC), 2012 edition: Group F-1; F-2; S-1; S-2.</p> <p>The International Existing Building Code (IEBC), 2012</p> <p>*Effective August 4, 2016</p>	<p>International Code Council, Inc. Regional Office 900 Montclair Road Birmingham, Alabama 35213-1206 (888) 422-7233</p>
2.	<p>NFPA 101 Life Safety Code, 2012</p> <p>No provision of the preceding cited publications shall be adopted that conflicts: The installation and service standards of portable fire extinguishers and fixed fire extinguisher systems in Tenn. Comp. R. & Regs. 0780-02-17-.02; and, The standards for engaging in the liquefied petroleum gas business in Tenn. Comp. R. & Regs. 0780-02-17-.02.</p> <p>Paragraph (1) of this rule shall not be construed as adopting any provision of the cited publications which establishes : and optional or recommended, rather than mandatory, standard or practice; or, any agency, procedure, fees or penalties for administration or enforcement purposes inconsistent with the statute or rules.</p> <p>The National Electric Code (NEC), 2017 edition, published by the NFPA except that:</p> <ol style="list-style-type: none"> 1. Section 110.24, Available Fault Current shall be optional; and 2. Arc Fault Circuit Interrupters (AFCI's) shall be optional for bathrooms, laundry areas, garages, unfinished basements, which are portions or areas of the basement not intended as habitable rooms and limited to storage, work or similar area, and for branch circuits dedicated to supplying refrigeration equipment. 	<p>National Fire Protection Association 1 Batterymarch Park Quincy, Massachusetts 02269-9101 (800) 344-3555</p>
3.	<p>2016 Tennessee Elevator Code And its Supplements</p> <p>2016 Edition of Boiler and Unfired Pressure Vessel Inspection Law, Rules, and Regulations</p>	<p>TN Dept. of Labor and Workforce Development Div. of Boiler & Elevator Inspection Amusement Device Inspection 220 French Landing Drive Nashville, TN 37243-1006 (615) 741-2123</p>
4.	<p>ASHRAE Std 90.1-2010 Energy Standards for Buildings except Low-Rise Residential Buildings</p> <p>ASHRAE Std 90.2-2010 Energy-Efficient Design of New Low-Rise Residential Buildings</p> <p>ASHRAE Std 62.1-2010 Ventilation for Acceptable Indoor Air</p>	<p>American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) 1791 Tullie Circle NE Atlanta, Georgia 30329 (404) 636-8400</p>

5.	Rules of TN Dept. of Commerce & Insurance Ch 0780-2-1, Electrical Installations Ch 0780-2-2, Codes and Standards Ch 0780-2-3, Plans and Specs Review Ch 0780-2-18, Equitable Restrooms	Department of Commerce and Insurance Fire Prevention Division Codes Enforcement Section 3rd Floor Davy Crockett Tower 500 James Robertson Parkway Nashville, TN 37243-1162 (615) 741-2981
6.	2010 ADA Standards for Accessible Design	U.S. Department of Justice Civil Rights Division Disability Rights Section-NYA 950 Pennsylvania Avenue, NW Washington, DC 20530 (800) 514-4609
7.	Rules of TN Dept. of Environment & Conservation Ch 0400-40-02, Water Resources Regulations Ch 1200-01-18, Lead Based Paint Abatement Ch 1200-01-20, Asbestos Accreditation Requirements Ch 1200-03-09, General Requirements for Construction permits Ch 1200-03-11, Hazardous Air Contaminant Regulation	Tennessee Department of Environment and Conservation Water Pollution Control 312 Rosa L. Parks Avenue William R. Snodgrass Tennessee Tower Nashville, Tennessee 37243 (615) 532-0625

END OF SECTION

Schedule of Values
(ESCO may use AIA document in lieu of this form)

[illegible]

Performance Period Cash Flow

The ESCO shall provide the Performance Period Cash Flow using information from eProjectBuilder. The savings can never be negative and a surplus in one year cannot be carried forward to create positive cash flow in a subsequent year. Electronic copies shall be provided in excel spreadsheet format.

SECTION 01 29 76.13
PERSONNEL USED IN CONTRACT PERFORMANCE

PART 1 - GENERAL**1.01 ATTESTATION**

Contractor shall submit a completed and signed copy of this form with each Application for Payment during the period of this Contract.

Project Title & Number:	
Contractor Legal Entity Name:	

The Contractor, identified above, does hereby attest, certify, warrant, and assure 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 an illegal immigrant in the performance of this Contract.

Signature _____ Date _____

Name _____ Title _____

NOTICE: An individual empowered to contractually bind the Contractor MUST sign this attestation. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

END OF SECTION

Insert Exhibit I – Certificate of Insurance (Including Professional Errors and Omissions Liability Insurance)

CONTRACT BOND

TENNESSEE STATE BUILDING COMMISSION STANDARD FORM

BOND NO. _____

Know all men by these presents: that we

(hereinafter called the "Principal") and

hereinafter called the "Surety") do hereby acknowledge ourselves indebted and securely bound and held unto

(hereinafter called the "Owner"), and in the penal sum of

good and lawful money of the United States of America, for the use and benefit of those entitled thereto, for the payment of which, well and truly to be made, we bind ourselves, our heirs, our administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

But the condition of the foregoing obligation or bond is this:**Whereas,** the Owner has engaged the principal for the sum of

to complete the Work of the project titled:

as more fully appears in a written agreement or contract bearing the date of

a copy of which said agreement or contract is by reference hereby made a part hereof, as fully and to the same extent as if copied at length herein, and it is the desire of the Owner that the Principal shall assure all undertakings under said agreement or contract and shall assure and protect all laborers and furnishers of material on said Work both as provided by Tennessee Code Annotated Sections 4-15-102 (f)(2) and 12-4-201 through 12-4-206, and any and all amendments thereto, and shall assure the prompt payment of claims as provided by Tennessee Code Annotated Sections 12-4-207 through 12-4-208, and any and all amendments thereto. The Principal shall also comply with provisions of Tennessee Code Annotated Sections 12-4-401 through 12-4-415, and any and all amendments thereto, pertaining to the payment of the prevailing wage rate.

Now, therefore, if the Principal shall fully and faithfully perform all undertakings and obligations under the contract hereinbefore referred to and shall fully indemnify and hold harmless the Owner from all costs and damage whatsoever which it may suffer by reason of any failure on the part of the Principal to do so, and shall fully reimburse and repay the Owner any and all outlay and expense which it may incur in making good any such default, and shall fully pay for all of the labor, material and work used by the Principal and any immediate or remote sub-contractor or furnisher of material under him in the performance of said contract, in lawful money of the United States, as the same shall become due, then this obligation or bond shall be null and void, otherwise to remain in full force and effect.

And for value received, it is hereby stipulated and agreed that no change, extension of time, alteration or addition to the terms of the contract or to the Work to be performed thereunder or to the specifications accompanying the same shall in any wise affect the obligation under this bond, and notice is hereby waived of any such change, extension of time, alteration or addition to the terms of the contract or to the Work or to the specifications.

In witness whereof the Principal has hereunto affixed its signature and Surety has hereunto caused to be affixed its corporate signature and seal, by its duly authorized officers, on this _____ day of _____, 20____.

Executed in _____ counterparts.

Witness:

(name of Principal)

(name of Surety)

(authorized signature)

(signature of Attorney-in-fact)

(name of signatory)

(name of Attorney-in-fact)

(title of signatory)

(Tennessee license number of Agent or
Attorney-in-fact)

(countersignature of Agent
if not same as Attorney-in-fact)

Surety Company issuing bond shall be licensed to transact business in State of Tennessee by Tennessee 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 licensed by the State of Tennessee, and shall affix license number to bond; or, countersignature by a licensed agent of the State of Tennessee, and the agent's license number, shall be affixed to the bond in addition to the signature of the Attorney-in-Fact.

SECTION 01 91 13 - GENERAL COMMISSIONING REQUIREMENTS

PART 1 - GENERAL

1.1 ABBREVIATIONS

- A. The following are common abbreviations used in the Specifications and the Commissioning Plan.

A/E-	Architect and Design Engineers	PFC -	Pre-Functional Checklists (aka pre-functional test)
BAS-	Building Automation System	GC-	General Contractor (prime)
BoD-	Basis of Design	MC-	Mechanical Contractor
Cx-	Commissioning	O&M-	Operation and Maintenance
CxA-	Commissioning Authority	OPR-	Owner's Project Requirements
Cx Plan-	Commissioning Plan document	PM-	Project Manager (of the Owner)
CC-	Controls Contractor (Building Automation System Contractor)	FPT-	Functional Performance Test
CM-	Construction Manager	Subs-	Subcontractors (CC, EC, MC, TAB)
EC-	Electrical Contractor	TAB-	Test and Balance Contractor

1.2 DEFINITIONS

- A. Owner's Project Requirements (OPR) – also known as the design intent. A document that provides the explanation of the ideas, concepts and criteria that are considered to be very important to the Owner. It is initially the outcome of the programming and conceptual design phases.
- B. Basis of Design (BoD) – The basis of design is the documentation of the primary thought processes and assumptions behind design decisions that were made to meet the Owner's Project Requirements (OPR). The BoD describes the systems, components, conditions and methods chosen to meet the OPR. Some reiterating of the OPR may be included.
- C. Commissioning Authority (CxA) - The CxA coordinates the Cx activities.
- D. Commissioning Plan – an overall project specific plan developed by the CxA that helps provide direction for the Cx Process during construction.
- E. Pre-Functional Checklist (PFC) – tests of individual components of a system, including static inspections and procedures to prepare the equipment or system for initial operation (e.g., belt tension, oil levels OK, labels affixed, gauges in place, sensors calibrated, etc.). Also includes simple testing of the function of a component, a piece of equipment or system PFC's augment and are combined with the manufacturer's start-up checklist. PFCs are performed by the contractor and sub-contractors. The CxA requires that the procedures be documented in writing, and does not witness much of the equipment start-up, except for larger or more critical pieces of equipment.
- F. Functional Performance Test (FPT) - test of the dynamic function and operation of equipment and systems using manual (direct observation) or monitoring methods. Performance testing is the dynamic testing of systems (rather than just components) under full operation (e.g., the chiller pump is tested interactively with the chiller functions

to see if the pump ramps up and down to maintain the differential pressure setpoint). Systems are tested under various modes, such as during low cooling or heating loads, high loads, component failures, unoccupied, varying outside air temperatures, fire alarm, power failure, etc. The systems are run through all the control system's sequences of operation and components are verified to be responding as the sequences state. The CxA develops the FPT procedures in a sequential written form, coordinates, oversees and documents the actual testing, which is performed by the installing Contractor or vendor. FPTs are performed after the PFCs are complete.

- G. Seasonal Tests - tests that are deferred until the system(s) will experience outdoor weather conditions closer to their design conditions.

1.3 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 1 Specification Sections, apply to this Section.
- B. OPR and BoD documentation may be prepared by Owner and CxA to contain requirements that apply to this Section.

1.4 SCOPE

- A. Cx is a systematic process of ensuring that all building systems perform interactively according to the OPR and BoD that may be prepared. This is achieved by beginning in the design phase and documenting the OPR that may be prepared and continuing through construction, acceptance and the warranty period with actual verification of performance. The Cx process will encompass and coordinate the separate functions of system documentation, equipment start-up, control system calibration, testing and balancing, performance testing and training.
- B. Cx during the design phase is intended to achieve the following specific objectives according to the Contract Documents:
 1. Owner's Project Requirements (OPR) – The OPR document will be completed by the Owner and reviewed by the CxA for appropriateness, completeness and clarity.
 2. Commissioning Specifications – The CxA will provide specifications for General Commissioning Requirements and any relative discipline specific specification sections to the Owner and Designer to be included in the Bidding Contract Documents to allow for bidders to account for commissioning activities.
 3. Design Review – Provide design review of the project documents at the 95% Construction Document phases in a timely manner to evaluate compliance with the OPR, applicable codes, control sequence optimization, ease of maintenance, overall design objective and industry best practice. Project documents are to be received by the CxA in a searchable PDF format.
- C. Cx during the construction and acceptance phases is intended to achieve the following specific objectives according to the Contract Documents:
 1. Create Cx Plan with Narrative, PFCs, FPTs, and Schedule for distribution to the project team.
 2. Verify that applicable equipment and systems are installed according to the manufacturer's recommendations and to industry accepted minimum standards and that they receive adequate operational checkout by installing Contractors. (Contractors fill out CxA created PFCs)

3. Verify and document proper and energy/water efficient performance of equipment and systems. (CxA uses FPTs to document contractor demonstrating equipment functionality)
 4. Provide the Cx Final Report containing commissioning documents for the facilities records.
 5. Conduct opposed season functional testing to verify system performance in both the heating and cooling seasons.
 6. Chair 10 month warranty review meeting with owner and O&M staff to review any issues or problems that have occurred during occupancy before warranty expires.
 7. Amend Final Cx Report to include opposed season testing summary and 10-month warranty review meeting minutes.
- D. The following systems will be commissioned. All general references to equipment in this document refer only to equipment that will be commissioned.
1. Mechanical Systems
 - a. All HVAC equipment and systems related to facility control of the following: temperature/humidity control, and other miscellaneous control metrics.
 - b. Hydronic piping and ancillary equipment (installed properly and as specified in contract documents).
 - c. Ductwork (installed properly and as specified in contract documents)
 - d. Everything associated with the BAS and equipment including programming, control sequences, sensors, control devices and operational interface.
 - e. TAB (verify accuracy through sampling).
 2. Plumbing Systems
 - a. Domestic water heaters and associated pumps
 3. Electrical Systems
 - a. Electrical normal and emergency power systems
 - b. Lighting controls systems
 4. Building Envelope
 - a. Exterior Enclosure
- E. The Cx process does not take away from or reduce the responsibility of the Contractor to provide a finished and fully functioning project. Cx is essentially the process of observing and documenting that the equipment and systems operate and perform as intended.
- F. The Cx testing will be based upon the following reference standards: American Commissioning Group (ACG) (www.commissioning.org); ASHRAE Guideline 1.1-2007, HVAC&R Technical Requirements for the Commissioning Process.
- 1.5 COMMISSIONING AUTHORITY
- A. The CxA services will be provided by the Owner. The Contractor(s) are responsible to execute the Cx process according to this specification section.

1.6 ROLES AND RESPONSIBILITIES

- A. Cx Team: The members of the Cx team consist of the CxA, the PM, the designated representative of the owner's firm, the GC or Contractor, the A/E (particularly the mechanical engineer), the MC, the EC, the TAB representative, the CC, and any other installing subcontractors or suppliers of equipment. The Owner's building or plant operator/engineer and users are also integral members of the Cx team.
- B. The responsibilities of various parties on the Cx team are provided in this section and will be clarified in the Cx Plan. Roles and responsibilities listed in this spec for the A/E, CxA and PM are for informational purposes only.
- C. All Parties
 - 1. Follow the Cx Plan.
 - 2. Attend the Cx kick-off meeting and additional meetings, as necessary.
- D. Architect and Engineer (A/E)
 - 1. Design Phase
 - a. Provide if any OPR narrative documentation to the CxA.
 - b. Provide if any BoD narrative documentation to the CxA.
 - c. Respond to CxA drawing review comments.
 - 2. Construction and Acceptance Phase
 - a. Perform normal submittal review, construction observation, as-built drawing preparation, O&M manual preparation, etc., as contracted.
 - b. Coordinate resolution of system deficiencies identified during Cx, according to the Contract Documents.
 - c. Prepare and submit final as-built documentation for inclusion in the O&M manuals. Review and approve the O&M manuals.
 - 3. Warranty Period
 - a. Coordinate resolution of design non-conformance and design deficiencies identified during warranty period Cx.
- E. Commissioning Authority (CxA)
 - 1. General: The CxA is not responsible for design concept, design criteria, compliance with codes, design or general construction scheduling, cost estimating, or construction management. The CxA may assist with problem solving, non-conformance or deficiencies, but ultimately that responsibility resides with the GC and the A/E. The primary role of the CxA is to develop and coordinate the execution of a testing plan, observe and document that systems are functioning and performing in accordance with the Contract Documents. The Contractors shall provide all tools or the use of tools to start, checkout and test equipment and systems, including specified testing with portable data-loggers.
 - 2. Design Phase
 - a. Verify the A/E documented OPR requirements if any.
 - b. Provide Cx specifications for general commissioning and any relative discipline specific specifications sections.

- c. Conduct design reviews at the 95% construction document phase.
- 3. Construction and Acceptance Phase
 - a. Help coordinate the Cx activities in a logical, sequential and efficient manner using consistent protocols and forms, centralized documentation, clear and regular communications and consultations with all necessary parties, frequently updated timelines and schedules and technical expertise.
 - b. Create and revise the project's Cx Plan document
 - c. Plan and conduct Cx meetings including but not limited to the Cx Kick-Off meeting.
 - d. Before start-up, gather and review the current control sequences and interlocks and work with Contractors and design engineers until sufficient clarity has been obtained, in writing, to be able to write detailed testing procedures.
 - e. The CxA makes periodic visits to the site, as necessary, to witness and observe equipment and system installations.
 - f. Write and distribute PFCs and FPTs.
 - g. Execute Cx field visits and distribute Cx field reports
 - h. Maintain and distribute Cx Issues Log (CIL)
 - i. Review Equipment Startup Checklists
 - j. Review and spot check contractor executed PFCs
 - k. Review air and water systems balancing by spot testing, by reviewing completed reports and by selected site observation. CxA will select, at random, a minimum of 10% of TAB report for spot testing. CxA will schedule and observe spot testing and will increase the sampling rate as necessary. TAB shall provide personnel and equipment/instruments to perform tests. The TAB contractor shall use the same equipment/instruments (by model and serial number) that were used when original data in report were collected. Any reading that deviates more than 10% from the design values shall result in rejection of the final TAB report.
 - l. Document functional testing on FPT forms
 - m. Provide a final Cx report.
 - n. Conduct opposed season testing
- 4. Warranty Period
 - a. Return to the site at 10 months into the 12 month warranty period and review with facility staff the current building operation and the condition of outstanding issues related to the original and seasonal Cx. Also interview facility staff and identify problems or concerns they have operating the building as originally intended. Make suggestions for improvements and for recording these changes in the O&M manuals. Identify areas that may come under warranty or under the original construction contract. Assist facility staff in developing reports, documents and requests for services to remedy outstanding problems.

- b. Provide amended final Cx report
- F. Construction Manager or General Contractor
 - 1. Construction and Acceptance Phase
 - a. Facilitate the coordination of the Cx work by the CxA, and ensure that Cx activities are being scheduled into the master project schedule.
 - b. Follow the Cx Plan.
 - c. Furnish a copy of all construction documents, addenda, change orders, approved submittals and shop drawings and O&M manuals related to commissioned equipment to the CxA.
 - d. Review the test procedures submitted by the CxA.
 - e. Provide completed construction checklists to the CxA for installation verification (PFCs and FPTs).
 - f. Sign off on completed PFCs and FPTs for all equipment and systems, prior to CxA witnessing testing.
 - g. Coordinate the resolution of non-compliance deficiencies identified in all phases of Cx with the various Contractors.
 - h. Coordinate and provide for the training of Owner personnel.
 - i. In each purchase order or subcontract written, include requirements for submittal data, Cx tasks and training.
 - j. Ensure that all subcontractors execute their Cx responsibilities according to the Contract Documents and schedule.
 - k. Prepare O&M manuals, according to the Contract Documents, including clarifying and updating the original sequences of operation to as-built conditions.
 - 2. Warranty Period
 - a. Assist the CxA as necessary in the seasonal or deferred testing and deficiency corrections required by the specifications.
- G. Mechanical and Electrical sub-contractors
 - 1. Include scope to complete Cx requirements for mechanical and electrical systems in the contract price.
 - 2. Ensure cooperation and participation of specialty subcontractors. This includes ensuring TAB shall be available for spot testing with CxA.
 - 3. Ensure participation of major equipment manufacturers in appropriate training and testing activities.
 - 4. Prepare schedule for mechanical and electrical system Cx related activities. Include time in the project schedule for equipment start-up, PFCs, and FPTs. Include time for resolution of deficiencies found during Functional and Performance tests.
 - 5. Sign off on completed PFCs and FPTs for all equipment and systems, prior to CxA witnessing testing.

6. Executing the Functional and Performance tests while the CxA witnesses and documents.
- H. Owner's Project Manager (PM)
1. Provide OPR information to commissioning team as is available.
 2. Arrange for facility operating and maintenance personnel to attend various field Cx activities and field training sessions according to the Cx Plan.
- I. Controls Contractor (or mechanical contractor if there is not a separate CC)
1. Include scope for Cx requirements in the contract price. The CC shall execute most of the Division 23 Functional and Performance testing.
 2. Review the PFCs and FPTs developed by the CxA to ensure that control system points are in place to execute the tests. Recommend test revisions to streamline or improve the test procedures
 3. Demonstrate building automation system performance to CxA during the Functional and Performance tests including all modes of system operation and explanation/definition of variable names for each piece of equipment and each system.
 4. Provide controls system technician, intimately familiar with the system, for use during execution of the Functional and Performance testing.

1.7 COMMISSIONING RESPONSIBILITY MATRIX

- A. General: The following responsibility matrix outlines the major tasks of the Cx process and the parties responsible to carry out the tasks. In general the CxA writes the tests and documents the test results. The Contractors are responsible to execute the tests. The CC is typically responsible for the majority of the mechanical test execution. If there is not a separate CC, the mechanical contractor shall be responsible for all scope designated to the CC in this specification.

Task / Action	Responsibility						
	CxA	Owner/ Arch	EOR	CM/GC	EC & MC	CC	TAB
Cx Kickoff Meeting. - Early to mid-construction phase.	Lead	Attend	Attend	Attend	Attend	Attend	Attend
Write Pre-Functional Checklists (PFC)	Write	Review	Review	Review	Review	Review	N/A
Write Functional Performance Tests (FPTs)	Write	Review	Review	Review	Review	Review	Review
Review and refine PFCs and FPTs	Refine	Review	Review	Review	Review	Review	Review
CxA visit site to review progress and document	Observe, Document	Review	Review	Coordinate, Review	Participate Review	Participate Review	Participate Review
Pre-Functional Checklists Execution (PFCs)	Verify	Review	Review	Verify	Complete	Assist	N/A
Test and Balance Verification	Verify, Document	Review	Review	Schedule	Participate	Participate	Execute
Functional Performance Testing Execution (FPTs)	Observe, Document	Observe	Observe	Schedule	Participate	Execute	Participate
Cx Issues Log (CIL)	Write	Review	Review	Verify Resolution	Correct	Correct	Correct
Deferred Functional Performance	Observe,	Observe	Observe	Schedule	Participate	Execute	Participate

Tests Summer/Winter tests for sequences.	Document						
Final Cx Report	Write	Review	Review	Review	N/A	N/A	N/A
Cx 10 Month Warranty Review	Coordinate, Chair	Attend	Attend	Coordinate, Attend	Attend	Attend	N/A

1.8 COMMISSIONING PROCESS

A. The following narrative provides a brief overview of the typical Cx tasks during construction and the general order in which they occur.

1. Cx during construction begins with a kick-off meeting conducted by the CxA where the Cx process is reviewed with the Cx team members.
2. Additional site visits and meetings shall be required throughout construction, scheduled by the CxA with necessary parties attending, to plan, scope, coordinate, schedule future activities, resolve issues and verify installation.
3. Equipment documentation is submitted to the CxA during normal submittals, including detailed start-up procedures.
4. The subcontractors develop startup plans and startup documentation/checklists to be completed, during the startup process.
5. The CxA uses submittals and shop drawings to develop specific equipment and system PFCs and FPT procedures. The subcontractors review the procedures.
6. The subcontractors, under their own direction, perform startup and initial checkout. The subcontractors shall provide documentation/checklists from the start-up process to the CxA.
7. Testing, adjusting and balancing is performed by TAB and verified by the CxA.
8. The PFC procedures are executed by the Subs, under the observation of, and reviewed by the CxA. The Subs resolve PFC deficiencies prior to performance testing.
9. The FPT procedures are executed by the Subs, under the observation of, and documented by the CxA. The subs resolve any deficiencies.
10. Items of non-compliance in material, installation or setup are corrected at the subcontractor's expense and the system retested.
11. The O&M documentation is completed.
12. Cx is completed before Substantial Completion.
13. Owner training is provided by the subcontractors.
14. Seasonal or deferred testing is conducted, as specified or required. The Subs resolve any deficiencies.

PART 2 - PRODUCTS

2.1 TEST EQUIPMENT

- A. All standard testing equipment required to perform startup and initial checkout and required functional and performance testing shall be provided by the contractor or sub-contractor for the equipment being tested.
- B. All testing equipment shall be of sufficient quality and accuracy to test and/or measure system performance with the tolerances specified in the *Specifications*. If not otherwise noted, the following minimum requirements apply:
 - 1. Temperature sensors and digital thermometers shall have a certified calibration within the past year to an accuracy of 0.5°F and a resolution of + or - 0.1°F.
 - 2. Pressure sensors shall have an accuracy of + or - 2.0% of the value range being measured (not full range of meter) and have been calibrated within the last year.
 - 3. All equipment shall be calibrated according to the manufacturer's recommended intervals and when dropped or damaged.
 - 4. Calibration tags shall be affixed or certificates readily available.

PART 3 - EXECUTION

3.1 SUBMITTALS

- A. The GC shall provide submittals for all equipment to be commissioned to the CxA. At a minimum, the submittals shall include the manufacturer and model number, the manufacturer's printed installation and detailed start-up procedures, full sequences of operation, O&M data, performance data and control drawings. In addition, the installation and checkout materials that are actually shipped inside the equipment and the actual field checkout sheet forms to be used by the factory or field technicians shall be submitted to the CxA. All documentation requested by the CxA shall be included by the subcontractors in their O&M manual contributions.
- B. The CxA may review submittals related to the commissioned equipment for conformance to the Contract Documents as it relates to the Cx process, to the functional performance of the equipment and adequacy for developing test procedures. This review is intended primarily to aid in the development of functional testing procedures and only secondarily to verify compliance with equipment specifications. The CxA will notify the CM, PM or A/E as requested, of items missing or areas that are not in conformance with Contract Documents and which requires resubmission.
- C. These submittals to the CxA do not constitute compliance for O&M manual documentation. The CxA may request additional design narratives from the A/E and from the Subs depending on the clarity of the bid document information. The O&M manuals are the responsibility of the Contractor, though the CxA will review and approve them

3.2 COMMISSIONING PLAN

- A. The purpose of the Cx Plan is to help provide direction for the Cx Process during construction. This includes providing resolution for issues and providing details that cannot or were not fully developed during design (such as scheduling, participation of various parties of this particular project, actual lines of reporting and approvals, coordination, etc.). The CxA will submit a preliminary Cx Plan to the Cx Team for review near 30% construction progress. The preliminary Cx Plan will include the following:
 - 1. Brief overview of the Cx process

2. List of all systems to be commissioned
3. Identification of the Cx Team and its responsibilities
4. Overview of the Cx process
5. Indicate expected work products
6. Schedule indicating key commissioning process milestones

3.3 TEST METHODS

- A. Functional performance testing and verification may be achieved by manual testing (persons manipulate the equipment and observe performance) or by monitoring the performance and analyzing the results using the control system's trend log capabilities or by stand-alone data-loggers. The CxA will determine which method is most appropriate.
- B. Simulated Conditions. Simulating conditions (not by an overwritten value) will be allowed, though timing the testing to experience actual conditions is encouraged wherever practical.
- C. Overwritten Values. Overwriting sensor values to simulate a condition, such as overwriting the outside air temperature reading in a control system to be something other than it really is, will be allowed, but shall be used with caution and avoided when possible. Such testing methods often can only test a part of a system, as the interactions and responses of other systems will be erroneous or not applicable. Simulating a condition is preferable. e.g., for the above case, by heating the outside air sensor with a hair blower rather than overwriting the value or by altering the appropriate setpoint to see the desired response. Before simulating conditions or overwriting values, sensors, transducers and devices shall have been calibrated.
- D. Simulated Signals. Using a signal generator which creates a simulated signal to test and calibrate transducers and DDC constants is generally recommended over using the sensor to act as the signal generator via simulated conditions or overwritten values.
- E. Altering Setpoints. Rather than overwriting sensor values, and when simulating conditions is difficult, altering setpoints to test a sequence is acceptable. For example, to see the AC compressor lockout work at an outside air temperature below 55F, when the outside air temperature is above 55F, temporarily change the lockout setpoint to be 2F above the current outside air temperature.
- F. Indirect Indicators. Relying on indirect indicators for responses or performance will be allowed only after visually and directly verifying and documenting, over the range of the tested parameters, that the indirect readings through the control system represent actual conditions and responses. Much of this verification is completed during equipment start-up.
- G. Setup. Each function and test shall be performed under conditions that simulate actual conditions as close as is practically possible. The subcontractor executing the test shall provide all necessary materials, system modifications, etc. to produce the necessary flows, pressures, temperatures, etc. necessary to execute the test according to the specified conditions. At completion of the test, the subcontractor shall return all affected building equipment and systems, due to these temporary modifications, to their pre-test condition.
- H. Sampling. Multiple identical pieces of non-life-safety or otherwise non-critical equipment may be functionally and performance tested using a sampling strategy as determined by the CxA. Significant application differences and significant sequence of operation

differences in otherwise identical equipment invalidates their common identity. A small size or capacity difference, alone, does not constitute a difference.

3.4 NON-CONFORMANCE

- A. The CxA will verify the Pre-Functional Checklists are being completed and record the results of the Functional Performance Tests. All deficiencies, non-conformance issues, or test failures will be noted and reported to the Contractors on the Cx Issues Log.
- B. Corrections of minor deficiencies identified may be made during the tests at the discretion of the CxA. In such cases the deficiency and resolution will be documented on the procedure form.
- C. Every effort will be made to expedite the testing process and minimize unnecessary delays, while not compromising the integrity of the procedures. However, the CxA will not be pressured into overlooking deficient work or loosening acceptance criteria to satisfy scheduling or cost issues, unless there is an overriding reason to do so at the request of the Owners Representative.
- D. Re-testing.
 - 1. If a Pre-functional or Functional Test fails, corrections shall be made to the deficient equipment or systems by the Contractors. The systems will be re-tested until they pass the tests.
 - 2. The time/cost for the CxA to perform any re-testing required because of improper set up of the systems by the contractors or failed pre-functional or functional tests will be back-charged to the General Contractor, who may choose to recover costs from the party responsible for executing faulty equipment start-up/checkout and associated checklists. This includes instances where a specific item was overlooked in the equipment start-up and checkout procedures, reported to have been successfully completed, but determined during Prefunctional or Functional testing to be faulty.
 - 3. Any required re-testing by any Contractor shall not be considered a justified reason for a claim of delay or for a time extension by the Prime Contractor.

3.5 EQUIPMENT START-UP & PRE-FUNCTIONAL CHECKLISTS (PFC)

- A. After the equipment is installed and powered, the contractor shall perform a formal equipment start-up and system verification procedure. PFC checklists are completed by the Contractors to ensure equipment and systems are installed, tested, and fully operational prior to proceeding with Functional Performance Testing. Each piece of equipment is required to have a start-up form filled out by the Contractor. No sampling strategies are allowed. Proper equipment start-up must be successfully completed prior to Functional Performance Testing of that equipment/system.
- B. The contractor shall submit a plan and schedule for equipment start-up, and submit the project specific Equipment Start-up checklists. The CxA will review and approve the Start-up checklists prior to the contractor performing equipment start-up.
- C. Objectives and Scope. The objective of pre-functional checklists and functional performance tests are to demonstrate that each piece of equipment is installed and operating properly according to the Contract Documents with respect to safety devices, thermostats, valves, control wiring, etc. During the testing process, areas of deficient operation or performance will be identified to be corrected.

- D. Specific installation checklists, Pre-Functional Checklists PFCs, will be developed by the CxA during the Construction Phase and will include (but not be limited to) the following information:
 - 1. System and equipment or component name(s)
 - 2. Specific sections for installation and start-up requirements to be verified.
 - 3. Clearly identified location for sign off using the date the installation or start-up section was verified.
 - 4. A section to identify any notes related to a specific check, and a comments section.
- E. The Contractor shall submit completed PFC checklists to the CxA for record documentation.
- F. PFC's must be submitted for all scheduled mechanical and electrical equipment that are part of the "systems to be commissioned".

3.6 FUNCTIONAL PERFORMANCE TESTING

- A. The CxA will observe and document the functional testing near the end of the project. Before the overall system performance can be tested, it is necessary to ensure that each "component" of the system be tested and deficiencies resolved to prove that it is set-up and adjusted to work within intended ranges.
- B. Objectives and Scope. The objective of Functional Performance Testing is to demonstrate that each system is operating according to the Contract Documents with respect to capacity and optimum energy efficiency. During the testing process, areas of deficient performance are identified to be corrected by the Contractors, improving the operation, functioning, and efficiency of the systems. In general, each system should be operated through all modes of operation (seasonal, occupied, unoccupied, warm-up, cool-down, part- and full-load) where there is a specified system response. Verifying each sequence in the sequences of operation is required. Proper responses to such modes and conditions as power failure, freeze condition, low oil pressure, no flow, equipment failure, etc., shall also be tested.
- C. The purpose of any given specific FPT is to verify and document compliance with the stated criteria of acceptance given on the test form. The FPT procedures will be written in simple verified/not verified format.
- D. Development of Test Procedures. Before test procedures are written, the CxA will obtain project contract documentation and a current list of change orders affecting equipment or systems, including an updated points list, program code, control sequences and parameters. The CxA will develop specific test procedures and forms to verify and document proper operation of each piece of equipment and system. Prior to execution, the CxA will provide a copy of the test procedures to the Contractors who shall review the tests for feasibility, safety, equipment and warranty protection.
- E. Specific test forms will be developed by the CxA during the Construction/Acceptance Phase and will include (but not be limited to) the following information:
 - 1. System and equipment or component name(s)
 - 2. Instructions for setting up the test.
 - 3. Special cautions, alarm limits, etc.

4. Specific step-by-step procedures to execute the test, in a clear, sequential and repeatable format
 5. Acceptance criteria of proper performance with a Verified/Not Verified check box for the date witnessed to allow for clearly marking whether or not proper performance of each part of the test was achieved.
 6. A section to identify any notes related to a specific test, and a comments section.
- F. The contractor and sub-contractor will perform all tests and the CxA shall witness tests as indicated above. The contractor shall be responsible for any damages resulting from equipment start-up or testing.

3.7 DOCUMENTATION

- A. Equipment Start-up / Pre-Functional Checklists (PFCs). The Contractor shall use a checklist type form during the start-up of each piece of equipment and submit to the CxA when complete. The Pre-Functional Checklists will be included in the Final Cx Report as a record that the equipment was started up and operating per the Contractors expectations.
- B. Functional Performance Tests (FPTs). The CxA will provide a performance test for each piece of equipment or system. The forms will be filled out during the on-site tests. The pass/fail criteria will be included on the FPT forms. If the systems fail the test, a deficiency list will be prepared for the Contractor outlining the failure. After the Contractors have addressed the deficiency, the CxA (or Contractors with Owners representative) will execute the FPT's again.
- C. Deficiency List. The CxA will document any non-conformance deficiencies observed during site visits, or during tests. The deficiency list will be distributed by the A/E.
- D. Field Visit Reports. Will be generated at the conclusion of each field visit and will indicate the purpose of the visit and all noted items during the visit including construction progress and identified deficiencies.
- E. Final Cx Report. The CxA will prepare a final report summarizing the Cx activities, the PFCs, the FPTs, the field reports, and the current Cx Issues Log. The final report will be submitted to the Owner and Facility Representative.

3.8 DEFICIENCIES AND RETESTING

- A. The CxA documents the results of each test. (Corrections of minor installation or sequence of operation deficiencies are made during tests at the discretion of CxA.)
- B. Deficiencies/non-conformance issues not corrected during testing are reported to the Contractors for corrective action. Upon completion, a request is made by the Contractors to CxA for retest.

3.9 DEFERRED TESTING

- A. Unforeseen Deferred Tests. If any Test cannot be completed due to the building structure, required occupancy condition or other deficiency, execution of Testing may be delayed upon approval of the Owner. These tests will be conducted in the same manner as the seasonal tests as soon as possible. Services of necessary parties due to unforeseen deferred testing will be negotiated.
- B. Seasonal Testing. During the warranty period, seasonal testing (tests delayed until weather conditions are closer to the system's design) shall be completed as part of this contract at no additional cost. The Contractors shall coordinate this activity. Tests shall

be executed, documented and deficiencies corrected by the Contractor, with facilities staff and the CxA witnessing.

3.10 MEETINGS

A. Kick-off Meeting

1. A Cx kick-off meeting is planned and conducted by the CxA near 30% construction progress. The CxA will distribute a preliminary Cx Plan. In attendance are the respective representatives of the GC, CxA, PM, A/E, MC, EC, CC and TAB. At the meeting, Cx parties are introduced and the Cx process reviewed, management and reporting lines determined. The flow of documents, how much submittal data the CxA will receive, etc., are also discussed. The Cx Plan is reviewed, process questions are addressed, lines of reporting and communications determined and the work products list discussed. Also covered are the general list of each party's responsibilities, who is responsible to develop the start-up checklist for each piece of equipment and the proposed Cx schedule. The outcome of the meeting is increased understanding by all parties of the Cx process and their respective responsibilities. The meeting provides the CxA additional information needed to finalize the Cx Plan.
2. Prior to or during this meeting, the GC shall provide all drawings and specifications and the construction schedule by trade to the CxA. The CxA keeps notes from the meeting and distributes them to each team member.

B. TAB Process Review Meeting

1. A Cx TAB process review meeting may be planned and conducted by the CxA prior to TAB work beginning. In attendance are the respective representatives of the GC, CxA, PM, MC, EC, CC and TAB. At the meeting, Cx parties are re-introduced to the Cx process pertaining to TAB verification and execution. The TAB document requirements, procedures, and schedule are discussed with the Cx team.

C. Cx Pre-FPT Meeting

1. A Cx Pre-FPT review meeting may be planned and conducted by the CxA prior to functional testing. In attendance are the respective representatives of the GC, CxA, PM, MC, EC, CC and TAB. At the meeting, Cx parties are re-introduced to the Cx process pertaining to functional performance testing and documentation. The FPTs procedures and schedule are discussed with the Cx team.

- #### D. Progress Meetings.
- Meetings will be planned and conducted by the CxA at appropriate intervals as construction progresses. These meetings will cover coordination, deficiency resolution and planning issues with the Contractor(s). The CxA will plan these meetings in conjunction with regular project meetings to minimize unnecessary travel time.

3.11 PROJECT COMPLETION SCHEDULE

- A. The Cx Functional Performance Tests are executed at the end of the project after the Contractors have completed their work. It is possible to execute some tests, on completed systems, prior to final project completion. In general, the Cx tests are scheduled for AFTER the TAB is complete and the controls contractor has completed the graphics in the building automation system. The Cx tests typically occur before the contractor requests the substantial completion milestone.
- B. The FPTs are typically executed during a few consecutive days at a time. A deficiency list is prepared and given to the contractors for remediation. It typically takes a week or

two to address the deficiencies. Follow-up Functional Performance Tests will be scheduled after the contractors report that the deficiency list is complete.

- C. The contractors should expect the Cx testing/deficiency identification and contractor remediation time period to span a month or two. The Owner/Contractor may agree to occupy the building during the Cx timeframe; however, this action may extend the Cx time frame due to scheduling difficulties encountered with shutting systems down or accessing equipment in an occupied building.
- D. Retainage will not be released until Cx is successfully completed.

3.12 O&M MANUALS

- A. Single Line System Diagrams. The contractor shall provide simplified professionally drawn single line system diagrams on 8 ½" x 11" or 11" x 17" sheets. These shall include chillers, water system, supply air systems, heat recovery and exhaust systems. These shall show major pieces of equipment such as pumps, chillers, boilers, control valves, expansion tanks, coils, service valves, etc. In some cases, the single line control diagrams submitted by the controls contractor can suffice if updated to as-built status and approved by the Owner for this purpose.
- B. CxA Review. Prior to substantial completion, the CxA may review the O&M manuals, documentation and redline as-builts *for systems that were commissioned* to verify compliance with the *Specifications*. The CxA will communicate deficiencies in the manuals to the CM, PM or A/E, as requested. Upon a successful review of the corrections, the CxA recommends approval and acceptance of these sections of the O&M manuals to the CM, PM or A/E. The CxA also reviews each equipment warranty and verifies that all requirements to keep the warranty valid are clearly stated. This work does not supersede the A/E's review of the O&M manuals according to the A/E's contract.

3.13 TRAINING AND ORIENTATION OF OWNER PERSONNEL

- A. The GC shall be responsible for training, including coordination and scheduling and ultimately for ensuring that training is completed.
- B. The CxA may review the content and adequacy of the training of Owner personnel for commissioned equipment.
- C. The GC and Owner should interview the facility manager and lead engineer to determine the special needs and areas where training will be most valuable. The Owner, and GC shall decide how rigorous the training should be for each piece of commissioned equipment. The GC shall communicate the results to the subcontractors and vendors who have training responsibilities.
- D. In addition to these general requirements, the specific training requirements of Owner personnel by subcontractors and vendors are specified in Division 22, 23, and 26.
- E. Each subcontractor and vendor responsible for training shall submit a written training plan to the GC and Owner for review and approval prior to training. The plan shall cover the following elements:
 - 1. Equipment (included in training)
 - 2. Intended audience
 - 3. Location of training
 - 4. Objectives

5. Subjects covered (description, duration of discussion, special methods, etc.)
 6. Duration of training on each subject
 7. Instructor for each subject
 8. Methods (classroom lecture, video, site walk-through, actual operational demonstrations, written handouts, etc.)
 9. Instructor and qualifications
- F. For the primary HVAC equipment, the Controls Contractor shall provide a short discussion of the control of the equipment during the mechanical or electrical training conducted by others.
- G. The GC develops an overall training plan and coordinates and schedules, with the CM, the overall training for the commissioned systems. The CxA may develop criteria for determining that the training was satisfactorily completed, including attending some of the training, etc.
- H. The mechanical design engineer will at the first training session present the overall system design concept and the design concept of each equipment section. This presentation will be 2 hours in length and include a review of all systems using the simplified system schematics (one-line drawings) including chilled water systems, heat rejection systems, supply air systems, exhaust system and outside air strategies.

- END OF SECTION -
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SECTION 01 79 00
DEMONSTRATION AND TRAINING

PART 1 - GENERAL**1.01 COORDINATION**

- A.** Coordinate schedule of demonstration and training with Designer and Owner's personnel for all installed equipment and systems.
- B.** If conditions (such as season of year) do not allow for a complete demonstration or training of equipment and systems operation during one meeting session; then coordinate a schedule that shall provide a sufficient number sessions within the warranty period.

1.02 SUBMITTALS

- A.** Submit an agenda for instruction of Owner's personnel on installed equipment to Designer not less than one week prior to the scheduled instruction. State number of hours of training time to be provided for each agenda item. State the names and qualifications of persons to provide instruction.
- B.** For each training event performed, submit two DVD copies documenting the training event with Project Data Binders. Submit each DVD in a standard protective hard plastic container. Label both the DVD *and* the container to include the full project title and short description of training documented.
- C.** Submit lists of persons witnessing equipment and systems demonstration, and persons receiving operating instruction. Include copy of lists in the Project Data Binders.
- D.** Submit lists of spare materials and parts furnished to Owner. Include on lists a written assertion of receipt by Owner's personnel responsible for receiving the materials and parts.
- E.** Submit lists of Contractor's Service Personnel who are to be contacted if problems arise with installed equipment or systems. Personnel named must be familiar with installed equipment and systems. Submit updated lists through the duration of the Warranty period, as needed, if Contractor's Service Personnel changes.

PART 2 - PRODUCTS**2.01 DVD's shall be:**

- A.** Format: Provide "Standard DVD" format, and
- B.** Grade: Provide "Standard DVD" grade.

PART 3 - EXECUTION**3.01 GENERAL**

- A.** Conduct initial demonstration and training as soon as practicable upon installation, and prior to Substantial Completion inspection.
- B.** Substantial Completion shall not be certified, nor shall Owner be required to assume responsibility for operating, maintaining, or insuring system, prior to initial demonstration and training.

3.02 DEMONSTRATION

- A.** Demonstrate operation of installed equipment and systems to Designer and to Owner's representative. All dependent systems must be demonstrated as being operationally coordinate (such as energy management controls coordinate with mechanical equipment.)

- B.** Demonstration shall be complete and detailed; referencing manufacturer's printed operating and maintenance instructions, and evidencing all required design specifications.

3.03 TRAINING

- A.** All training shall be specific to the actual-installed equipment and systems, and be performed by persons approved by equipment manufacturer(s) and/or approved by Designer to conduct such training.
- B.** Instruct Owner's personnel with overall equipment and systems assembly and function; using assembly drawings and diagrams which are specific to the actual-installed equipment and systems.
- C.** Instruct Owner's personnel in operation, adjustment, and maintenance of equipment and systems; using the manufacturer's printed operating and maintenance data that is specific to the actual-installed equipment and systems as the basis of instruction.
- D.** Verify that Owner's personnel has received all spare materials and parts required to be furnished, and provide instruction in replacement procedures.
- E.** Record the entire training event
 - 1.** Upon initiating recording of an event, camera operator shall announce as a part of the sound recording the date, time, and event being recorded. Operator may take full liberty to provide a narration of the event being recorded.
 - 2.** Recording shall be of sufficient quality to provide overall undistorted shading, contrast and focus, and to provide an adequate degree of magnitude so that the event being recorded can be clearly discerned by the viewer.
 - 3.** Upon Designer approval, an equipment manufacturer-prepared training DVD which complies to the requirements of this section may be substituted in lieu of recording the actual training session provided for that particular equipment.
- F.** Approximately thirty days from initial training event, and subsequent other training events, if required, provide a follow-up training event with Owner's personnel; addressing questions and concerns which have arisen since the initial training (no recording is required).

END OF SECTION

PROJECT METRICS REPORT FOR THE STATE

A Project Metrics Report shall be submitted to the State as data is initially available and updated when the ESPC is signed, when modifications are signed, at the acceptance of the ESPC work, during the M&V work, and at the end of each reporting period if information is requested by the State. Submission of this report is a minimum requirement for and will be completed electronically as per the State's instructions. This information is critical to the State's ability to monitor projects and communicate results to the state legislature.

The Project Metrics Report shall include, but is not limited to, the following:

- a. Project name;
- b. State contact, including: name, title, email address, and phone number;
- c. ESCO contact, including: name, title, email address, and phone number;
- d. Project status:
 - i. In initial discussions;
 - ii. IGA and ESPC Project Proposal Agreement signed;
 - iii. ESCO IGA and ESPC Project Proposal started;
 - iv. ESCO IGA and ESPC Project Proposal completed;
 - v. ESPC signed;
 - vi. ESPC in Design;
 - vii. ESPC in Construction;
 - viii. ESPC M&V; and
 - ix. Project closed;
- e. Total square footage;
- f. Number of buildings included;
- g. Date of IGA and ESPC Project Proposal Agreement signed (Electronic copies submitted to the State);
- h. Date of ESCO IGA and ESPC Project Proposal completed;
- i. Date of ESPC signed (Electronic copies submitted to the State);
- j. List of energy conservation measures;
- k. Length of financing term or length of time needed to payback EPC if self-funded;
- l. Baseline energy use and cost data, including: electrical energy use as kWh and kW, electrical energy cost as \$/kWh and \$/kW, fuel type, fuel use and cost, water use and cost, and operation and maintenance costs;
- m. Projected energy use and cost data post-ESPC, including: electrical energy usage as kWh and kW, electrical energy cost as \$/kWh and \$/kW, and cost, water use and cost, operation and maintenance costs, and lifetime cost savings;
- n. Construction cost (initial and revised as necessary);
- o. Date construction completed;
- p. Total project cost (initial and revised as necessary), and
- q. Projected and actual energy savings as kW, kWh and therms per energy conservation measure.

Other information may be identified and required by the State in order to meet the requirements of the State.

Insert Exhibit N – IGA & ESPC Project Proposal Agreement

Insert Exhibit O – ESPC Project Proposal