



AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:for:

Work for The University of Tennessee
(Name and location or address) Section 00 72 13
October 2013

THE OWNER:

(Name, legal status and address)
The University of Tennessee

THE ARCHITECT: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.

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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 requirements.

§ 1.1.1.1 Presentation by Owner of an unexecuted Agreement or Modification does not constitute a commitment by Owner to execute the subject document and does not provide Owner authorization to any person or entity to proceed as if subject document will be executed. Contract shall not be considered awarded prior to receipt of a fully executed Agreement.

§ 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.

§ 1.1.6 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 and certify termination of the Agreement under Section 14.2.2.~~

§ 1.1.9 THE PROJECT MANUAL

The Project Manual is a volume or set that may include portions of the Contract Documents and other documents.

§ 1.1.10 PROVIDE OR PROVIDED:

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

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

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

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

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

§ 1.3 CAPITALIZATION

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

§ 1.4.2 In the event that any provision(s) in any component parts of the Contract Documents conflict(s) with any provision(s) of any other component part, the following declining order of precedence between Contract Document component parts shall govern:

- .1 Written Modifications to the Contract
- .2 Owner-Contractor Agreement
- .3 Addenda
- .4 Specifications
- .5 General Conditions of the Contract for Construction
- .6 Drawings with drawings of larger scale taking precedence over drawings of smaller scale and over schedules shown on drawings
- .7 Contract Bond
- .8 Bid Form
- .9 Instructions to Bidders
- .10 Invitation to Bid

§ 1.4.3 In the event there is a conflict between or among any provisions within one of the component parts of the Contract Documents, the higher standard or the more stringent requirement shall apply and govern.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect-Designer and the Architect's Designer's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights, of their respective Instruments of Service. The Contractor,

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Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of ~~the Architect's or Architect's consultants'~~ reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use ~~and reproduce~~ the Instruments of Service provided to them 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 material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect-Designer and the Architect's-Designer's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

~~If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they -Contractor intends to transmit Instruments of Service in digital form, it shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.~~

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~~ representative in accordance with State Building Commission (SBC) policy.

§ 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.~~ project is not subject to mechanics liens under Tennessee State law.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 ~~Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor. The SBC project number constitutes verification that funding has been established as a matter of public record.~~

§ 2.2.2 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.

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

§ 2.2.4 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.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. The Contractor will be furnished, free of charge, fifteen (15) copies of Drawings and Project Manuals, and will be furnished as many additional copies as it may require, at cost of reproduction and handling.

§ 2.3 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 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.

§ 2.4 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 written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.~~ § 2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to fulfill requirements of Contract, then Owner may, after ten (10) days written notice to Contractor and without prejudice to any other remedy that Owner may have, perform or complete the Work and deduct costs in accordance with Section 2.4.3.

§ 2.4.2 If the Contractor fails to complete the Work in accordance with the time limit stipulated in the Certificate of Substantial Completion, then Owner may take over the completion of Work without advance notice to Contractor and without prejudice to any other remedy that Owner may have.

§ 2.4.3 In such cases as described in Sections 2.4.1 and 2.4.2, appropriate Modification will be issued deducting from the Contract Sum the reasonable cost of correcting such deficiencies or completing such Work, regardless of whether Owner actually undertakes completing such Work, in which case the deduction shall be based on the Designer's estimate in accordance with Section 7.3.6, including Owner's expenses and compensation for the Designer's additional services made necessary by such default, neglect, or failure. Such action by the Owner and amounts charged to Contractor are both subject to prior approval of the Designer. If the unpaid balance of the Contract Sum is not sufficient to cover such amounts, the Contractor shall pay difference to Owner.

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. ~~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 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, Contractor shall not be currently disqualified from participating in State construction projects under the supervision of the SBC. 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 entities 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 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 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating 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 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. The Contractor shall not perform construction activity when Contractor know, or should know in exercise of reasonable diligence, that the activity involves error, inconsistency, or omission in 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 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 make 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 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, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice and a proposal of corrective changes to the Owner and ~~Architect-Designer~~ and shall not proceed with that portion of the Work without further written instructions from the Architect. ~~If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner required means, methods, techniques, sequences or procedures.~~ Designer that are accepted by the Contractor.

§ 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.

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§ 3.4 LABOR AND MATERIALS

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

§ 3.4.2 ~~Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 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. During the performance of the Work the Contractor may propose to make a substitution for a specified material, equipment, or system by submitting such proposal for approval in writing to the Designer with 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 a substitution. No substitution shall be made without authority in writing from Designer. Substitutions to remedy the failure of a manufacturer or installer to meet requirements of Contract Documents shall not give cause for an adjustment to Contract Sum or Contract Time.~~

§ 3.4.2.1 Before the second Application for Payment the Contractor shall provide a list showing names of manufacturers proposed for each specified major product and applicable name of installer, whether Contractor or Subcontractor. Designer will within fourteen (14) days reply in writing to Contractor stating whether Owner or Designer, after due investigation, has objection to any such manufacturer or installer. If adequate data on proposed manufacturer or installer is not available Designer may state that action will be deferred until Contractor provides further data. Contractor shall not make use of a manufacturer or installer to which Owner or Designer has objected. Failure to object to a manufacturer shall not constitute waiver of requirements of 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 Before the second Application for Payment the Contractor shall disclose in writing the existence and extent of financial interests, whether direct or indirect, which Contractor has in proposed Subcontractors and material suppliers.

§ 3.4.5 PROHIBITION OF ILLEGAL IMMIGRANTS

§ 3.4.5.1 The requirements of Public Acts of 2006, Chapter Number 878, of the State of Tennessee, addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the State of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, including termination of this Contract.

§ 3.4.5.2 The Contractor by entering into this contract attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor or consultant who will utilize the services of any illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the Owner with each Application for Payment a completed and signed copy of the standard form provided in the Contract Documents entitled "Personnel Used in Contract Performance". 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 the Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current written attestation that the Subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any Subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Such attestations by 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. Said records

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shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

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

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

§ 3.4.6 NON-DISCRIMINATION IN EMPLOYMENT

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

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

§ 3.4.6.3 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 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 PREVAILING WAGE SCALE

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

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

§ 3.4.7.3 Current Prevailing Wage Scale Determination(s) for this project will be included in Contract Documents as part of the Conditions of the Contract, if Owner's estimate of the value of Work indicates that it is required. Failure of Owner or Designer to provide current wage scale decision prior to bidding does not relieve Contractor of obligations set forth above.

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

§ 3.4.8 REPORTING OF SUBCONTRACTORS

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

§ 3.5 WARRANTY

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.~~ ~~defects.~~ 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,~~ Contractor or Subcontractors, 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.

§ 3.6 TAXES

~~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.~~ § 3.6.1 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 If the State of Tennessee enacts, after bids are received or negotiations concluded, a change in a sales, consumer, use, or similar state tax for the Work or a portion thereof provided by the Contractor, the Contract Sum shall be accordingly adjusted by appropriate Modification.

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

§ 3.7 PERMITS, FEES, 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 ~~Contractor~~ Contractor, except as provided in Section 3.7.3, 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 the ~~Contractor~~ Contractor, except as provided in this section, 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. This section applies to any applicable local government permit. The Owner is an instrumentality of state government, and as such has sovereign immunity from the laws, ordinances, rules, regulations, and lawful orders of local governments within the state; however, the Contractor shall obtain all normal permits whenever possible as if the Owner had no such immunity. If a delay or denial in securing a local permit occurs, the Contractor shall continue the Work, inform the Designer and the Owner of the situation, propose corrective measures, and continue to pursue the customary permits.

§ 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 taking into account that unless otherwise stipulated in Contract Documents, excavations and other subsurface construction activity shall be considered unclassified down to design depth, regardless of substrate and abandoned or inactive infrastructures, or (2) unknown physical conditions of an unusual nature, 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~~ Designer in accordance with Section 15.1.4 before continuing activities that could lead to a claim for additional cost and in no event later than 21 days after first observance of the conditions. The ~~Architect~~ Designer will promptly investigate such conditions and, if the ~~Architect~~ 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 an equitable adjustment in the Contract Sum or Contract Time, or both. ~~If the Architect~~

~~-adjustment in the Work, Contract Sum and/or Contract Time. 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 Architect-Designer shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's-Designer's determination or recommendation, that party may proceed as provided in Article 15.~~

§ 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 in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect-Designer. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain pursue 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. Any archaeological finds shall be the property of the Owner.

§ 3.8 LUMP SUM ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 ~~Allowances-Lump sum 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 lump sum allowance amounts shall be included in the Contract Sum but not in the lump sum allowances; ~~and~~
- .3 Whenever costs are ~~more than or less than~~ lump sum allowances, the Contract Sum shall be adjusted accordingly by ~~Change Order-Modification~~. The amount of the ~~Change Order-Modification~~ shall reflect (1) the difference between actual costs and the lump sum allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section ~~3.8.2.2-3.8.2.2~~; ~~and~~

.4 Contractor shall monitor the costs included in lump sum allowances and shall not incur excess costs without first obtaining a Modification adjusting the lump sum allowance in an amount sufficient for the excess.

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

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ and designate in writing a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the ~~Work-Work through final inspection~~. The Contractor shall not change such designation without consent of Owner which shall not be unreasonably withheld. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

~~§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.~~

§ 3.9.3 The Contractor shall not employ a ~~proposed~~ superintendent to whom the Owner or 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 SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's-Designer's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the

conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the ~~Architect's-Designer's~~ approval. The ~~Architect's-Designer's~~ approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the ~~Architect-Designer~~ reasonable time to review submittals. If the Contractor fails to submit a 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~~.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the ~~Architect-Designer~~ and shall be delivered to the ~~Architect-Designer~~ for submittal to the Owner upon completion of the Work 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 the way by which 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 requirements of the Contract Documents by the ~~Architect's-Designer's~~ approval of

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Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect-Designer in writing of such deviation at the time of submittal and (1) the Architect-Designer has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's-Designer's approval thereof.

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

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

§ 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, and 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 and patching shall be restored to the condition existing prior to the cutting, fitting and 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 such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove 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 and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and ~~Architect-Designer~~ 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 ~~defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, indemnify and hold harmless the Owner, 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 attorney's fees, arising out of or resulting from alleged infringement of copyrights and patent rights,~~ but shall not be responsible for such ~~defense or loss~~ when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or ~~Architect-Designer~~. However, if the Contractor knows or has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect-Designer.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, ~~Architect, Architect's consultants,~~ and agents and employees of ~~any of them~~ the Owner 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 ~~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 which~~ would otherwise exist as to a party or person described in this Section 3.18. Contractor agrees to indemnify the Designer and Designer's consultants based on the acts or omissions of the Contractor, except that Contractor shall not indemnify the Designer and Designer's consultants based on design mistakes and errors or omissions.

§ 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.

ARTICLE 4 — ARCHITECT

§ 3.18.3 The obligations of the Contractor under this Section 3.18 shall specifically include all claims, damages, losses and expenses including attorneys' fees arising out of or relating to construction means, methods, techniques, sequences, procedures, or for safety precautions and programs in connection with the Work, as well as the Contractor's failure to carry out the Work in accordance with the Contract Documents, regardless of the Designer's on-site inspections of such Work.

§ 3.19 RELATIONS WITH OWNER'S REPRESENTATIVES

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

§ 3.20 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.

ARTICLE 4 DESIGNER

§ 4.1 GENERAL

§ 4.1.1 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. "Designer" is the licensed design professional or firm lawfully practicing architecture, landscape architecture, or engineering, identified in the Bidding Documents and Agreement form for the Project, or the authorized representative thereof.

§ 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.

§ 4.1.3 If the employment of the Architect-Designer is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and Designer whose status under the Contract Documents shall be that of the Architect-Designer.

§ 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 (1) during construction, (2) until final payment is due and (3) at the Owner's request during 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, (1) to become generally familiar with the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work 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, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these which are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 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 report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) 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 FACILITATING CONTRACT ADMINISTRATION

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

§ 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 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the ~~Architect-Designer~~ nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the ~~Architect-Designer~~ to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The ~~Architect-Designer~~ will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, ~~but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's checking for compliance with the requirements and conformance with the intent of the Contract Documents. The 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, unless otherwise specifically stated by the Architect-Designer, of any construction means, methods, techniques, sequences or procedures. The Architect's-Designer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.~~

§ 4.2.8 The ~~Architect will prepare~~ ~~Designer will assist the Owner in preparing~~ Change Orders and Construction Change Directives, and may authorize 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 agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 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~~ accordance with a reasonable and professional standard of care.

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

~~§ 4.2.14~~ 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 otherwise ~~with reasonable promptness, within 15 days~~. 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 subcontractors of a separate contractor.

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

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

~~§ 5.2.1~~ Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, ~~as soon as practicable after award of the Contract, before the second Application for Payment~~, shall furnish in writing to the Owner through the ~~Architect-Designer~~ the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The ~~Architect-Designer~~ may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the ~~Architect-Designer~~ has reasonable objection to any such proposed person or entity or (2) that the ~~Architect-Designer~~ requires additional time for review. Failure of the Owner or ~~Architect-Designer~~ to reply within the ~~14 day~~ 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~~ has no reasonable objection. ~~If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.~~ Designer has no reasonable objection.

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

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

~~§ 5.2.6~~ Contractor shall not allow work under the Contract to be performed contrary to the requirements of Section 3.4.5 or by a Contractor or Subcontractor that has been disqualified from participating in State construction projects under the supervision of the State Building Commission. Such disqualification extends to succeeding or related corporations, partnerships, joint ventures, and other business organizations having substantial factual or legal connections, continuity, or identity with those that have been disqualified. If such a participant is discovered, Contractor shall immediately discontinue the participation and provide a suitable substitute at no additional cost to the Owner, and provide documentation to the Owner of the action taken to comply with this requirement.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and

~~Architect-Designer.~~ Each subcontract agreement shall preserve and protect the rights of the Owner and ~~Architect Designer~~ under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement 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

- .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 in writing; 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 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 Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to ~~insurance and waiver of subrogation-insurance.~~ If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

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

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

§ 6.2 MUTUAL RESPONSIBILITY

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

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

§ 6.2.3 The 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 construction activities, damage to the Work or defective construction.

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

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

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

§ 7.2 CHANGE ORDERS

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

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract ~~Sum~~; Sum with the amount representing all costs associated with the change including overhead and profit; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Unless otherwise agreed in writing by Owner and Contractor, the method of determining the amount of the adjustment in Contract Sum shall be by one or more of the methods set forth in the subsections of Section 7.3.3, and shall be based on reasonable expenditures and savings as set forth in Section 7.3.7.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the ~~Architect-Designer~~ and signed by the Owner and ~~Architect-Designer~~, directing a change in the Work prior to agreement on adjustment, if any, in the

Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

~~§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.~~

§ 7.3.5 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.

§ 7.3.6 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.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the ~~Architect-Designer~~ shall determine the method and 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 accordance with Section 7.3.11.~~ 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~~ Costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 ~~Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;~~ Direct Payroll Expense of labor;
- .2 Costs of materials, supplies and equipment, including cost of ~~transportation, transportation thereof,~~ whether incorporated or consumed;
- .3 ~~Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;~~ Machinery and equipment costs based on (1) rental costs for rental of machinery and equipment rented from others and (2) costs for machinery and equipment owned by the Contractor limited to not more than eighty percent (80%) of the applicable average rental rate as listed in the current edition of the AED Green Book for Rental Rates and Specifications for Construction Equipment;
- .4 Costs of premiums for ~~all bonds and insurance,~~ bonds to the extent required by Contract Documents, permit fees, and sales, use or other similar taxes related to the Work; and
- .5 ~~Additional costs of supervision and field office personnel directly attributable to the change.~~ Direct Payroll Expense of superintendence directly attributable to authorized overtime which is directly attributable to the change.

§ 7.3.7.1 DIRECT PAYROLL EXPENSE (DPE)

Direct Payroll Expense (DPE) as referenced in Section 7.3.7 shall be limited to base salary or hourly wage plus a maximum of thirty nine percent (39%) of base salary or hourly wage, and further limited to a maximum of one

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hundred fifty five dollars (\$155) per hour, to cover social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance.

§ 7.3.7.2 Specifically excluded from costs referenced in Section 7.3.7 and included in overhead are the following:

- .1 corporate, home office, and branch office overhead, insurance premiums, rent, mortgage, off-site utilities, project management, and personnel not otherwise mentioned;
- .2 capital expenses and interest on capital;
- .3 hand tools;
- .4 **field offices, sheds, phones, sanitary facilities, on-site utilities, drinking fountains, cleaning, safety programs and other construction facilities and temporary controls;**
- .5 costs of superintendence except as set forth in Section 7.3.7.5; and
- .6 superintendent's vehicle costs and other general use vehicle costs.

§ 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 will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect'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~~. Order for execution. Change Orders may be issued for all or any part of a Construction Change Directive.

§7.3.11 OVERHEAD AND PROFIT

The amount recoverable as overhead and profit on costs stipulated in Section 7.3.7 shall be as follows:

- .1 For self-performed work, the Contractor shall be entitled to overhead of ten percent (10%) of the cost of the self-performed work (the "Overhead") and profit of five percent (5%) of the sum of the cost of the self-performed work and the Overhead.
- .2 For work performed by a subcontractor or sub-subcontractor the subcontractor or sub-subcontractor shall be entitled to overhead of ten percent (10%) of its itemized cost ("Subcontractor Overhead") and profit of five percent (5%) of the sum of its itemized cost and the Subcontractor Overhead ("Subcontractor Profit"). Only the subcontractor or sub-subcontractor actually performing the work shall be entitled to Subcontractor Overhead and Subcontractor Profit.
- .3 For work performed by a subcontractor or sub-subcontractor the Contractor shall be entitled to profit of five percent (5%) of the sum of the subcontractor's or sub-subcontractor's itemized cost, Subcontractor Overhead, and Subcontractor Profit. The Contractor shall not be entitled to recover any overhead on work performed by a subcontractor or sub-subcontractor.

§ 7.4 MINOR CHANGES IN THE WORK

The ~~Architect-Designer~~ has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

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, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is ~~delayed at any time in the commencement or progress of the Work by an~~ delayed, disrupted or otherwise interfered with at any time, or from time to time, in the progress of the Work by any act or neglect of the Owner or Architect, or of an Designer, or by any employee of either, or of a by any separate contractor employed by the Owner; or by changes-Modifications ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. ~~unavoidable casualties, or any causes beyond the Contractor's control, then the Contract Time will be extended by Change Order in accordance with Article 7.~~

§ 8.3.2 ~~Claims relating to time shall be made in accordance with applicable provisions of Article 15. Neither the Owner nor the Designer shall be obligated or liable to the Contractor for any damages, costs, or expenses of any nature which the Contractor, its Subcontractors, or Sub-subcontractors, or any other person may incur as a result of any disruption or delay from any cause, regardless of the actual source of the delay, whether avoidable or unavoidable, it being understood and agreed that the Contractor's sole and exclusive remedy in such event shall be an extension of the Contract Time, but only in accordance with the provisions of the Contract Documents.~~

§ 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. Any Claim for extension of time pursuant to Section 8.3 shall be made in writing to the Designer not more than five (5) days after the commencement of such delay. Otherwise, such Claim shall be waived. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work.~~

§ 8.3.4 ~~Claims relating to time shall be made in accordance with applicable provisions of 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 Contractor waives the right to such Claims.~~

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the ~~Architect, Designer,~~ before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy

as the ~~Architect-Designer~~ may require. This schedule, unless objected to by the ~~Architect-Designer~~, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

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

§ 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 material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

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

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

§ 9.3.4 In Applications for Payment, the amount represented as Total Completed and Stored to Date shall reflect 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, and not exceed the Contract Sum less the value of incomplete work and corrections required. This Total Completed and Stored to Date shall not be construed to define completion as determined for Substantial Completion or final completion of the Work according to Sections 9.8, 9.9, or 9.10.

§ 9.3.5 Applications for Payment shall indicate retainage withheld from the Total Completed and Stored to Date as follows: five percent (5%) until acceptance of a Certificate of Substantial Completion; and, thereafter two percent (2%) until final payment. The resulting amount shall be indicated as the Total Earned Less Retainage. Applications that reduce retainage shall be accompanied by Consent of Surety.

§ 9.4 CERTIFICATES FOR PAYMENT

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

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the ~~Architect-Designer~~ to the Owner, based on the ~~Architect's-Designer's~~ evaluation of the Work and the data comprising the Application for

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

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

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

~~§ 9.5.3 If the Architect 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 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 and the Architect will reflect such payment on the next Certificate 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 TCA § 12-4-701 et seq, as may from time to time be amended.

- .1 Payment is due not later than forty five (45) days after an undisputed Certificate for Payment has been received by Owner.
- .2 Based upon Certificates for Payment issued by the Designer, correcting the Application for Payment as appropriate, the Owner shall make progress payments to the Contractor as provided in the Contract Documents.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment 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 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, except as may otherwise be required by law.

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

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

~~§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.~~

If the original Contract Sum meets the statutory threshold, the Contractor shall comply with the procedures established by the Tennessee State Treasurer and Department of Finance and Administration for establishment of an interest-bearing retainage escrow account.

§ 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' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut down, delay and start up, plus interest as provided for in the Contract Documents.~~

§ 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 (1) the Owner can occupy or utilize the Work for its intended use-use and (2) the Owner has received required use and occupancy permits.

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

§ 9.8.3 Upon receipt of the Contractor's list, the ~~Architect-Designer~~ will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the ~~Architect's-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.

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

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

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is ~~consented to by the insurer as required under Section 11.3.1.5~~ 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 written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the ~~Architect-Designer~~ will promptly make such inspection and, when the ~~Architect-Designer~~ finds the Work acceptable under the Contract Documents and the Contract fully performed, the ~~Architect-Designer~~ will promptly issue a final Certificate for Payment stating that to the best of the ~~Architect's-Designer's~~ knowledge, information and belief, and on the basis of the ~~Architect's-Designer's~~ on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The ~~Architect's-Designer's~~ final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.1.1 As a condition of full contract performance, the Owner must have received complete Product Data, Operations and Maintenance Binders and demonstration and training for the Owner's operations and maintenance personnel as required by Contract Documents.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the ~~Architect-Designer~~ (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) ~~a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents,~~ (4) consent of surety, if any, to final payment and ~~(5), (4),~~ if required by the Owner, other

data establishing payment or satisfaction of obligations, such as receipts, releases and ~~waivers of liens, waivers,~~ claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor ~~may furnish a bond~~ shall furnish acknowledgement of the matter from the Surety satisfactory to the Owner to indemnify the Owner against such ~~lien-matter~~. If such ~~lien-matter~~ remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such ~~lien-matter~~, including all costs and reasonable attorneys' fees.

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

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

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

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

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

§ 9.11 PAYMENT RECORDS

§ 9.11.1 The Contractor shall maintain documentation for all charges to the Owner. The accounting records, agreements with Subcontractors, and documents of the Contractor, insofar as they relate to the Work, shall be maintained for a period of three (3) 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 Owner, or the Comptroller of the Treasury, or their duly appointed representatives. These records shall be maintained in accordance with generally accepted accounting principles.

§ 9.11.2 The Contractor shall maintain accurate records and accounts and shall make available to the Owner any and all supporting data requested by the Owner, to validate or verify an Application for Payment, Cost Proposal, Change Order, Construction Change Directive, or any Claim for additional compensation made by the Contractor.

§ 9.11.3 The Contractor shall not be entitled to additional compensation or time in the event an Application for Payment, Cost Proposal, Construction Change Directive, or Change Order is delayed due to the failure or refusal of the Contractor to provide such requested information.

§ 9.12 LIQUIDATED DAMAGES

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

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

§ 9.12.3 The Owner reserves the right to deduct said Liquidated Damages from any amount due the Contractor under this Contract, or, at its option, to collect such Liquidated Damages directly from the Contractor or its Surety.

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

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

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or ~~Architect~~ Designer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The Owner reserves the right to effect repairs to damaged property and deduct all costs from the 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 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, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. 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 report the condition to the Owner and ~~Architect-Designer~~ in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, pursuant to the 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 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 such material or substance. ~~The Contractor and the Architect 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 has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect 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 claim and modification processes in accordance with Articles 15 and 7, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut down, delay and start up appropriately.~~

§ 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 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 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 indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance 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 indemnify 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 LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies acceptable to the Owner and lawfully authorized to do business in the jurisdiction in which the Project is located State of Tennessee such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed 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 that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible ~~property, property on or away from the site,~~ including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents two (2) years after final payment. All insurance policies required under Section 11.1.1, except for Workers' Compensation, shall name the Owner as an additional insured and shall be in no less than the following minimum limits and coverages.

- .1 Commercial General Liability, including Premises/Operations, Completed Operations/Products, Contractual Liability, and XCU Coverage in no less than the following limits, with coverages for Premises/Operations and Completed Operations naming the Owner as an additional insured, and with coverage for Completed Operations maintained for a minimum of two (2) years after project completion:

Combined single limits for bodily injury and property damage:

Each Occurrence: \$1,000,000.00

Aggregate: \$2,000,000.00

- .2 Automobile Liability to include Owned, Non-owned, and Hired; Bodily Injury and Property Damage:

Combined Single Limit: \$1,000,000.00

- .3 Excess/Umbrella Liability:

Each Occurrence: \$5,000,000.00

Aggregate: \$5,000,000.00

- .4 Workers, Compensation

Applicable Federal and State Statutory

Employer's Liability \$500,000.00

- .5 Contractors Job Pollution Liability Coverage:

Minimum Limits Per Occurrence/Aggregate: \$1,000,000.00

If asbestos abatement or other hazardous material abatement is included in scope of work then the pollution policy must include coverage for asbestos. If Contractor is performing no portion of the asbestos removal or abatement with its own forces, Contractor, in lieu of its own such endorsement, may substitute a certificate showing such special endorsement covering the Subcontractor or Sub-subcontractor which is actually performing the asbestos removal or abatement.

- .6 Aircraft and/or Watercraft Liability to include Owned, Non-owned, and Hired; Bodily Injury and Property Damage (if applicable) Combined Single Limit \$1,000,000.00
- .7 Builder's Risk Insurance as detailed in Section 11.3.

~~§ 11.1.3 Certificates~~The Contractor shall furnish certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. 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. evidencing all coverages required under this Article 11 prior to commencing the Work and shall maintain all required insurance policies without interruption from the date of commencement of the Work until the date of final payment as set forth in Section 9.10, unless otherwise specifically stated in this Agreement.

~~§ 11.1.4~~ The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect-Designer and the Architect's-Designer's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations. operations using ISO Additional Insured Endorsement CG 20 10 (11-85) or CC 2010 (07-04) AND CG 20 37 (07-04) or an endorsement providing equivalent coverage to the additional insureds.

~~§ 11.2 OWNER'S LIABILITY INSURANCE~~

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

~~§ 11.1.5~~ All insurance to be purchased and maintained by the Contractor under this Article 11 shall include (a) a written waiver of any right by the insurer to recovery, by subrogation or otherwise, against the Owner and (b) per project endorsements stating that the aggregate limits apply fully to this project.

~~§ 11.1.6~~ The Contractor shall notify the Owner in writing of any changes, deletions, or cancellations of coverage, not later than ten (10) days after notification of the Contractor by the insurer, or ten (10) days before the Contractor makes a change, whichever comes first. The Contractor shall require that if policies are cancelled or modified before the expiration date thereof, the insurer shall endeavor to provide ten (10) days prior written notice to certificate holder named therein.

~~§ 11.1.7~~ The Contractor expressly agrees that it shall not violate or permit any violation of any conditions or terms of any insurance policy required by this Article 11. The Contractor acknowledges that the Owner may, in its sole discretion, deem any such a violation to be a material breach of the Contract.

~~§ 11.1.8~~ If the Contractor fails to purchase or maintain any insurance coverage required by this Article 11, the Owner may, in its sole discretion, either provide similar coverage and charge the expense to the Contractor or terminate the Contract for cause.

~~§ 11.3 PROPERTY INSURANCE~~**BUILDER'S RISK INSURANCE**

~~§ 11.3.1~~ Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Contractor shall purchase and maintain Builder's Risk Insurance on the entire Work on a completed value basis, covering the full insurable replacement cost of the entire Project, in the following minimum limits and coverage:

- .1 Minimum Limits: The amount of the initial Contract Sum plus the value of subsequent Contract Modifications for the covered Project at the site on a replacement cost basis without optional deductibles. 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 11.3 to be

~~covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project basis.~~

- ~~.2 Coverage: "All risk" of physical loss, including theft, vandalism, malicious mischief, collapse, earth movement, flood, windstorm, and debris removal; off-site storage and transit; and all resultant damage caused by faulty design, faulty workmanship, and faulty materials. The builder's risk insurance shall specifically include physical loss or damage to all aspects of the Work, materials, and equipment whether incorporated into the Project, in transit, or stored on or off Site.~~
- ~~.3 Deductible Amounts: The Contractor shall bear the responsibility for deductible amounts.~~

~~The Owner shall be a named insured on the Contractor's builder's risk policy and the policy shall otherwise insure the Owner, the Contractor, and Subcontractors and Sub-subcontractors as additional insureds as their interests may appear.~~

~~The Contractor as trustee shall have power to adjust and settle any loss with its insurers. However, any loss insured under this Section 11.3.1 is to be adjusted with the Owner and made payable to the Contractor as trustee for the insureds, including the Owner, as their interests may appear, subject to the requirements of any applicable mortgagee clause. The Contractor shall pay each Subcontractor a just share of any insurance moneys received by the Contractor, and by appropriate agreement, written where legally required for validity, shall require each Subcontractor to make payments to his Sub-subcontractors in similar manner.~~

~~§ 11.3.1.1 Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.~~

~~§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.~~

~~§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.~~

~~§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.~~

~~§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.~~

~~§ 11.3.2 BOILER AND MACHINERY INSURANCE~~

~~The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner;~~

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this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

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

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

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 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 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

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

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such

~~objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.~~

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

~~§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. Contractor shall furnish a Contract Bond on a form provided by the Owner. Such bond shall be made payable to the Owner, and shall be executed by a corporate surety licensed to transact business in the State of Tennessee and acceptable to the Owner, and shall be in an amount equal to one hundred percent (100%) of the Contract Sum. If at any time during the construction of the Work the Surety on the bond is disqualified from doing business in the State of Tennessee, an alternate surety acceptable to the Owner shall be provided at no additional cost to the Owner. In the event that any Modification results in the performance of additional work in connection with the Contract, the amount of such bond shall be increased by the cost of such additional work or fixtures to be incorporated into the Project.~~

§ 11.4.2 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 and Owner shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

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

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the ~~Architect-Designer~~ or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, 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 an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor of known noncomplying Work 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~~ noncomplying 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 2.4. 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 (2) additional years for a total period of three (3) years. Until such time as the three (3) years hereunder have expired, Contractor's obligations hereunder shall be joint and several with Company as defined and set forth in the Roofing System Warranty. For the purpose of Section 12.2.2, all of Company's actions, whether of omission or commission, pursuant to the Roofing System Warranty are likewise actions of Contractor hereunder and shall in no way negate or reduce the responsibilities of Contractor hereunder.

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

§ 12.2.3 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 are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work 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 and time periods of applicable special warranties relate only~~ to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 If all or a portion of the mechanical and/or electrical system is used beneficially by the Owner prior to the date of Substantial Completion, the guarantee and warranty period for that particular system or portion thereof shall commence on the date when such system or portion thereof is placed in operation. Installation and testing shall not give cause for such commencement.

§ 12.2.7 Guarantee and warranty requirements shall extend to correction, without cost to the Owner, of all work found to be defective or not in conformance with the Contract Documents. The Contractor shall bear the cost of correcting all damage resulting from such defects or nonconformance with Contract Documents, exclusive of repairs required as a result of improper maintenance or operation, or of normal wear.

~~§ 12.3 ACCEPTANCE OF NONCONFORMING WORK~~ ACCEPTANCE OF INCOMPLETE OR 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 completion or 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 except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~
laws of the State of Tennessee.

§ 13.2 SUCCESSORS AND ASSIGNS

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

~~§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to 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 such assignment.~~

§ 13.3 WRITTEN NOTICE

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

§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.4.3 The Contractor agrees and acknowledges that any liability to the Contractor and third parties for any claims, damages, losses, or costs arising out of or related to acts performed by the Owner under this Agreement shall be governed by the Tennessee Claims Commission Act, Tennessee Code Annotated §§ 9-8-301 et seq.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 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-Owner~~ shall make arrangements with the Designer to provide 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~~ the testing laboratory and the Designer timely notice of when and where tests and inspections are to be made ~~so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor, and shall provide incidental labor and facilities.~~

§ 13.5.2 If the ~~Architect-Designer~~, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the ~~Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements~~ Owner will make arrangements with the Designer 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 may be present for such procedures.~~ made. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

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

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

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

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

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§ 13.6 INTEREST

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

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time 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 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

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

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor 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, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards or 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 above reasons exist, the Owner, upon certification by the ~~Initial Decision Maker~~ Designer that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all Work, the site, and all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon 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~~, Designer, 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 as described in Section 14.3.1. ~~Adjustment of the Contract Sum shall include profit.~~ -No adjustment shall be made to the extent

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the ~~Work;~~ Work including materials for which 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 ~~ease the event~~ of such termination for the Owner's convenience, the ~~Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.~~ Contractor's sole and exclusive remedy shall be to receive payment for the reasonable value of the completed portion of Work plus a portion ("P") of the remaining balance of the Contract Sum calculated under the following formula.

$$"P" = [(Remaining Balance of Contract Sum) \times (.05)] \times [(Value of the Work Completed) / (Contract Sum)]$$

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, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters~~ dispute or matter

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~~in question between the Owner and Contractor arising out of or relating to the Contract-Work. The responsibility to substantiate Claims shall rest with the party making the Claim.~~

§ 15.1.2 NOTICE OF CLAIMS

~~Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or Designer. Claims by either party, except claims of Liquidated Damages, must be initiated within 21 days after the claimant first recognizes or should have recognized the condition giving rise to the Claim, whichever is later. If the effect of the condition giving rise to the Claim cannot be fully evaluated, a preliminary notice of a pending claim shall be made within the stated time limit subject to further action in a timely manner.~~

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

~~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. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.~~

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

~~If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to and such Claim is not barred under Section 8.3, it shall deliver to the Designer written notice thereof within five (5) days after the occurrence of the event giving rise to such Claim. This written notice shall state the basis for the Claim and the amount documented in conformance to the requirements of Article 7. If the Contractor cannot determine the amount of the Claim within five (5) days after occurrence of the event giving rise to the Claim it shall so state and shall provide the amount no later than twenty (20) days after the occurrence of the event. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property arising under Section 10.4 in which case the Contractor shall proceed in accordance with Paragraph 10.4. No such Claim shall be valid unless so made. If the Designer cannot agree with the Contractor on the amount of the adjustment in the Contract Sum, it shall be determined by the Designer. Such determination by the Designer shall not preclude the Contractor from filing a Claim in accordance with Tennessee law for an adjustment of the Contract Sum, but in no event shall the Contractor slow or stop the Work while such Claim is pending and the Owner shall continue to make payment in accordance with the Contract Documents except as to the amount in dispute.~~

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

~~§ 15.1.5.1 If the Contractor wishes to To make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. Contract Time, Contractor shall deliver to the Designer written notice thereof within five (5) days after the occurrence of the event giving rise to such Claim. This written notice shall state the basis for the Claim and the increase in Contract Time documented in conformance to the requirements of Article 7. If the Contractor cannot determine the increase in Contract Time of the Claim within five (5) days after occurrence of the event giving rise to the Claim it shall so state and shall provide the amount no later than twenty (20) days after the occurrence of the event. In the case of a continuing delay, only one Claim is necessary-necessary and Contractor shall subsequently detail the full scope of the delay.~~

~~§ 15.1.5.2 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 CLAIMS FOR CONSEQUENTIAL DAMAGES

~~The Contractor and Owner waive Claims against each other-waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This mutual waiver includes Contract including but not limited to the following.~~

- ~~.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 such damages arising from termination in accordance with Article 14; and~~

- ~~.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, at the office, 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 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents, profit.~~

~~§ 15.2 INITIAL DECISION RESOLUTION OF CLAIMS AND DISPUTES~~

~~§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect 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 including those alleging an error or omission by the Designer, shall be referred to the Designer for initial decision. An initial decision or other action by the Designer in accordance with Section 15.2.2 shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no 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. Claims unless the Designer fails to timely comply with Section 15.2.2.~~

~~§ 15.2.2 The Initial Decision Maker-Designer will review Claims and within ten days of the receipt of a Claim or information preliminary or pursuant to a Claim or a modification to a Claim and will 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, claimant, (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-Designer is unable to resolve the Claim if the Initial Decision Maker-Designer lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker-Designer concludes that, in the Initial Decision Maker's-Designer's sole discretion, it would be inappropriate for the Initial Decision Maker-Designer to resolve the Claim.~~

~~§ 15.2.3 In evaluating Claims, the Initial Decision Maker-Designer may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker-Designer in rendering a decision. The Initial Decision Maker-Designer may request the Owner to authorize retention of such persons at the Owner's expense.~~

~~§ 15.2.4 If the Initial Decision Maker-Designer requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker-Designer when the response or supporting data will be furnished or (3) advise the Initial Decision Maker-Designer that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker-Designer will either reject or approve the Claim in whole or in part.~~

~~§ 15.2.5 The Initial Decision Maker-Designer 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, if the Architect 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 parties.~~

~~§ 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.~~

~~§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, 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 Designer or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Designer or 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 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 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.~~

~~§ 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 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. 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.~~

~~§ 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 Either party, at its sole discretion, 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).~~

~~§ 15.4.4.2~~ Either party, at its sole discretion, 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 the Owner and Contractor under this Agreement.



Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Tim McKeehan, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 08:11:10 on 10/16/2013 under Order No. 7646203301_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)