



GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION LIMITED WORK

Note to users: these Conditions differ from September 2012 OFD 007214 principally by deleting the prevailing wage requirements formerly in 3.4.4. State Prevailing Wage Rates are no longer applicable to building construction contracts issued on or after January 1, 2014. Highway rates can still apply, and will be addressed in Supplementary Conditions when applicable.

ARTICLE 1 GENERAL PROVISIONS

1.1 Contract Documents

1.1.1 Contract Documents consist of the signed construction Agreement, Conditions, Addenda, Specifications, Drawings, and Modifications.

1.1.2 PROJECT MANUAL is the volume or volumes which includes or lists bidding requirements, contract forms, Conditions, schedules, drawings, and Specifications.

1.1.3 Intent of Contract Documents is to include items necessary for proper completion of Work, including that which is consistent and reasonably inferable as necessary to produce intended results.

1.1.4 Contract Documents and copies are property of Owner.

1.2 Contract for Construction is formed by the Contract Documents and represents the entire agreement, superseding prior negotiations, representations, or agreements. Contract Documents create no contractual relationship between Designer and Contractor, but Designer is entitled to performance of obligations intended for Designer's benefit, and to enforcement thereof.

1.3 Work comprises the completed construction and services required by Contract Documents, including materials, equipment, and labor to produce construction.

1.4 Project is total construction of which Work performed under Contract Documents may be the whole or a part. The Project is identified in the first page of the Agreement with an Owner's project number in the format of 999/999-99-9999XX. This project number may differ from the number as used on other Contract Documents. This Owner's project number is to be shown in all correspondence related to the project.

1.5 Provide or provided means to furnish and install, complete and ready for intended use.

1.6 Governing Law

The Contract shall be governed by the law of the place where the Project is located.

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

ARTICLE 2 OWNER

2.1 Definition

Owner is the government of the State of Tennessee operating through the agency or department identified in the Agreement.

2.2 Information and Services Required of Owner

2.2.1 The Owner's project number constitutes verification that funding has been established as a matter of public record.

2.2.2 Owner will furnish surveys describing physical characteristics, legal limitations and utility locations for the site, and legal description of site, to the extent necessary.

2.2.3 Owner will secure and pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures, or for permanent changes in existing facilities, except as required of Contractor.

2.2.4 Owner will furnish information and services under Owner's control with reasonable promptness.

2.2.5 Owner will furnish Contractor the number of copies of Contract Documents reasonably necessary for execution of Work free of charge.

2.3 Owner's Right to Stop Work

Owner may order Contractor in writing to stop Work or a portion thereof if Contractor fails to correct defective Work as required or persistently fails to carry out Work in accordance with Contract Documents, until the cause for such order has been eliminated. This right to stop Work imposes no duty of Owner to exercise this right for the benefit of Contractor or another person or entity.

2.4 Owner's Right to Carry Out Work

If Contractor defaults or neglects to carry out Work in accordance with Contract Documents and fails within fourteen days after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, Owner may without prejudice to other available remedy make good such deficiencies. In such case, an appropriate Change Order shall be issued deducting the cost of correcting such deficiencies from the Contract Sum, including compensation for Designer's related additional services. If payments then or thereafter due Contractor are insufficient to cover such amount, Contractor shall pay the difference to Owner.

ARTICLE 3 CONTRACTOR

3.1 Definition and Qualification

3.1.1 Contractor is the person or entity identified as such in the Agreement.

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

3.2 Review of Requirements

3.2.1 Contractor shall carefully study and compare Contract Documents and at once report discovery of error, inconsistency, or omission to Designer. Contractor shall not be liable to Owner or Designer for damage resulting from such errors, inconsistencies, or omissions.

3.2.2 Contractor shall not work without Contract Documents, or where required, approved Shop Drawings, Product Data, or Samples.

3.2.3 By submitting a bid, Contractor represents self to have visited site, become familiar with local conditions under which Work shall be performed, and correlated observations with requirements of Contract Documents.

3.3 Supervision and Construction Procedures

3.3.1 Contractor shall supervise and direct Work, using Contractor's best skill and attention, and is solely responsible for construction means, methods, techniques, sequences, procedures, and coordination.

3.3.2 Contractor is responsible to Owner for acts and omissions of Contractor's, subcontractors', and suppliers' agents and employees, and other persons performing work under contract with Contractor.

3.3.3 Contractor shall not be relieved from obligations to perform Work in accordance with Contract Documents either by activities or duties of Designer in administration of the Contract, or by inspections, tests or approvals required or performed by persons other than Contractor.

3.4 Labor and Materials

3.4.1 Unless otherwise provided in Contract Documents, 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 Work, whether temporary or permanent and whether or not incorporated or to be incorporated in Work. Contractor shall not receive material nor labor from one who submitted a competing general bid for the same Contract and subsequently withdrew, reneged, or otherwise failed to enter into contract.

3.4.2 Specified materials, equipment, and systems are essential elements of the Contract. If Contractor desires to use other materials, equipment, or systems, Contractor shall request approval in writing and submit adequate samples and data for Designer's decision. No substitution shall be made without authority in writing from Designer.

3.4.3 Non-discrimination in employment

3.4.3.1 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.

3.4.3.2 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.

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

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

3.4.4 (formerly for Prevailing Wage Scale, now not used)

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.

3.4.5.3 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.

3.4.5.4 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.

3.5 Warranty

Contractor warrants that materials and equipment furnished under Contract will be of good quality, free from faults and defects, and in conformance with Contract Documents. Work not conforming to these requirements, including substitutions not properly approved, may be considered defective. This warranty is not limited by provisions for correction of Work.

3.6 Taxes

Contractor shall pay sales, consumer, use, and other similar taxes for Work or portions thereof provided by Contractor.

3.7 Permits, Fees, and Notices

3.7.1 Unless otherwise provided in Contract Documents, Contractor shall secure and pay for the building permit and for all other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of Work which are customarily secured after execution of Contract.

3.7.2 Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of public authority bearing on the performance of the Work.

3.7.3 If Contractor observes that Contract Documents are at variance with applicable laws, statutes, building codes and regulations, Contractor shall promptly notify Designer in writing, and necessary changes shall be accomplished by appropriate Modification.

3.7.4 If Contractor performs Work knowing it to be contrary to such regulatory requirements without such notice to Designer, Contractor assumes full responsibility therefor and shall bear all costs attributable thereto.

3.7.5 The Owner is an agency of state government, and as such has sovereign immunity from the regulations 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.

3.8 Allowances

Allowances stated in Contract Documents are included in Work.

3.9 Superintendent

Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at site during progress of Work, representing Contractor. Communications given to Superintendent shall be binding as if given to Contractor. Communications shall be confirmed in writing on request.

3.10 Progress and Submittals Schedules

3.10.1 FORMAT: Contractor shall format progress and submittals schedules in bar chart or other form approved by Designer, utilizing same method throughout Project, and clearly identifying Project.

3.10.2 SUBMITTAL: Contractor shall prepare and submit three (3) copies of schedules within 7 days of award of Contract, and not later than first application for payment. Contractor shall prepare and submit three (3) copies of updated schedules with each application for payment, unless waived by Owner.

3.10.3 CONTENT: Contractor's schedule shall be consistent with schedule of values and show planned progress from commencement through completion, with projected monthly progress and point of Substantial Completion.

3.10.4 Designer may require revision of schedules if schedules seem impracticable, and Contractor shall revise and resubmit within ten (10) days.

3.11 Documents and Samples at the Site

3.11.1 Contractor shall maintain at site one complete record set of Contract Documents in good order marked "Record Documents" and marked currently to record actual conditions of construction, changes, approved Shop Drawings, Product Data and Samples. These shall be available to Designer and shall be delivered to Designer for Owner upon completion of Work.

3.11.2 Contractor shall furnish two complete sets of Project Data in commercial quality binders with:

- .1 the project identified on the face and side of the binder;
- .2 a complete listing of subcontractors and material suppliers, including dollar amount, company name, address, phone number, local company representative, and information regarding status of whether a minority-owned business as defined in paragraph 3.19; and,
- .3 copies of Certificates, Warranties, Product Data, Maintenance and Operation Data, and related documents information required by Contract Documents or furnished with items included in Project.

3.12 Shop Drawings, Product Data, and Samples

3.12.1 Contractor shall review, approve and submit required Shop Drawings, Product Data and Samples with reasonable promptness and in such sequence as to cause no delay in Work or in work of Owner or separate contractor.

3.12.2 By approving and submitting Shop Drawings, Product Data and Samples, Contractor represents to have determined and verified materials, field measurements, and field construction criteria and to have checked and coordinated information contained within such submittals with requirements of Contract Documents.

3.12.3 Contractor shall not be relieved of responsibility for deviation from Contract requirements by Designer's approval of Shop Drawings, Product Data or Samples unless Contractor has specifically informed Designer in writing of such deviation at time of submission and Designer has given written approval to the specific deviation. Contractor shall not be relieved from responsibility for errors or omissions in Shop Drawings, Product Data or Samples by Designer's approval thereof.

3.12.4 Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by Designer on previous submittals.

3.12.5 No portion of Work requiring submission of Shop Drawing, Product Data or Sample shall be commenced until submittal has approval of Designer. Work shall be in accordance with approved submittals.

3.13 Use of Site

Contractor shall confine operations at site to areas permitted by law, permits, and Contract Documents, and keep site reasonably clear of materials and equipment.

3.14 Cutting and Patching

Contractor shall be responsible for cutting, fitting, or patching needed to complete Work, and shall not damage or endanger a portion of Work or the work of Owner or separate contractors by cutting, patching, or otherwise altering work, and shall not alter work of Owner or separate contractor except with written consent thereof. Contractor shall not unreasonably withhold consent to cutting or otherwise altering Work by others.

3.15 Cleaning Up

Contractor shall keep premises free from accumulation of waste materials or rubbish caused by operations, and at completion of Work shall remove tools, equipment, machinery surplus and waste materials, and rubbish from and about the Project, or Owner may do so and charge the costs thereof to Contractor.

3.16 Access to Work

Contractor shall facilitate access to Work by Owner and Designer whenever and wherever Work is in preparation or progress.

3.17 Royalties and Patents

Contractor shall pay royalties and license fees, defend suits or claims for infringement of patent rights, and save Owner harmless from loss of account thereof.

3.18 Indemnification

3.18.1 To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the Owner and the Designer and their agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of Work, provided that such claim, damage, loss or expense is:

- .1 attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including loss of use resulting therefrom; and,
- .2 caused in whole or part by negligent act or omission of Contractor, subcontractor, anyone directly or indirectly employed by them, or one for whose acts they may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

3.18.2 Such obligation shall not be construed to negate, abridge, or otherwise reduce another right or obligation of indemnity which would otherwise exist as to a party or person described in this Paragraph. In claims against Owner or Designer or their agents or employees by an employee of Contractor, subcontractor, anyone directly or indirectly employed by them, or one for whose acts they may be liable, the indemnification obligation under this Paragraph shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

3.18.3 Obligations of Contractor under this Paragraph shall not extend to liability of Designer, its agents or employees, arising out of:

- .1 preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or,
- .2 giving or failure to give directions or instructions by Designer, Designer's agents or employees provided such giving or failure to give is the primary cause of injury or damage.

3.19 Participation of Minority-Owned Businesses

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

3.19.2 "Minority-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.

3.19.3 To be a "Minority-owned Business" for the purposes of this contract, a business must be certified as a "Minority-owned Business" by an agency of the federal government or the government of the State of Tennessee which is normally engaged in the practice of providing such certification.

3.20 Financial Records:

3.20.1 The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, 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 State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

-----**ARTICLE 4**-----
ADMINISTRATION OF THE CONTRACT

4.1 Designer

4.1.1 Designer is the lawfully licensed Architect or Engineer, or entity lawfully practicing architecture or engineering, or another person or entity, identified as Designer in Contract Documents. "Architect" or "Engineer" when used in Contract Documents means "Designer", unless specifically required to be employed by Contractor. Designer is Owner's representative until obligations of the Agreement are discharged.

4.1.2 Designer provides administration of Contract, and has authority only to the extent provided in Contract Documents. Duties, responsibilities and limitations of authority of Designer may only be modified or extended by Change Order.

4.1.3 Designer is interpreter of Contract Documents and judge of performance by both Owner and Contractor. Designer has authority to order minor changes in the Work, to reject Work which does not conform to Contract Documents, and to require special inspection or testing of Work, whether or not such Work be then fabricated, installed or completed.

4.1.4 In case of termination of employment of Designer, Owner may appoint a Designer whose status under Contract Documents shall be that of the former Designer.

4.2 Communications

Contractor and Owner shall forward communications to each other through Designer.

4.3 Payments, Modifications, and Completion

Designer will determine amounts owing to Contractor and issue Certificates for Payment based on observations of Work and evaluation of Applications for Payment. Designer will assist Owner in preparing Change Orders. Designer will inspect to determine dates of Substantial Completion and final completion.

4.4 Submittals

Designer will review and approve or take other appropriate action on Contractor's submittals, but only for conformance with the Contract Documents. Designer's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Designer will receive warranties and related documents required of and assembled by Contractor, and forward to Owner.

4.5 Interpretations and Claims

4.5.1 Designer will render interpretations, judgments, and decisions with reasonable promptness, and consistent with intent of, and reasonably inferable from, Contract Documents, in writing or in form of drawings, seeking faithful performance by both Owner and Contractor, and showing partiality to neither. Designer will not be liable for the result of interpretations or decisions rendered in good faith. Designer's decisions in matters relating to artistic effect will be final.

4.5.2 Either party to the Contract may request interpretations, judgments, and decisions. Claims, disputes and other matters in question relating to execution of Work or interpretation of Contract Documents shall be referred initially to Designer.

4.5.3 As a matter of law, the State of Tennessee and its property are not subject to mechanic's and material suppliers liens. Subcontractors, suppliers, and other claimants are protected through the Contract Bond as required by TCA § 12-4-201 et seq., the policies of the State Building Commission, and paragraph 11.5 of these Conditions. Specific requirements for notice of claims on the bond are set forth in TCA § 12-4-205.

4.6 Project Meetings

Designer will schedule and administer Pre-Construction Conference, periodic Progress Meetings, and other specially called or required meetings in cooperation with Owner and Contractor. Owner, Designer, and Contractor shall attend. Contractor shall require attendance by representatives of Subcontractors, Suppliers, and others, as befits the agenda, each being qualified and authorized to act on behalf of the entity each represents.

-----**ARTICLE 5**-----
SUBCONTRACTORS

5.1 Definition

A subcontractor is a person or entity who has a direct or indirect contract with Contractor to perform a portion of the Work.

5.2 Award of Subcontracts

5.2.1 Contractor shall furnish to Owner and Designer in writing, within 21 days after award of Contract, names of subcontractors proposed for principal portions of Work. Subcontractors listed on the Bid Envelope for this project shall be used in the capacity listed.

5.2.2 Contractor shall neither employ subcontractors against whom Owner or Designer has reasonable objection, nor be compelled to contract with anyone against whom Contractor has reasonable objection.

5.2.3 Contractor shall not employ a subcontractor who submitted a competing bid for the Contract and subsequently reneged upon or withdrew that bid.

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

5.3 Subcontractual Relations

Contractor shall require subcontractor to be bound to Contractor by the terms of the Contract Documents and to assume toward Contractor the obligations and responsibilities which Contractor assumes toward Owner and Designer, and shall allow subcontractors the benefits of rights, remedies and redress against Contractor that Contractor has against Owner.

-----**ARTICLE 6**-----
**CONSTRUCTION BY OWNER
OR BY SEPARATE CONTRACTORS**

**6.1 Right to Perform Work
and Award Separate Contracts**

6.1.1 Owner may perform work related to the Project and award separate contracts in connection with the Project or other work on site under these or similar Conditions of Contract.

6.1.2 Owner will provide for coordination of work of its own forces and of separate contractors with Work of Contractor, who shall cooperate therewith as provided in Paragraph 6.2.

6.1.3 Claims by Contractor that delay or additional cost is involved because of such action by Owner, shall be made as provided elsewhere in Contract Documents.

6.2 Mutual Responsibility

6.2.1 Contractor shall afford Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and execution of their work, and shall connect and coordinate with their work as required by Contract.

6.2.2 Costs caused by defective or ill-timed work shall be borne by the responsible party.

-----**ARTICLE 7**-----
CHANGES IN THE WORK

7.1 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of Contract, the Contract Sum and the Contract Time being adjusted accordingly, with such changes authorized by Change Order. The Designer may order minor changes in the Work which do not impact upon the Contract Sum and the Contract Time.

7.2 Change Orders

7.2.1 A Change Order is a written order signed by Owner and Designer after execution of the Contract authorizing a change in Work or adjustment in Contract Sum or Contract Time, which may be changed only by Change Order. A Change Order not signed by Contractor may be commonly referred to as a Construction Change Directive. A Change Order signed by Contractor indicates agreement therewith, including adjustments in Contract Sum or Contract Time, and certifies that adjustments, including allowance for overhead and profit, encompass all direct and indirect costs and schedule impacts associated with the change.

7.2.2 Change Orders shall be written on a form consistent with that provided in the Specifications. Itemizations of cost shall be prepared by Contractor on a form consistent with that provided in the Specifications.

7.2.3 Change Orders shall include complete description of changes in Work, Contract Sum, and Contract Time, and be further supported by:

- .1** Documentation of reasons for changes in Work, Contract Sum, and Contract Time.
- .2** Itemization of applicable direct costs to Contractor and subcontractors, citing: Material units, costs, quantities, and totals; Equipment hours, rates, and totals; and, Labor hours, rates, and totals.
- .3** If a weather-related delay, comparative data by the National Oceanic and Atmospheric Administration obtained by the Contractor as an impartial basis for determining justifiable extensions, or daily work logs which describe actual local weather conditions and impact, subject to approval by the Designer.

7.2.4 Proposed Change Orders will be prepared by Designer or Owner and normally signed by both before being submitted to Contractor for signature. Contractor shall retain one (1) counterpart of change orders and return other counterparts to Designer.

7.3 Costs and Credits

7.3.1 Credit to Owner for change in Work shall be actual net costs as confirmed by Designer.

7.3.2 Cost to Owner from change in Work shall be the lump sum properly itemized by Contractor into the three categories of labor, materials and equipment, as confirmed by Designer, and in accordance with 7.3.6.

7.3.3 When both additional cost and credits are involved in a related change, overhead and profit shall be calculated on the net increase, if any, with respect to that change.

7.3.4 In addition to the itemized costs allowed in 7.3.6, there shall be allowed 10% overhead and 5% profit.

7.3.5 If Work is by a subcontractor or sub-subcontractor, then in addition to the costs, overhead, and profit allowed in 7.3.4, there shall be allowed a further 5% for overhead and profit.

7.3.6 Allowable costs defined:

7.3.6.1 Costs shall be limited to the following:

- .1** Direct Payroll Expense of labor;
- .2** costs of materials, supplies, and equipment, including cost of transportation thereof, whether incorporated or consumed;
- .3** rental costs of machinery and equipment rented from others, and not more than eighty percent (80%) of the Associated Equipment Distributors Nationally Averaged Rental Rates for Construction Equipment for machinery and equipment belonging to Contractor;
- .4** costs of premiums for bonds and insurance to the extent required by Contract Documents, permit fees, and sales, use, or other similar taxes related to the Work;
- .5** additional Direct Payroll Expense of superintendence directly attributable to authorized overtime; and,
- .6** reasonable Direct Payroll Expense of project manager and clerical work directly attributable to estimating and coordinating the change.

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

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

7.3.6.3 Direct payroll expense (DPE) costs referenced in this subparagraph 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 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.

7.3.6.4 Specifically excluded from costs and included in overhead are:

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

----- ARTICLE 8 ----- TIME

8.1 Time limits stated in Contract Documents are of the essence of the Contract. Contractor shall expedite the Work, and achieve Substantial Completion in accordance with the Agreement.

8.2 "Day" shall mean calendar day unless otherwise specifically designated.

8.3 Delays and Extensions of Time

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

- .1 Class 1 causes:** an act or failure to act on the part of Owner or Designer or an employee of either, or of a separate contractor employed by Owner, or an injunction against Owner or Owner's representatives.
- .2 Class 2 causes:** abnormal weather, acts of God, riots, civil commotion, acts of War, fire, unavoidable casualties, epidemics, quarantine restrictions, labor disputes, unusual delay in transportation, freight embargoes, or delays or insolvency of subcontractors, sub-subcontractors, or suppliers.

8.3.2 A claim for extension of time shall be made in writing to Designer not more than twenty-one days after commencement of delay; otherwise it shall be waived. In the case of a continuing delay, Contractor shall provide an estimate of probable effect of such delay on progress of Work, and subsequently detail full impact of delay before action will be taken on disposition of the claim.

8.3.3 Neither Owner nor Designer will be obligated or liable to Contractor for, and Contractor hereby expressly waives claims against Owner and Designer on account of damages, costs, expenses, or related impacts which Contractor, subcontractors, sub-subcontractors, suppliers, or other persons may incur as a result of a Class 2 cause enumerated in 8.3.1; Contractor's sole and exclusive remedy and full compensation in such event shall be extension of Contract Time in accordance with provisions of the Contract Documents. Contractor likewise waives claims of damages, costs, or expenses due to a delay resulting from a Class 1 causes except and solely to the extent of costs allowed under 7.3.6."

8.3.4 Modifications required under this paragraph shall be implemented in accordance with Article 7.

-----ARTICLE 9----- PAYMENTS AND COMPLETION

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

9.2 Schedule of Values shall be submitted by Contractor to Designer before first Application for Payment, apportioning Contract Sum to the various parts of Work, prepared in such form and supported by such data to substantiate its accuracy as Designer may require, and unless objected to by Designer, shall be used as basis for Contractor's Application for Payment.

9.3 Progress Payments

9.3.1 Based upon five (5) counterparts of an Application for Payment on AIA Document G702 Application and Certificate for Payment accompanied by AIA Document G703 Continuation Sheet itemized according to the Schedule of Values with required attachments and accompanying submittals prepared and submitted to Designer by Contractor, and Certificates for Payment issued by Designer, Owner will make progress payments on account of the Contract Sum to Contractor.

9.3.2 Applications may include proper allocations for materials suitably stored at the site and materials suitably stored at another location if agreed in writing and documented with:

- .1** attached certification as to where materials are stored and that materials are fully insured and tagged to identify them for project;
- .2** copies of bills of sale for materials; and,
- .3** certificates of insurance covering materials.

9.3.3 Payment prior to Substantial Completion of the Work shall be in the amount of ninety five percent (95%) of the portion of Contract Sum certified by Contractor and Designer for each pay request, less the aggregate of previous payments by Owner.

9.3.4 Upon Substantial Completion of the Work, payment sufficient to increase total payments to ninety eight percent (98%) of Contract Sum, less such amounts as Designer determines for incomplete work and unsettled claims.

9.3.5 Contractor must attach to Application a Consent of Surety, using AIA Document G707A or a similarly formed letter, if there is a Contract Bond in place per Conditions 11.4.3 and retainage, as a percentage of the total completed and stored to date, is less than was provided in the previous application.

9.3.6 Payment may be expected within forty five (45) days after an undisputed Certificate for Payment has been received by Owner.

9.3.7 Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, the portion thereof to which the Subcontractor is entitled.

9.3.8 Neither Certificates for Payment nor making payment shall constitute acceptance of work not in accordance with Contract Documents.

9.4 Payments Withheld

Payments may be withheld to such extent as may be necessary to protect the Owner from loss because of:

- .1** defective Work not remedied;
- .2** third party claims filed or reasonable evidence indicating probable filing of such claims;
- .3** failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5** damage to the Owner or another contractor;
- .6** reasonable evidence that the Work will not be completed within the Contract Time; or,
- .7** failure to carry out the Work in accordance with the Contract Documents.

9.5 Title to Work

Contractor warrants that title to Work, materials, and equipment covered by an Application for Payment will pass to Owner either upon incorporation in construction or upon receipt of payment by Contractor, whichever occurs first, free and clear of claims, security interests, or encumbrances.

9.6 Substantial Completion

9.6.1 The Date of Substantial Completion is the date certified by Designer when:

- .1** Work is sufficiently complete so Owner can occupy or utilize the Work or designated portion thereof for its intended use;
- .2** Contractor has provided Operating & Maintenance Data Binders which include complete Product Data, Operating & Maintenance Data, and use and occupancy permits if applicable; and,
- .3** Contractor has tested, demonstrated, and operated equipment and systems if any in the presence of Owner representatives.

9.6.2 When Contractor considers Work substantially complete, Contractor shall submit to Designer written notice that Work is Substantially Complete, with a list of items to be completed or corrected and dates scheduled for completion or correction of each item. Upon receipt of such notice, Designer will schedule an inspection meeting with Contractor and Owner.

9.6.3 If Designer determines that Work is not Substantially Complete, Designer will promptly notify Contractor in writing stating reasons. Contractor shall remedy deficiencies in Work and send second written notice of Substantial Completion to Designer. Designer will then schedule a reinspection meeting.

9.6.4 When Designer concurs that Work is substantially complete, Designer will prepare a Certificate of Substantial Completion accompanied by Contractor's list of items to be completed or corrected as verified and amended by Designer. Designer will submit this Certificate to Contractor and Owner for their signatures.

9.6.5 The Certificate of Substantial Completion shall establish the Date of Substantial Completion, stating responsibilities of Owner and Contractor for security, maintenance, heat, utilities, damage to Work, and insurance, and fixing the time within which Contractor shall complete the Work. Warranties shall commence on the Date of Substantial Completion.

9.7 Liquidated Damages

Time being of the essence, the parties agree that the amount of damages resulting from delay would be uncertain and difficult to prove, that the amount for liquidated damages set forth in the Agreement is a reasonable estimate of damages which would result from delay, and accept the conditions for liquidated damages in the amount set forth in the Agreement for reduction of the Contract Sum in compensation for each calendar day in excess of the allotted time for Substantial Completion.

9.8 Final Inspection

9.8.1 The Date of final Completion is the date certified by Designer when Contractor has:

- .1** completed the required construction activity, with no items outstanding;
- .2** provided Record Documents required by 3.11.1;
- .3** provided Project Data Binders required by 3.11.3; and,
- .4** obtained inspections or letters of acceptance for items requiring approval from governing authorities, and added these to the Project Data Binders.

9.8.2 When Contractor has reviewed Contract Documents and inspected Work for completion in compliance with Contract Documents, and considers Work complete and ready for final inspection and acceptance, Contractor shall submit to Designer written request for final inspection certifying readiness. Upon such request and certification, Designer will make inspection as soon as practicable.

9.8.3 If Designer considers Work incomplete or defective, Designer will promptly notify Contractor in writing listing incomplete or defective work. Contractor shall take immediate steps to remedy stated deficiencies and repeat the process of the previous subparagraph.

9.8.4 If Designer finds Work acceptable in accordance with Contract Documents and the Contract fully performed, Designer will make final accounting.

9.9 Final Accounting

9.9.1 A final modification will be made for Liquidated Damages and other appropriate adjustments, if any, to Contract Sum not previously effected.

9.9.2 When the Work and Final Accounting are complete, Contractor shall submit Final Application for Payment.

9.10 Final Payment

9.10.1 Contractor shall submit to Designer six equal counterparts of final application on AIA Document G702 Application and Certificate for Payment, accompanied by:

- .1** AIA Document G703 Continuation Sheet itemized with line items and values of the Schedule of Values;
- .2** Contractor's Affidavit of Payment of Debts and Claims on AIA Document G706, that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner might in any way be responsible, have been paid or otherwise satisfied;
- .3** Consent of Surety Company, if any, to Final Payment on AIA Document G707 or a similarly formed letter, including acknowledgment of exemptions which were identified in Contractor's Affidavit;
- .4** other data establishing payment or satisfaction of all such obligations, such as receipts, releases, and waivers, to the extent and in such form as Owner may require;
- .5** a copy of roofing system warranties, if any are required by the Contract Documents; and,
- .6** a copy of the list of subcontractors and suppliers required by clause 3.11.2.2.

9.10.2 Upon completion of the Work and full performance of the Contract, final inspection, and receipt of the final Application for Payment with required attachments, Designer will issue Certificate for Payment; however, if there is no Contract Bond, the final Certificate may be withheld until the prospect of final payment is advertised 30 days for the benefit of those to whom the Contractor may be indebted.

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

9.10.4 The making of final payment shall not constitute a waiver of claims by the Owner for:

- .1** faulty or defective Work appearing after completion;
- .2** failure of the Work to comply with the requirements of the Contract Documents; or,
- .3** terms of any special warranties required by the Contract.

9.10.5 Acceptance of final payment shall constitute a waiver of payee's claims except those previously made in writing and identified as unsettled at time of final application for payment.

9.11 Method of Payment

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

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

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

----- ARTICLE 10 ----- PROTECTION of PERSONS and PROPERTY

10.1 Contractor shall be responsible for initiating, maintaining and supervising safety precautions and programs in connection with the Work. Contractor shall take reasonable precautions for the 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 Contractor or subcontractors; and
- .3** other property and appurtenances at the site or adjacent thereto.

10.2 Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

10.3 Contractor shall erect and maintain reasonable safeguards for safety and protection.

10.4 When use or storage of explosives or other hazardous materials or equipment is necessary for execution of Work, Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

10.5 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

10.6 Contractor shall promptly remedy damage or loss to property caused in whole or in part by Contractor, subcontractor, or sub-subcontractor, or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, except damage or loss attributable to the acts or omissions of the Owner or Designer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to obligations under Paragraph 3.18.

----- **ARTICLE 11** -----
INSURANCE and BONDS

11.1 Contractor's Liability Insurance

11.1.1 The company or companies providing coverage shall be licensed to do business in Tennessee by the Tennessee Department of Commerce and Insurance. Contractor shall purchase and maintain throughout the life of this Contract such liability insurance, written in a comprehensive form satisfactory to the Owner, as will serve the contractual liability applicable to Contractor's obligations under Paragraph 3.18 and protect Contractor and the Owner from claims set forth below which might arise out of or result from Contractor's operations under Contract, whether such operations be by Contractor, subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Liabilities to be insured under Contractor's insurance shall include, but not be limited to:

- .1 claims under worker's or workmen's compensation, disability benefit and other similar employee benefits acts;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of its employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees;
- .4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;
- .5 claims for damages, including to the Work itself, because of injury to or destruction of tangible property, on or away from the site, including loss of use resulting therefrom; and,
- .6 claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

11.1.2 Limits of liability covered under Contractor's insurance shall be at least as required by law, or as follow, whichever is greater:

- .1 **Comprehensive General Liability**
 - .a including:
 - Premises / Operations
 - Underground, explosion, collapse
 - Products / Completed Operations
 - Contractual
 - Independent Contractors
 - Broad Form Property Damage
 - .b Combined single limits for bodily injury and property damage:

Each Occurrence:	\$500,000
Aggregate:	\$1,000,000
 - .c Products and Completed Operations to be maintained for one year after final payment.
- .d **Asbestos abatement insurance**
 - .1 **Non-friable asbestos:** If removal or abatement of non-friable asbestos is included in Work, and Contractor's General Liability Insurance coverage excludes such risks, Contractor shall provide evidence of a Special Endorsement.
 - .2 **Friable asbestos:** If removal or abatement of friable asbestos is included in Work, Contractor shall provide evidence of a Special Endorsement.
 - .3 **Special Endorsement:** Evidence of a Special Endorsement shall be in the form of a Certificate of Insurance certifying a special endorsement for asbestos abatement insurance with a minimum \$500,000 limit of liability. If Contractor is performing no portion of the asbestos removal or abatement with its own forces, Contractor, in lieu of its own such endorsement, may substitute a Certificate showing such special endorsement covering the subcontractor or sub-subcontractor that is actually performing the asbestos work.

- .2 **Personal injury**, with Employment Exclusion deleted:

Aggregate:	\$50,000
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.3 Comprehensive Automobile Liability:

- .a Including owned, hired, and non-owned vehicles; or, if there are no owned vehicles, Contractor may provide written certification of such and provide coverage limited to hired and non-owned vehicles.
- .b Bodily injury and property damage combined single limits:

Each Occurrence: **\$500,000**

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

- .a Workers Compensation: according to statute
- .b Employer's Liability: **\$100,000**

.5 Builder's Risk Insurance

for the full amount of the Contract Sum.

11.1.3 Certificates of Insurance acceptable to Owner attesting to coverage shall be filed with Owner prior to commencement of Work, and shall specifically identify, as confirmation of complete coverage:

- .1 each element of coverage, except that "Commercial General Liability" shall mean all of the coverages listed in 11.1.2.1.a unless specifically noted otherwise;
- .2 not less than limits set forth above;
- .3 Contractor;
- .4 Producer;
- .5 insurance Carrier;
- .6 Project; and,
- .7 certificate holder;

11.1.4 Contractor shall notify Owner in writing of changes in coverage or carrier not later than 30 days after notification of Contractor by producer, or 10 days before Contractor makes a change, whichever occurs first. Contractor shall require that if policies are canceled or modified before expiration date thereof, Producer shall endeavor to mail 10 days prior written notice to certificate holder named therein.

11.2 Owner's Liability Insurance

The Owner's shall be responsible for purchasing and maintaining its own liability insurance and, at its option, may purchase and maintain such insurance as will protect it against claims which may arise from operations under the Contract.

11.3 Property Insurance

11.3.1 The Contractor shall purchase from and maintain, with a company or companies licensed to do business in Tennessee by the Department of Commerce and Insurance, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum plus value of subsequent Contract modifications for the covered project at the site on a replacement cost basis.

11.3.2 Any deductibles shall be the responsibility of the Contractor.

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

11.4 Bonds

11.4.1 Bonds shall be executed on the Owner's standard forms, as may be exhibited in the Project Manual.

11.4.2 Surety Company issuing bond shall be licensed to transact business in Tennessee by Tennessee Department of Commerce and Insurance. Bonds shall have certified and current Power-of-Attorney for Surety's Attorney-in-Fact attached. Attorney-in-fact who executes bond on behalf of Surety shall be a Tennessee licensed resident agent, and shall affix license number to bond; or, countersignature and license number of a Tennessee licensed resident agent shall be affixed to bond in addition to signature of Attorney-in-Fact.

11.4.3 Performance Bond and Labor and Material Payment Bond

If the Contract Sum exceeds \$100,000, Contractor shall provide Contract Bond in the amount of one hundred percent (100%) of Contract Sum covering faithful performance of contract and payment of obligations arising thereunder, and shall also provide Three Year Roof Bond, if and as stipulated in the Bid and Agreement Form.

-----ARTICLE 12----- UNCOVERING AND CORRECTION OF WORK

12.1 Contractor shall promptly correct Work rejected by Designer as defective or failing to conform with Contract Documents whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Contractor shall bear costs of correcting rejected Work, including compensation for Designer's additional services made necessary thereby.

12.2 If within one year after Date of Substantial Completion, or such longer period of time as may be prescribed by law or by the terms of applicable special warranty required by Contract Documents, work is found to be defective or not in accordance with Contract Documents, Contractor shall correct it promptly unless Owner has previously given Contractor written acceptance of such condition. This obligation shall survive termination of Contract.

12.3 If Three Year Roof Bond is provided according to subparagraph 11.4.3, then with regard only to the roofing system, its installation, and materials, the one year time period of 12.2 is extended for two (2) additional years for a total period of three (3) years, during which time Contractor's obligations hereunder shall be joint and several with Company as defined and set forth in the Roofing System Warranty. For the purpose of this Paragraph, Company's actions, whether of omission or commission, pursuant to Roofing System Warranty are likewise actions of Contractor and in no way negate or reduce responsibilities of Contractor.

12.4 Corrective Inspection

A Corrective Inspection will be scheduled and conducted at project site prior to one year from date Substantial Completion was achieved, but as close to the end of that year as is reasonably possible, and shall be attended by at least one representative each of Owner, Designer, and Contractor, in order to evaluate outstanding corrections needed pursuant to the one-year correction period required by Paragraph 12.2.

-----ARTICLE 13----- TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 Termination by Owner

14.1.1 If Contractor is adjudged bankrupt, or makes general assignment for benefit of creditors, enters receivership, persistently or repeatedly refuses or fails to supply enough properly skilled workmen or proper materials, or fails to promptly pay subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of authorities having jurisdiction, or otherwise substantially violates provisions of the Contract Documents, then Owner, upon certification by Designer of sufficient cause, without prejudice to any right or remedy, may upon seven days' written notice to Contractor, terminate employment of Contractor, taking possession of site and materials, equipment, tools, consumed labor, construction equipment, and machinery thereon owned by Contractor, and may finish Work by whatever method Owner deems expedient. In such case the Contractor shall not be entitled to receive further payment until Work is finished.

14.1.2 If unpaid balance of Contract Sum exceeds costs of finishing Work, including Designer's additional services made necessary thereby, such excess shall be paid to Contractor. If costs exceed the unpaid balance, Contractor shall pay difference to Owner. The amount to be paid to Contractor or to Owner, as case may be, shall be certified by Designer, upon application. This obligation for payment shall survive termination of Contract.

14.2 Termination by Contractor

If Designer fails to issue a Certificate for Payment for a period of thirty days through no fault of Contractor, or if Owner fails to make payment thereon for a period of forty five days, Contractor may, upon ten days additional notice in writing to Owner and Designer, terminate the Contract and recover from Owner payment for Work executed and for proven losses sustained upon materials, equipment, tools, construction equipment, machinery, and reasonable overhead, profit and costs normally allowed in Article 7.

END OF DOCUMENT