



# GENERAL CONDITIONS

## OF THE CONTRACT FOR NON-CONSTRUCTION

-----ARTICLE 1-----  
**GENERAL PROVISIONS**

**1.1 Governing Law:**

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

**1.2 Contract Documents** and copies are property of Owner.

**1.3 Contract** is formed by the Contract Documents and represents the entire agreement, superseding prior negotiations, representations, or agreements. 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

**1.4 "Work"** comprises the completed products and services required by Contract Documents, including materials, equipment, transportation, and labor.

**1.5 "Provide"** means to furnish and install, complete and ready for intended use.

-----ARTICLE 2-----  
**OWNER**

**2.1** Owner is the government of the State of Tennessee operating through the contracting agency identified in the Agreement.

**2.2 Information and services:**

Owner will furnish surveys describing physical characteristics, legal limitations and utility locations for the site, and legal description of site, to the extent necessary. 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. Owner will furnish Contractor the number of copies of Contract Documents reasonably necessary for execution of Work free of charge.

**2.3 Right to stop Work:**

Owner may order Contractor 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. Owner has no duty to exercise this right for the benefit of Contractor or other entity.

**2.4 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 correct such deficiencies and issue a Change Order deducting the cost of correction from the Contract Sum.

-----ARTICLE 3-----  
**CONTRACTOR**

**3.1** Contractor is the entity identified as such in the Agreement. 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:** Prior to contract, Contractor has visited site, become familiar with local working conditions, and correlated observations with requirements of Contract Documents. Contractor shall carefully study and compare Contract Documents and at once report discovery of error, inconsistency, or omission to Owner's Representative, and shall not be liable to Owner for damage resulting from such errors, inconsistencies, or omissions. Contractor shall not work without Contract Documents, or where required, approved Shop Drawings, Product Data, or Samples.

**3.3 Control of Work:** Contractor shall supervise and direct Work, and is solely responsible for means, methods, techniques, sequences, procedures, and coordination of Work. Contractor is responsible for acts and omissions of agents, employees, and other persons performing work under contract with Contractor, subcontractors, and suppliers, and shall not be relieved from obligations to perform Work in accordance with Contract Documents either by activities, duties, inspections, tests, or approvals by others.

### **3.4 Labor and materials**

**3.4.1** Unless otherwise provided in Contract Documents, Contractor shall provide and pay for labor, materials, equipment, tools, machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of Work. Contractor shall not receive material nor labor from one who submitted a lower general bid for the same Contract and subsequently withdrew or reneged. If desiring to use materials, equipment, or systems other than those specified, Contractor shall submit written request for substitution, with adequate samples and data, for review by Owner's Representative, and make no substitution without written approval from Owner's Representative.

#### **3.4.2 Non-discrimination:**

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

#### **3.4.3 Prohibition of Illegal Immigrants**

**3.4.3.1** 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.

**3.4.3.2** 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.

**3.4.3.3** 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.

**3.4.3.4** 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 Use of Site:**

Contractor shall confine operations at site to areas permitted by law, permits, and Contract Documents; shall keep site reasonably clear of materials, equipment, waste materials, and rubbish; and, at completion of Work shall remove tools, equipment, machinery surplus, waste materials, and rubbish.

#### **3.6 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 altering work, and shall not alter work of Owner or separate contractor except with written consent thereof.

#### **3.7 Shop Drawings, Product Data, and Samples:**

Contractor shall review, approve and submit Shop Drawings, Product Data and Samples required by Contract Documents with reasonable promptness. Contractor's approval shall represent having determined and verified materials, field measurements, field construction criteria, and compatibility with requirements of Contract Documents. No portion of Work requiring submission of Shop Drawing, Product Data or Sample shall be commenced until submittal has approval of Owner's Representative. Work shall be in accordance with approved submittals. Approval of Shop Drawings, Product Data or Samples by Owner's Representative shall not relieve Contractor of responsibility for error, omissions, or deviations from requirements of Contract Documents except for deviations specifically identified by Contractor at time of submission and specifically approved in writing by Owner's Representative.

**3.8 Record Documents:**

Contractor shall maintain and make available to Owner's Representative one complete record set of Contract Documents in good order marked "Record Documents" and marked currently to record actual conditions of Work, including approved Shop Drawings, Product Data, and Samples. Contractor shall furnish 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. Contractor shall obtain Certificates, Warranties, Product Data, Maintenance and Operation Data, and related documents information required by Contract Documents or furnished with items included in Project. These shall be delivered to Owner's Representative upon completion of Work.

**3.9 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.

**3.10 Permits, fees and notices:**

Unless otherwise provided in Contract Documents, Contractor shall secure and pay for all necessary permits, governmental fees, licenses, and inspections for completion of Work which are customarily secured after execution of Contract. 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. If Contractor observes that Contract Documents conflict with applicable laws, statutes, building codes and regulations, Contractor shall promptly notify Owner's Representative in writing, and necessary changes shall be accomplished by appropriate Modification. If Contractor performs Work knowing it to be contrary to such regulatory requirements without such notice, Contractor assumes full responsibility therefor and shall bear all costs attributable thereto.

**3.11 Taxes:**

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

**3.12 Warranty:**

Contractor warrants materials, equipment, and labor furnished to 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.

**3.13 Indemnification:**

**3.13.1** To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the Owner, the Owner's Representative, 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.

**3.13.2** 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, Owner's Representative, 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 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.

----- **ARTICLE 4** -----  
**ADMINISTRATION of the CONTRACT**

**4.1** The Owner's Representative provides Contract administration, and has responsibility and authority only to the extent provided in the Contract Documents.

**4.2 Modifications, Completion, Inspection, and Payments:**

Owner's Representative will help prepare contract modifications, inspect to determine dates of Substantial Completion and final completion, reject Work which does not conform to Contract Documents, and issue Certificates for Payment based on observations of Work and evaluation of Applications for Payment, and may require special inspection or testing.

**4.3 Submittals:**

Owner's Representative will receive and reply to Contractor's submittals, but only for conformance with the Contract Documents. Approval of a specific item shall not indicate approval of an assembly of which the item is a component. Owner's Representative will receive Record Documents required of and assembled by Contractor.

**4.4 Interpretations:**

Owner's Representative will interpret Contract Documents and judge performance by both Owner and Contractor, rendering 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. Owner's Representative will not be liable for the result of interpretations or decisions rendered in good faith. Owner's Representative's decisions in matters relating to artistic effect will be final. Either party to the Contract may request interpretations, judgments, and decisions.

**4.5** Claims, disputes and other matters in question relating to execution of Work or interpretation of Contract Documents shall be referred initially to Owner's Representative. The State of Tennessee is not subject to mechanic's liens. Payment is protected through the Contract Bond, if and as required by paragraph 11.5 of these Conditions. If normal procedures within the Contract fail to satisfy a payment claim, further action against the State is to be taken up with the Tennessee Claims Commission, pursuant to TCA § 9-8-101, et seq. Specific requirements for notice of claim are set forth in TCA § 12-4-205. Damages recoverable against the State shall be limited expressly to claims awarded by the Commission.

**5.4** Contractor shall not award subcontract to one who made a competing bid for the Contract and subsequently reneged or withdrew that bid. 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.

**5.5** Contractor shall furnish to Owner and Owner's Representative in writing, within 21 days after award of Contract, names of subcontractors proposed for principal portions of Work.

**5.6 Participation of Minority-Owned Businesses:**

If this contract provides construction, demolition, or renovation, Contractor shall report to Owner the names and amounts of contracts entered into with minority-owned businesses. "Minority-owned business" means a business which is at least fifty-one percent (51%) owned by an individual who personally manages and controls 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, and which business has been certified as a "Minority-owned Business" by an agency of the federal government or the government of the State of Tennessee which normally provides such certification.

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

**5.1** 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** Contractor shall engage subcontractors with the same obligations, responsibilities, rights, remedies, and redress as Owner has engaged Contractor. Contractor shall neither employ subcontractors against whom Owner has reasonable objection, nor be compelled to contract with anyone against whom Contractor has reasonable objection.

**5.3** Subcontractors listed on the Bid Envelope for this project shall be used in the capacity listed.

-----**ARTICLE 6**-----  
**CONSTRUCTION by OWNER  
or by SEPARATE CONTRACTORS**

**6.1 Right to perform Work  
and award separate contracts:**

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. Owner will provide for coordination of work of Owner's and separate contractors' forces with Work of Contractor. 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 Documents.

-----**ARTICLE 7**-----  
**CHANGES in the WORK**

**7.1** Owner may order changes in Work within general scope of Contract, adjusting Contract Sum and Contract Time accordingly by Change Order. Owner's Representative may order minor changes in Work which do not impact upon Contract Sum and Contract Time.

**7.2 Change Orders:**

A Change Order is a written order after execution of the Contract signed by Owner and Owner's Representative describing and authorizing changes in Work, Contract Sum, or Contract Time. A Change Order signed by Contractor indicates agreement therewith, including adjustments in Contract Sum or Contract Time, and certifies that adjustments encompass all direct and indirect costs and schedule impacts associated with the change. If forms for Change Orders and Cost Itemization are included in Specifications, those forms, or similar forms, should be used. Change Orders shall be supported by:

- .1 Itemization of direct costs of change which cites: Material units, costs, quantities, and totals; Equipment hours, rates, and totals; and, Labor hours, rates, and totals.
- .2 If a weather-related delay, detailed documentation of impact and analysis of weather deviation from norm, subject to corroboration by Owner's Representative.

**7.3 Costs, Credits, Overhead, and Profit**

**7.3.1** 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. In addition to the itemized costs allowed in 7.3.2, there shall be allowed 10% overhead and 5% profit; and, if Work is by a subcontractor or sub-subcontractor, then there shall be allowed a further 5% for overhead and profit.

**7.3.2** Costs shall be limited to the following:

- .1 Direct payroll expense (DPE) costs delineated below 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;.
- .2 DPE of project manager and clerical work directly attributable to estimating and coordinating the change;
- .3 DPE of additional superintendence directly attributable to authorized overtime;
- .4 DPE of labor;

- .5 materials, supplies, and equipment, including cost of transportation thereof, whether incorporated or consumed;
- .6 rental 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;
- .7 permit fees, and sales, use, or other similar taxes related to the Work; and,
- .8 premiums for bonds and insurance to the extent required by Contract Documents.

**7.3.3** 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 Article 8, 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 and unaffected by the extension of 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.

**7.3.4** 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 Contract Time** is the number of calendar days in which the Contractor shall achieve Substantial Completion, from and including the date of commencement of Work, established in the Notice to Proceed. "Day" shall mean calendar day unless otherwise specifically designated.

## 8.2 Delays and extensions of Time

**8.2.1** 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, 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 Owner's Representative 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 commotions, acts of War, fire, unavoidable casualties, epidemics, quarantine restrictions, labor disputes, unusual delay in transportation, freight embargoes, or delays or insolvencies of subcontractors, sub-subcontractors, or suppliers.

**8.2.2** A claim for extension of time shall be made in writing to Owner's Representative 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.

**8.2.3** Neither Owner nor Owner's Representative will be obligated or liable to Contractor for, and Contractor hereby expressly waives claims against them on account of damages, costs, expenses, or related impacts which Contractor, subcontractors, suppliers, or others may incur as a result of a Class 2 cause enumerated above. Contractor's full and exclusive remedy and compensation for such shall be extension of Contract Time. Contractor likewise waives claims of damages, costs, or expenses due to a delay resulting from a Class 1 cause except and solely to the extent of costs allowed under 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 Progress Payments:

**9.2.1** Based upon original and three copies of each Application for Payment on AIA Document G702 Application and Certificate for Payment with required attachments and accompanying submittals prepared and submitted by Contractor, and certified by Owner's Representative, Owner will make progress payments on account of the Contract Sum to Contractor.

**9.2.2** Applications may include allocations for materials stored at the site and materials 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.

**9.2.3** Until Substantial Completion of the Work, payment shall be ninety five percent (95%) of the total completed and stored to date, less previous payments by Owner.

**9.2.4** Upon Substantial Completion of the Work, payment shall be ninety eight percent (98%) of Contract Sum, less the value of incomplete work, unsettled claims, and previous payments by Owner.

**9.2.5** If retainage as a percentage of the total completed and stored to date is less than was provided in the previous application, and there is Contract Bond on the Contract, Contractor must attach to Application a Consent of Surety, using AIA Document G707A or a similarly formed letter.

**9.2.6** Payment may be expected within forty five (45) days after an undisputed Certificate for Payment has been received by Owner. Contractor shall promptly pay each Subcontractor, upon receipt of payment from Owner, the portion to which the Subcontractor is entitled, reflecting actual retainage. Neither Certificates for Payment nor making payment shall constitute acceptance of work not in accordance with Contract Documents.

## 9.3 Payments withheld:

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

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

**9.4 Title to Work:**

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

**9.5 Substantial Completion:**

**9.5.1** The Date of Substantial Completion is the date certified by Owner's Representative 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.

**9.5.2** When Contractor considers Work substantially complete, Contractor shall submit to Owner's Representative 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, Owner's Representative will schedule an inspection meeting with Contractor and Owner. If Work is not Substantially Complete, Contractor shall remedy deficiencies in Work and repeat the above procedure.

**9.5.4** Owner's Representative, upon concurring that Work is substantially complete, will prepare a Certificate of Substantial Completion accompanied by a list of items to be completed or corrected, and will submit this Certificate to Contractor and Owner for signature.

**9.5.5** 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.

**9.6 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.

**9.7 Final Inspection:**

**9.7.1** The Date of final Completion is the date certified by Owner's Representative when Contractor has:

- .1 completed required delivery and installation, with no items outstanding;
- .2 obtained required inspections or letters of acceptance from governing authorities, and included these in Data Binders; and,
- .3 provided Record Documents and Data Binders.

**9.7.2** Contractor, having reviewed Contract Documents, inspected Work for completion in compliance with Contract Documents, and considering Work complete and ready for final inspection and acceptance, shall arrange for final inspection by Owner's Representative as soon as practicable.

**9.7.3** Owner's Representative, considering Work incomplete or defective, will notify Contractor with list of incomplete or defective work. Contractor shall take immediate steps to remedy stated deficiencies and repeat the process of the previous subparagraph.

**9.7.4** Owner's Representative, considering Work acceptable in accordance with Contract Documents and the Contract fully performed, will make final accounting.

**9.8 Final Accounting:**

Owner's Representative will prepare a Change Order, if necessary, to effect Liquidated Damages and other appropriate adjustments to Contract Sum not previously effected, and deliver it to Contractor, who shall sign and return it to Owner's Representative. When the Work and Final Accounting are complete, Owner's Representative will instruct Contractor to submit Final Application for Payment.

**9.9 Final Payment:**

**9.9.1** Contractor shall submit to Owner's Representative an original and three copies of final application on AIA Document G702 Application and Certificate for Payment, accompanied by:

- .1 AIA Document G703 Continuation Sheet with 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 satisfied;
- .3 Consent of Surety Company, if any, to Final Payment on AIA Document G707 or a similar letter, including acknowledgment of exemptions which were identified in Contractor's Affidavit;
- .4 other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers, to the extent and in such form as may be designated by Owner; and,

.5 the list of subcontractors and suppliers required by the Contract Documents.

9.9.2 Upon completion of the Work, final inspection, and receipt of the final Application for Payment with required attachments, Owner's Representative will issue Certificate for Payment, whereupon Final Payment, constituting the entire unpaid balance of the Contract Sum, will be paid by Owner to Contractor.

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

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

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

9.10 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 the 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 public authority bearing on 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 using or storing of explosives or other hazardous materials or equipment, Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

10.5 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 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 acts or omissions of the Owner or Owner's Representative 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 Contractor. This obligation of Contractor is in addition to the Indemnification obligations under Article 3.

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

11.1 **Insurance and Surety Providers** shall be licensed to do business in Tennessee by the Tennessee Department of Commerce and Insurance.

11.2 **Contractor's Liability Insurance:**

11.2.1 Contractor shall have liability insurance to serve the contractual indemnification liability under Article 3 and to protect from claims including, but not be limited to:

- .1 claims under worker's or workmen's compensation, disability benefit and other similar employee benefits acts;
- .2 death, bodily injury, sickness, or disease of any person, including occupational sickness or disease of employees;
- .3 damages to or destruction of tangible property, including the Work itself, including loss of use resulting therefrom;
- .4 personal injury; and,
- .5 property damage, bodily injury, or death arising from ownership, maintenance or use of motor vehicles.

11.2.2 Limits of liability of Contractor's insurance shall be sufficient to protect Contractor and ensure continued performance of the Work, and not less than required by law. Certificates of Insurance shall be filed with Owner prior to commencement of Work.

11.3 **Owner's Liability and Property Insurance:**

Owner shall be responsible for its own liability insurance, and may have insurance to protect against claims which may arise from the Contract. If the Work includes construction on site, Owner shall have property insurance for the Work at the site, including interests of Owner, Contractor, and subcontractors, insuring against perils of fire and extended coverage and including "all risk" insurance for physical loss or damage including, without duplication of coverage, theft, vandalism and malicious mischief. Such insurance carried by Owner will include a \$10,000 deductible. The



deductible is the responsibility of the Contractor. Covered losses will be adjusted with Owner and paid to Owner as trustee for the insureds. Contractor shall pay each Subcontractor a just share of insurance proceeds received by Contractor, and shall require subcontractors to pay their subcontractors similarly.

**11.4 Mutual Waiver:**

Owner and Contractor waive all rights against each other for damages caused by fire or other perils to extent covered by insurance, except such rights as they may have to proceeds of such insurance held by the Owner as trustee. Contractor shall require similar waivers from subcontractors.

**11.5 Bonds:**

If the Contract Sum equals or exceeds \$100,000 at time of award, 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, executed on the Owner's standard form, as may be exhibited in the Project Manual. 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.

-----**ARTICLE 12**-----  
**UNCOVERING and CORRECTION of WORK**

**12.1** Contractor shall promptly correct Work rejected by Owner's Representative as defective or failing to conform with Contract Documents, and shall bear costs of correcting rejected Work, including compensation for Owner's Representative'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 special warranty requirement, 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.

-----**ARTICLE 13**-----  
**TERMINATION or SUSPENSION  
of the CONTRACT**

**13.1 Termination by Owner:**

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, without prejudice to any right or remedy, may terminate employment of Contractor, take possession of site, materials, equipment, tools, consumed labor, construction equipment, and machinery thereon owned by Contractor, and may finish Work by whatever method Owner deems expedient, and Contractor shall not be entitled to receive further payment until Work is finished. If unpaid balance of Contract Sum exceeds costs of finishing Work, including Owner's Representative'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. This obligation for payment shall survive termination of Contract.

**13.2 Termination by Contractor:**

If Owner's Representative 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 Owner's Representative, 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.

---

**END OF DOCUMENT**