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Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

Arkansas
State Claims Commission
AUG 01 2014

RECEIVED

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

X Mr.

- ☐ Mrs.
☐ Ms.
☐ Miss

LYLE D. SULLIVAN D/B/A SULLIVAN CONSTRUCTION COMPANY Claimant

vs.

State of Arkansas, Respondent
State Parks & Tourism

| Do Not Write in These Spaces | | |
|------------------------------|--|--|
| Claim No. | 15-0094-CC | |
| Date Filed | August 1, 2014 (Month) (Day) (Year) | |
| Amount of Claim \$ | 260,864.25 | |
| Fund | ASP&T | |

Refund of Expenses/Breach of Contract

COMPLAINT

LYLE D. SULLIVAN D/B/A SULLIVAN CONSTRUCTION COMPANY

(Name)

the above named Claimant, of

140 BRADLEY ROAD 18 EAST, WARREN

(Street or R.F.D. & No.)

(City)

AR 71671 (870) 226-5651

(State) (Zip Code)

(Daytime Phone No.)

County of BRADLEY

represented by DAVID A. GRACE

(Legal Counsel, if any, for Claim)

of 500 MAIN ST., STE. A, NORTH LITTLE ROCK, AR 72114

(Street and No.)

(City)

(State)

(Zip Code)

(501) 378-7900

(Phone No.)

(501) 376-6337

(Fax No.)

says:

State agency involved: ARK. DEPARTMENT OF PARKS & TOURISM

Amount sought: \$260,864.25

Month, day, year and place of incident or service: 10/24/07 - 08/04/09

Explanation: Claimant contracted with Respondent to construct a project generally described as "Five Housekeeping Cabins, Laundry Building Including Parking, Access and Utilities at Moro Bay State Park" ("Project"). The Project was substantially completed on August 4, 2009. During the course of construction, Claimant was asked to perform work that was not a part of his original contract, which caused him to submit 19 change orders. Many of the change orders were originally approved but were then discovered to have been submitted using an outdated form. All change orders were revised using the correct form, which increased Claimant's compensation by \$103,102.51. Respondent refused to approve the revised change orders, although there is no dispute that the work described in the change orders was not part of Claimant's original contract. In addition, Claimant's work was delayed, and even stopped, by historically bad weather, including three floods, unprecedented working conditions and design mistakes that were the responsibility of Respondent. As a result, Claimant incurred additional costs totaling \$157,761.74. Despite timely demand, Respondent has refused to reimburse Claimant for these costs. Claimant has exhausted his administrative remedies.

Attached hereto and incorporated by this reference are the contract between Claimant and Respondent, supporting documentation for his claims and explanatory letters.

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof?

YES ; when? 10 15 2009 ; to whom? ARK. DEPARTMENT OF PARKS & TOURISM
(Yes or No) (Month) (Day) (Year) (Department)

and that the following action was taken thereon: NO ACTION TAKEN

and that \$ -0- was paid thereon: (2) Has any third person or corporation an interest in this claim? YES ; if so, state name and address

OHIO CAS. INS. CO., C/O PAUL HICKEY, ATTORNEY, P.O. BOX 3780, LITTLE ROCK, AR 72203

(Name)

(Street or R.F.D. & No.)

(City)

(State)

(Zip Code)

and that the nature thereof is as follows:

RIGHT OF EQUITABLE SUBROGATION

and was acquired on

VARIOUS DATES IN 2009

in the following manner:

SUBROGATION BASED ON PAYMENTS MADE PURSUANT TO THE TERMS OF PAYMENT BOND

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true. LYLE D. SULLIVAN D/B/A

SULLIVAN CONSTRUCTION COMPANY

(Print Claimant/Representative Name)

(Signature of Claimant/Representative)

SWORN TO and subscribed before me at

North Little Rock Ark.

on this

1st

(Date)

day of

August

(City)

2014

(State)

(Month)

(Year)

Lisa Petersen

(Notary Public)

My Commission Expires:

9

(Month)

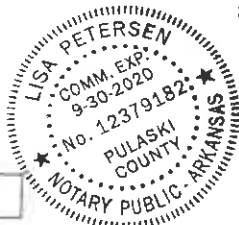
30

(Day)

2020

(Year)

(SEAL)



SF1- R7/99

AGREEMENT FORM
Section 00520

MOF # 02602
Approp 5000
✓ Capital Expensed
4500783002

THIS AGREEMENT entered into this 24th day of October 2007 by and between Sullivan Construction Company hereinafter referred to as the Contractor, and Arkansas Department of Parks and Tourism hereinafter referred to as Owner, and Arkansas Building Authority (ABA) in accordance with Ark. Code Ann. § 22-2-101 et seq.,

WITNESSETH:

1. That for and in consideration of the payment by the owner in the amount of \$1,475,000.00 to be made as set forth in the Contract Documents, the Contractor hereby agrees to furnish all tools, labor, equipment, and materials, and to build and construct that certain project in Bradley County, designated as

Project #: ABA 9000705

Project Name: Five housekeeping cabins, laundry building including parking, access and utilities at Moro Bay State Park consisting of construction, more specifically described in the Contract Documents attached hereto and incorporated herein by reference. Contract Documents include the following: the Agreement Form (this instrument); the Invitation to Bid; Instruction to Bidders; Bid Form; all Addenda; Performance and Payment Bond; General and Supplementary Conditions; Drawings and Specifications; Drawings listed in the Specifications; Notice to Proceed; Negotiated Changes Documents; and Change Orders. All capital improvements shall be in exact accord with the Contract Documents filed with the Construction Section Office of Arkansas Building Authority, located in Little Rock, on October 18, 2007. The Arkansas Building Authority (ABA) Construction Section shall have direct contract supervision. Said capital improvements shall be to the satisfaction of the ABA Construction Section, and in accordance with the laws of the State of Arkansas, and the work shall be subject to inspection and approval at all times by the appropriate state and federal agencies.

2. Owner may at any time during the progress of the work alter, change, subtract from, or add to said Contract Documents without violating this Agreement or the terms thereof. Said changes, alterations, subtractions, or additions shall be set forth in writing in a document referred to as a "Change Order." Said document shall not be effective unless approved by the ABA. Once effective, the Change Order shall be attached hereto and incorporated herein by reference and shall be made a condition or term of the Contract Documents. Nothing contained in the Change Order shall be construed to waive the sovereign immunity of the State or entities thereof.

3. The Contractor agrees, for the consideration set forth in the Bid Form, to begin work within the time frame as stated in 6 (b) of Section 00410 Bid Form after a Notice to Proceed is issued and to complete the work in 360 calendar days or on or before N/A. If the Contractor fails to complete the work within the time limit herein specified, he shall pay to the Owner, as liquidated damages and not in the nature of a penalty, the sum specified in the Bid Form of for each calendar day delayed, it being understood and agreed between the parties hereto that the said sum fixed as liquidated damages is a reasonable sum, considering the damages that Owner will sustain in the event of any such delay, and said amount is herein agreed upon and fixed as liquidated damages because of difficulty of ascertaining the exact amount of damages that may be sustained by such delay. The said sum shall be deducted from the amount of the contract.

4. Should Contractor be delayed in the execution or completion of the work by the act, neglect or default of the State, or by any damage by fire, weather conditions or other casualty or event for which the contractor is not responsible, or by general strikes or lockouts caused by acts of employees, then any extended period shall be determined and fixed by the Owner with approval

given by ABA Construction Section. Said extended period shall be the time for a period equivalent to the time lost by reason of any or all of the causes aforesaid, but no such allowance shall be made unless a claim therefore is presented in writing to the Owner or ABA Construction Section within seven calendar days of the occurrence of the event causing the delay.

5. It is mutually agreed between the parties that in the performance of this contract, Contractor is acting independently and in no sense as Agent of the State. Contractor shall not let, assign, or transfer this contract or any interest therein, without the written consent of the Owner and ABA.
6. It is agreed and understood between the parties hereto that the Contractor shall accept and the Owner will pay for the work, at the prices stipulated in the Contract Documents, such payment to be in the form of legal tender, and the payment shall be made at the time and in the manner set forth in the Contract Documents.
7. Any laborer or mechanic employed by the Contractor or any Subcontractors for this project, directly on site for the work covered by the Contract Documents, shall be paid a rate of wages required by the Contract Documents. If the Owner or ABA, or both discovers that wages less than the rate of wages specified by the Contract Documents have been or are being paid, then the Owner or ABA, after giving written notice to the Contractor, will terminate the Contractor's right to proceed with the project work or such part of the work as to which there has been a failure to pay the required wages and to prosecute the work to completion by contract or otherwise, and the Contractor and his sureties shall be liable to the Owner for any excess costs occasioned thereby.
8. Contractor shall promptly repair, at his own expense and to the satisfaction of the Owner and ABA Construction Section, damage done by him or his employees or agents at the work site, or to the public property or buildings, or both, and will save the State harmless from all claims of any person for injury to person or to property occasioned by his act, or the acts of his employees or agents, while in the execution of the work specified.
9. The Owner or ABA, or both may terminate this agreement to the extent Owner's funds are no longer available for expenditures under this agreement.
10. Failure to make any disclosure required by Governor's Executive order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the Agency.
 - a) The contractor shall prior to entering any agreement with any subcontractor, for which the total consideration is greater than \$25,000.00, require the subcontractor to complete a Contract and Grant Disclosure and Certification Form. The contractor shall ensure that any agreement, current or future between the contractor and a subcontractor for which the total consideration is greater than \$25,000.00 shall contain the following:

Failure to make any disclosure required by Governor Executive Order 98-04, or any violation of any rule, regulation or adopted pursuant to that Order, shall be a material breach of the term of this subcontract. The party who fails to make the required disclosure or who violates the rule, regulation, or policy shall be subject to all legal remedies available to the contractor.
 - b) The Contractor shall, within ten days of entering into any agreement with a subcontractor, transmit to Arkansas Building Authority; a copy of the Contract and Grant Disclosure and Certification Form (00850) completed and signed by the subcontractor and a statement containing the dollar amount of the subcontractor.
 - c) The terms and conditions regarding the failure to disclose and conditions which constitutes material breach of contract and rights of termination and remedies under the Executive Order 98-04 are hereby incorporated within.

11. Nothing in this Contract shall be construed to waive the sovereign immunity of the STATE OF ARKANSAS or any entities there of.

Executed by the parties who individually represent that each have the authority to enter into this Contract.

CONTRACTOR: Sullivan Construction Company

By: Doug Sullivan (Signature)

Doug Sullivan (Print Name)

Title: President

Firm: Sullivan Construction Company

Address: P.O. Box 946 WARREN, AR 71671

Date: 10/31/07

Email: d.s.construction@searke.com

OWNER: Arkansas State Parks

By: Greg Butts (Signature)

Greg Butts (Print Name)

Title: Director State Parks

Agency: ADPT

Address: 2 Capitol Mall

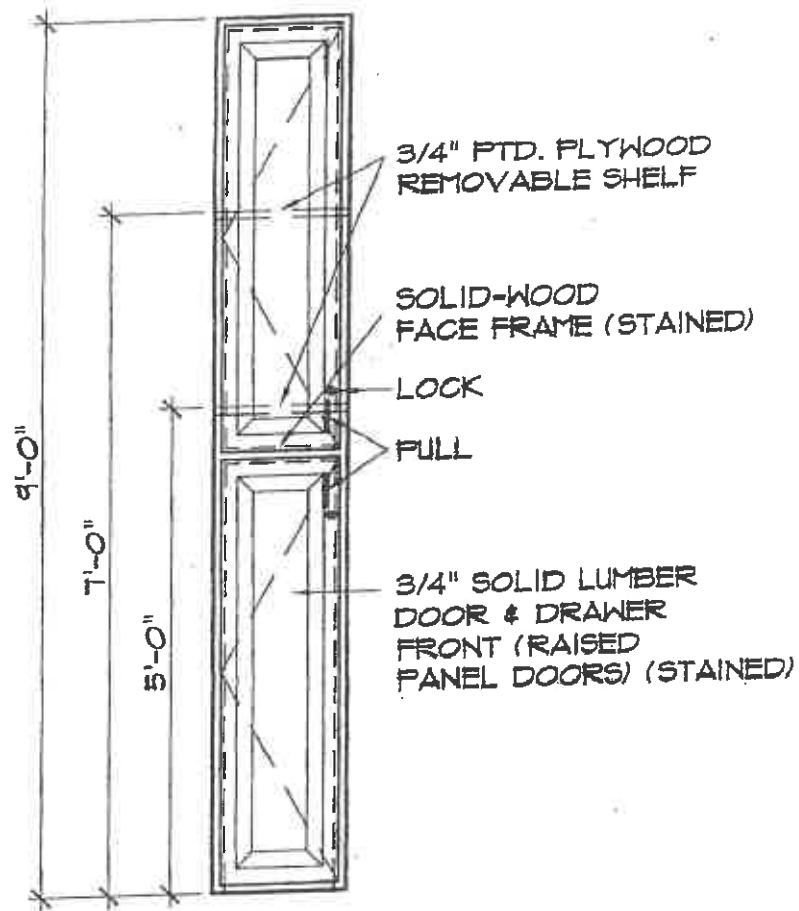
Date: 11/6/07

Email: _____

APPROVED: ARKANSAS BUILDING AUTHORITY

By: _____ (Signature)

Date: _____



10
A5.2

ELEV. - MAID STORAGE IN CABIN

1/2" = 1'-0"

MORO Bay
BY
Trull-Hollensworth, Architects
804 N. Jackson
Magnolia, AR 71753
10-21-08

ox Document Centre 340 PS

5

FUNDERBURG ELECTRICAL CONTRACTORS INC.
885 HWY. 8 NORTH
WARREN, AR 71671
CELL PHONE 870-820-2220

CHANGE ORDER

DATE: DECEMBER 10, 2008
TO: SULLIVAN CONSTRUCTION
FROM: RANDY FUNDERBURG
JOB: MORO BAY STATE PARK CABINS

*INSTALL NEW WALL PACK LIGHT ON CABIN #1 ABOVE HANDICAP RAMP.
(MATCHES THE OTHER WALL PACK LIGHTS W2 E1.4)

*INSTALL EMPTY CONDUIT FROM PANEL BOX TO CHASE UNDER CABIN FOR
FUTURE USE.

| | | |
|-------|-------------------|---|
| A. | 520.00 | (LIGHT \$275.00)(CONDUIT, CONNECTORS ,BOXES & WIRE \$245.00) |
| B. | 49.40 | |
| C. | 715.00 | |
| D. | 88.00 | |
| E. | 164.68 | |
| TOTAL | <u>\$1,537.08</u> | |

RANDY FUNDERBURG

General Contractor
Doug Sullivan / Owner
P.O.Box 946 Warren, AR 71671
Office Phone (870) 226-5651
Fax (870) 226-7099
Cell Phone (870) 820-2264

JANUARY 30, 2009
MARCH 29, 2009(REVISED)
APRIL 20, 209(REVISED)
APRIL 23, 2009 (REVISED)
CHANGE ORDER #13

SLEEVES UNDERNEATH DRIVEWAYS FOR FUTURE ACCESS
BREAK DOWN

NET COST OF MATERIALS

- *SUPPLIES (4" PVC SC 40, 140 LF, FITTINGS, GLUE, CLEANER)
- *EQUIPMENT REQUIRED (BACKHOE 3 HRS. @ \$75 PER HR.)
- *COST OF TRANSPORTATION (1 TRUCK 1 TRIP 70 MILES ROUND TRIP)

393.09 ✓
225.00 ✓
50.00 ✓
668.09 ✓

STATE SALES TAX 9.00%

60.13 ✓

NET PLACING COST

- *LABOR MAN HOURS 16
- *ADDITIONAL COST OF SUPERVISION (\$214.29 DAY (2) ½ DAY CHARGES)
- *ADDITIONAL COST OF REQUIRED INSURANCE IN PLACE (\$40.61 DAY (2) DAYS)
- *ADDITIONAL COST OF REQUIRED JOB TOILET (\$2.40 DAY (2) DAYS)
- *ADDITIONAL COST OF REQUIRED JOB ELECTRICITY (\$0.77 DAY (2) DAYS)

*@ \$18.125/hr
and field office personnel*

290.00 ✓
214.29 ✓
81.22 ✓
4.80 ✓
1.54 ✓
591.85 ✓

Labor Total = \$ 504.29

W.C. INSURANCE PREMIUM & FICA TAX @ 36%

181.54 ✓

SUB TOTAL

1,501.61 ✓

*Supervision & field office personnel 214.29
payroll burden X 36% 77.14
ins. 40.61
Toilet 2.40
elect. 0.77
335.21 DAY*

General Contractor
Doug Sullivan / Owner

P.O.Box 946 Warren, AR 71671

OFFICE (870)226-5651 FAX(870)226-7099 CELL(870)820-2264

JANUARY 30, 2009

MARCH 25, 2009 (REVISED)

APRIL 20, 2009 (REVISED)

APRIL 23, 2009 (REVISED)

CHANGE ORDER #13

MAID STORAGE CABINETS (5) CABINETS TOTAL
BREAKDOWN

NET COST OF MATERIALS

2,171.13 ✓✓

*SUPPLIES (OAK PLYWOOD, OAK LUMBER, OAK RAISED
PANEL DOORS, HARDWARE, SANDPAPER, STAIN,
WOOD FILLER, VARNISH, BRUSHES)

1,831.13

*EQUIPMENT REQUIRED (TRAILER 2 DAYS @ \$20)

40.00 ✓

*COST OF TRANSPORTATION

300.00 ✓

(1 TRUCK 6 TRIPS 70 MILES ROUND TRIP @ \$50)

STATE SALES TAX 9.00%

195.40 ✓

NET PLACING COST

2,005.55 ✓

*LABOR MAN HOURS 48 @ \$22.917/hr

1,100.00 ✓

*ADDITIONAL COST OF SUPERVISION *and field office personnel*

642.87 ✓

(\$214.29 PER DAY (6) ½ DAYS)

*ADDITIONAL COST OF REQUIRED INSURANCES IN PLACE
(\$40.61 DAY (6) DAYS)

243.66 ✓

*ADDITIONAL COST OF REQUIRED JOB TOILET
(\$2.40 DAY (6) DAYS)

14.40 ✓

*ADDITIONAL COST OF REQUIRED JOB ELECTRICITY
(\$.77 DAY (6) DAYS)

4.62 ✓

Labor Total \$1,742.87

W.C. INSURANCE PREMIUM & FICA TAX @ 36%

627.43 ✓

SUB TOTAL

4,999.51 ✓

General Contractor
Doug Sullivan / Owner
P.O.Box 946 Warren, AR 71671

OFFICE PHONE (870)226-5651

FAX (870)226-7099

CELL (870)820-2264

JANUARY 30, 2009
MARCH 25, 2009 (REVISED)3
APRIL 20, 2009(REVISED)
APRIL 23, 2009(REVISED)

AR. DEPT. OF PARKS & TOURISM
MORO BAY STATE PARK
ABA PROJECT # 9000705

CHANGE ORDER #13

ELECTRICAL ADD (1) LIGHT - ADD (5) CONDUIT

NET COST OF MATERIALS
STATE SALES TAX
NET PLACING COST
W.C. INSURANCE PREMIUM AND FICA TAX
SUB CONTRACTOR'S OVERHEAD AND PROFIT @ 12%

9.5%

12.3%

\$1372.40

520.00
49.40
715.00
88.00
164.68 ✓

TOTAL SUB CONTRACTOR (FUNDERBURG ELECTRIC CO.)

1,537.08 ✓

NET PLACING COST GENERAL CONTRACTOR

301.85 ✓

*G. C. ADDITIONAL COST OF SUPERVISION

214.29 ✓

(\$214.29 PER DAY (2) ½ DAY CHARGES)

*G. C. ADDITIONAL COST OF REQUIRED INSURANCES IN PLACE

81.22 ✓

(\$40.61 PER DAY (2) DAYS

*G. C. ADDITIONAL COST OF REQUIRED JOB TOILET

4.80 ✓

(\$2.40 PER DAY (2) DAYS)

*G. C. ADDITIONAL COST OF REQUIRED ELECTRICITY

1.54 ✓

(\$.77 PER DAY (2) DAYS)

Labor Total \$214.29

W.C. INS. PREM. & F.I.C.A. TAX 36%

77.14 ✓

SUB TOTAL

1,916.07 ✓

SULLIVAN CONSTRUCTION COMPANY

General Contractor

Doug Sullivan / Owner

P.O.Box 946 Warren, AR 71671

Office Phone (870) 226-5651

Fax (870) 226-7099

Cell Phone (870) 820-2264

JANUARY 30, 2009

MARCH 25, 2009 (REVISED)

AR. DEPT. OF PARKS & TOURISM

MORO BAY STATE PARK

ABA PROJECT # 9000705

CHANGE ORDER #13

LABOR BREAKDOWN

(DONE IN OCTOBER)

SLEEVES UNDERNEATH DRIVEWAYS
(DIGGING TRENCH & PLACING)

MAN HOURS 16

(IF DONE WILL BE APRIL)

MAID STORAGE CABINETS
(BUILDING, PLACING & FINISHING)

MAN HOURS 48

(DONE IN DECEMBER)

ELECTRICAL
(PLACING 130 LF CONDUIT & INSTALLING LIGHT)

MAN HOURS 16

TOTAL MAN HOURS

80

10 WORK DAYS OR 14 CALENDAR DAYS

ADD 14 CALENDAR DAYS TO CONTRACT

10

ARKANSAS

BUILDING

AUTHORITY

MIKE BEEBE, GOVERNOR

ANNE W. LAIDLAW, DIRECTOR

501 WOODLANE • SUITE 101N • LITTLE ROCK, AR • 72201 • (501) 682-1833 • FAX (501) 682-5589 • TDD (501) 682-1487

MEMORANDUM

To: Stan Graves, Parks and Tourism

From: Doran White, Contract and Construction Manager

Re: Change Order #13, Project #9000705, Moro Bay Cabins

Date: May 13, 2009

Your Change Order has been approved. Please ensure the Contractor and the Design Professional receives copies of the approved documents. You will need to amend your Purchase Order in AASIS as soon as possible.

If you have any questions, call me at 682-5575.

cc: Jerry Hollensworth, A/E (email-only)
Doug Sullivan, Contractor (email-only)
Hamid Patel, Inspector (email-only)
Parks and Tourism Office Distribution List (email-only)

Enclosure: Change Order #13

April 28 Arch. approval
May 13 ABA approval

really took 103 days

#13 sleeves

Cabinets

Spare conduit

Change Order Form

Revised: JAN 20, 2007
" March 29, 2009
" April 20, 2009
" April 23, 2009

ABA Project Number: 9000705

Change Order #: 43-18-13

Planning & Development

Agency Name: ARKANSAS DEPT. OF PARKS AND TOURISM / MORO BAY

APR 29 2009

The undersigned entities below state that they have the authority and consent to enter into this Change Order, and further agree that the changes below and any attachments hereto shall be incorporated into the above referenced Contract.

RECEIVED

Furthermore, "I, the undersigned contractor, do hereby certify that I have reviewed my files and declare that there are / are not (circle one) new or additional subcontractors and sub-subcontractors which are required to be disclosed under this contract pursuant to the governor's executive order 98-04. I have attached to this change order those disclosures required under the order. I understand that any false information provided by or omission made by me, may be grounds for termination due to a material breach."

Per the Contract's General Conditions Article 4.2.5 the method of payment for the change in Work is: {please check applicable box(s)}

☐ Unit prices or combination of unit prices which formed the basis of the original contract.

☐ A lump sum fee based on the Contractor's estimate, approved by the Design Professional and accepted by the owner.

☒ The applicable methods of computation as set forth in the General Conditions Article 7.2.2.3.

The following fields are used to summarize the Owner's justification for the change order. Documentation supporting this change order must be attached. The documentation shall include but not be limited to the Design Professional's drawing(s), and/or specification change(s); request(s) for information (RFI) and pricing; the General Contractor's RFI/P response(s); and cost breakdown, material, placing cost's, tax and bond premiums. Fill in the applicable areas to include the cost for each. Change orders submitted with inadequate or no justification will be return to the Owner or the Owner's Representative.

☒ Owner Requested

\$ 9,459.46

Justification: SLEEVES UNDER DRIVEWAYS-FOR FUTURE UTILITY ACCESS
(5) MAID CABINETS-ONLY STORAGE AREA FOR CLEANING SUPPLIES
ELECTRICAL-(1) LIGHT FOR SAFETY AT WHEELCHAIR RAMP
(5) CONDUITS FOR FUTURE USE

Change Order Form

ABA Project Number: 9000705

Change Order #: 43 ~~18~~ 13

☐ Unforeseen Conditions

\$ -

Justification:

☐ Items Not Shown or Specified

\$ -

Justification:

☐ Substitution / Alternative Method

\$ -

Justification:

☐ Code / Regulation / Rule

\$ -

Justification:

☒ Time Extension

Justification: MORE WORK

☒ Status of the Work is On-Hold

Status of the Work is On-Going



Change Order Form

ABA Project Number: 9000705

Change Order #: 434813

| | |
|---|-----------------|
| The Original Contract Sum Was: | \$ 1,475,000.00 |
| The Net Change by Previous Change Order Was: | \$ 93,216.03 |
| The Contract Sum Prior to the Change Order Was: | \$ 1,568,216.03 |
| The Contract Sum Will Be <input checked="" type="checkbox"/> Increased <input type="checkbox"/> By This Change Order: | \$ 9,459.46 |
| The New Contract Sum Including This Change Order, Shall Be: | \$ 1,577,675.49 |
| The Contract Time Will Be: <input checked="" type="checkbox"/> Increased <input type="checkbox"/> (enter number of calendar days) | 14 |
| The Date (or dates for phased project) of Contract Substantial Completion Shall Be: | 5/27/2009 |

Design Professional:

Signature: Jerry Hollensworth

Date: 4/28/09

Name/Title: Jerry Hollensworth, V.P.

Address:

Trull-Hollensworth, Architects
804 N. Jackson
Magnolia, AR 71753

Email:

jh.tharch@sbcglobal.net

Contractor:

Signature: Doug Sullivan

Date: 4/23/09

Name/Title: DOUG SULLIVAN / PRESIDENT SULLIVAN CONSTRUCTION CO.

Address: P.O. BOX 946

WARREN, AR 71671

Email: sulconstrco@gmail.com

Owner/Agency:

Signature: Stan Graves

Date: 5/7/09

Name/Title: Stan Graves, manager, Planning + Development

Address: One Capitol mall

Little Rock, AR 72201

Email: stan.graves@arkansas.gov

Approved By ABA Construction:

Signature: Doran White

Date: 5/13/09

Name/Title: _____

Doran White

Contract & Construction Manager

12/01/2007

RECEIVED

ABA 00940 - 3 of 3

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Change Order Calculation Sheet

Sheet One

| Reason for Change | | Owner Requested | |
|--|----|-------------------------------|----|
| General Contractor Company Name: | | Subcontractor Company Name: | |
| SULLIVAN CONSTRUCTION CO./CHANGE ORDER #13 | | FUNDERBURG ELECTRIC CO. | |
| Contractor Additional Work | | Subcontractor Additional Work | |
| Net Cost of Materials | \$ | 2,839.22 | \$ |
| State Sales Tax | \$ | 255.53 | \$ |
| Net Placing Cost | \$ | 2,899.25 | \$ |
| W.C. Insurance Premium and FICA Tax | \$ | 886.11 | \$ |
| Subtotal | \$ | 6,880.11 | \$ |
| Overhead and Profit | \$ | 825.61 | \$ |
| Allowable Bond Premium | | 12.00% | |
| | | 139.79 | |
| Total | \$ | 7,845.51 | \$ |
| Contractor Deleted Work | | Subcontractor Deleted Work | |
| Net Cost of Materials | | | |
| State Sales Tax | | | |
| Net Placing Cost | | | |
| W.C. Insurance Premium and FICA Tax | | | |
| Subtotal | | -0.00 | |
| Overhead and Profit | \$ | - | |
| Total | | -0.00 | |
| Cost Summary | | Cost Summary | |
| Contractor: Work, Taxes and Bond | \$ | 7,019.90 | \$ |
| Contractor: Overhead and Profit | \$ | 902.47 | \$ |
| Total | \$ | 7,922.37 | \$ |
| Subcontractor: Work and Taxes | \$ | 1,372.40 | \$ |
| Subcontractor: Overhead and Profit | \$ | 164.69 | \$ |
| Total | \$ | 1,537.09 | \$ |
| Grand Total | \$ | 9,459.46 | \$ |

| | | | |
|-------------------------------------|----|-------------------------------|----|
| Subcontractor Company Name: | | FUNDERBURG ELECTRIC CO. | |
| Subcontractor Additional Work | | Subcontractor Additional Work | |
| Net Cost of Materials | \$ | 520.00 | \$ |
| State Sales Tax | \$ | 49.40 | \$ |
| Net Placing Cost | \$ | 715.00 | \$ |
| W.C. Insurance Premium and FICA Tax | \$ | 88.00 | \$ |
| Subtotal | \$ | 1,372.40 | \$ |
| Overhead and Profit | \$ | 164.69 | \$ |
| Subcontractor Total | \$ | 1,537.09 | \$ |
| Contractor Overhead and Profit | \$ | 76.85 | \$ |
| Allowable Bond Premium | | 5.00% | |
| Contractor Total | \$ | 76.85 | \$ |
| Combined Total | \$ | 1,613.94 | \$ |
| Subcontractor Deleted Work | | Subcontractor Deleted Work | |
| Net Cost of Materials | | | |
| State Sales Tax | | | |
| Net Placing Cost | | | |
| W.C. Insurance Premium and FICA Tax | | | |
| Subtotal | | -0.00 | |
| Overhead and Profit | \$ | - | |
| Subcontractor Total | \$ | -0.00 | \$ |
| Contractor Overhead and Profit | \$ | 0.00% | \$ |
| Contractor Total | \$ | -0.00 | \$ |
| Combined Total | \$ | -0.00 | \$ |

October 15, 2009

HAND-DELIVERED

Mr. Don K. Barnes,
Assistant Attorney General
Office of the Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201

RE: Bond No.: 3-965-484
Principal: Sullivan Construction Company
Obligee: Arkansas Department of Parks and Tourism
Project: Five Housekeeping Cabins, Laundry Building, Including
Parking, Access and Utilities at Moro Bay State Park

Dear Don:

Enclosed you will find a spreadsheet summarizing the claim of Sullivan Construction Company for an additional payment in the amount of \$260,864.25. The claim includes six separate components:

- (1) Rework of Change Orders #1-#19 using the Change Order form approved by Parks and Tourism beginning with Original Change Order #13. The amount of this claim is \$103,102.51. Please note that Change Orders #3, #12, #14 and #18, which add days to the contract time, reflect General Condition costs of \$335.21 for each additional day. This per diem for General Conditions was approved in Original Change Order #13.
- (2) Price increases for asphalt, metal roof panels, fuel and steel occurring over the life of the contract. The amount of this claim is \$29,000.00.
- (3) Extra costs incurred because of the failure or refusal of Parks and Tourism to suspend performance of the contract while Parks and Tourism's engineers attempted to have its revised sewer plan approved by the Arkansas Health Department. The total amount of this claim is \$72,752.52. Please note that this component of the

claim does not include the General Conditions charges included in Reworked Change Orders #3, #12, #14 and #18.

- (4) The cost of an extra superintendent for the 276 days added to the contract at the rate of \$133.33 per day. Sullivan contends that the cost of an extra superintendent has been included in General Conditions for other projects similar to the Moro Bay Cabins project. The total amount of this claim is \$36,799.08.
- (5) The cost of an extra superintendent for the 41 weather days which occurred after May 1, 2009. The total amount of this claim is \$5,466.53.
- (6) General conditions for the 41 weather days occurring after May 1, 2009. The total amount of this claim is \$13,743.61.

Revised Change Orders #1-#19 are included with this letter. Documentation for the other claims can be produced upon request.

This claim is submitted with a complete reservation of all rights, claims and defenses available to Sullivan Construction Company.

Please review and advise.

Cordially,

HARDIN & GRACE, P.A.

David A. Grace

DAG/Ilp

Enclosures

cc: Jim Rumpf
Sullivan Construction Company

Sullivan Construction
Arkansas State Parks - Moro Bay Cabins
ABA Project #9000705
Summary of Claim

| Subject | Rework C/O 1-19 (change) | Price Increases | Sewer Extra Costs | Extra Super Thru 4/09 | Extra Super 5/09-8/09 | G. C. 5/09-8/09 |
|-------------------|--------------------------------|--------------------|-------------------------|-----------------------------|-----------------------------|--------------------|
| C/O 1 | \$ -0- | | | | | |
| C/O 2 | \$ 3,981.00 | | | | | |
| C/O 3 | \$ 19,151.76 | | | | | |
| C/O 4 | \$ 24,256.73 | | | | | |
| C/O 5 | \$ 539.30 | | | | | |
| C/O 6 | \$ -0- | | | | | |
| C/O 7 | \$ -0- | | | | | |
| C/O 8 | \$ 5,906.70 | | | | | |
| C/O 9 | \$ -0- | | | | | |
| C/O 10 | \$ 2,000.47 | | | | | |
| C/O 11 | \$ 2,579.70 | | | | | |
| C/O 12 | \$ 18,752.72 | | | | | |
| C/O 13 | \$ -0- | | | | | |
| C/O 14 | \$ 13,964.80 | | | | | |
| C/O 15 | \$ -0- | | | | | |
| C/O 16 | \$ -0- | | | | | |
| C/O 17 | \$ -0- | | | | | |
| C/O 18 | \$ 11,969.82 | | | | | |
| C/O 19 | \$ -0- | | | | | |
| Asphalt | | \$12,600.00 | | | | |
| Metal Roof Panels | | \$ 9,000.00 | | | | |
| Fuel | | \$ 5,000.00 | | | | |
| Steel | | \$ 2,400.00 | | | | |
| 3 Remobs | | | \$12,182.52 | | | |
| Replace Sub Base | | | \$ 3,450.00 | | | |
| Extra Labor | | | \$57,120.00 | | | |
| 133.33 x 276 Days | | | | \$36,799.08 | | |
| 133.33 x 41 Days | | | | | \$5,466.53 | |
| 335.21 x 41 Days | | | | | | \$13,743.61 |
| Totals | <u>\$103,102.51</u> | <u>\$29,000.00</u> | <u>\$72,752.52</u> | <u>\$36,799.08</u> | <u>\$5,466.53</u> | <u>\$13,743.61</u> |

**BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS**

OCT 31 2014

RECEIVED
CLAIMANT

**LYLE D. SULLIVAN D/B/A
SULLIVAN CONTRUCTION COMPANY**

v.

CLAIM NO. 15-0094-CC

**ARKANSAS DEPARTMENT OF
PARKS AND TOURISM**

RESPONDENT

ANSWER

Comes the Respondent, Arkansas Department of Parks and Tourism, by and through Attorney General Dustin McDaniel and Assistant Attorney General Charles Lyford, and states for its Answer:

1. Respondent re-asserts all defenses raised in its first responsive pleadings, whether in the Motion to Dismiss, the Brief in Support of the Motion, or in any documents attached to or incorporated with the Motion.

2. Respondent admits a written contract existed between itself, the Arkansas Building Authority ("ABA") and Claimant for Project No. ABA 9000705. This project involved construction at Moro Bay State Park of five housekeeping cabins, a laundry building, parking, and associated access and utilities.

3. The Agreement Form (Section 00520) evidencing this contract was signed by Claimant on October 31, 2007. Respondent denies the existence of any amendments or alterations to this contract, beyond those bearing the signatures of each party required to execute and approve such changes.

4. As stated in Paragraph 1 of the Agreement Form, the contract for Project No. ABA 9000705 incorporates all "Contract Documents" as that term is defined. Contract Documents include, but are not limited to, the "General Conditions" promulgated by the ABA.

5. Respondent expressly incorporates the Agreement Form and related Contract Documents for Project No. ABA 9000705 with its Answer, and asserts all defenses these documents make available.

6. Respondent admits Project No. ABA 9000705 reached substantial completion on or about August 4, 2009.

7. Respondent affirmatively states that following substantial completion, Claimant agreed to a schedule of nineteen change orders, representing total amounts owed to Claimant of \$119,533.73 above the original contract price of \$1,475,000.

8. Respondent affirmatively states that on or about June 27, 2010, Claimant accepted final payment in the amount of \$1,594,533.73, or the original contract price plus the total approved change orders. *See* ABA General Conditions, ¶ 9.16.1 (defining final payment as "the Contract Sum plus approved Change Order additions less approved Change Order deductions and less previous payments").

9. Respondent affirmatively states that according to both the Agreement Form and the General Conditions, any request for further payment must have been made by written change order, with no change orders binding unless signed by Claimant, Respondent, the project's Design Professional, and the ABA. Agreement Form, ¶ 2; ABA General Conditions, ¶¶ 4.2.6, 7.3.2, 13.4.1.

10. Respondent denies that the "revised" change orders offered by Claimant in support of its demand for further payment are valid amendments to the contract for Project No.

ABA 9000705. Further, assuming the change-order proposals were submitted for review according to the contract terms, Respondent denies it had any duty to approve them. *See* General Conditions, ¶ 7.2.2.2.

11. While denying liability, Respondent affirmatively states that any delays in completing Project No. ABA 9000705, to the extent these delays resulted from Respondent's acts or omissions or extreme weather conditions, cannot give rise to a claim for damages. *See* ABA General Conditions, ¶ 8.4.1.

12. Respondent affirmatively states that Claimant's demands are barred by the applicable statutes of limitation.

13. Respondent affirmatively states that Claimant's demands are barred by the applicable statute of repose.

14. Respondent affirmatively states that Claimant's demands are barred by waiver, estoppel, and laches.

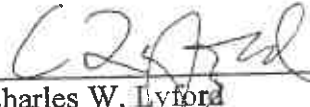
15. Respondent denies all allegations not specifically admitted, reserving the right to amend and plead further.

WHEREFORE, Respondent Arkansas Department of Parks and Tourism requests that the Claims Commission dismiss the claims of Sullivan Construction Company, and award all other appropriate relief.

Respectfully Submitted,

DUSTIN McDANIEL,
Attorney General

By:


Charles W. Lyford
Arkansas Bar No. 2010-200
Assistant Attorney General
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Telephone: (501) 682.3676
Fax: (501) 682.2591
charles.lyford@arkansasag.gov

CERTIFICATE OF SERVICE

I, Charles Lyford, Assistant Attorney General, certify that the foregoing document has been served by placing a copy in the U.S. Mail on October 31, 2014, addressed to the following:

Mr. David A. Grace
Attorney at Law
500 Main Street, Suite A
North Little Rock, AR 72114


Charles Lyford

AGREEMENT FORM
Section 00520

MOF # _____
Approp _____
_____ Capital _____ Expensed

THIS AGREEMENT entered into this 24th day of October 2007 by and between Sullivan Construction Company hereinafter referred to as the Contractor, and Arkansas Department of Parks and Tourism hereinafter referred to as Owner, and Arkansas Building Authority (ABA) in accordance with Ark. Code Ann. § 22-2-101 et seq.,

WITNESSETH:

1. That for and in consideration of the payment by the owner in the amount of \$1,475,000.00 to be made as set forth in the Contract Documents, the Contractor hereby agrees to furnish all tools, labor, equipment, and materials, and to build and construct that certain project in Bradley County, designated as

Project #: ABA 9000705

Project Name: Five housekeeping cabins, laundry building including parking, access and utilities at Moro Bay State Park consisting of construction, more specifically described in the Contract Documents attached hereto and incorporated herein by reference. Contract Documents include the following: the Agreement Form (this Instrument); the Invitation to Bid; Instruction to Bidders; Bid Form; all Addenda; Performance and Payment Bond; General and Supplementary Conditions; Drawings and Specifications; Drawings listed in the Specifications; Notice to Proceed; Negotiated Changes Documents; and Change Orders. All capital improvements shall be in exact accord with the Contract Documents filed with the Construction Section Office of Arkansas Building Authority, located in Little Rock, on October 18, 2007. The Arkansas Building Authority (ABA) Construction Section shall have direct contract supervision. Said capital improvements shall be to the satisfaction of the ABA Construction Section, and in accordance with the laws of the State of Arkansas, and the work shall be subject to inspection and approval at all times by the appropriate state and federal agencies.

2. Owner may at any time during the progress of the work alter, change, subtract from, or add to said Contract Documents without violating this Agreement or the terms thereof. Said changes, alterations, subtractions, or additions shall be set forth in writing in a document referred to as a "Change Order." Said document shall not be effective unless approved by the ABA. Once effective, the Change Order shall be attached hereto and incorporated herein by reference and shall be made a condition or term of the Contract Documents. Nothing contained in the Change Order shall be construed to waive the sovereign immunity of the State or entities thereof.

3. The Contractor agrees, for the consideration set forth in the Bid Form, to begin work within the time frame as stated in 6 (b) of Section 00410 Bid Form after a Notice to Proceed is issued and to complete the work in 360 calendar days or on or before N/A. If the Contractor fails to complete the work within the time limit herein specified, he shall pay to the Owner, as liquidated damages and not in the nature of a penalty, the sum specified in the Bid Form of for each calendar day delayed, it being understood and agreed between the parties hereto that the said sum fixed as liquidated damages is a reasonable sum, considering the damages that Owner will sustain in the event of any such delay, and said amount is herein agreed upon and fixed as liquidated damages because of difficulty of ascertaining the exact amount of damages that may be sustained by such delay. The said sum shall be deducted from the amount of the contract.

4. Should Contractor be delayed in the execution or completion of the work by the act, neglect or default of the State, or by any damage by fire, weather conditions or other casualty or event for which the contractor is not responsible, or by general strikes or lockouts caused by acts of employees, then any extended period shall be determined and fixed by the Owner with approval



given by ABA Construction Section. Said extended period shall be the time for a period equivalent to the time lost by reason of any or all of the causes aforesaid, but no such allowance shall be made unless a claim therefore is presented in writing to the Owner or ABA Construction Section within seven calendar days of the occurrence of the event causing the delay.

5. It is mutually agreed between the parties that in the performance of this contract, Contractor is acting independently and in no sense as Agent of the State. Contractor shall not let, assign, or transfer this contract or any interest therein, without the written consent of the Owner and ABA.

6. It is agreed and understood between the parties hereto that the Contractor shall accept and the Owner will pay for the work, at the prices stipulated in the Contract Documents, such payment to be in the form of legal tender, and the payment shall be made at the time and in the manner set forth in the Contract Documents.

7. Any laborer or mechanic employed by the Contractor or any Subcontractors for this project, directly on site for the work covered by the Contract Documents, shall be paid a rate of wages required by the Contract Documents. If the Owner or ABA, or both discovers that wages less than the rate of wages specified by the Contract Documents have been or are being paid, then the Owner or ABA, after giving written notice to the Contractor, will terminate the Contractor's right to proceed with the project work or such part of the work as to which there has been a failure to pay the required wages and to prosecute the work to completion by contract or otherwise, and the Contractor and his sureties shall be liable to the Owner for any excess costs occasioned thereby.

8. Contractor shall promptly repair, at his own expense and to the satisfaction of the Owner and ABA Construction Section, damage done by him or his employees or agents at the work site, or to the public property or buildings, or both, and will save the State harmless from all claims of any person for injury to person or to property occasioned by his act, or the acts of his employees or agents, while in the execution of the work specified.

9. The Owner or ABA, or both may terminate this agreement to the extent Owner's funds are no longer available for expenditures under this agreement.

10. Failure to make any disclosure required by Governor's Executive order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the Agency.

a) The contractor shall prior to entering any agreement with any subcontractor, for which the total consideration is greater than \$25,000.00, require the subcontractor to complete a Contract and Grant Disclosure and Certification Form. The contractor shall ensure that any agreement, current or future between the contractor and a subcontractor for which the total consideration is greater than \$25,000.00 shall contain the following:

Failure to make any disclosure required by Governor Executive Order 98-04, or any violation of any rule, regulation or adopted pursuant to that Order, shall be a material breach of the term of this subcontract. The party who fails to make the required disclosure or who violates the rule, regulation, or policy shall be subject to all legal remedies available to the contractor.

b) The Contractor shall, within ten days of entering into any agreement with a subcontractor, transmit to Arkansas Building Authority; a copy of the Contract and Grant Disclosure and Certification Form (00850) completed and signed by the subcontractor and a statement containing the dollar amount of the subcontractor.

c) The terms and conditions regarding the failure to disclose and conditions which constitutes material breach of contract and rights of termination and remedies under the Executive Order 98-04 are hereby incorporated within.

11. Nothing in this Contract shall be construed to waive the sovereign immunity of the STATE OF ARKANSAS or any entities there of.

Executed by the parties who individually represent that each have the authority to enter into this Contract.

CONTRACTOR: Sullivan Construction Company

By: Doug Sullivan
(Signature)
Doug Sullivan
(Print Name)
Title: President
Firm: Sullivan Construction Company
Address: P.O. Box 946 WARREN, AR 71671
Date: 10/31/07
Email: d.s.construction@seark.com

OWNER: Arkansas State Parks

By: Greg Butts
(Signature)
Greg Butts
(Print Name)
Title: Director State Parks
Agency: ADPT
Address: 2 Capitol Mall
Date: 11/6/07
Email: _____

APPROVED: ARKANSAS BUILDING AUTHORITY

By: Doran White
(Signature)
Date: 11/7/07
Doran White
Contract & Construction Manager

ARK. BUILDING AUTHORITY

07 NOV -6 PM 3:30

Arkansas Building Authority

General Conditions

Section 00700

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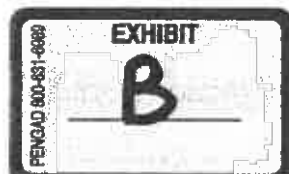
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ARTICLE 1 -- GENERAL PROVISIONS

1.1 DEFINITIONS

- 1.1.1 Contract Documents: Contract Documents consist of Agreement; Invitation to Bid; Instruction to Bidders; the Bid Form; the Bid and the Performance and Payment Bonds; General and Supplementary Conditions; Specifications; Drawings; Addenda issued prior to execution of the Contract; all ABA approved Change Orders; Wage Rate Determinations; other documents listed or referred to in the Agreement; and modifications issued after execution of the Contract and signed by Contractor and Owner, and approved by ABA
- 1.1.2 Contract: The Contract Documents form the Contract for construction. The Contract Documents will not be construed to create a contractual relationship between the Design Professional and Contractor, between the Owner and a subcontractor, between the Owner and Design Professional, or between entities other than the Owner and Contractor; however, a contractual relationship does exist between the Contractor and the agency referred to as Owner, and ABA for approval purposes.
- 1.1.3 Work: Construction and services required by the Contract Documents whether completed or partially completed, include tools, labor, equipment, supplies, transportation, handling, and incidentals provided by the Contractor.
- 1.1.4 Project: The total capital improvement project described in the Contract Documents.
- 1.1.5 Drawings: Graphic and textual portions of the Contract Documents showing the design, location, and dimensions and size of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.
- 1.1.6 Specifications: Written requirements for materials, equipment, systems, standards, and workmanship for the Work, and performance of related services.
- 1.1.7 Project Manual: Volume, which may include the bidding requirements, forms, contracting requirements, and the Specifications.
- 1.1.8 Owner: The person or entity identified as such in the Contract Agreement, referred to throughout the Contract Documents as singular in number. The term Owner means the Owner which is a party to this contract.
- 1.1.9 Contractor: The person or entity identified as such in the Contract Agreement, referred to throughout the Contract Documents as singular in number. The Contractor means the person or other entity entering into the contract with the Owner. The term Contractor means the Prime Contractor or the Prime Contractor-authorized representative.
- 1.1.10 Design Professional (Architect/Engineer/Consultant): The person or entity identified as such in the Agreement, lawfully licensed to practice architecture or engineering or another field of expertise and under contract to Owner to provide design service, advice, and consultation, referred to throughout the Contract Documents as if singular in number. The term Design Professional means the Architect/Engineer/ Consultant or the authorized representative.
- 1.1.11 Subcontractor: Any person, firm, or corporation with a direct contract with the Contractor who acts for or in behalf of the Contractor in executing a portion of the Work. The term subcontractor is referred to as singular in number and means the subcontractor or the subcontractor-authorized representative.

1.1.12 Inspector: A duly authorized representative of the Owner, ABA and Design Professional, designated for detailed inspection and/or observations of materials, construction, workmanship, and methods of construction.

1.1.13 Sites: The particular location of that part of the project being considered.

1.1.14 State: The Owner or ABA, or both

1.1.15 Day(s): Unless specifically referred to as calendar days, "day(s)" refers to a period of time meaning "work" days.

1.2 INTENT

1.2.1 The intent of the Contract Documents is to set forth the standards of construction, the quality of materials and equipment, the guarantees that are to be met, and to include items necessary for proper execution and completion of the Work. The Contract Documents are complementary and what is required by one will be as binding as if required by all. Performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable as necessary to produce indicated results.

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

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

1.3 CAPITALIZATION

1.3.1 Terms capitalized in the Contract Documents include those which are specifically defined, the titles to numbered sections and articles, identified references to paragraphs, and the titles of other published documents.

1.4 INTERPRETATION

1.4.1 Whenever in these Contract Documents the words "as ordered", "as directed", "as required", "as permitted", "as allowed", or words or phrases of like import are used, it shall be understood that the order, direction, requirement, permission, or allowance of the Owner and Design Professional is intended.

1.4.2 Whenever in these Contract Documents the word "product" is used, it shall be understood that the materials, systems, and equipment will be included.

1.4.3 Whenever in these Contract Documents the word "provide" is used, it shall be understood that it means to "furnish and install".

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

ARTICLE 2 -- OWNER

2.1 LAND

- 2.1.1 The Owner will provide the lands shown on the Drawings upon which the Work shall be performed. The Owner will provide a right-of-way for access to the project site.
- 2.1.2 The Owner will provide base lines for the location of the principle component parts of the Work with a suitable number of benchmarks adjacent to the Work.

2.2 RIGHT OF ENTRY BY OWNER

- 2.2.1 The Owner and his authorized representative will have the right to enter the property or location on which the Work shall be constructed. The Owner further reserves the right to construct or have his authorized agents construct such work as the Owner will desire, so long as these operations do not interfere with or delay the work being constructed under this Contract.

2.3 OWNER'S RIGHT TO CARRY OUT THE WORK

- 2.3.1 If the Contractor defaults or neglects to perform the Work in accordance with the Contract Documents, including the requirements with respect to the schedule of completion, and fails after ten days written notice from the Owner to correct the deficiencies, the Owner may deduct the cost thereof from the payment then or thereafter due the Contractor.

ARTICLE 3 -- CONTRACTOR

3.1 GENERAL

- 3.1.1 The Contractor shall perform the Work in accordance with the Contract Documents.
- 3.1.2 The Contractor shall furnish labor, materials, equipment, and transportation necessary for the proper execution of the work unless specifically noted otherwise. The Contractor shall do all the work shown on Drawings and described in Specifications and all incidental work considered necessary to complete the project in a substantial and acceptable manner, and to fully complete the work or improvement, ready for use, occupancy and operation by the Owner. Drawings and Specifications shall be interpreted by the Design Professional or the Owner if no Design Professional exists for the project.
- 3.1.3 The Contractor shall cooperate with the Owner, Design Professional, inspectors, and with other contractors on the Project. Contractor shall allow inspectors acting in an official capacity, to have access to the project site.
- 3.1.4 The Contractor shall determine that the final and completed work on the project is in accordance with the Contract Documents. The failure of the Design Professional to find or correct errors or omissions in the use of materials or work methods during the progress of the work shall not relieve the Contractor from his responsibility to correct all the defects in the project.
- 3.1.5 The Contractor shall assist in making final inspections and shall furnish such labor and equipment as may be required for the final tests of equipment, piping, and structures.

3.2 REVIEW OF FIELD CONDITIONS

- 3.2.1 Before ordering material or doing Work, the Contractor shall verify all measurements involved and shall be responsible for the correctness of same. No extra charge or compensation will be allowed on account of difference between actual dimensions and the measurements indicated on Drawings; differences which may be found shall be submitted to Design Professional for consideration before proceeding with the Work.
- 3.2.2 Drawings may show the location or existence of certain exposed and buried utilities as well as existing surface and subsurface structures. The Owner assumes no responsibility for failure to show any or all such utilities and structures on the Drawings or to show such in the exact location. It is mutually agreed such failure will not be considered sufficient basis for claims for extra work or for increasing the pay quantities in any manner unless the obstruction encountered necessitates substantial changes in the lines or grades or requires the building of a special structure.

3.3 REVIEW OF CONTRACT DOCUMENTS

- 3.3.1 The Contractor shall study and compare Drawings, Specifications, and other instructions and shall report to the Design Professional at once any error, inconsistency, or omission discovered.
- 3.3.2 In the event of conflict among the Contract Documents, interpretations will be based on the following order of precedence, stated highest to lowest:
 - a. The Agreement
 - b. This Division Zero (0) shall control in the event of conflict between this Division Zero (0) and other Divisions 1 through 16
 - c. Addenda to Drawings and Specifications with those of later date having precedence.
 - d. Drawings and Specifications
- 3.3.3 Since the Contract Documents are complementary, the Contractor shall take no advantage of any apparent error or omission in the Drawings and Specifications. The Owner or Design Professional shall furnish interpretations as deemed necessary for the fulfillment of the intent of the Drawings and Specifications.
- 3.3.4 Discrepancies found between the Drawings and Specifications and actual site conditions or any errors or omissions in the Drawings or Specifications shall be immediately reported to the Design Professional or in the case where a Design Professional is not on the Project, the Owner shall be notified, who shall address such error or omission in writing. Work done by the Contractor after discovery of such discrepancies, errors, or omissions shall be at the Contractor's risk and expense.
- 3.3.5 The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Owner, Design Professional, and ABA access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of differences between the drawings and specifications the more stringent document will prevail.

3.4 REQUEST FOR SUPPLEMENTARY INFORMATION

- 3.4.1 The Contractor shall make timely requests of the Owner or Design Professional for additional information required for the planning and production of the Work. Such requests shall be submitted as required, but shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay. Contractor understands and agrees that it is Contractor's duty to determine the need for, and to request said additional information in writing from the Design

Professional by such date as allows Design Professional to provide the information to the Contractor by a date that will not adversely affect Contractor's ability to complete the Work by the date specified in the Contract.

- 3.4.2 Additional instructions may be issued by the Design Professional during the progress of the Work to clarify the Drawings and Specifications or as may be necessary to explain or illustrate changes in the Work.

3.5 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

- 3.5.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work. The Owner or their designated representative may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.
- 3.5.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- 3.5.3 Samples are physical examples that illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.
- 3.5.4 The Contractor shall provide shop drawings and other submittals, settings, schedules, and other drawings as may be necessary for the prosecution of the Work in the shop and in the field as required by the Drawings, Specifications, or Design Professional instructions. The Contractor shall coordinate all such drawings, submittals etc. and review them for accuracy, completeness, and compliance with other contract requirements. Any deviation from the contract documents shall be disclosed upon submission to the Owner/Design Professional. Approval shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract. Any work done before receiving approval from the Owner/Design Professional will be at the Contractor's risk.

3.6 LABOR AND MATERIALS

- 3.6.1 Except as otherwise specifically stated in the Contract, the Contractor shall provide, but not be limited to, all materials, labor, tools, equipment, water, light, heating and cooling, power, transportation, superintendence, temporary construction of every nature, taxes legally collectible because of the work, and all other services and facilities of every nature whatsoever necessary to complete the Work in accordance with the Contract Documents in an orderly and efficient manner. The sequence of construction operations shall follow the schedule of construction as approved by the Design Professional. The Work shall not be discontinued by the Contractor without approval of the Design Professional. Should prosecution of the Work be discontinued for any reason, the Contractor shall notify the Design Professional at least twenty-four hours in advance of resuming the Work.
- 3.6.2 All equipment, material, and articles furnished under this contract shall be new and of most suitable materials grade for the purpose intended, unless otherwise specifically provided in this contract. Materials and equipment furnished under this Contract will be subject to inspection by the Owner's authorized representative or by independent laboratories. Defective material, equipment, or workmanship may be rejected at any time before the acceptance of the Work even though the defective material, equipment, or workmanship may have been previously overlooked and estimated for payment. The Contractor shall replace defective equipment and material in accordance with the Contract Documents at no additional cost to the Owner.
- 3.6.3 The Contractor shall provide materials and supplies not subject to conditional sales agreements, or other agreement reserving unto the seller any right, title, or interest therein. All materials and

supplies shall become the property of the Owner upon final acceptance of this Contract by the Owner.

3.6.4 If shop tests are to be conducted, the Contractor shall notify the Owner of such tests so a representative may witness tests, if desired.

3.6.5 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Design Professional, and in accordance with a Change Order.

3.7 UNAUTHORIZED WORK

3.7.1 Work done without lines and grades having been given or work done beyond the lines or not in conformity with the grades shown on the Drawings or as provided by the Owner, except as provided herein, and work completed without proper inspection and supervision or any extra or unclassified work completed without written authority and prior agreement shall be at the Contractor's risk. Such unauthorized work, at the option of the Design Professional, may not be measured and paid for and may be ordered removed at the Contractor's expense.

3.8 SUPERINTENDENCE

3.8.1 The Contractor shall supervise and direct the Work. The Contractor shall be solely responsible for construction means, methods, techniques, sequences, and procedures and for coordinating portions of the Work under the Contract.

3.8.2 The Contractor shall employ a qualified superintendent during the duration of the Project who is acceptable to the Owner, Design Professional and ABA Construction. The superintendent shall be maintained on the Project site and shall be present on the site at all times work is in progress. The superintendent shall be capable of reading and understanding the Drawings and Specifications and shall have full authority to act in behalf of the Contractor. All directions and instructions given to the Superintendent shall be considered as given to the Contractor and shall be as binding as if given to the Contractor.

3.8.3 Workmanship shall be performed by workmen experienced in their trade and skilled and experienced for the class of work to which assigned. Any person, including supervisory personnel, who does not show and exhibit skill and proficiency in said work shall be removed by the Contractor and replaced by a competent and experienced workman.

3.8.4 The Contractor shall, at all times, be responsible for the conduct and discipline of his employees and all Subcontractors and their employees. Disorderly, incompetent or intemperate persons, or persons who commit any crimes or trespass on public or private property in the vicinity of the Work must not be allowed to continue working upon the project which the Contractor has with the State. Any superintendent, foreman or workman employed by the Contractor or a Subcontractor who unreasonably refuses or neglects to comply with the instructions of the Owner, Design Professional, or inspector, shall, at the written request of the Owner or Design Professional, be removed from the work site and shall not be allowed to work further on any portion of the work or another State Project without the approval of the Owner.

3.8.5 The Contractor shall coordinate Work by the various trades to provide uniform and symmetrical layout and spacing of the exposed components which will affect the finished design and appearance. Where spacing and related locations are not specifically shown on Drawings or where in doubt, the Contractor shall consult the Design Professional prior to installation of that part of the Work.

3.9 PERMITS, FEES, AND NOTICES

3.9.1 The Contractor shall purchase and secure all applicable permits and licenses and give all notices necessary and incidental to the prosecution of the Work. However, in accordance with Ark. Code

Ann. §22-9-213, public works construction projects conducted by ABA or other state agencies are exempt from permit fees or inspection requirements of county or municipal ordinances.

- 3.9.2 When new construction under the Contract crosses highways, railroads, streets or utilities under the jurisdiction of the state, county, city, or other public agency, public utility, or private entity, the Contractor shall secure written permission from the proper authority before executing such new construction. A copy of this written permission shall be filed with the Owner before any work is completed. The Contractor shall furnish a release from the proper authority before final acceptance of the Work. Any bonds required for this Work shall be secured and paid for by the Contractor.

3.10 SAMPLES AND TESTS

- 3.10.1 The Contractor shall provide samples, materials, and equipment necessary or required for testing as outlined in the various sections of the Specifications or as directed by the Owner. The Contractor shall pay all costs for testing. Should materials, methods, or systems fail to meet specified standards, the Contractor shall pay all costs for additional testing as required by the Owner.
- 3.10.2 All tests shall be made by a laboratory approved by the Owner.

3.11 LOCATION, GRADIENT, AND ALIGNMENT

- 3.11.1 Based upon the site information provided by the Owner and verified by the Contractor, the Contractor shall develop and make detailed surveys necessary for construction including slope stakes, batter boards, and other working points, lines and elevations. The Contractor shall verify the figures before laying out the work and will be held responsible for any error resulting from its failure to do so.
- 3.11.2 The Contractor shall report any errors, inconsistencies, or omissions to the Design Professional as a request for information.
- 3.11.3 The Contractor shall preserve benchmarks, reference points and stakes, and in the case of destruction thereof by the Contractor, shall be responsible for damage or mistakes resulting from unnecessary loss or disturbance.

3.12 LAND

- 3.12.1 Additional land and access thereto not shown on Drawings that may be required for temporary construction facilities or for storage of materials shall be provided by the Contractor at his expense with no liability to the Owner. The Contractor shall confine his equipment and storage of materials and the operation of his workmen to those areas shown on the Drawings and described in the Specifications, and such additional areas which he may provide or secure as approved by the Owner.
- 3.12.2 The Contractor shall not enter upon private property for any purpose without first obtaining permission.
- 3.12.3 The Contractor shall be responsible for the preservation of and prevent damage or injury to all trees, monuments, and other public property along and adjacent to the street and right-of-way. The Contractor shall prevent damage to pipes, conduits and other underground structures, and shall protect from disturbance or damage all monuments and property marks until an authorized agent has witnessed or otherwise referenced their location, and shall not remove monuments or property marks until directed.

3.13 LIMITS OF WORK

- 3.13.1 The Contractor shall conduct Work and operations so as to cause a minimum of inconvenience to the public. At any time when, in the opinion of the Owner or Design Professional, the Contractor is

obstructing a larger portion of a road, street, or other public right-of-way than is necessary for the proper execution of the Work, the Design Professional may require the Contractor to finish the sections on which work is in progress before work is commenced on any new sections.

3.14 WARRANTY

3.14.1 In addition to any other warranties in this contract, the Contractor warrants that Work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any subcontractor or supplier. The Contractor shall warrant that all Work, materials, and equipment furnished will be free from defects in design, materials, and workmanship and will give successful service under the conditions required. The warranty period for Work, materials, and equipment furnished by the Contractor shall be one year from the date of the written acceptance of the Work as stated in the Substantial Completion Form approved by the Contractor, Owner, Design Professional and ABA or the date that the ABA approves the final payment request, unless a longer period is agreed upon.

3.14.2 Warranty of Title: The Contractor warrants good title to all materials, supplies, and equipment incorporated in the Work and agrees to deliver the premises together with all improvements thereon free from any claims, liens or charges, and agrees further that neither it nor any other person, firm or corporation shall have any right to a lien upon the premises or anything appurtenant thereto.

3.15 PATENTS AND ROYALTIES

3.15.1 If the Contractor is required or desires to use any design, device, material or process covered by letters, patent, or copyright, he shall provide for such use by suitable legal agreement with the patents or Owner. It is mutually understood and agreed that without exception the Contract Sum shall include all royalties or costs arising from patents, trademarks, and copyrights in any way involved in the Work. The Contractor and the surety shall defend, indemnify, and save harmless the Owner and all its officers, agents and employees from all suits, actions, or claims of any character, name and description brought for or on account of infringement or alleged infringement by reason of the use of any such patented design, device, material or process of any trademark or copyright used in connection with the Work agreed to be performed under this Contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of any action or actions, suit or suits which may be commenced against the Owner for any such infringement or alleged infringement at any time during the prosecution or after the completion of the Work contracted for herein. It is mutually agreed that the Owner may give written notice of any such suit to the Contractor, and thereafter, the Contractor shall attend to the defense of the same and save and keep harmless the Owner from all expense, counsel fees, cost liabilities, disbursements, recoveries, judgments, and executions in any manner growing out of, pertaining to, or connected therewith.

3.16 CLEANING UP

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

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

ARTICLE 4 -- ADMINISTRATION OF CONTRACT

4.1 DESIGN PROFESSIONAL AUTHORITY

- 4.1.1 The Design Professional will interpret the requirements of the Contract Documents and decide matters concerning performance there under on request of the Owner or Contractor.
- 4.1.2 The Design Professional will provide administration of the Contract as described in the Contract Documents and will be the Owner's representative. The Design Professional will decide any and all questions as to the acceptability of materials or equipment furnished, work performed, interpretation of the Drawings and Specifications, rate of progress of the Work, acceptability of the quality of workmanship provided, and other questions as to the fulfillment of the Contract by the Contractor.
- 4.1.3 The Design Professional will prepare all change orders on the form specified by ABA. The Design Professional may authorize minor changes in the Work not involving adjustment in Contract Sum or extension of Contract Time and not inconsistent with the intent of the Contract Documents.
- 4.1.4 The Design Professional and his authorized representatives, Owner and ABA will have the right to enter the property or location on which the Work shall be constructed.

4.2 CLAIMS

- 4.2.1 Definition: A claim is a demand or assertion by one of the parties seeking adjustment, or interpretation of Contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract. The term includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims will be initiated by written notice. The responsibility to substantiate claims shall rest with the party making the claim.
- 4.2.2 Claims of the Contractor or the Owner: Claims regarding the Work of the Contract shall be referred initially to the Design Professional for a decision. The Design Professional will review claims, and 1) reject in whole or in part; 2) approve the claim; 3) suggest a compromise; 4) advise the parties that the Design Professional is unable to resolve the claim.
- 4.2.3 Claims for Concealed or Unknown Conditions: If new and unforeseen items of work are discovered, which cannot be covered by any item or combination of items for which there is a Contract Sum, then the Contractor shall notify the Design Professional as quickly as reasonably possible and shall not continue working on the discovered new or unforeseen items without express written permission from the Design Professional. The Contractor shall complete such work and furnish such materials as may be required for the proper completion or construction of the work contemplated upon written Change Order from the Design Professional as approved by the Owner and ABA. Work shall be performed in accordance with the Contract Documents.
- 4.2.4 Claims for Extensions of Time: The Contractor shall provide written notice to Design Professional within seven calendar days stating the cause of the delay and request an extension of Contract Time. The Design Professional will act on the request in writing. The extension of time shall be for a period equivalent to the time lost by reasons indicated. No extension of time shall be effective until included in a Change Order approved by the Owner, Design Professional and ABA.
- 4.2.5 Claims for Changes in the Work: The Contractor shall provide written notice to Design Professional within seven calendar days after the receipt of instructions from the Owner, as approved by the Design Professional and ABA to proceed with changes in the Work and before such Work is commenced. Changes in the Work shall not be commenced before the claim for payment has been approved, except in emergencies endangering life or property. The Contractor's itemized estimate sheets showing labor and material shall be submitted to the Design Professional. The Owner's order (Change Order) for changes in the Work shall specify any extension of the Contract Time and one of the following methods of payment:
 - a. Unit prices or combinations of unit prices, which formed the basis of the original Contract.

- b. A lump sum fee based on the Contractor's estimate, approved by the Design Professional and accepted by the Owner.
 - c. The applicable methods of computation as set forth in 7.2.2.3.
- 4.2.6 Claims for Additional Costs: In case of an emergency which threatens loss or injury of property or safety of life, the Contractor shall be allowed to act, without previous instructions from the Design Professional, in a diligent manner. The Contractor shall notify the Design Professional immediately thereafter. Any claim for compensation by the Contractor due to such extra work shall be promptly submitted, but in no case more than 7 calendar days following the event causing the emergency, to the Design Professional for consideration. The amount of reimbursement claimed by the Contractor on account of any emergency action shall be determined in the manner provided under these General Conditions. No agreement to pay costs for additional work shall be effective until included in a Change Order approved by the Owner, Contractor, the Design Professional and ABA.

ARTICLE 5 – SUBCONTRACTORS

5.1 ASSIGNMENT OF CONTRACT

- 5.1.1 Neither the Owner nor the Contractor shall have the right to sublet, sell, transfer, assign, or otherwise dispose of the "Contract" or any portion thereof without written consent of the other party. No assignment, transfer, or subletting, even with the proper consent, shall relieve the Contractor of his liabilities under this Contract. Should any Assignee or Subcontractor fail to perform the work undertaken by him in a satisfactory manner, the Owner, with ABA approval, has the right to annul and terminate the Assignee's or Subcontractor's contract on the project.

5.2 SUBCONTRACTS

- 5.2.1 The subcontracting of the whole or any part of the Work to be done under this Contract will not relieve the Contractor of his responsibility and obligations. All transactions of the Owner or Design Professional shall be with the Contractor. Subcontractors will be considered only in the capacity of employees or workmen and shall be subject to the same requirements as to character and competency.
- 5.2.2 The Contractor shall discharge or otherwise remove from the project any Subcontractor that the Owner or the Design Professional has reasonably determined as incompetent or unfit.
- 5.2.3 The Contractor may not change those Subcontractors listed on the proposal without the written approval of the Owner, Design Professional and ABA. The Contractor shall submit written evidence, which includes but is not limited to, that the substituted contractor is costing the same amount of money or less and if costing less, that the saving will be deducted from the total contract of the prime contractor and rebated to the Owner prior to any approval. The Contractor shall submit his request to the design professional who then shall review the request, if approved, the request and approval shall be forwarded to the Owner. The Owner shall then review the request and accompanying paperwork and if approved, shall forward the approval and the accompanying documents to ABA. ABA shall review all of the documents. ABA shall provide written notification to the Contractor, Design Professional and Owner as its determination. The Contractor shall not be relieved of any liabilities under this Contract, but shall be fully responsible for any Subcontractor or work by said Subcontractor where Subcontractor is employed by the Contractor to perform work under this Contract. Nothing contained in the Contract Documents shall create contractual relations between any Subcontractor and the State.

- 5.2.4 No officer, agent, or employee of the Owner, including the Design Professional, shall have any power or authority to bind the Owner or incur any obligation in his behalf to any Subcontractor, material supplier or other person in any manner whatsoever.

ARTICLE 6 - CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OTHER CONTRACTS

- 6.1.1 The Owner reserves the right to award other contracts in connection with the Project. The Contractor shall cooperate with the other contractors with regard to the storage of materials and equipment, access to the site, and execution of their work. It shall be the Contractor's responsibility to inspect the work of other contractors which will affect the work of this Contract and to report to the Owner irregularities which will not permit him to complete his work in a satisfactory manner or in the time allotted. Failure to so report shall constitute an acceptance of the work of other contractors.

6.2 DEPENDENCE ON OTHERS

- 6.2.1 If any part of the Contractor's work depends for proper execution or results upon the work of the Owner or any separate contractor, the Contractor shall, prior to proceeding with the work, promptly report to the Design Professional any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acceptance of the work.

ARTICLE 7 -- CHANGES IN THE WORK

7.1 GENERAL

- 7.1.1 The Owner may, as the need arises, without invalidating the Contract, order changes in the work in the form of additions, deletions, or modifications. Compensation to the Contractor for additional work or to the Owner for deductions in the work and adjustments for the time of completion shall be adjusted at the time of ordering such change.
- 7.1.2 Additional work shall be done as ordered in writing by the Owner. The order shall state the location, character, and amount of extra work. All such work shall be executed under the conditions of the Contract, subject to the same inspections and tests.
- 7.1.3 The Design Professional and the Owner reserve and shall have the right to make changes in the Contract Documents and the character or quantity of the work as may be considered necessary or desirable to complete fully and acceptably the proposed construction in a satisfactory manner.

7.2 CHANGE ORDERS

- 7.2.1 A Change Order is a written instrument, prepared by the Design Professional/ABA and approved by the Owner, Design Professional and ABA stating their agreement upon the following, separately or in any combination thereof:
- a. Description and details of the work.
 - b. Amount of the adjustment in the Contract Sum.
 - c. Extent of the adjustment in the Contract Time.
 - d. Terms and conditions of the Contract Documents.

7.2.2 Change Order requests by the Contractor shall be submitted in a complete itemized breakdown, acceptable to the Owner, Design Professional and ABA. Nothing contained in the change order shall be construed to waive the sovereign immunity of the State or entities thereof.

7.2.2.1 Where unit prices are stated in the Contract, Contractor should submit an itemized breakdown showing each unit price and quantities of any changes in the Contract Amount. The value of all such additions and deductions shall then be computed as set forth in Paragraph 7.2.2.3.

7.2.2.2 The Contractor shall present an itemized accounting together with appropriate supporting data for the purposes of considering additions or deductions to the Contract Amount. Supporting data shall include but is not limited to the following:

- a. Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker or workmen's compensation insurance;
- b. Cost of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- c. Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- d. Costs of premiums for all bonds and insurance, permit fees, and sales, use of similar taxes related to the Work; and
- e. Additional costs of supervision and field office personnel directly attributable to the change. (General Conditions)

The burden of proof of cost rests upon the Contractor. Contractor agrees that ABA or Owner's Representative shall have the right, at reasonable times, to inspect and audit the books and records of Contractor to verify the propriety and granting of such cost.

7.2.2.3 Compute requests for changes be they additions or deductions as follows:

- a. For work performed by the Contractor which results in an overall increase in the contract sum: example

| | |
|--|-------------------|
| Net Cost of Materials | a |
| State Sales Tax | b |
| Net Placing Cost including Owner approved General Conditions | c |
| W.C. Insurance Premium and FICA Tax | d _____ |
| | a+b+c+d |
| Overhead and Profit, shall not exceed 12% x (a+b+c+d) | e _____ |
| Allowable Bond Premium | f _____ |
| TOTAL COST | a+b+c+d+e+f _____ |

- b. The amount of credit to be allowed by the contractor to the owner for a deletion or change which results in a net decrease in the contract sum shall be actual net cost as computed as outlined in 7.2.2.3.a (a. through e.) and confirmed by the design professional. Credit for work deleted shall be computed as outlined in 7.2.2.3.a (a. through e.), except the Contractor's share of overhead and profit percentage is not less than seven (7) percent.

- c. For added work performed by Subcontractors: Subcontractors shall compute their work as outlined in 7.2.2.3.a (a. through e.) to the cost of that portion of the work (Change) that is performed by the Subcontractor. The Contractor Overhead and Profit Change shall not exceed five (5) percent plus the Allowable Bond Premium.
- d. The amount of credit to be allowed by the contractor to the owner for a deletion or change which results in a net decrease in the contract sum by a subcontractor shall be actual net cost as computed as outlined in 7.2.2.3.a (a. through e.) and confirmed by the design professional for work deleted by a Subcontractor. Subcontractors shall compute their work as outlined in 7.2.2.3.a (a. through e.), except that the overhead and profit shall be not less than seven (7) percent and the Contractor's overhead and profit shall be not less than five (5) percent.

7.3 PAYMENT FOR CHANGES IN THE WORK

- 7.3.1 All changes in the Work will be paid for in the manner indicated in Article 4, Paragraph 4.2, and the compensation thus provided shall be accepted by the Contractor as payment in full for the use of small tools, superintendent's services, premium on bond, and all other overhead expenses incurred in the prosecution of such work.
- 7.3.2 The Owner shall not be deemed to have agreed to any costs for additional work, to have agreed to additional time for completion, or to have agreed to any other change in the terms and conditions of the Contract Documents until Owner, Design Professional and Contractor have executed a Change Order to this Contract, and the Change Order is approved by ABA.

ARTICLE 8 -- TIME

8.1 DEFINITIONS

- 8.1.1 Contract Time is the period of time identified in the Contract Documents for Substantial Completion of the Work, including authorized adjustments made as part of Change Orders agreed to by the Owner, Contractor Design Professional and ABA.
- 8.1.2 Date for commencement of the Work is the fifth calendar day following the start date listed on the Notice to Proceed, unless otherwise stated in the Contract.
- 8.1.3 Date of Substantial Completion is the date certified by the Design Professional, the Owner and ABA.

8.2 PROGRESS

- 8.2.1 Time limits identified in the Contract Documents are of the essence of the Contract. The Contractor confirms that the Contract Time is a reasonable period of time for performing the Work.

8.3 HOLIDAYS

- 8.3.1 New Year's Day, Robert E. Lee/Dr. Martin Luther King's Birthday, President's Birthday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day and the day thereafter, Christmas Eve and Christmas Day will be considered as being legal holidays; no other days will be considered unless declared by the Governor of the State of Arkansas through an Executive Order or Proclamation. No Design Professional clarifications, observations, or State inspections will be provided on legal holidays, Saturdays and Sundays, and no work shall be performed on these days except in an emergency or with written approval in advance by the Design Professional and Owner.

8.4 DELAYS

- 8.4.1 Delays beyond the Contractor's control occasioned by an act or omission on the part of the Owner, strikes, fires, additions to the work, delays by any separate contractor employed by the Owner, extremely abnormal weather conditions, or other delays beyond the Contractor's control may, if agreed to by Change Order by the Contractor, Owner, Design Professional and ABA entitle the Contractor to an extension of time in which to complete the work. While such delays may be just cause for an extension of the Contract Time, the Contractor shall not have a claim for damages for any such cause or delay.

ARTICLE 9 -- PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

- 9.1.1 The Contractor shall accept the compensation, as herein provided, in full payment for furnishing all materials, equipment, labor, tools, and incidentals necessary to complete the Work and for performing all Work contemplated and embraced under the Contract; also for loss or damage arising from the nature of the Work, from the action of the elements or from any unforeseen difficulties which may be encountered during the prosecution of the Work until the final acceptance by the Design Professional and Owner; and for all risks of every description connected with the prosecution of the Work; for all expenses incurred in consequence of the suspension or discontinuance of the Work as specified; and for any infringement of patent, trademark, or copyright, and for completing the Work according to the Contract Documents. Neither the payment of any estimate nor of any retained percentage shall relieve the Contractor of any obligation to make good any defective work or material.
- 9.1.2 No moneys payable under Contract or any part thereof, except the estimate for the first month or period, shall become due and payable if the Owner so elects until the Contractor shall satisfy the said Owner that he has fully settled or paid for all materials and equipment used in or on the Work and labor done in connection therewith, and the Owner, if he so elects, may pay any or all such bills wholly or in part and deduct the amount or amounts so paid from any monthly or final estimate excepting the first estimate.
- 9.1.3 In the event the surety on any contract or payment bond given by the Contractor becomes insolvent, or is placed in the hands of a receiver, or has the right to do business in a state revoked as provided by law, the Owner may at its election withhold payment of any estimate filed or approved by the Design Professional until the Contractor shall give a good and sufficient bond in lieu of the bond so executed by such surety. Any and all subsequent bonds shall be filed with the Circuit Clerk of the County in which the Work is being performed.

9.2 SCHEDULE OF VALUES

- 9.2.1 The Contractor shall submit to the Design Professional a schedule of values for each part of the Work. The schedule shall be a complete breakdown of labor and materials for the various parts of the Work including an allowance for profit and overhead. The total of these amounts shall equal the Contract Sum. The approved schedule of values shall be used as a basis for the monthly payments to the Contractor. In applying for the monthly payment, the Contractor shall show a detailed account of work accomplished in conformity with the schedule.

9.3 MEASUREMENT OF QUANTITIES

- 9.3.1 The Contractor shall be paid for all Work performed under the Contract based on Design Professional computations of as-built quantities and the Contractor's Contract Sum. This payment shall be full compensation for furnishing all supplies, materials, tools, equipment, transportation, and labor required to do the Work; for all loss or damage, because of the nature of the Work, from the action of the elements or from any unforeseen obstruction or difficulty which may be encountered in the prosecution of the Work and for which payment is not specifically provided for all or any part of

the Work; and for well and faithfully completing the Work in accordance with the Contract Documents. The method of computation and payment for each item shall be as set forth in the Specifications or the Supplementary Conditions.

9.4 REQUESTS FOR PAYMENT

9.4.1 The Contractor may submit periodically, but not more often than once each month, a Request for Payment for work completed. When unit prices are specified in the Contract Documents, the Request for Payment shall be based on the quantities completed.

9.4.2 Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work to date but delivered and suitably stored at the site, and if approved in advance by the Owner, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner and the Design Professional to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest including applicable insurance and transportation to the site for those materials and equipment stored off the site.

9.4.3 The Contractor shall furnish the Design Professional all reasonable facilities and job tickets required for obtaining the necessary information relative to the progress and execution of the Work and the measurement of quantities. Each Request for Payment shall be computed from the Work completed on all items listed in the approved schedule of values less 10 percent of the first 50 percent of the adjusted Contract Sum and less previous payments to the Contractor on the Contract.

9.5 PERIODIC ESTIMATES FOR PAYMENT

9.5.1 Unless otherwise stated in the Specifications or Supplementary Conditions, the Owner shall cause the Design Professional to prepare an Estimate for Payment to the Contractor each month. The Design Professional will make the estimate for the materials complete in place and the amount of work performed in accordance with the Contract between the twenty-fifth day of the month and the fifth day of the succeeding month.

9.5.2 From the total of the amount estimated to be paid, an amount equal to 10 percent of the total completed shall be retained until the Contract is 50 percent complete after which no further retainage will be withheld from the monthly estimates. All sums withheld by the Owner and requested in a Final Pay Request prepared by the Owner or Contractor will be paid to the Contractor within 30 days after the Contract has been completed and the work approved by ABA. No retainage will be withheld on that amount of the progress payment pertaining to the cost of materials stored at the site or within a bonded warehouse.

9.6 PAYMENT FOR INCREASED OR DECREASED QUANTITIES

9.6.1 When alterations in the quantities of work not requiring Contract modifications are ordered and performed, the Contractor shall accept payment in full at the Contract Sum, for the actual quantities of work accomplished. No allowance will be made for anticipated profits. Increased or decreased work involving Contract modifications shall be paid for as stipulated in such Contract modifications.

9.7 DESIGN PROFESSIONAL'S ACTION ON A REQUEST FOR PAYMENT (See also 9.9)

9.7.1 The Owner shall cause the Design Professional to, within five working days plus time required for transmittal from one party to another, act on a Request for Payment by the Contractor in one of the following:

- a. Approve the Request for Payment as submitted by the Contractor, and transmit same to the Owner.
- b. Approve an adjusted amount, as the Design Professional will decide is due the Contractor informing the Contractor in writing of the reason for the adjusted amount, and transmit same to the Owner.
- c. Withhold the Request for Payment submitted by the Contractor informing the Contractor, Owner and ABA in writing of the reason for withholding the request.

9.8 ACTION ON A REQUEST FOR PAYMENT AND FINAL PAYMENT

(See also 9.9)

9.8.1 The Owner will, within five working days plus transmittal time between the various state agencies involved, act on a Request for Payment (not Final) after approval by the Design Professional by one of the following:

- a. Approve the Request for Payment as approved by the Design Professional and process the payment.
- b. Approve payment of an adjusted amount as the Owner will decide is due the Contractor, informing the Contractor and the Design Professional in writing of the reason for the adjusted amount of payment.
- c. Withhold the Request for Payment informing the Contractor and the Design Professional in writing of the reason for withholding the payment.

9.8.2 The State shall process payments in accordance with Ark. Code Ann. §19-4-1411, which establishes the time limits for the Design Professional, the Owner, and the Department of Finance and Administration. It also authorizes the Chief Fiscal Officer of the State to investigate any complaints of late payments and assess penalties for late payment. Complaints shall be addresses to: Chief Fiscal Officer of the State: Department of Finance and Administration; 1509 West Seventh Street, Suite 401; Post Office Box 3278; Little Rock, AR 72203-3278.

9.8.3 The Design Professional or the State may withhold payment for contested issues, including but not limited to, defective work on the project; evidence indicating the probable filing of claims by other parties against the Contractor related to the project; damage caused to another contractor; reasonable evidence that Work cannot be completed for the unpaid balance of the Contract Sum or within Contract Time or failure of the Contractor to make payments on materials, equipment or labor to subcontractors. It is the responsibility of the contesting party to notify the Contractor in writing that payment has been contested and the reasons why. The notification must be done within the timeframe specified for processing of payment under Ark. Code Ann. §19-4-1411.

9.9 PAYMENT FOR UNCORRECTED WORK

9.9.1 Should the Design Professional direct the Contractor not to correct work that has been damaged or that was not performed in accordance with the Contract Documents, an equitable deduction from the Contract Sum shall be made to compensate the Owner for the uncorrected work. The Design Professional shall determine the amount of the equitable deduction.

9.10 PAYMENT FOR REJECTED MATERIALS AND WORK

9.10.1 The removal of rejected Work and materials and the re-execution of acceptable work by the Contractor shall be at the expense of the Contractor. The Contractor shall pay the cost of replacing

the work of other contractors destroyed or damaged by the removal of the rejected work or materials and the subsequent replacement with acceptable work.

9.11 DATE OF SUBSTANTIAL COMPLETION

- 9.11.1 A Certificate of Substantial Completion, which shall establish the Date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to work, and insurance and shall fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion, unless another timeframe is stated in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall not become effective until approved by ABA.

9.12 FINAL COMPLETION AND PAYMENT BY OWNER

- 9.12.1 The Contractor shall furnish a letter from the Design Professional attached to the Contractor's final estimate, which shall include all retainage withheld, certifying that the Design Professional has received and approved all guarantees, bonds, maintenance and operation manuals, air balance data, shop drawings, catalog data, and record documents specified in the Contract Documents.
- 9.12.2 Before final payment, the Contractor shall furnish to the Design Professional executed copies of the Release of Claims and Consent of the Performance and Payment Bond Surety for Final Payment. Items listed in this Section Nine (9) shall be submitted with and at the same time as the final estimate to the Design Professional and shall be promptly delivered by the Design Professional to the Owner. No final payment or release of retained amounts shall be made without complete compliance with this Section Nine (9), and approval by the Owner and ABA of the Final Pay Request, which shall include payment of all retained amounts,
- 9.12.3 Any claim by the Contractor to the Owner for interest on a delinquent final payment shall only be made pursuant to Ark. Code Ann. § 22-9-205.

9.13 PARTIAL OCCUPANCY OR USE

- 9.13.1 The Owner may occupy or use any completed or partially completed portion of the Work provided such use or occupancy is consented to by the insurer and authorized. The Contractor will prepare a list of items to be completed or corrected before partial acceptance. Upon receipt of the Contractor's list, the Design Professional will make an inspection to determine whether the Work or portion thereof is substantially complete. No portion of the work shall be considered substantially complete unless described in a Certificate of Substantial Completion Form approved by the Contractor, Owner, Design Professional and ABA.
- 9.13.2 The Design Professional will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to Work and insurance, identify work items to be corrected or completed by the contractor and shall fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion, unless another timeframe is stated in the Certificate of Substantial Completion. No retained amounts shall be paid until the Contractor, Design Professional, Owner and ABA approve a Certificate of Substantial Completion for all of the Work unless specifically provided for by this contract, and all other conditions for final acceptance of this Work are met to the satisfaction of the Owner and ABA.
- 9.13.3 If the contract documents allow for phased work and those phased sections of the project are completed, the retained amounts shall be paid in direct proportion to the value of the part of the capital improvement project completed as approved by the Contractor, Design Professional, Owner, and ABA and all other conditions of this Section Nine (9) are met by the Contractor.

9.14 FINAL INSPECTION

- 9.14.1 Tests, inspections, and approvals of portions of the Work required by the Contract Documents, laws, ordinances, or any public authority having jurisdiction shall be made at the appropriate time. The Contractor shall give the Design Professional timely notice of when and where tests and inspections shall be made so that the Design Professional may be present. The Contractor shall make arrangements for the testing and inspection with an independent testing laboratory.
- 9.14.2 The Contractor shall ensure that the final completed work is in accordance with the Contract Documents. Required certificates of testing and inspection shall be secured by the Contractor and delivered to the Design Professional, unless otherwise required by the Contract Documents. The Design Professional (or Owner, in the absence of a design professional) will coordinate the scheduling of the final inspection with all parties, to include specifically the ABA Observer. Upon completion of all work, including but not limited to the punch list items, all parties will execute the Certificate of Final Completion form setting forth the final completion date.

9.15 ASSIGNMENT OF WARRANTIES

- 9.15.1 All warranties of materials and workmanship running in favor of the Contractor shall be transferred and assigned to the Owner on completion of the Work and at such time as the Contractor receives final payment.
- 9.15.2 In case of warranties covering work performed by subcontractors, such warranties shall be addressed to and in favor of the Owner. The Contractor shall be responsible for delivery of such warranties to the Owner prior to final acceptance of the work.
- 9.15.3 Delivery of guarantees or warranties shall not relieve the Contractor from any obligation assumed under any provision of the Contract. All warranties shall be for one year from the date of Substantial Completion of the Project, unless noted differently in the contract documents or extended otherwise.

9.16 ACCEPTANCE AND FINAL PAYMENT

- 9.16.1 Upon receipt of written notice that the Work is ready for final inspection, the Design Professional together with the Owner and ABA will conduct such inspection and when the Design Professional determines the work is acceptable to the Design Professional, Owner and ABA the Design Professional shall certify his acceptance to the Owner. Final Payment shall be the Contract Sum plus approved Change Order additions less approved Change Order deductions and less previous payments made. The Contractor shall furnish evidence that he has fully paid all debts for labor, materials, and equipment incurred in connection with the Work. The Owner, upon approval by the Design Professional of all documentation to be provided by the contractor in accordance with this Section 9, and approval by the Design Professional, Contractor, Owner and ABA of the Certificate of Substantial Completion will accept the Work and release the Contractor, *except as to the conditions of the Performance and Payment Bond, any legal rights of the Owner, required guarantees and correction of faulty work after Final Payment*, and shall authorize payment of the Contractor's final Request for Payment. The Contractor must allow sufficient time between the time of completion of the work and approval of the final Request for Payment for the Design Professional to assemble and check the necessary data.
- 9.16.2 Acceptance of final payment by the Contractor shall constitute waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final Request for Payment. Any claims for interest on delinquent payments shall be made pursuant to Ark. Code Ann. § 22-9-205.

ARTICLE 10 -- PROTECTION OF PERSONS AND PROPERTY

10.1 GENERAL

- 10.1.1 The Contractor shall at all times exercise precaution for the safety of employees on the Project and of the public, and shall comply with all applicable provisions of federal, state and municipal safety laws and applicable building and construction codes. The Contractor shall provide and maintain passageways, guard fences, lights, and other facilities for protection required by all applicable laws. All machinery, equipment, and other physical hazards shall be guarded in accordance with all federal, state or municipal laws or regulations.
- 10.1.2 The Work, from commencement to completion, and until written acceptance by the Design Professional, Owner and ABA or to such earlier date or dates when the Owner may take possession and control in accordance with Section Nine (9) of these General Conditions, shall be under the charge and control of the Contractor and during such period of control by the Contractor, all risks in connection therewith shall be borne by the Contractor. The Contractor shall make good and fully repair all damages to the Project by reason of the Contractor's negligence, and make good on all injuries to persons caused by any casualty or cause by reason of the Contractor's negligence. The Contractor shall adequately protect adjacent Property as provided by law and the Contract Documents. The Contractor shall hold the Owner and ABA harmless from any and all claims for injuries to persons or for damage to property during the control by the Contractor of the project or any part thereof.
- 10.1.3 The Contractor shall at all times so conduct the Work as to ensure the least possible obstruction to traffic, to the general public, and the residents in the vicinity of the Work, and to ensure the protection of persons and property. No road, street, or highway shall be closed to the public except with the permission of the Owner and proper governmental authority. Fire hydrants on or adjacent to the Work shall be kept accessible to fire fighting equipment at all times. The local fire department shall be notified of the temporary closing of any street.

ARTICLE 11 -- INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

- 11.1.1 The Contractor shall secure and maintain in force during this Contract such insurance as is specified within the Contract Documents, from an insurance company authorized to write the prescribed insurance in the jurisdiction where the Project is located as will protect the Contractor, his subcontractors, and the Owner from claims for bodily injury, death, or property damage which may arise from operations under this Contract. The Contractor shall not commence work under this Contract until he has obtained all the insurance required, has filed the Certificate of Insurance with the Owner, and the certificate has been approved by the Owner. Each insurance policy shall contain a clause providing that it shall not be canceled by the insurance company without written notice to the Owner of intention to cancel.
- 11.1.2 Workman's Compensation and Employer's Liability Insurance in statutory limits shall be secured and maintained as required by the laws of the State of Arkansas. This insurance shall cover all employees who have performed any of the obligations assumed by the Contractor under these Contract Documents including Employer's Liability Insurance. This insurance shall protect the Contractor against any and all claims resulting from injuries, sickness, disease, or death to employees engaged in work under this Contract.
- 11.1.3 Comprehensive General Liability Insurance, including automobile and truck liability. Prior to blasting, the Contractor shall furnish Certificate of Insurance, which shall certify that damage caused by blasting is within the coverage of his Comprehensive General Liability Insurance to the full limits thereof. Hired and non owned automobile insurance for automobiles and trucks shall include hired

and non owned automobile coverage. Coverage for "completed operations" shall be required under this comprehensive liability Insurance section.

- 11.1.4 Contractor's Protective Liability Insurance: The Contractor shall indemnify and save harmless the Owner and ABA from and against all losses and all suits, claims, demands, judgments, actions, and payments of every description and nature brought or recovered against him by reason of any omission or act of the Contractor, his agents, or employees in the execution of the Work or in the guarding of it. The Contractor shall secure and maintain protective liability insurance in the name of the Owner and the Contractor covering them from contingent liability under this Contract.
- 11.1.5 Builder's Risk or Installation Floater Policy: The Contractor shall procure and maintain during the life of this Contract Builder's Risk or Installation Floater Insurance. Perils to be covered are fire, lightning, malicious mischief, explosion, riot and civil commotion, smoke, sprinkler leakage, water damage, windstorm, hail, vandalism, and property theft on the insurable portion of the Project on a 100 percent completed value basis against damage to the equipment, structures, or material. The Owner and the Contractor, as their interests may appear, shall be named as the Insured. Contractors will use the following information as guidance for the type of policy to procure which include but not limited to the following: a) All new building construction and major renovations will require Builders Risk insurance; b) Equipment installations, small renovations, utility installations, paving projects will require an Installation Floater Policy. If a determination cannot be made by the contractor as the type of coverage required, the contractor shall provide a written request to the Owner for clarification.
- 11.1.6 Proof of Insurance: The Contractor shall maintain the insurance coverage's required by this contract (see Section 00825 Insurance requirements) throughout the term of this contract, and shall furnish the Owner with certificates and a copy of the policy showing all endorsement, exclusions and the type, amount, class of operations covered, effective dates and dates of expiration of policies. Such certificates shall also contain substantially the following statement: "The insurance covered by this certificate will not be canceled, or materially altered except after 15 days prior written notice has been received by the Owner." The notice to proceed shall not be issued until the insurance policies have reviewed and approved by the Owner.

11.2 BONDS

- 11.2.1 Performance and Payment Bond: The Contractor shall, at the time of execution of the Contract, furnish bonds covering faithful performance of the Contract and the payment of obligations. Performance and Payment bonds, and any amendments thereto, shall be filed with the circuit clerk office in the County Courthouse of the county where the work shall be performed.

ARTICLE 12 -- UNCOVERING AND CORRECTION OF WORK

12.1 EXAMINATION OF COMPLETED WORK

- 12.1.1 If any portion of the work should be covered contrary to the request of the Owner, Design Professional, or Inspector or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Owner, Design Professional, or Inspector, be uncovered for his observation and replaced at the Contractor's expense.

12.2 DEFECTIVE WORK

- 12.2.1 Defective work, whether through the use of defective materials, the result of poor workmanship, or any other cause, shall be removed within ten days after notice is given by the Owner or Design Professional. The Work and affected materials and equipment shall be removed and replaced as necessary to comply with the Contract Documents without additional cost to the Owner. The fact that

the defective work may have been previously overlooked by the Design Professional shall not constitute acceptance.

12.3 REJECTED MATERIALS

12.3.1 Materials which do not conform to the requirements of the Contract Documents, are not equal to samples approved by the Design Professional, or are in any way unsuited or unsatisfactory for the purpose for which intended, shall be rejected. Defective materials shall be removed within ten days after notice by the Design Professional. The materials shall be replaced with new materials as necessary to comply with the Contract Documents at no additional cost to the Owner. The fact that the defective material may have been previously overlooked by the Design Professional shall not constitute acceptance.

12.3.2 Should the Contractor fail to remove and replace rejected material within the specified ten days after written notice to do so, the Owner may remove and replace the material and deduct the cost from the Contract Sum.

12.4 CORRECTION OF FAULTY WORK AFTER FINAL PAYMENT

12.4.1 The approval of the final Request for Payment by the Design Professional and the making of the Final Payment by the Owner to the Contractor shall not relieve the Contractor of responsibility to correct faulty materials or workmanship promptly after receipt of written notice from the Owner. The Owner shall give such notice of faulty materials or workmanship promptly, after discovery of the condition. If the Contractor fails to correct the defects, promptly, after receipt of written notice from Owner, the Owner may have the work corrected at the Contractor's expense.

ARTICLE 13 – MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

13.1.1 The Contract shall be governed by the laws and regulations of the STATE OF ARKANSAS. Venue for any administrative action or judicial proceedings shall be Pulaski County, Arkansas. Nothing in these General Conditions shall be construed to waive the sovereign immunity of the STATE OF ARKANSAS or any entities thereof.

13.1.2 The Contractor shall give all notices and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the conduct of the Work. The Contractor shall indemnify and save harmless the Owner and ABA against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree whether by himself or his employees.

13.1.3 The Contractor shall comply with the laws of the local, state, and federal government regarding wages and hours of labor.

13.2 WRITTEN NOTICE

13.2.1 Consider as served when delivered in person or sent by certified or registered mail to the individual, firm, or corporation or to the last business address of such known to him who serves the notice. Failure to accept or receive the hand delivered, certified, or registered mail does not negate the consideration of serving.

13.2.2 The written Notice to Proceed with the Work shall be issued by the Design Professional after the execution of the Contract by the Owner. The Contractor shall begin and prosecute the Work uninterruptedly in a manner that will complete the Work within the time limits stated in the Contract.

13.3 TESTS AND INSPECTIONS

- 13.3.1 All materials and each and every part of the Work shall be subject at all times to inspection by the Owner, Design Professional, or the Inspector. The Contractor shall be held to the intent of the Contract Documents in regard to quality of materials, equipment, and workmanship, and the diligent execution of the Contract. The inspection may extend to and include plant, shop, or factory inspection of material furnished. The Contractor agrees to allow Federal or State inspectors, acting in an official capacity, to have access to the job site.
- 13.3.2 The Owner, Design Professional, ABA and the Inspector shall be allowed access to all parts of the Work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection for ascertaining if the Work as performed is in accordance with the requirements and the Contract Documents.
- 13.3.3 Inspectors shall only have authority to suspend any work in a life-threatening situation, which is being improperly done, subject to the final decision of the Owner or Design Professional. Inspectors shall have no authority to permit deviations, or to relax provisions of the Contract Documents without the written permission or instruction of the Owner, ABA or Design Professional, or delay the Contractor by failing to work with reasonable promptness.

13.4 VERBAL AGREEMENTS

- 13.4.1 No verbal objection, order, claim, or notice by any of the parties involved to the other parties shall affect or modify any of the terms or obligations contained in the Contract Documents. None of the terms or provisions of the Contract Documents shall be considered waived or modified unless the waiver or modification thereof is in writing, and agreed upon by the parties in the form of a Change Order approved by the Owner, Design Professional, Contractor and ABA, and no evidence shall be introduced in any proceeding of any other waiver or modification.

ARTICLE 14 -- TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 SUSPENSION OF WORK

- 14.1.1 The work or any portion thereof may be suspended at any time by the Owner provided that the Owner gives the Contractor written notice of the suspension. The notice shall set forth the date on which the work is to be suspended and the date on which the work is to be resumed. The Contractor shall resume the work upon written notice from the Owner within ten days after the date set forth in the notice of suspension.
- 14.1.2 The Owner will have the authority to suspend the work, wholly or in part, for such period of time as deemed necessary. The suspension may be due to unsuitable weather, or such other conditions as are considered unfavorable for the proper prosecution of the work, or the failure on the part of the Contractor to fulfill the provisions of the Contract. Failure to supply material, equipment, or workmanship meeting the requirements of the Contract Documents shall be just cause for suspension of the Work. The Contractor shall not have the right to suspend operations without the Design Professional or Owner's permission.

14.2 TERMINATION BY OWNER FOR CAUSE

- 14.2.1 The Owner will have the right to terminate the Contract upon giving ten days written notice of the termination to the Contractor and the Contractor's surety, in the event of any default by the Contractor and upon written notice from the Design Professional to the Owner that sufficient cause exists to justify such action. In the event of termination of the Contract, the Owner may take possession of the Work and of all materials, tools, and equipment and construction equipment and machinery thereon and may finish the work by whatever method he may select. If the Owner does

not elect to use his own forces, the surety shall furnish a competent licensed contractor within 10 working days from the written notice to the surety.

- 14.2.2 It shall be considered a default by the Contractor whenever he shall become insolvent; declare bankruptcy assigns assets for the benefit of his creditors; fails to provide qualified superintendence, proper materials, competent subcontractors, competent workmen; fails to make prompt payments for labor, materials, or equipment; disregards or violates provisions of the Contract Documents; disregards the Owner's, Design Professional's, or ABA instructions; fails to prosecute the Work according to the approved schedule of completion, including extensions thereof as provided for by approved Change Orders; and fails to start the Work on the date established in the Notice to Proceed.

14.3 TERMINATION BY OWNER FOR CONVENIENCE

The Owner will have the right to terminate the Contract for Convenience and without cause upon giving ten days written notice of the termination to the Contractor and Contractor's surety and ABA. Once notice is received, the Contractor shall: cease all operations as indicated by the written notice and take necessary actions or at the Owner's direction as indicated by the written notice, for the protection and preservation of the work; and terminate existing subcontractors and purchase orders upon the effective termination date as indicated in the notice and not enter into any contracts involving subcontractors or purchase orders.

If the contract is terminated upon the convenience of the Owner, the Contractor is entitled to receive payment for the work executed and accepted by the Owner, and the overhead and profit credit amount of 1% of the work that was left to be performed in the contract unless funds are no longer available for the project.

ARTICLE 15 – ALTERNATIVE DISPUTE RESOLUTION

15.1 MEDIATION

- 15.1.1 In the event of any dispute regarding the Contractor and the Owner (hereinafter referred to as party/parties for this section only) under this Agreement, the party shall notify the ABA Construction Administrator in writing. The ABA Construction Administrator or his designee will then attempt to negotiate a settlement of the dispute between the parties.

- 15.1.2 If the ABA Construction Administrator, or designee, determines he is unable to negotiate a settlement between the parties, the parties may participate in mediation. A request for mediation must be made in writing to the Owner and the parties shall agree upon the location of the mediation. A Mediator mutually agreed upon by the parties shall conduct the mediation process. Mediation shall be voluntary, non-binding and all proceedings in connection with such shall be subject to this Agreement and applicable provisions of Arkansas law. Any mediation fees shall be borne equally between the parties. The parties shall coordinate mediation and the Owner shall notify ABA of any mediation prior to it taking place. ABA Administrator or his designee may view any and all mediation proceedings. Any settlements arising out of the mediation process must be approved by ABA.

- 15.1.3 Notwithstanding anything to the contrary contained herein, if any dispute arises between the Parties, whether or not it requires at any time the use of dispute resolution procedures described above, in no event, nor for any reason, shall the Contractor, Architect, or Engineer interrupt the provision of services/performance to the Owner, or perform any other action that prevents, slows down, or reduces, in any way, the provisions of the Agreement unless: (a) authority to do so is granted by the Owner and approved by ABA or (b) the Agreement has been terminated by the Owner/ ABA. Nothing in these contract documents, including the use of mediation, shall be construed to waive the sovereign immunity of the State of Arkansas or any entities thereof.

15.2. ARBITRATION

- 15.2.1 In the event of any dispute regarding the Contractor, and the Owner (hereinafter referred to as party/parties for this section only) under this Agreement, the party shall notify the ABA Construction Administrator in writing. The ABA Administrator or his designee will then attempt to negotiate a settlement of the dispute between the parties.
- 15.2.2 Claims, disputes and other matter in question between the parties may be decided by arbitration if the ABA Administrator, or designee, determines he is unable to negotiate a settlement (due to time or other reasons) between the parties, and/or the parties are unwilling to have ABA negotiate and/or the parties are unable to settle the dispute, and these issues were not resolved by voluntary mediation. Requests for arbitration must be made in writing to the Owner. The parties shall agree upon the Arbitrator, process and procedures and the location of arbitration. Arbitration while voluntary shall be binding and all proceedings in connection with such shall be subject to this Agreement and applicable provisions of Arkansas law. Any arbitration fees shall be borne equally between the parties. The parties shall coordinate arbitration and the Owner shall notify ABA of any arbitration prior to it taking place. ABA Administrator or his designee may view any and all arbitration proceedings.
- 15.2.3 Notwithstanding anything to the contrary contained herein, if any dispute arises between the Parties, whether or not it requires at any time the use of dispute resolution procedures described above, in no event, nor for any reason, shall the Contractor, Architect, or Engineer interrupt the provision of services/performance to the Owner, or perform any other action that prevents, slows down, or reduces, in any way, the provisions of the Agreement unless: (a) authority to do so is granted by the Owner and approved by ABA or (b) the Agreement has been terminated by the Owner/ ABA. Any award rendered by the arbitrator shall be final. Nothing in these contract documents, including the use of arbitration, shall be construed to waive the sovereign immunity of the State of Arkansas or any entities thereof.

**END OF DOCUMENT
DOCUMENT 00700**

October 15, 2009

HAND-DELIVERED

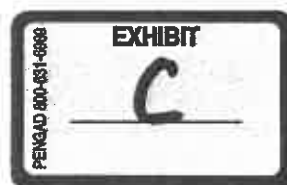
Mr. Don K. Barnes,
Assistant Attorney General
Office of the Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201

RE: Bond No.: 3-965-484
Principal: Sullivan Construction Company
Obligee: Arkansas Department of Parks and Tourism
Project: Five Housekeeping Cabins, Laundry Building, Including
Parking, Access and Utilities at Moro Bay State Park

Dear Don:

Enclosed you will find a spreadsheet summarizing the claim of Sullivan Construction Company for an additional payment in the amount of \$260,864.25. The claim includes six separate components:

- (1) Rework of Change Orders #1-#19 using the Change Order form approved by Parks and Tourism beginning with Original Change Order #13. The amount of this claim is \$103,102.51. Please note that Change Orders #3, #12, #14 and #18, which add days to the contract time, reflect General Condition costs of \$335.21 for each additional day. This per diem for General Conditions was approved in Original Change Order #13.
- (2) Price increases for asphalt, metal roof panels, fuel and steel occurring over the life of the contract. The amount of this claim is \$29,000.00.
- (3) Extra costs incurred because of the failure or refusal of Parks and Tourism to suspend performance of the contract while Parks and Tourism's engineers attempted to have its revised sewer plan approved by the Arkansas Health Department. The total amount of this claim is \$72,752.52. Please note that this component of the



claim does not include the General Conditions charges included in Reworked Change Orders #3, #12, #14 and #18.

- (4) The cost of an extra superintendent for the 276 days added to the contract at the rate of \$133.33 per day. Sullivan contends that the cost of an extra superintendent has been included in General Conditions for other projects similar to the Moro Bay Cabins project. The total amount of this claim is \$36,799.08.
- (5) The cost of an extra superintendent for the 41 weather days which occurred after May 1, 2009. The total amount of this claim is \$5,466.53.
- (6) General conditions for the 41 weather days occurring after May 1, 2009. The total amount of this claim is \$13,743.61.

Revised Change Orders #1-#19 are included with this letter. Documentation for the other claims can be produced upon request.

This claim is submitted with a complete reservation of all rights, claims and defenses available to Sullivan Construction Company.

Please review and advise.

Cordially,

HARDIN & GRACE, P.A.

David A. Grace

DAG/llp

Enclosures

cc: Jim Rumpf
Sullivan Construction Company

Arkansas
State Claims Commission
AUG 28 2014

RECEIVED
CLAIMANT

**BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS**

**LYLE D. SULLIVAN D/B/A
SULLIVAN CONTRUCTION COMPANY**

v. CLAIM NO. 15-0094-CC

**ARKANSAS DEPARTMENT OF
PARKS AND TOURISM**

RESPONDENT

MOTION TO DISMISS

Pursuant to Rule 12(b) of the Arkansas Rules of Civil Procedure and Ark. Code Ann. § 19-10-204(b)(3), Respondent Arkansas Department of Parks and Tourism, ("Parks") submits the following Motion to Dismiss the complaint of Lyle D. Sullivan D/B/A Sullivan Construction Company("Sullivan"), and states:

1. On August 1, 2014 Sullivan filed with the Commission his complaint against Parks seeking \$260,864.25 in damages allegedly related to construction work performed at Moro Bay State Park.
2. According to the Complaint, "Claimant contracted with Respondent to construct a project generally described as "Five Housekeeping Cabins, Laundry Building Including Parking, Access and Utilities at Moro Bay State Park."
3. The written contract between Sullivan and Parks, dated October 24th, 2007, for this construction project was attached with the Complaint and incorporated by reference.

4. Sullivan alleged that he “was ask to perform work that was not a part of his original contract, which caused him to submit 19 change orders.” Sullivan notes in the Complaint “there is no dispute that the work described in the change orders was not part of claimant’s original contract.”

5. In addition, the Complaint alleges that “Claimant’s work was delayed, and even stopped, by historically bad weather, including three floods, unprecedented working conditions and design mistakes.”

6. Claimant attached to the Complaint 19 *unsigned* Change Orders which Claimant admits in his Complaint were not part of the original contract.

7. Pursuant to A.C.A. § 19-10-204(b)(3), the Commission does not have statutory authority to make any award for any claim that would be dismissed from a court of law or equity for reasons other than sovereign immunity.

8. Pursuant to Rules 12(b)(6) of the Arkansas Rules of Civil Procedure and A.C.A. § 19-10-204(b)(3), Sullivan’s Complaint should be dismissed for failure to state facts upon which relief may be granted.

9. Pursuant to A.C.A. § 16-56-105, Sullivan’s Complaint should be dismissed because he has failed to commence this claim within three (3) years after the cause of action has accrued. *See Scroggin Farms Corp. v. Howell* 216 Ark. 569, 226 S.W.2d 562 (1950); *East Poinsett County School Dist. No. 14 of Poinsett County v. Union Standard Ins. Co.* 304 Ark. 32, 800 S.W.2d 415 (1990).

10. The following exhibits are attached to this Motion and incorporated herein by reference:

- a. **Exhibit A:** October 24th, 2007 Agreement Form for ABA Project # 9000705 (fully executed by all parties);
- b. **Exhibit B:** Arkansas Building Authority General Conditions, Section 00700 (08/01/2007 version);
- c. **Exhibit C:** October 15, 2009 Letter from David Grace to Don Barnes regarding Sullivan Construction Co. (Attached to Complaint).

11. This Motion is accompanied by a Brief in Support which more fully set forth the grounds for this Motion to Dismiss.

WHEREFORE, Respondents, Arkansas Department of Parks and Tourism, pray that said Complaint be dismissed, and for all other relief to which they may be entitled.

Respectfully Submitted,

DUSTIN McDANIEL,
Attorney General

By:




Brandon C. Robinson
Arkansas Bar No. 2006031
Assistant Attorney General
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Little Rock, Arkansas 72201
Phone: (501) 683-3296
Fax: (501) 682-2591
brandon.robinson@arkansasag.gov
Attorneys for Respondent

CERTIFICATE OF SERVICE

I, Brandon C. Robinson, certify that on August 28th, 2014, a copy of the foregoing pleading was served via U.S. mail, postage prepaid, on the following recipient:

Mr. David A. Grace
Attorney at Law
500 Main Street, Suite A
North Little Rock, AR 72114



Brandon C. Robinson

BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

LYLE D. SULLIVAN D/B/A
SULLIVAN CONSTRUCTION
COMPANY

Arkansas Claims Commission
SEP 12 2014

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CLAIMANT

VS.

NO. 15-0094-CC

ARKANSAS DEPARTMENT OF
PARKS AND TOURISM

RESPONDENT

RESPONSE TO MOTION TO DISMISS

For his Response to Motion to Dismiss, Claimant, Lyle D. Sullivan d/b/a Sullivan Construction Company ("Sullivan"), states:

1. The allegations in paragraph 1 of the Motion to Dismiss are admitted.
2. The allegations in paragraph 2 of the Motion to Dismiss are admitted.
3. The allegations in paragraph 3 of the Motion to Dismiss are admitted.
4. The allegations in paragraph 4 of the Motion to Dismiss are admitted.

Pleading further, Sullivan states that the Complaint also states that "many of the change orders were originally approved but were then discovered to have been submitted using an outdated form." In fact, Change Orders #1-#19, in their original form, were approved in writing by Respondent before the extra work was performed by Sullivan. Approved Change Orders #1-#4, #6-#7 and #9-#19 are attached to this Response as Exhibit "A". Sullivan has been unable to locate his copies of approved Change Orders #5 and #8 but both approved change orders are in the possession of Respondent.

5. The allegations in paragraph 5 of the Motion to Dismiss are admitted, but Sullivan affirmatively states that exhibits to the Complaint establish that the project

was also delayed by the affirmative acts and active interference of Respondent, as discussed more specifically in Sullivan's Brief in Support of Response to Motion to Dismiss filed contemporaneously herewith. Some correspondence discussing Respondent's affirmative acts delaying the processing of change orders is attached hereto as Exhibit "B".

6. Sullivan admits that the revised Change Orders #1-#19 attached to the Complaint are unsigned but denies any suggestion that the extra work described in Change Orders #1-#19 was not submitted for approval and authorized for performance in accordance with the written contract between Sullivan and Respondent.

7. Paragraph 7 of the Motion to Dismiss states a legal conclusion that does not require a response by Sullivan.

8. The allegations in paragraph 8 of the Motion to Dismiss are denied. Pursuant to A.C.A. §19-10-204(b)(3), complaints may only be dismissed if the claim asserted therein must be dismissed as a matter of law. A claim that is subject to dismissal pursuant to Ark. R. Civ. P. 12(b)(6) may not be dismissed with prejudice as a matter of law.

9. The allegations in paragraph 9 of the Motion to Dismiss are denied. Sullivan's claims are based on a breach of written contract and are subject to a five-year statute of limitations. A.C.A. §16-56-111. Respondent's characterization of Sullivan's claims is not evidence, only argument, and is not supported by the facts established in the Complaint and the exhibits, as supplemented by this Response.

10. The allegations in paragraph 10 of the Motion to Dismiss do not require a response.

11. In the event that it is determined that there is merit in the Motion to Dismiss, it should be treated as a motion for a more definite statement and Sullivan should be granted leave to plead further to avoid a gross and irreparable injustice.

12. Except as otherwise expressly admitted herein, all allegations in the Motion to Dismiss are denied, as though each such allegation and denial thereof was set forth word for word herein.

13. Filed contemporaneously herewith and incorporated herein by reference is a Brief in Support of Response to Motion to Dismiss which sets forth additional fact and argument in support of Sullivan's position as set forth herein.

WHEREFORE, Claimant, Lyle D. Sullivan d/b/a Sullivan Construction Company, prays that the Motion to Dismiss be overruled and denied or, alternatively, that Claimant be granted leave to plead further to make a more definite statement of his claim.

HARDIN & GRACE, P.A.
Attorneys for Claimant
500 Main Street, Suite A
P.O. Box 5851
North Little Rock, AR 72119-5851
Telephone: (501) 378-7900
Facsimile: (501) 376-6337
E-mail: dgrace@hardinggrace.com

By: 

David A. Grace
State Bar No. 76-044

Arkansas
State Claims Commission
SEP 12 2014

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was hand-delivered to:

Mr. Brandon C. Robinson,
Assistant Attorney General
Office of the Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201

on this 12th day of September, 2014.



DAVID A. GRACE

Arkansas
State Claims Commission
SEP 12 2014

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STATE CLAIMS COMMISSION LOCKET
OPINION

Amount of Claim \$ 260,864.25 Claim No. 15-0094-CC

Lyle D. Sullivan D/B/A Sullivan Construction **Attorneys**
vs. David A. Grace, Attorney **Claimant**

Ark. Dept. of Parks and Tourism **Respondent** Brandon C. Robinson **Respondent**

State of Arkansas

Date Filed August 1, 2014 **Type of Claim** Refund of Expenses,
Breach of Contract

FINDING OF FACTS

The Claims Commission hereby unanimously denied and dismissed the Respondent's "Motion to Dismiss." Therefore, this claim will be set for hearing and all parties notified accordingly.

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously denied and dismissed the Respondent's "Motion to Dismiss." Therefore, this claim will be set for hearing and all parties notified accordingly.

October 15, 2014
Date of Hearing

October 15, 2014
Date of Disposition

Richard May **Chairman**
Thompson **Commissioner**
Gagnon **Commissioner**

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THE ATTORNEY GENERAL
STATE OF ARKANSAS
LESLIE RUTLEDGE

Arkansas
State Claims Commission

APR 13 2016

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Charles Lyford
Assistant Attorney General

Telephone: (501) 682-3676
charles.lyford@arkansasag.gov

April 11, 2016

Arkansas State Claims Commission
Brenda Wade, Director
101 East Capitol, Suite 410
Little Rock, AR 72201

RE: *Sullivan Construction v. AR Dept. of Parks & Tourism*
Claims Commission Case No. 15-0094-CC

Dear Director Wade:

Please find enclosed a fully executed release in *Sullivan Construction v. Arkansas State Parks*. For purposes of finalizing payment, State Parks' Fund Center Number is NPT104; its Fund Number is 986; and its Cost Center Number is 444260. My understanding is that the Commission will submit the settlement amount of \$32,513.48 to the Claims Review Subcommittee, and that upon the Subcommittee's approval a check in this amount will issue to "Lyle D. Sullivan and Ohio Casualty Insurance Company," in care of Claimant's counsel David Grace. I further understand that the Subcommittee will notify the parties when the matter has been set for hearing.

If any of the following is in error, or if you need anything else from my client to close the file, please let me know. As always, I appreciate the Commission's time and consideration. Best regards.

Sincerely,

Charles Lyford

CWL/th
Enclosure

cc:

Mr. Paul Hickey
Law Offices of Walker & Hickey
P.O. Box 26278
Little Rock, AR 72221-6278

Mr. David A. Grace
Attorney at Law
500 Main Street, Suite A
North Little Rock, AR 72114

Mr. Grady Spann, Director
Arkansas Department of Parks
and Tourism
1 Capitol Mall, Room 4A-900
Little Rock, Arkansas 72201

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FINAL SETTLEMENT AND RELEASE

WHEREAS, a claim is pending in the Arkansas State Claims Commission styled *Lyle D. Sullivan, d/b/a Sullivan Construction Company v. Arkansas Department of Parks and Tourism*, No. 15-00094-CC ("Action"), and;

WHEREAS, the Respondent, the Arkansas Department of Parks and Tourism, denies that it, or any officer, employee, or agent, have engaged in any wrongful, tortious or unlawful conduct of any kind, and;

WHEREAS, the Claimant, Lyle D. Sullivan, d/b/a Sullivan Construction, desires to compromise and settle the Action to avoid the costs and uncertainties of continued litigation;

WHEREAS, Ohio Casualty Insurance Company, the Surety under the Performance and Payment Bond 3965484 issued on or about October 31, 2007 in connection with Arkansas Building Authority Project 9000705, desires to release any and all claims against the Respondent that arise from the Action or from Bond 3965484;

THEREFORE, the Claimant, Respondent, and Surety agree to the following terms as full and final satisfaction of any and all claims, including any and all claims for costs and attorney fees, which were raised or could have been raised against the Respondent in the Action.

1. ACTION TO BE TAKEN BY RESPONDENT. Following appropriation by the Claims Review Subcommittee as set out in Paragraph 12, below, the Respondent will pay a total of \$32,513.48 to the Claimant and the Surety, jointly.

2. ACTION TO BE TAKEN BY CLAIMANT. The Claimant will dismiss the Action with prejudice. The Claimant agrees to be bound by the terms of this Final Settlement and Release ("Release").

3. ACTION TO BE TAKEN BY SURETY. The Surety will release any and all claims against the Respondent that have arisen, or which could arise, from the Action or from Bond 3965484. The Surety agrees to be bound by the terms of this Release.

4. COMPLETE RELEASE AND WAIVER. The Claimant and the Surety waive, release, relinquish and forever discharge the Respondent from all claims, liens, subrogation interests, or causes of action, known or unknown, arising in any way out of the breach alleged in the Action or from Bond 3965484, whether for damages, attorneys' fees, costs or recovery of any type against the Respondent, including any officers, officials, employees and agents of the Respondent in either their official or individual capacities.

5. ENTIRE AGREEMENT. This Release contains the entire agreement between the parties. The parties have not relied upon any promise or statement, oral or written, that is not set forth in this Release.

6. MODIFICATION. The parties agree that this Release may not be modified, amended, or altered except by a written agreement executed by all parties.

7. VOLUNTARY AGREEMENT. The parties acknowledge that each has read this Release, that each has had the opportunity to consult with legal counsel of their choosing concerning the advisability, meaning and effect of this Release, and that each has signed this Release voluntarily and without duress.

8. NO RESCISSION FOR MISTAKE. The parties acknowledge that each has had the opportunity to investigate the facts and law relating to the claims raised in the Action and any additionally waived and released claims to the extent each deems necessary and appropriate. The parties assume the risk of any mistake of fact or law and agree any such mistake shall not be grounds for rescission or modification of any part of this Release.

9. NO ADMISSION OF LIABILITY. The parties acknowledge that this Release is a compromise and is not an admission of liability or wrongdoing on the part of the Respondent or any of the Respondent's employees or officers. The Claimant and the Surety agree not to suggest or construe this Release as an admission or implication of wrongdoing, and agree that the Release is not admissible in any court or administrative body except as necessary to enforce its terms or as otherwise required by law.

10. CHOICE OF LAW. This Release shall be governed by and construed in accordance with the substantive law of the State of Arkansas.

11. SUCCESSORS AND ASSIGNS. This Release shall be binding upon the Claimant, the Surety, and the Respondent and all of their respective heirs, descendants, successors and assigns.

12. EFFECTIVE DATE. This Release shall not become effective until approved by the Arkansas State Claims Commission and the Claims Review Subcommittee of the Arkansas Legislative Council; the settlement monies are appropriated by the General Assembly; and that appropriation is funded.

13. COUNTERPARTS. This Release may be executed in counterparts and the counterparts, taken together, will have binding effect.

CLAIMANT

By: J. P. Sullivan
d/b/a Sullivan Construction

Date: 3/4/16

RESPONDENT

By: [Signature]

Title: Director, ARKANSAS STATE PARKS

Date: 4/7/2016

SURETY

By: James E. Ruff

Title: Sr Surety Claims Specialist IV

Date: 3/17/16

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THE OHIO CASUALTY INSURANCE COMPANY

BY: James E. Rumpf

TITLE: Sr Surety Claims Specialist IV

LYLE D. SULLIVAN, INDIVIDUALLY, AND
D/B/A SULLIVAN CONSTRUCTION COMPANY

GENA MARIE SULLIVAN

STATE OF Indiana
COUNTY OF Johnson

ACKNOWLEDGMENT

On this _____ day of _____, 2016, before me, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named James E. Rumpf, being the person authorized by said Insurance company to execute such instrument, to me personally well known, who stated that he/she was the Sr. Surety Claims Specialist IV of The Ohio Casualty Insurance Company, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

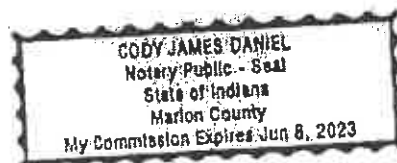
IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 17 day of March, 2016.

[Signature]
NOTARY PUBLIC

MY COMMISSION EXPIRES:

June 8, 2023

SETTLEMENT AGREEMENT AND RELEASE/5



STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim \$260,864.25

Claim No. 15-0094-CC

Lyle Sullivan d/b/a
Sullivan Construction Co. Claimant
vs.

Attorneys David Grace, Attorney
Claimant

AR Department of Parks and Tourism Respondent

Charles Lyford, Attorney Respondent

State of Arkansas
Date Filed August 1, 2014

Refund of Expenses. Breach of
Type of Claim Contract

FINDING OF FACTS

This claim was filed for Arkansas Department of Parks and Tourism in the amount of \$260,864.25 against the Arkansas Highway and Transportation Department.

Present at a hearing February 11, 2016 was the Claimant, represented by David Grace, Attorney and Respondent, represented by David Dawson, Attorney.

A "Negotiated Settlement Agreement" by the claim parties was presented to the Claims Commission in an oral presentation, February 11, 2016, by the parties, along with the Respondent's recommendation of payment in the amount of \$32,513.48

Upon consideration of all the facts as stated above the Claims Commission hereby **unanimously allows the Claimant the amount of \$32,513.48 and will include the claim in a claims bill to be submitted to the 91st General Assembly, Arkansas State Legislature 2016 for subsequent approval and payment.**

IT IS SO ORDERED.


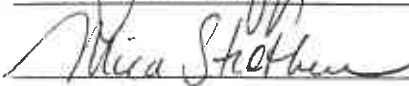

(See Back of Opinion Form)

CONCLUSION

Upon consideration of all the facts, as stated above, the Claims Commission hereby **unanimously allows the Claimant the amount of \$32,513.48 and will include the claim in a claims bill to be submitted to the 91st General Assembly, Arkansas State Legislature 2016 for subsequent approval and payment.**

Date of Hearing February 11, 2016

Date of Disposition February 11, 2016


Chairman

Commissioner

Commissioner