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COURT OF CLAIMS
OF OHIO

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IN THE COURT OF CLAIMS OF OHIO

TRANSAMERICA BUILDING COMPANY, INC., **2000 West Henderson Road** **Columbus, OH 43220,**	:	Case No. 2013-00349
Plaintiff,	:	
v.	:	Judge McGrath
OHIO SCHOOL FACILITIES COMMISSION, **nka Ohio Facilities Construction Commission** **30 West Spring St., 4th Floor** **Columbus, OH 43215,**	:	Referee Wampler
Defendant.	:	

AMENDED COMPLAINT

Plaintiff TransAmerica Building Company, Inc. ("TransAmerica") with its Amended Complaint against the Defendant, State of Ohio, through an instrumentality of the State, the Ohio School Facilities Commission ("OSFC") states as follows:

JURISDICTION AND VENUE

1. This is an action to recover money damages for breach of a construction contract, equitable adjustment, breach of warranties, fraud, fraud in the inducement, negligent misrepresentation and negligence arising from or relating to TransAmerica's work as the general trades prime contractor on a project known as the Ohio State School for the Blind and Ohio School for the Deaf Projects (the "Project").

2. An actual controversy exists regarding the legal rights and relationships between the parties in this action. Jurisdiction and venue of this action lie with the Ohio Court of Claims pursuant to Ohio Revised Code Chapter 2743 and §153.12, and paragraph 1.1.7 of the Contract's General Conditions.

ON COMPUTER

3. Pursuant to R.C. §2743.03(C)(3), TransAmerica requests a single referee or panel of three referees to hear evidence from both parties, issue a report, make recommendations and findings of facts to the judge assigned the case with thirty (30) days of the conclusion of the hearings.

4. TransAmerica is an Ohio corporation with its principal place of business located in Columbus, Ohio, where it is engaged in the business of commercial general contracting.

5. The OSFC (now known as the Ohio Facilities Construction Commission) is a State agency or instrumentality of the State pursuant to R.C. §3318.10 that funds, enters into and administers contracts with respect to school construction projects funded in part with State tax dollars.

6. The OSFC is the Owner of the Project and approved the Contract with TransAmerica pursuant to R.C. §3383.02.

FACTUAL BACKGROUND

7. On July 23, 2010, the OSFC received bids for the Project and they came in over budget and the Project was later rebid in October of 2010.

8. On July 29, 2010 and after the bid packages had been made available to the public, the Department of Industrial Compliance issued a partial plan approval for "footer, foundation, slab, and shell only."

9. On July 29, 2010, the Department of Industrial Compliance issued Correction Letters for the Project.

10. In a October 6, 2010 e-mail, the OSFC's Project Administrator expressed concerns about the errors he identified in the Project's second bid set. The subject line of the email was titled "D&B 10-06010 OSD/OSSB Flawed Bid Sets." The Project Administrator

noted the risk the OSFC took with bidding the Project without having the full approval from the Department of Industrial Compliance.

11. On October 29, 2010, the OSFC received bids a second time for the Project and TransAmerica was awarded the Contract after the low bidder rescinded its bid.

12. TransAmerica's bid was within 2% of the stated estimate.

13. Prior to receiving its Notice to Proceed, the OSFC, through its consultants, represented at the post bid meeting to TransAmerica that an updated set of construction plans would be provided which would incorporate the various changes and addendums that had taken place.

14. On December 1, 2010, TransAmerica entered into a Contract for the Project. A copy of the Contract is attached hereto as Exhibit A. The Contract's incorporated documents (collectively referred to as the "Contract Documents") are omitted because they are voluminous and are already in the possession of the OSFC.

15. TransAmerica was the general trades contractor for just the Residential Portion of the Project. Other portions of the Project included the Campus Wide Packages and the Academic Portion, all of which were awarded to other contractors under the OSFC's control.

16. At the time the Project was bid a second time, the Residential Portion consisted of 12 wood framed dormitories that resembled residential structures.

17. TransAmerica was one of several prime contractors on the Project.

18. The OSFC hired SHP Leading Design ("SHP") to act as the Project Architect on the Project.

19. The OSFC, through SHP, was responsible for furnishing plans and specifications that were full and accurate and included all items necessary for the proper execution and completion of the work by TransAmerica.

20. The OSFC, through SHP, was responsible for furnishing full and accurate plans and specifications for the Project as required under R.C. §153.01.

21. SHP also was responsible for timely processing and responding to shop drawings, submittals, and requests for interpretation ("RFI") in accordance with the Contract Documents.

22. In a December 5, 2010 e-mail, SHP expressed frustration to Berardi & Partners, Inc. (the Project's Housing Design Consultant) that it had taken at least five (5) months to respond to the Department of Industrial Compliance's Correction Letters and the exposure to claims this had created.

23. The OSFC hired Lend Lease, Inc. ("Lend Lease") to act as the Construction Manager on the Project.

24. During construction of the Project, Lend Lease was responsible for, among other things, scheduling the Project, accurately updating the Construction Schedule on a monthly basis, and coordinating the work of all prime contractors with each other and with the activities and responsibilities of SHP.

25. In a January 4, 2011 e-mail, Lend Lease stated they had received "updated drawings" but they were still not ready to be issued to the contractors.

26. Under the Contract Documents, the OSFC, through SHP and Lend Lease, were to fairly and impartially review and evaluate requests for payment for any and all work, including additional or extra work and requests for extensions of time.

27. In a January 25, 2011 e-mail, SHP expressed concern over whether the prior addendums had included all of the changes that had taken previously taken place, including those to reduce the costs that had caused the first round of bids to come in well over the estimate.

28. On February 17, 2011 and prior to mobilizing to the Project, TransAmerica provided notice regarding additional costs because the updated construction set of plans had not been provided as previously promised.

29. TransAmerica's work on the Project was continually delayed and disrupted by the OSFC and those under its control for reasons that include, but are not limited to, failing to:

a. Properly coordinate the work of all prime contractors;

b. Provide a project design that properly and accurately addressed all jobsite conditions;

c. Provide plans and specifications that were full and accurate as required under R.C. §153.01;

d. Provide plans and specifications that included all items necessary for the proper execution and completion of the work;

e. Timely and sufficiently respond to RFIs and submittals;

f. Properly schedule, coordinate, and sequence the Project; and

g. Properly administer the Project.

30. TransAmerica's activities were also delayed and hindered because of the misrepresentations of the OSFC, through SHP and Lend Lease, regarding the approval and inspection process of the plans and specifications and building permits.

31. TransAmerica encountered significantly different jobsite conditions than those represented and reasonable foreseeable in the Contract Documents. These different jobsite conditions include, but are not limited to, the following:

a. Plans and specifications that did not include all necessary information and were not complete, nor accurate and buildable;

b. Environmental conditions of the buildings;

c. A delayed installation of the fire alarm and security systems, which was performed by those under the OSFC's control; and

d. A delayed and uncoordinated installation of the case work, performed by those under the OSFC's control.

32. Throughout the Project, TransAmerica repeatedly notified the OSFC and their representatives that its work was being hindered and delayed by factors within the control of the OSFC and requested equitable adjustments and time extensions to reflect the delays and extra work being performed as required under the Contract, but those requests were either ignored or denied.

33. On February 23, 2011 e-mail, Lend Lease stated to SHP that TransAmerica had provided notice regarding the lack of an updated set of construction plans and that it was "expected and reasonable that the contractor is counting on these drawings to complete the coordination of their work."

34. On February 28, 2011, SHP indicated they would be issuing an updated set of construction plans by March 1, 2011 as the issuance of the set "will eliminate confusion."

35. On March 1, 2011, Lend Lease responded to TransAmerica's notice stating that there was no justification for additional time or costs provided the updated drawings were issued by March 1, 2011.

36. The updated construction drawings were never issued to TransAmerica by March 1, 2011 or anytime during the course of the Project, despite representations by the OSFC and its agents that this would be done.

37. On April 4, 2011, TransAmerica again notified Lend Lease of the problems being encountered with the dimensions and the need for the construction set to be issued in order to avoid major costly errors.

38. On April 15, 2011, TransAmerica again notified Lend Lease of the need to receive the updated set of construction plans and concerns about forthcoming coordination problems.

39. In a April 15, 2011 e-mail, Lend Lease notified SHP that TransAmerica had submitted correspondence to "cover themselves if there is field issue or error" and that the construction set of plans "were originally promised to the contractors in December."

40. On May 6, 2011, TransAmerica notified Lend Lease that the updated construction set has still not been provided, still had concerns about additional dimensional issues, and noted the "best solution is to have the corrected construction set issued."

41. On May 17, 2011, TransAmerica notified Lend Lease and SHP of dimensional discrepancies between the architectural and structural plans.

42. On May 23, 2011, Lend Lease notified the Project Administrator for the OSFC that the bid and award of the casework package is urgent and will "have a direct impact on the completion of the project and could cause delay."

43. The casework package was eventually bid and awarded to another contractor but the inability for the casework to be installed as TransAmerica progressed with its work created additional delays and inefficiencies.

44. In a June 6, 2011 e-mail, Lend Lease again requested the exact date as to when the construction set for the blind elementary dormitories will be issued and goes on to note that the "lack of construction set is delaying the job."

45. In a July 7, 2011 e-mail, Lend Lease expressed frustration about the problems encountered, including those with inspections, and the need for "clear and accurate drawings."

46. In a July 18, 2011 e-mail, the OSFC Project Administrator notified SHP that it will be responsible for the contractor's delay costs that arise from SHP's failure to issue the Campus Wide Bid Package plans by July 1, 2011.

47. On August 23, 2011, the Department of Industrial Compliance issued plan approval for "shell interior finishes, electrical, and mechanical." The partial approval still noted that additional information regarding fire alarm and fire dampers were required.

48. Over thirteen (13) months passed from when the Department of Industrial Compliance issued its initial approval for footer, foundation and shell to when it issued approval for shell finishes, electrical and mechanical.

49. The substantial delay in receiving approval for the shell finishes, electrical, and mechanical portions prevented rough-in inspections and TransAmerica from closing in the dormitories.

50. Neither the OSFC, Lend Lease, or SHP notified TransAmerica that there was a delay in receiving the shell finishes, electrical, and mechanical portions of the plans.

51. During this period of time when rough-inspections could not be scheduled, Lend Lease made various allegations regarding TransAmerica's work that were not supported by the requirements stated in the Contract Documents.

52. In an August 30, 2011 e-mail, Lend Lease notified OSFC and SHP that was is being delayed because the corrected drawings for the Academic Portion of the Project have not been provided and goes on to note that the impact could not be determined until Lend Lease received the full and final drawings.

53. The Academic phase of the project was awarded to other contractors and not part of TransAmerica's Contract. However, TransAmerica was also not able to determine the impact of the various design changes, coordination issues, delays, and disruptions that were encountered until TransAmerica received full and final drawings, which never occurred during construction.

54. TransAmerica never received full and accurate drawings, including all the drawings provided to the Department of Industrial Compliance, and was forced to address design and coordination errors inefficiently with its field forces at a substantial cost.

55. The OSFC, through SHP and Lend Lease, failed to fairly and impartially review and evaluate requests for payment for any and all work, including additional or extra work and request for extensions of time in accordance with the Contract Document and normal customary construction practices.

56. The OSFC is wrongfully withholding the Contract Balance owed TransAmerica, which at the time of the filing of this Complaint is $824,605.42.

57. Through its actions and inactions, the OSFC has waived compliance with the Contract's Notice and Contract Dispute Resolutions Procedures, and the 120 day period for resolution under R.C. §153.16(B) has expired.

58. TransAmerica has unsuccessfully sought resolution of its claims and has either satisfied or exhausted its remedies through the administrative procedures set forth in Article 8 of the Contract.

COUNT ONE
BREACH OF CONTRACT

59. TransAmerica incorporates the preceding paragraphs by reference as though fully rewritten.

60. TransAmerica and the OSFC entered into a contract for construction services related to the Project.

61. TransAmerica substantially performed its obligations under the Contract and satisfied all conditions precedent.

62. The OSFC, through its representatives including SHP and Lend Lease, breached the Contract by, among other things:

a. Failing to properly coordinate the work of other prime contractors;

b. Failing to provide plans and specifications that were accurate and buildable and that included all items necessary for the proper execution and completion of the work;

c. Failing to accurately schedule, including updating the schedule, and sequence the Project in accordance with the Contract Documents;

d. Delaying and interrupting TransAmerica's performance;

e. Failing to pay TransAmerica to the extent the Contract time and price were affected by the OSFC, and their representatives' actions or inactions;

f. Wrongfully asserting liquidated damages against TransAmerica; and

g. Wrongfully withholding TransAmerica's contract balance.

63. The OSFC, and its representatives, failed to handle fairly and impartially, in accordance with the Contract Documents and recognized customs and practice in the trade, requests for payment for any and all work, including additional or extra work.

64. As a result of the OSFC's breach, TransAmerica is entitled to recover from the OSFC its unpaid Contract Balance of $824,605.42 plus damages in an amount not fully ascertained but which at trial will be proven to be in excess of $3,000,000.00.

COUNT TWO
EQUITABLE ADJUSTMENT

65. TransAmerica incorporates the preceding paragraphs by reference as though fully rewritten.

66. The terms of the Contract include a requirement that the OSFC, through SHP and Lend Lease, issue change orders to the Contract providing for equitable adjustments for work required to be performed over and above the requirements of the Contract.

67. As a result of the actions and/or inactions and delays of the OSFC, and their representatives, TransAmerica had to perform additional work above and beyond the requirements of the Contract, among other items, TransAmerica had to:

a. Change the sequence and timing of its work;

b. Perform additional work to complete the Project;

c. Perform work in an inefficient manner;

d. Perform work over longer periods of time and in different time frames than contemplated by the Contract; and

e. Perform and provide additional labor, material and equipment to complete the Project.

68. TransAmerica is entitled to an equitable adjustment for the interferences, delays, disruptions, expenses and additional work caused by the OSFC, through their representatives, in an amount not fully ascertained but which at trial will be proven to be in excess of $3,000,000.00.

COUNT THREE
BREACH OF EXPRESS AND IMPLIED WARRANTIES

69. TransAmerica incorporates the preceding paragraphs by reference as though fully rewritten.

70. The OSFC expressly and impliedly warranted the conditions of the Contract. Among other things, the OSFC impliedly warranted to TransAmerica that during the course of the Project, it or its representatives would:

a. Provide accurate, detailed, buildable and easily understood plans and specifications;

b. Properly coordinate the work, including the work of the other prime contractors;

c. Provide plans and specifications suitable for their intended purpose as it relates to jobsite conditions;

d. Provide a jobsite on which TransAmerica could perform its work without hindrance and/or delay;

e. Carry out its responsibilities and exercise due care to make work available to perform in a timely and economical fashion with respect to jobsite conditions;

f. Administer, including scheduling and coordinating, the Project work so as not to make the performance more difficult and costly than anticipated;

g. Handle fairly and impartially in accordance with recognized customs and practice in the trade, requests for payment for any and all work, including additional or extra work; and

h. Administer the Project with reasonable diligence and care.

71. The OSFC breached said representations and warranties in many regards, including, but not limited to, the following:

a. Failing to provide accurate, detailed, buildable and easily understood plans and specifications;

b. Failing to properly coordinate the work of other prime contractors;

c. Failing to provide plans and specifications relating to jobsite conditions suitable for their intended purpose;

d. Failing to provide a jobsite on which TransAmerica could perform its work without hindrance and/or delay;

e. Failing to carry out its responsibilities and exercise due care to make work available to perform in a timely and economical fashion;

f. Failing to administer the Project work so as not to make the performance more difficult and costly than anticipated;

g. Failing to properly schedule, coordinate and sequence the Project;

h. Failing to handle fairly and impartially, in accordance with recognized customs and practice in the trade, requests for payment for any and all work, including additional or extra work; and

i. Failing to administer the Project with reasonable diligence and care.

72. Through the above-described acts, failures to act, neglects, and defaults, the OSFC breached its express and implied warranties. By reason of said breaches, TransAmerica is entitled to recover from the OSFC its unpaid contract balance and damages in an amount not fully ascertained but which at trial will be shown in excess of $3,000,000.00.

COUNT FOUR
FRAUD

73. TransAmerica realleges and incorporates by reference paragraphs 1 through 72 as if fully set forth herein.

74. OSFC and its agents knowingly, or with a reckless disregard for the truth, made false and material representations concerning the state of the plans and specifications, and the status of building permits to TransAmerica as part of the bidding process and throughout the Project.

75. By putting the Project out for bid, OSFC was representing that the plans and specifications were complete, accurate and constructable pursuant to R.C. § 153.01 when the OSFC and its agents knew, or should have known, otherwise.

76. Those representations, as further described in the OSFC's Minimum Phase Submission Requirements for Construction Documents contained in the OSFC's contract with SHP and codified by R.C. §153.01, include (at a minimum) the following:

a. Fire ratings of all partitions; fire doors, etc. should be clearly denoted.

b. A dimensioned floor plan locating all interior partitions and exterior wall partitions from the grid or column reference system. Floor plan should include room and workstation designations, interior and exterior door and window designations.

c. A dimensioned floor plan showing wire management system with openings located for voice, data, video, and electrical outlet locations.

d. Casework floor plan complete with schedule, details, and elevations.

e. Interior and exterior window, door and frame schedule complete with elevations and details for all head, jamb, and sill conditions.

f. A sufficient number of details shall be provided to clearly indicate the method of construction for all building components and shall include but not be limited to the following; exterior wall, waterproofing systems, interface between exterior walls and roof structure, sectional ridge details, insulating systems, interior and exterior finishes, architectural details, interior stairs, elevators.

g. Partition type schedule and section details for all interior, exterior, and floor wall conditions.

h. All structural members included in, or enclosed by the architectural details shall be closely coordinated with and the size verified by the structural engineer. Details shall indicate the framing and furring method wherever appropriate.

i. A dimensioned foundation plan showing and locating in plan and in elevation all footing, foundations, foundation piers, caissons, grade beams, reinforcement with all layouts for masonry and anchor bolts.

j. A dimensioned floor plan for each floor, showing all beams, beam sizes, duct and piping penetrations, construction joints, expansion joints, edge conditions, imbedded anchors and frames thickened slabs, recessed slabs stair penetrations, elevator shafts, floor loading, top of structure elevation and reinforcement.

k. Elevations of all footings, elevations to top of all beams, columns, recesses and floors.

l. Exterior louver schedule, as coordinate with architectural louvers.

m. Floor plans indicating ductwork with sizes, ductwork mechanical devices, beams for floor above with ductwork penetrations.

n. Floor plan indicating the sprinkler and standpipe riser systems including all required pumps and control devices.

o. Fire damper schedule and individually shown on the floor plan at required locations.

p. Piping penetrations of all walls, floors, roofs, beams, columns, and foundations shall be coordinated with and verified by the structural engineer, code complying firestopping will be detailed for penetrations through fire rated assemblies.

q. Floor plan showing location of all security devices, panel schedule and locations and riser diagram.

r. Floor plan showing location of all intercom and TV, outlets and devices.

s. Separate plans for power, voice and data shall be provided.

t. Detailed floor plans indicating the locations of all technology outlets throughout the building, including but not limited to: data, voice, video, sound, paging, security, speakers, access control, and wireless.

u. Detailed floor plans indicating the locations of all technology devices throughout the building, including but not limited: rack/cabinet layouts wall-fields and layer-3 network switches, routers, transreivers, PBX, servers, security system, media, retrieval equipment, ATM switches, monitors, DVD players, patch panels, cross-connects, etc.

77. During an eight month period, the OSFC, through its consultants, represented or promised that an updated and coordinated set of plans would be provided to TransAmerica. These representations include the following:

a. After TransAmerica submitted its bid but prior to receiving its Notice to Proceed, the OSFC, through its representatives, represented that an updated and coordinated set of drawings would be provided to TransAmerica.

b. At a February 7, 2011 Progress Meeting, SHP represented new drawings would be available "by the end of this week."

c. On February 28, 2011, SHP represented that an updated construction set would "eliminate any confusion" and be provided by March 1, 2011. These plans were never provided.

d. The OSFC, through SHP, issued responses to Requests for Information stating such information would be provided on the updated "construction set" of plans.

78. The OSFC did issue updated construction plans to the Plans Examiner at the Department of Industrial Compliance in order to receive the necessary building permit approvals for the various phases of construction to proceed. Yet these sets of construction or building permit plans were never provided to TransAmerica during construction.

79. An updated set of construction plans was never provided to TransAmerica despite TransAmerica's repeated requests.

80. OSFC intended that TransAmerica and other bidders and contractors rely and act upon these misrepresentations.

81. TransAmerica was unaware of the falsity of these representations.

82. TransAmerica reasonably and justifiably relied on the veracity of these representations.

83. TransAmerica, as a foreseen third party, or a member of a limited class of bidders and contractors, had the right to rely upon OSFC's and its agent's statements and representations.

84. As a direct and proximate result of OSFC's and its agent's fraudulent representations, TransAmerica incurred significant damages.

FIFTH CLAIM FOR RELIEF
FRAUD IN THE INDUCEMENT

85. TransAmerica realleges and incorporates by reference paragraphs 1 through 84 as if fully set forth herein.

86. OSFC and its agents made representations of existing fact that were false and material and that were either known to be false or were made with a reckless disregard of the truth or falsity of such representations.

87. OSFC and its agents intended that TransAmerica rely and act upon the representations made by OSFC and its agents.

88. TransAmerica was unaware of the falsity of the OSFC's statements and representations.

89. TransAmerica reasonably and justifiably relied on the veracity of these representations.

90. TransAmerica had the right to rely upon the OSFC's statements and representations.

91. As a direct and proximate result of OSFC's fraud and deceit, TransAmerica was induced to submit a bid proposal in response to OSFC's request for proposal, sign a contract for a Project where the design was not as represented and to enter in a contract after OSFC misrepresented the existing status of the design and advised bidders that the design was constructable.

92. As a direct and proximate result of OSFC's fraudulent inducement, TransAmerica incurred significant damages.

SIXTH CLAIM FOR RELIEF
NEGLIGENT MISREPRESENTATION

93. TransAmerica realleges and incorporates by reference paragraphs 1 through 92 as if fully set forth herein.

94. During the Project's pre-bid and bid phases, OSFC represented to all bidders that the design process was essentially complete, and that the design was full and accurate, current and sufficient for the proper construction of the Project.

95. OSFC knew, or should have known, when it made these representations about the level of design completion and the design documents' status, including the lack of building permits, that they were inaccurate or false and that the bidders would rely on these misrepresentations in formulating their bids.

96. OSFC made false representations to TransAmerica when it released the drawings, plans and specifications and other contract documents for bid, when it induced TransAmerica's bid, when TransAmerica executed the contract, and throughout the Project in inducing TransAmerica to continue working on the Project by misrepresenting that design changes were ending and the existing status of the design.

97. OSFC had a pecuniary interest in misrepresenting this information to facilitate its construction of the project within its inadequate budget.

98. OSFC, as the entity that actually reviewed, revised, prepared and furnished the Project's design owed a duty of care to always provide truthful and reliable information to TransAmerica.

99. As a direct and foreseeable result of the OSFC's misrepresentations, TransAmerica has repeatedly responded to and performed an extraordinary excessive number of design changes during the course of the Project.

100. OSFC breached its duty of care by failing to exercise due care in its design and its design representations.

101. TransAmerica reasonably and justifiably relied on the OSFC's representations to its detriment.

102. As a direct, foreseeable and proximate result of the OSFC's negligent misrepresentations, TransAmerica incurred significant additional and unanticipated costs and damages, including, but not limited to, disruption and delay and additional services and staffing in completion of its work.

SEVENTH CLAIM FOR RELIEF
NEGLIGENCE

103. TransAmerica realleges and incorporates by reference paragraphs 1 through 102 as if fully set forth herein.

104. OSFC, through its agents, was responsible for providing design and construction management services for the Project in accordance with industry and statutory standards including Revised Code §153.01, and the applicable standard of care.

105. OSFC and its authorized agents owed a duty of care to TransAmerica, as a bidder responding to OSFC's request for bid proposals, as the low responsive, responsible bidder/awardee and as a party to the solicited contract, to accurately portray the Project and the state of design therefor, and to the extent the design changed, to promptly pay for the costs associated with the change and to otherwise properly manage the change process and properly provide its architectural and construction management duties within the applicable standard of care.

106. OSFC breached its duty of care by its negligent acts and/or omissions, in that OSFC (a) failed to issue complete, definite, final, sufficient, adequate, accurate or current design documents for the Project; (b) improperly marked design documents as final or "Issued for Construction" when such design documents were not final or suitable for construction; (c) improperly prepared the design documents; (d) failed to provide a final construction set of documents as promised; (e) failed to adequately verify the design documents prior to releasing the design for construction; (f) failed to properly administer and manage the design change process; (g) failed to properly provide its architectural and construction management duties including timely obtaining building permits; (h) failed to properly handle its duties with respect to the Project schedule; (i) failed to reasonably review, handle and approve change orders and requests for equitable adjustment to compensate TransAmerica for the costs and damages incurred on the Project; and (j) failed to carry out its duties arising out of the Prime Contract and the applicable statutory standards.

107. OSFC's negligence, through its actions and inactions, was the actual or proximate cause of TransAmerica's damages, as the defective design, the changes to the design and the

mismanagement and ineptness of the design process fundamentally and radically changed the character of the work.

108. As a direct and proximate result of OSFC's negligence, TransAmerica incurred significant, additional and unanticipated costs and damages, including, but not limited to, delay and disruption in the completion of the work and the additional services and costs described herein in an amount substantially in excess of $3,000,000.

WHEREFORE, TransAmerica demands from the OSFC, now known as the OFCC:

a. Money judgment against the OSFC for the Contract Balance of $824,605.42 and an equitable adjustment in an amount exceeding $3,000,000.00, the specific amount to be proven at trial;

b. Interest on any amounts due, including prejudgment interest; and

c. All further necessary and proper relief to which it may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true copy of the foregoing was served via U.S. Mail, postage prepaid, this 1st day of ~~July~~ August, 2013 upon:

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