

APPENDIX N

SAMPLE SALES AND USE CONSTRUCTION CONTRACT PROVISIONS

SECTION _____. [THE WORK.]

Except as otherwise indicated in [the Contract Documents], Contractor shall provide the following:

Section _____. Procurement. As provided in Section ____, Contractor is responsible for supplying all building materials, equipment, and other tangible personal property (the “Personal Property”) identified in the [Scope of Work]. Contractor shall assist Company as necessary in identifying all Personal Property that may be eligible for various incentives in accordance with applicable laws, rules, and regulations, including without limitation exemption from Tennessee sales and use taxes, including without limitation Personal Property acquired for the control, reduction or elimination of pollution and industrial machinery. Contractor shall further assist the Company in identifying subcontractors supplying Personal Property identified in the [Scope of Work]. Purchases of Personal Property by Contractor and each of its subcontractors shall be made in accordance with applicable laws, rules, and regulations, including without limitation by utilizing direct pay permits or exemption certificates issued by the Tennessee Department of Revenue in the following manner and under the following circumstances:

(a) Purchases of Personal Property in General. Contractor and each subcontractor purchasing Personal Property for the construction, equipping or furnishing of the [Project] shall apply for a direct pay permit (the “Direct Pay Permit”) from the Tennessee Department of Revenue. Contractor and each subcontractor shall provide the Direct Pay Permit to vendors with all purchase orders for Personal Property. By utilizing the Direct Pay Permit, Contractor and each subcontractor shall not pay any Tennessee sales or use tax to the vendor. Contractor and each subcontractor shall be responsible for timely reporting and remitting applicable Tennessee sales and use taxes on taxable purchases made under the Direct Pay Permit.

(b) Purchases of Industrial machinery. Contractor and each subcontractor purchasing Personal Property classified as industrial machinery exempt from Tennessee sales and use tax may apply to the Tennessee Department of Revenue for an industrial machinery exemption certificate which shall be utilized to purchase such industrial machinery without the payment to vendors of Tennessee sales and use tax. Alternatively, Contractor and its subcontractors may apply for and utilize the Direct Pay Permit to purchase qualified industrial machinery tax free. If a contractor utilizes the direct pay permit, the contractor shall promptly consult and coordinate with the Company to review the qualification of the purchases for the Tennessee industrial machinery sales and use tax exemption.

(c) Purchases of Personal Property for Pollution Control. Contractor and each subcontractor purchasing Personal Property classified as pollution control devices, materials, equipment, or facilities exempt from Tennessee sales and use tax shall apply to the Tennessee Department of Revenue for a pollution control exemption certificate which shall be utilized to purchase such pollution control without the payment to vendors of Tennessee sales and use tax.

Section _____. Utilization of Sales and Use Tax Credits. The construction and equipping of the [Project] will generate certain sales and use tax credits for the Company (the “Headquarters Credit”). The Tennessee Department of Revenue has authorized the use of the Company’s Headquarters Credit to offset the sales and use tax liabilities otherwise due by the Contractor or a subcontractor under a Direct Pay Permit tax return. Contractor agrees that Contractor and each subcontractor will each utilize any available Company Headquarters Credit to offset sales and use tax liabilities otherwise due by Contractor or its subcontractors in accordance and compliance with the following conditions, procedures, and terms:

(a) Prior to filing a required Direct Pay Permit tax return, Contractor and each subcontractor shall compute their sales and use liability for the return;

(b) Contractor and each subcontractor shall then contact the Tennessee Department of Revenue. Based on the contractor’s calculated sales and use tax liability, the Tennessee Department of Revenue will authorize Contractor or the subcontractor to utilize a specified amount of the Headquarters Credit, if any, on the return. The Tennessee Department of Revenue will designate an official contact for this purpose. Contractor and each subcontractor shall claim any authorized credit on their Direct Pay Permit tax return filed with the department, and remit any taxes due not otherwise offset by the authorized credit.

(c) Contractor agrees that the Company shall receive a credit against future payments required under this [Contract] or a refund of installment payments made by Company under this [Contract] equal to all Headquarters Credits utilized by Contractor and each subcontractor on Direct Pay Permit tax returns filed in accordance with this section.

Section _____. Limited Power of Attorney. Contractor and each subcontractor shall provide the Company with a limited power of attorney that authorizes the Tennessee Department of Revenue to provide the Company copies of each direct pay permit return in which the Headquarters Credit is claimed.

Section _____. Compliance. Contractor and subcontractors agree to abide by all applicable laws, rules-, and regulations-, including without limitation those applicable to the direct pay permits and certificates of exemption issued to them. The Company shall not be responsible for any sales or use taxes imposed on the purchase or use of Personal Property by Contractor, or any penalties, interest, fees or charges that accrue from the failure to timely report and remit sales or use taxes owed by the Contractor or any subcontractor or from the misuse of the direct pay permits or certificates of exemption. Contractor recognizes that the purchasing procedures set forth in Sections ____ are for the purpose of allowing the Company to fully realize the benefit of various sales and use tax credits and exemptions available under Tennessee state law. Contractor agrees to use its best efforts to assist Company in realizing these benefits by complying with these procedures as they may be freely amended from time to time by the Company. Contractor further agrees to use its best efforts to identify

and comply fully with all similar incentives, including without limitation sales and use tax credits and exemptions available under Tennessee state law. Contractor further agrees that, by specifically identifying certain sales and use tax credits and exemptions herein, the Company does not limit Contractor's obligations herein to only the specific sales and use tax credits and exemptions identified herein.