

personnel to *assist* ” (emphasis added), Triconex must have asked Marion Flanagan, the project manager, for permission, because he was *1112 the only person who had authority as the owner.

¶ 29. In the end, it is irrelevant whether Triconex asked Greenwood for assistance. According to the plain language of the contract, Triconex had the burden of providing all labor, tools, and technical assistance for the testing. In other words, Triconex had sole responsibility for the testing. Thus, we find that this issue is without merit.

IV. WHETHER GREENWOOD'S PROVIDING PERSONNEL AND INSTRUMENTATION FOR ON-SITE TESTING WAIVED THE CONTRACTUAL REQUIREMENT FOR TRICONEX TO PROVIDE ALL PERSONNEL AND INSTRUMENTATION.

[9][10] ¶ 30. Triconex argues that the contract allowed for assistance by Greenwood personnel. Further, Triconex argues that Greenwood never objected to Shaw's assistance and, therefore, waived the contractual requirement for Triconex to provide all personnel and instrumentation. This Court has stated that the actions and pattern of conduct of the parties determine if a waiver or modification occurred. *Sanderson Farms v. Gatlin*, 848 So.2d 828, 837 (Miss.2003). To determine the point at which any waiver occurs, the Court should look to the actions of the relevant party after that party has sufficient information to be on notice of the alleged deviation from the contractual duty. *Brent Towing Co., Inc. v. Scott Petroleum Corp.*, 735 So.2d 355, 358 (Miss.1999). If, after acquiring knowledge of the deviation from a known right articulated in the contract, a party fails to insist on its contractual rights, or acts inconsistently with such rights, then that party waives the right to require such performance. *Id.*; *Sanderson Farms*, 848 So.2d at 837-38.

¶ 31. Triconex argues that Greenwood had notice of deviation from the contract on the date of testing and, by failing to object to providing Shaw for testing, waived Triconex's obligation to provide all personnel for test-

ing. However, Greenwood argues that the trial judge did not base his decision on the personnel issue, but instead upon Triconex's design and installation of a defective control system. Furthermore, Greenwood argues that no “known deviation” occurred because the contract specifically states when a waiver or amendment may occur. Greenwood also argues that, according to the language of the contract, only the engineer ^{FN6} for Greenwood had the authority to modify the contract. Greenwood directs this Court to three sections of the contract:

FN6. Greenwood's engineering firm was Burns and McDonnell of Kansas City, Missouri, which also wrote the contract.

ARTICLE 3-CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

B. AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS:

1. The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- a. A formal Written Amendment.
- b. A Change Order (pursuant to Paragraph 10.A.4.)

....

3. In addition, the requirements of the Contract Documents may be *1113 supplemented, and minor variations and deviations in the Work may be authorized, in the following way:

- a. A Field Order (pursuant to Paragraph 9.E).
- b. Engineer's written interpretation or clarification (pursuant to Paragraph 9.D).

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ARTICLE 9-ENGINEER'S STATUS DURING CONSTRUCTION: