

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions modify, change, delete from or add to the General Conditions of the Contract for Construction, AIA Document A201, 2007 Edition. Where any Article of the General Conditions is modified or any Paragraph, Subparagraph or Clause thereof is modified or deleted by these supplements, the unaltered provisions of that Article, Paragraph, Subparagraph or Clause shall remain in effect.

Articles, Paragraphs, Subparagraphs or Clauses modified or deleted have the same numerical designation as those occurring in the General Conditions.

ARTICLE 1

GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1. THE CONTRACT DOCUMENTS

In Subparagraph 1.1.1 delete the third sentence, and add the following sentence:

The Contract Documents shall include the Bid Documents as listed in the Instructions to Bidders and any modifications made thereto by addenda.

1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE [REFER TO R.S. 38:2317]

1.5.1 Delete the first sentence of the paragraph.

1.5.1 In the third sentence: delete the remainder after the word “publication”.

ARTICLE 2

OWNER

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 Delete this paragraph.

2.2.2 In the first sentence, delete: all before “...the Owner shall secure...”

ARTICLE 3

CONTRACTOR

3.4 LABOR AND MATERIALS

3.4.2 Delete this paragraph.

3.4.3 Delete this paragraph and substitute with the following:

Contractor and its employees, officers, agents, representatives, and Subcontractors shall conduct themselves in an appropriate and professional manner, in accordance with the Owner's requirements, at all times while working on the Project. Any such individual who behaves in an inappropriate manner or who engages in the use of inappropriate language or conduct while on Owner's property, as determined by the Owner, shall be removed from the Project at the Owner's request. Such individual shall not be permitted to return without the written permission of the Owner. The Owner shall not be responsible or liable to Contractor or any Subcontractor for any additional costs, expenses, losses, claims or damages incurred by Contractor or its Subcontractor as a result of the removal of an individual from the Owner's property pursuant to this paragraph. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS (R.S. 40:1724[A])

3.7.1 Delete Subparagraph 3.7.1

3.7.2 In paragraph 3.7.2, replace the word "public" with the word "State".

Delete Subparagraph 3.7.5 and substitute the following:

3.7.5 If, during the course of the Work, the Contractor discovers human remains, unmarked burial or archaeological sites, burial artifacts, or wetlands, which are not indicated in the Contract Documents, the Contractor shall follow all procedures mandated by State and Federal law, including but not limited to L.R.S. 8:671 et seq., R.S. 49:213.1 et seq., and Sections 401 & 404 of the Federal Clean Water Act. Request for adjustment of the Contract Sum and Contract Time arising from the existence of such remains or features shall be submitted in writing to the Owner pursuant to the Contract Documents.

3.8 ALLOWANCES

Delete Subparagraph 3.8.1, 3.8.2, and 3.8.3 in their entirety and add the following new Subparagraph 3.8.1:

3.8.1 Allowances shall not be made on any of the Work.

3.9 SUPERINTENDENT

3.9.1 Add the following to the end of the paragraph: Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.10.1 Add the following: For projects with a contract sum greater than \$1,000,000.00, the Contractor shall include with the schedule, for the Owner's and Architect's information,

a network analysis to identify those tasks which are on the critical path, i.e. where any delay in the completion of these tasks will lengthen the project timescale, unless action is taken. A revised schedule shall be submitted with each Application and Certificate for Payment. No payment will be made until this schedule is received.

- 3.10.3 Delete the word "...general..." Add the following: If the Work is not on schedule, as determined by the Architect, and the Contractor fails to take action to bring the Work on schedule, then the Contractor shall be deemed in default under this Contract and the progress of the Work shall be deemed unsatisfactory. Such default may be considered grounds for termination by the Owner for cause in accordance with 14.2.
- 3.10.4 Add the following: Submittal by the contractor of a schedule or other documentation showing a completion date for his Work prior to the completion date stated in the contract shall not impose any obligation or responsibility on the Owner or Architect for the earlier completion date.
- 3.10.5 Add the following: In the event the Owner employs a commissioning consultant, the Contractor shall cooperate fully in the commissioning process and shall require all subcontractors and others under his control to cooperate. The purpose of such services shall be to ensure that all systems perform correctly and interactively according to the provisions of the Contract Documents.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

Add the following: This requirement is of the essence of the contract. The Architect shall determine the value of these documents and this amount shall not be approved for payment to the Contractor until all of the listed documents are delivered to the Architect in good order, completely marked with field changes and otherwise complete in all aspects.

ARTICLE 4

ARCHITECT

4.1 GENERAL

Delete Subparagraph 4.1.1 and substitute the following:

4.1.1 The term Architect, when used in the Contract Documents, shall mean the prime Designer (Architect, Engineer or Landscape Architect), or his authorized representative, lawfully licensed to practice architecture, engineering or landscape architecture in the State of Louisiana, identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number.

4.1.3 Delete the words: "as to whom the Contractor has no reasonable objection and"

4.2 ADMINISTRATION OF THE CONTRACT

4.2.1 In the first sentence, delete the phrase: "the date the Architect issues the final Certificate for Payment" and replace with the phrase "final payment is due, and with the

Owner's concurrence, from time to time during the one year period for correction of Work described in Section 12.2."

- 4.2.2 In the first sentence, after the phrase: "become generally familiar with"; insert the following: "and to keep the Owner informed about."

In the first sentence, after the phrase "portion of the Work completed", insert the following: "to endeavor to guard the Owner against defects and deficiencies in the Work,"

- 4.2.10 Add the following sentence to the end of Subsection 4.2.10:

There will be no restriction on the Owner having a Representative.

- 4.2.11 Add the following sentence to the end of Subsection 4.2.11:

If no agreement is made concerning the time within which interpretation required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretation until 15 days after written request is made for them.

- 4.2.14 Insert the following sentence between the second and third sentences of Subsection 4.2.14:

If no agreement is made concerning the time within which interpretation required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretation until 15 days after written request is made for them.

ARTICLE 5

SUBCONTRACTORS

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

Delete Subparagraph 5.2.1, and substitute the following:

- 5.2.1 Unless otherwise required by the Contract Documents, the Contractor shall furnish at the Pre-Construction Conference, to the Owner and the Architect, in writing, the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work. No Contractor payments shall be made until this information is received.

Delete Subparagraph 5.2.2 and substitute the following:

- 5.2.2 The Contractor shall be solely responsible for selection and performance of all subcontractors. The Contractor shall not be entitled to claims for additional time and/or

an increase in the contract sum due to a problem with performance or non-performance of a subcontractor.

Delete Subparagraph 5.2.3 and 5.2.4 and add the following:

- 5.2.3 The contractor shall notify the Owner when a subcontractor is to be changed and substituted with another subcontractor.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

Delete Subparagraphs 5.4.1, 5.4.2 and 5.4.3

ARTICLE 7

CHANGES IN THE WORK

7.1 GENERAL

Add the following paragraph:

- 7.1.4 As part of the pre-construction conference submittals, the contractor is to submit the following prior to the commencement of Work:

Fixed job site overhead cost itemized with documentation to support daily rates.
Bond Premium Rate with supporting information from the General Contractor's carrier.
Labor Burden by trade for both Subcontractors and General Contractor.
Internal Rate Charges for all significant company owned equipment.

Failure to submit this information as part of the pre-construction submittals shall prohibit the Contractor from claiming these items as costs on any change order issued on the project.

7.2 CHANGE ORDERS

Delete Subparagraph clause 7.2.1, and substitute the following paragraphs:

- 7.2.1 A Change Order is a written order to the Contractor prepared by the Architect and signed by the Owner and the Architect, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates his agreement therewith, including the adjustment in the Contract Sum or the Contract Time. Any reservation of rights, stipulation, or other modification made on the change order by the contractor will have no effect.

- 7.2.2 "Cost of the Work" for the purpose of Change Orders shall be costs required to be incurred in performance of the Work and paid by the Contractor and Subcontractors which shall consist of:

- 7.2.2.1 Wages paid direct labor personnel, delineating a labor burden markup for applicable payroll taxes, worker's compensation insurance, unemployment compensation, and social security taxes.
- 7.2.2.2 Cost of all materials and supplies, including the identification of each item and its cost including taxes.
- 7.2.2.3 Identify each necessary piece of machinery and equipment and its individual cost including taxes.
- 7.2.2.4 Increases in insurance premiums for those forms of insurance required by Article 11 of these Supplementary Conditions and only for those forms.
- 7.2.2.5 Bond costs.

Credit will not be required for Overhead and Profit.

- 7.2.3 Overhead and Profit - The Contractor and Subcontractor shall be due job-site and home office fixed overhead and profits on the Cost of the Work, but shall not exceed a total of 25% of the direct cost of any portion of Work:

The credit to the Owner resulting from a change in the Work shall be the sum of those items above, except credit will not be required for Overhead and Profit. Where a change results in both credits to the Owner and extras to the Contractor for related items, overhead and profit will only be computed on the net extra cost to the Contractor.

- 7.2.4 The cost to the Owner resulting from a change in the Work shall be the sum of: Cost of the Work (as defined at 7.2.2) and Overhead and Profit (as defined at 7.2.4), and shall be computed as follows:

- 7.2.4.1 When all of the Work is General Contract Work; 15% markup on the Cost of the Work.

- 7.2.4.2 When the Work is all Subcontract Work; 15% markup on the Cost of the Work for Subcontractor's Overhead and Profit, plus 10% markup on the Cost of the Work, not including the Subcontractor's Overhead and Profit markup, for General Contractor's Overhead and Profit.

- 7.2.4.3 When the Work is a combination of General Contract Work and Subcontract Work; that portion of the direct cost that is General Contract Work shall be computed per 7.2.4.1 and that portion of the direct cost that is Subcontract Work shall be computed per 7.2.4.2.

Premiums for the General Contractor's bond may be included, but after the markup is added to the Cost of the Work.

- 7.2.4.4 Subcontract cost shall consist of the items in 7.2.2 above plus Overhead and Profit as defined in 7.2.4.

- 7.2.5 Before a Change Order is prepared, the Contractor shall provide and deliver to the Architect the following information concerning the Cost of the Work, not subject to waiver, within a reasonable time after being notified to prepare said Change Order:

A detailed itemized list of labor, material and equipment costs for the General Contractor's Work including quantities and unit costs for each item of labor, material and equipment.

An itemized list of labor, material and equipment costs for each Subcontractor's and/or Sub-Subcontractor's Work including quantities and unit costs for each item of labor, material and equipment.

- 7.2.6 After a Change Order has been approved, no future requests for extensions of time or additional cost shall be considered for that Change Order.

- 7.2.7 The Contractor will be due extended fixed job-site overhead for time delays only when complete stoppage of Work occurs causing a contract completion extension, and the Contractor is unable to mitigate financial damages through replacement Work. The stoppage must be due to acts or omissions solely attributable to the Owner. In all cases the Contractor is to notify the Architect in writing as required by Article 15.1.2. Reasonable proof may be required by the architect that alternate Work could not be performed. Reasonable proof may be required by the Architect that the stoppage affected the Completion Date.

- 7.2.8 "Cost of the Work" whether General Contract cost or Subcontract cost shall not apply to the following:

Salaries or other compensation of the Contractor's personnel at the Contractor's principal office and branch offices.

Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.

Overhead and general expenses of any kind or the cost of any item not specifically and expressly included above in Cost of the Work.

Cost of supervision not specifically required by the Change Order.

- 7.2.9 When applicable as provided by the Contract, the cost to Owner for Change Orders shall be determined by quantities and unit prices. The quantity of any item shall be as submitted by the Contractor and approved by the Architect. Unit prices shall cover cost of Material, Labor, Equipment, Overhead and Profit.

Add the following:

- 7.2.10 Unless otherwise agreed to by the Owner and Contractor, the Contractor shall submit all change order documents through the web based electronic document management system designated by Facility Planning and Control. Any fees charged by the provider of the system shall be the responsibility of the Owner. In using this system the Contractor shall strictly adhere to the naming conventions for change orders assigned by Facility

Planning and Control.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.3 In the first sentence after following methods add: “, but not to exceed a specified amount.”

7.3.7 Delete the following from .1 of the list: “fringe benefits required by agreement or custom,”

Delete the following from .4 of the list: “permit fees,”

Delete the following from .5 of the list: “and field office personnel”

7.3.9 Delete Subparagraph 7.3.9 and substitute the following:

Pending final determination of the total costs of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties’ agreement with part or all of such costs.

ARTICLE 8

TIME

8.1 DEFINITIONS

Add the following:

8.1.5 The Contract Time shall not be changed by the submission of a schedule that shows an early completion date unless specifically authorized by change order.

8.2 PROGRESS AND COMPLETION

Add to Subparagraph 8.2.1 the following:

Completion of the Work must be within the Time for Completion stated in the Agreement, subject to such extensions as may be granted under Section 8.3. The Contractor agrees to commence Work not later than fourteen (14) days after the transmittal date of Written Notice to Proceed from the Owner and to substantially complete the project within the time stated in the Contract. The Owner will suffer financial loss if the project is not substantially complete in the time set forth in the Contract Documents. The Contractor and the Contractor’s Surety shall be liable for and shall pay to the Owner the sum stated in the Contract Documents as fixed, agreed and liquidated damages for each consecutive calendar day (Saturdays, Sundays and holidays included) of delay until the Work is substantially complete. The Owner shall be entitled to the sum stated in the Contract Documents. Such Liquidated Damages shall be withheld by the Owner from the amounts due the Contractor for progress payments.

Delete Subparagraph 8.2.2

8.3 DELAYS AND EXTENSIONS OF TIME

- 8.3.1 In the first sentence after the words Owner pending delete the words: “mediation and arbitration” and add the word: “litigation” and delete the last word: “determine” and add the following: “recommend, subject to Owner’s approval of Change Order. If the claim is not made within the limits of Article 15, all right for future claims for that month are waived.”

ARTICLE 9

PAYMENTS AND COMPLETION

9.2 SCHEDULE OF VALUES

Delete Subparagraph 9.2 and substitute the following:

- 9.2 At the Pre-Construction Conference, the Contractor shall submit to the Owner and the Architect a Schedule of Values prepared as follows:
- 9.2.1 The attached Schedule of Values Format shall be used. If applicable, the cost of Work for each section listed under each division, shall be given. The cost for each section shall include Labor, Materials, Overhead and Profit.
- 9.2.2 The Total of all items shall equal the Total Contract Sum. This schedule, when approved by the Architect, shall be used as a basis for the Contractor’s Applications for Payment and it may be used for determining the cost of the Work in deductive change orders, when a specific item of Work listed on the Schedule of Values is to be removed. Once the Schedule of Values is submitted at the Pre-Construction Conference, the schedule may not be modified without approval from the Owner and Architect.

9.3 APPLICATIONS FOR PAYMENT

Delete Subparagraph 9.3.1 and clause 9.3.1.1 and 9.3.1.2 and substitute the following:

- 9.3.1 Monthly, the Contractor shall submit to the Architect an Application & Certificate for Payment on the AIA Document G702-1992, accompanied by AIA Document G703-1992, and supported by any additional data substantiating the Contractor’s right to payment as the Owner or the Architect may require. Application for Payment shall be submitted on or about the first of each month for the value of labor and materials incorporated into the Work and of materials, suitably stored, at the site as of the twenty-fifth day of the preceding month, less normal retainage as follows, per R.S. 38:2248:
- 9.3.1.1 Projects with Contract price up to \$500,000.00 – 10% of the Contract price.
- 9.3.1.2 Projects with Contract price of \$500,000.00, or more – 5% of the Contract price.

9.3.1.3 No payment will be made until the revised schedule required by Section 3.10.1 is received.

The normal retainage shall not be due the Contractor until after substantial completion and expiration of the forty-five day lien period and submission to the Architect of a clear lien certificate, consent of surety and invoice for retainage.

Delete Subparagraph 9.3.2 and substitute the following:

9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. Payments for materials or equipment stored on the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, including applicable insurance.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

Subparagraph 9.5.1.7: Delete the word "repeated".

Delete Subparagraph 9.5.3

9.6 PROGRESS PAYMENTS

Delete Subparagraph 9.6.1 and substitute the following:

9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment within twenty days except for projects funded fully or in part by a Federal reimbursement program. For such projects the Owner will make payment in a timely manner consistent with reimbursement.

9.6.2 Delete the phrase: "no later than seven days" from the first sentence.

After the end of the second sentence, add the following:

R.S. 9:2784 (A) and (C) require a Contractor or Subcontractor to make payment due to each Subcontractor and supplier within fourteen (14) consecutive days of the receipt of payment from the Owner. If not paid, a penalty in the amount of ½ of 1% per day is due, up to a maximum of 15% from the expiration date until paid. The contractor or subcontractor, whichever is applicable, is solely responsible for payment of a penalty.

9.6.4 Delete the first two sentences of Subparagraph 9.6.4 and add the following to the end of the Subparagraph:

Pursuant to La. R.S. 38:2242, when the Owner receives any claim of nonpayment arising out of the Contract, the Owner shall deduct 125% of such claim from the Contract Sum. The Contractor, or any interested party, may deposit security, in accordance with La. R.S. 38:2242.2, guaranteeing payment of the claim with the recorder of mortgages of the parish where the Work has been done. When the Owner receives original proof of such

guarantee from the recorder of mortgages, the claim deduction will be added back to the Contract Sum.

9.7 FAILURE OF PAYMENT

Delete Subparagraph 9.7

9.8 SUBSTANTIAL COMPLETION: Delete this section and substitute the following:

9.8 SUBSTANTIAL COMPLETION

9.8.1 Substantial Completion is the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The Architect shall determine if the project is substantially complete in accordance with this Subparagraph.

9.8.2 When the Contractor considers that the Work is Substantially Complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work is substantially complete. A prerequisite to the Work being considered as substantially complete is the Owner's receipt of the executed Roofing Contractor's and Roofing Manufacturer's guarantees, where roofing Work is part of the Contract. Prior to inspection by the Architect, the Contractor shall notify the Architect that the project is ready for inspection by the State Fire Marshal's office. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, the Contractor shall, before the Work can be considered as Substantially Complete, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

9.8.4 When the Architect determines that the project is Substantially Complete, he shall prepare a punch list of exceptions and the dollar value related thereto. The monetary value assigned to this list will be the sum of the cost estimate for each particular item of Work the Architect develops based on the mobilization, labor, material and equipment costs of correcting the item and shall be retained from the monies owed the contractor, above and beyond the standard lien retainage. The cost of these items shall be prepared in the same format as the schedule of values. At the end of the 45 day lien period payment shall be approved for all punch list items completed up to that time. After that payment, none of the remaining funds shall be due the contractor until all punch list items are completed and are accepted by the Architect. If the dollar value of the punch list exceeds the amount of funds, less the retainage amount, in the remaining balance of the Contract, then the Project shall not be considered as substantially complete. If funds remaining are less than that required to complete the Work, the Contractor shall pay the difference.

- 9.8.5 When the preparation of the punch list is complete the Architect shall prepare a Recommendation of Acceptance incorporating the punch list and submit it to the Owner. Upon approval of the Recommendation of Acceptance, the Owner may issue a Notice of Acceptance of Building Contract which shall establish the Date of Substantial Completion. The Contractor will record the Notice of Acceptance with the Clerk of Court in the Parish in which the Work has been performed. If the Notice of Acceptance has not been recorded seven (7) days after issuance, the Owner may record the Acceptance at the Contractor's expense. All additive change orders must be processed before issuance of the Recommendation of Acceptance. The Owner will not be responsible for payment for any Work associated with change orders that is not incorporated into the contract at the time of the Recommendation of Acceptance.
- 9.8.6 Warranties required by the Contract Documents shall commence on the date of Acceptance of the Work unless otherwise agreed to in writing by the Owner and Contractor. Unless otherwise agreed to in writing by the Owner and Contractor, security, maintenance, heat, utilities, damage to the Work not covered by the punch list and insurance shall become the Owner's responsibility on the Date of Substantial Completion.
- 9.8.7 If all punch list items have not been completed by the end of the forty-five (45) day lien period, through no fault of the Architect or Owner, the Owner may hold the Contractor in default. If the Owner finds the Contractor is in default, the Surety shall be notified. If within forty-five (45) days after notification, the Surety has not completed the punch list, through no fault of the Architect or Owner, the Owner may, at his option, contract to have the balance of the Work completed and pay for such Work with the unpaid funds remaining in the Contract sum. Finding the Contractor in default shall constitute a reason for disqualification of the Contractor from bidding on future state contracts. If the surety fails to complete the punch list within the stipulated time period, the Owner may not accept bonds submitted, in the future, by the surety.

9.9 PARTIAL OCCUPANCY OR USE

- 9.9.1 Delete paragraph and substitute the following:

Partial Occupancy is that stage in the progress of the Work when a designated portion of the Work is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the designated portion of the Work for its intended use. The Owner may occupy or use any substantially completed portion of the Work so designated by separate agreement with the Contractor and authorized by public authorities having jurisdiction over the Work. Such occupancy or use may commence provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers the designated portion substantially complete the Contractor shall prepare and submit a list to the Architect as provided under Subparagraph 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonable withheld.

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 After the first sentence, add the following:

If the Architect does not find the Work acceptable under the Contract Documents, the Architect shall make one additional inspection; if the Work is still not acceptable, the Architect, and each of the Architect's principal consultants, shall be paid \$175.00/hour for their time at the project site, for each additional inspection, to be withheld from the unpaid funds remaining in the Contract sum. The payment shall be made by the Owner and deducted from the construction contract funds.

9.10.4 Replace with the following:

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

- 9.10.4.1 Claims, security interests or encumbrances arising out of the Contract and unsettled;
- 9.10.4.2 Failure of the Work to comply with the requirements of the Contract Documents irrespective of when such failure is discovered; or
- 9.10.4.3 Terms of special warranties required by the Contract Documents.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.2 In the first sentence, between the words: "bearing on and safety", add the words: "the health and,"

10.3 HAZARDOUS MATERIALS

10.3.1 In the first sentence after (PCB) add: "or lead"

10.3.2 After the first sentence, delete all remaining sentences.

Add at the end: "The Contract time shall be extended appropriately."

10.4 EMERGENCIES

Delete Subparagraph 10.4 and substitute the following:

10.4 In an emergency affecting the safety of persons or property, the Contractor shall notify the Owner and Architect immediately of the emergency, simultaneously acting at his discretion to prevent damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency Work shall be determined as provided in Article 15 and Article 7.

ARTICLE 11

INSURANCE AND BONDS

Delete all of Paragraphs 11.1, 11.2 and 11.3 and substitute the following:

**INSURANCE REQUIREMENTS FOR
NEW CONSTRUCTION, ADDITIONS AND RENOVATIONS**

11.1 The Contractor shall purchase and maintain without interruption for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder by the Contractor, its agents, representatives, employees or subcontractors. The duration of the contract shall be from the inception of the contract until the date of final payment.

11.2 MINIMUM SCOPE AND LIMITS OF INSURANCE

11.2.1 Worker’s Compensation

Worker’s Compensation insurance shall be in compliance with the Worker’s Compensation law of the State of Louisiana. Employers Liability is included with a minimum limit of \$500,000 per accident/per disease/per employee. If Work is to be performed over water and involves maritime exposure, applicable LHWCA, Jones Act or other maritime law coverage shall be included and the Employers Liability limit increased to a minimum of \$1,000,000. A.M. Best’s insurance company rating requirement may be waived for Worker’s compensation coverage only.

11.2.2 Commercial General Liability

Commercial General Liability insurance, including Personal and Advertising Injury Liability and Products and Completed Operations Liability, shall have a minimum limit per occurrence based on the project value. The Insurance Services Office (ISO) Commercial General Liability occurrence coverage form CG 00 01 (current form approved for use in Louisiana), or equivalent, is to be used in the policy. Claims-made form is unacceptable.

The aggregate loss limit must apply to each project. ISO form CG 25 03 (current form approved for use in Louisiana), or equivalent, shall also be submitted. The State project number, including part number, and project name shall be included on this endorsement.

COMBINED SINGLE LIMIT (CSL) PER OCCURRENCE

<u>Type of Construction</u>	<u>Projects up to \$1,000,000</u>	<u>Projects over \$1,000,000 up to \$10,000,000</u>	<u>Projects over \$10,000,000</u>
New Buildings:			
Each Occurrence			
Minimum Limit	\$1,000,000	\$2,000,000	\$4,000,000

with Interstate 10 to the Louisiana – Mississippi border. If flood is included in the builder’s risk insurance policy, then the sub-limit shall not be less than ten percent (10%) of the total contract cost per occurrence. If flood is purchased as a separate policy, the limit shall be ten percent (10%) of the total contract cost per occurrence (with a max of \$500,000 if NFIP). Coverage for roofing projects shall **not** require flood coverage.

On projects South of this corridor, flood coverage shall be provided by the State of Louisiana as the Owner. The Contractor will be liable for the \$5,000 policy deductible from the Notice to Proceed date through the date of final payment of the project in the event of a flood loss.

A Specialty Contractor may provide an installation floater in lieu of a Builder’s Risk policy, with the similar coverage as the Builder’s Risk policy, upon the system to be installed in an amount equal to the greater of the fully-completed project value or the amount of the contract including any amendments. Flood coverage is not required.

The policy must include coverage for the Owner, Contractor and any subcontractors as their interests may appear.

11.2.6 Pollution Liability (*required when asbestos or other hazardous material abatement is included in the contract*)

Pollution Liability insurance, including gradual release as well as sudden and accidental, shall have a minimum limit of not less than \$1,000,000 per claim. A claims-made form will be acceptable. A policy period inception date of no later than the first day of anticipated Work under this contract and an expiration date of no earlier than 30 days after anticipated completion of all Work under the contract shall be provided. There shall be an extended reporting period of at least 24 months, with full reinstatement of limits, from the expiration date of the policy. The policy shall not be cancelled for any reason, except non-payment of premium.

11.2.7 Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and accepted by the Owner. The Contractor shall be responsible for all deductibles and self-insured retentions.

11.3 OTHER INSURANCE PROVISIONS

11.3.1 The policies are to contain, or be endorsed to contain, the following provisions:

11.3.1.1 Worker’s Compensation and Employers Liability Coverage

11.3.1.1.1 The insurer shall agree to waive all rights of subrogation against the Owner, its officers, agents, employees and volunteers for losses arising from Work performed by the Contractor for the Owner.

11.3.1.2 General Liability Coverage

- 11.3.1.2.1 The Owner, its officers, agents, employees and volunteers are to be added as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor, premises owned, occupied or used by the Contractor. ISO Form CG 20 10 (current form approved for use in Louisiana), or equivalent, is to be used.
- 11.3.1.2.2 The Contractor's insurance shall be primary as respects the Owner, its officers, agents, employees and volunteers. The coverage shall contain no special limitations on the scope of protection afforded to the Owner, its officers, officials, employees or volunteers. Any insurance or self-insurance maintained by the Owner shall be excess and non-contributory of the Contractor's insurance.
- 11.3.1.2.3 The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the policy limits.

11.3.1.3 Builder's Risk

The policy must include an endorsement providing the following:
In the event of a disagreement regarding a loss covered by this policy which may also be covered by a State of Louisiana self-insurance or commercial property policy through the Office of Risk Management (ORM), Contractor and its insurer agree to follow the following procedure to establish coverage and/or the amount of loss:

Any party to a loss may make written demand for an appraisal of the matter in disagreement. Within 20 days of receipt of written demand, the Contractor's insurer and either ORM or its commercial insurance company shall each select a competent and impartial appraiser and notify the other of the appraiser selected. The two appraisers will select a competent and impartial umpire. The appraisers will then identify the policy or policies under which the loss is insured and, if necessary, state separately the value of the property and the amount of the loss that must be borne by each policy. If the two appraisers fail to agree, they shall submit their differences to the umpire. A written decision by any two shall determine the policy or policies and the amount of the loss. Each insurance company agrees that the decision of the appraisers and the umpire if involved will be binding and final and that neither party will resort to litigation. Each of the two parties shall pay its chosen appraiser and bear the cost of the umpire equally.

11.3.1.4 All Coverages

- 11.3.1.4.1 Coverage shall not be canceled, suspended, or voided by either party (the Contractor or the insurer) or reduced in coverage or in limits except after 30 days written notice has been given to the Owner. Ten-day written notice of cancellation is acceptable for non-payment of premium. Notifications shall comply with the standard cancellation provisions in the Contractor's policy.
- 11.3.1.4.2 Neither the acceptance of the completed Work nor the payment thereof shall release the Contractor from the obligations of the insurance requirements or indemnification agreement.
- 11.3.1.4.3 The insurance companies issuing the policies shall have no recourse against the Owner for payment of premiums or for assessments under any form of the policies.
- 11.3.1.4.4 Any failure of the Contractor to comply with reporting provisions of the policy shall not affect coverage provided to the Owner, its officers, agents, employees and volunteers.

11.3.2 ACCEPTABILITY OF INSURERS

All required insurance shall be provided by a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located. Insurance shall be placed with insurers with an A.M. Best's rating of **A-:VI or higher**. This rating requirement may be waived for Worker's compensation coverage only.

If at any time an insurer issuing any such policy does not meet the minimum A.M. Best rating, the Contractor shall obtain a policy with an insurer that meets the A.M. Best rating and shall submit another certificate of insurance as required in the contract.

11.3.3 VERIFICATION OF COVERAGE

Contractor shall furnish the Owner with Certificates of Insurance reflecting proof of required coverage. The Certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Certificates are to be received and approved by the Owner before Work commences and upon any contract renewal thereafter. The Certificate Holder must be listed as follows:

State of Louisiana
 Name of Owner
 Owner Address
 City, State, Zip
 Attn: Project # _____

In addition to the Certificates, Contractor shall submit the declarations page and the cancellation provision endorsement for each insurance policy. The Owner reserves the right to request complete certified copies of all required insurance policies at any time.

Upon failure of the Contractor to furnish, deliver and maintain such insurance as above provided, this contract, at the election of the Owner, may be suspended, discontinued or terminated. Failure of the Contractor to purchase and/or maintain any required insurance shall not relieve the Contractor from any liability or indemnification under the contract.

If the Contractor does not meet the insurance requirements at policy renewal, at the option of the Owner, payment to the Contractor may be withheld until the requirements have been met, OR the Owner may pay the renewal premium and withhold such payment from any monies due the Contractor, OR the contract may be suspended or terminated for cause.

11.3.4 SUBCONTRACTORS

Contractor shall include all subcontractors as insureds under its policies OR shall be responsible for verifying and maintaining the certificates provided by each subcontractor. Subcontractors shall be subject to all of the requirements stated herein. The Owner reserves the right to request copies of subcontractor's certificates at any time.

If Contractor does not verify subcontractors' insurance as described above, Owner has the right to withhold payments to the Contractor until the requirements have been met.

11.3.5 WORKER'S COMPENSATION INDEMNITY

In the event Contractor is not required to provide or elects not to provide Worker's compensation coverage, the parties hereby agree the Contractor, its Owners, agents and employees will have no cause of action against, and will not assert a claim against, the State of Louisiana, its departments, agencies, agents and employees as an employer, whether pursuant to the Louisiana Worker's Compensation Act or otherwise, under any circumstance. The parties also hereby agree that the State of Louisiana, its departments, agencies, agents and employees shall in no circumstance be, or considered as, the employer or statutory employer of Contractor, its Owners, agents and employees. The parties further agree that Contractor is a wholly independent Contractor and is exclusively responsible for its employees, Owners, and agents. Contractor hereby agrees to protect, defend, indemnify and hold the State of Louisiana, its departments, agencies, agents and employees harmless from any such assertion or claim that may arise from the performance of this contract.

11.3.6 INDEMNIFICATION/HOLD HARMLESS AGREEMENT

Contractor agrees to protect, defend, indemnify, save, and hold harmless, the State of Louisiana, all State Departments, Agencies, Boards and Commissions, its officers, agents, servants, employees and volunteers, from and against any and all claims, damages, expenses and liability arising out of injury or death to any person or the damage, loss or destruction of any property which may occur, or in any way grow out of, any act or omission of Contractor, its agents, servants and employees, or any and all costs, expenses and/or attorney fees incurred by Contractor as a result of any claims, demands, suits or causes of action, except those claims, demands, suits or causes of action arising out of the negligence of the State of Louisiana, all State Departments, Agencies, Boards, Commissions, its officers, agents, servants, employees and volunteers.

Contractor agrees to investigate, handle, respond to, provide defense for and defend any such claims, demands, suits or causes of action at its sole expense and agrees to bear all other costs and expenses related thereto, even if the claims, demands, suits, or causes of action are groundless, false or fraudulent.

11.4 PERFORMANCE AND PAYMENT BOND

Add the following Subparagraph 11.4.3:

11.4.3 RECORDATION OF CONTRACT AND BOND [38:2241A(2)]

The Owner shall record within thirty (30) days the Contract Between Owner and Contractor and Performance and Payment Bond with the Clerk of Court in the Parish in which the Work is to be performed.

ARTICLE 12

UNCOVERING AND CORRECTION OF WORK

12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

At the end of the paragraph, add the following sentences: “If the Contractor fails to correct Work identified as defective within a thirty (30) day period, through no fault of the Designer, the Owner may hold the Contractor in default. If the Owner finds the Contractor in default, the Surety shall be notified. If within thirty (30) days after notification, the Surety has not corrected the nonconforming Work, through no fault of the Architect or Owner, the Owner may contract to have nonconforming Work corrected and hold the Surety and Contractor responsible for the cost, including architectural fees and other indirect costs. If the Surety fails to correct the Work within the stipulated time period and fails to meet its obligation to pay the costs, the Owner may elect not to accept bonds submitted in the future by the Surety. Finding the Contractor in default shall constitute a reason for disqualification of the Contractor from bidding on future state contracts.

12.2.2 AFTER SUBSTANTIAL COMPLETION

12.2.2.1 At the end of the paragraph delete the last sentence and add the following sentences: If the Contractor fails to correct nonconforming Work within a thirty (30) day period, through no fault of the Architect or Owner, the Owner may hold the Contractor in default. If the Owner finds the Contractor is in default, the Surety shall be notified. If within thirty (30) days after notification, the Surety has not corrected the nonconforming Work, through no fault of the Architect or Owner, the Owner may contract to have the nonconforming Work corrected and hold the Surety responsible for the cost including architects fees and other indirect costs. Corrections by the Owner shall be in accordance with Section 2.4. If the Surety fails to correct the nonconforming Work within the stipulated time period and fails to meet its obligation to pay the costs, the Owner may not accept bonds submitted, in the future, by the Surety.

12.2.2.1 At the end of the paragraph delete the last sentence and add the following sentences: If the Contractor fails to correct Work covered by warranties within a thirty (30) day period, through no fault of the Architect or Owner, the Owner may hold the Contractor in default. If the Owner finds the Contractor is in default, the Surety shall be notified. If within thirty (30) days after notification, the Surety has not corrected the warranty Work, through no fault of the Architect or Owner, the Owner may contract to have the warranty Work corrected and hold the Surety responsible for the cost including architects fees and other indirect costs. Corrections by the Owner shall be in accordance with Section 2.4. If the Surety fails to correct the warranty Work within the stipulated time period and fails to meet its obligation to pay the costs, the Owner may not accept bonds submitted, in the future, by the Surety.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

Delete all after the word "located".

13.2 SUCCESSORS AND ASSIGNS

13.2.1 In the second sentence, delete "Except as ... 13.2.2"

Delete paragraph 13.2.2

13.4 RIGHTS AND REMEDIES

Add the following clause 13.4.3

13.4.3 The Nineteenth Judicial Court in and for the Parish of East Baton Rouge, State of Louisiana shall have sole jurisdiction and venue in any action brought under this contract.

13.5 TESTS AND INSPECTIONS

In Subparagraph 13.5.1, delete the second sentence and substitute the following:

The Contractor shall make arrangements for such tests, inspections and approvals with the Testing Laboratory provided by the Owner, and the Owner shall bear all related costs of tests, inspections and approvals.

Delete the last sentence of Subparagraph 13.5.1

13.6 INTEREST

Delete Paragraph 13.6

13.7 TIME LIMITS ON CLAIMS

Delete Paragraph 13.7 (See L.R.S. 38:2189).

ARTICLE 14

TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

Delete clause 14.1.1.4

In Subparagraph 14.1.3, after the word “profit” add the following: “for Work completed prior to stoppage”.

14.2 TERMINATION BY THE OWNER FOR CAUSE

Add the following clause:

14.2.1.5 Failure to complete the punch list within the lien period as provided in 9.8.7.

14.2.3 Add the following sentence:

Termination by the Owner shall not suspend assessment of liquidated damages against the Surety.

14.2.5 Add the following Subparagraph:

If an agreed sum of liquidated damages has been established, termination by the Owner under this Article will not relieve the Contractor and/or surety of his obligations under the liquidated damages provisions and the Contractor and/or surety shall be liable to the Owner for per diem liquidated damages.

ARTICLE 15

CLAIMS AND DISPUTES

15.1 CLAIMS

In the first sentence of Subparagraph 15.1.1, after the word “money”, add the phrase: “extension of time,”

15.1.2 Add the following to the end of the paragraph: A Reservation of Rights and similar stipulations shall not be recognized under this contract as having any effect. A party must make a claim as defined herein within the time limits provided.

15.1.3 In the second sentence of the Subparagraph, delete “the decisions of the Initial Decision Maker” and replace with: “his/her decision”.

Delete Paragraph 15.1.5.2 and substitute the following:

If adverse weather conditions are the basis for a claim for additional time, the Contractor shall document that weather conditions had an adverse effect on the scheduled construction. An increase in the contract time due to weather shall not be cause for an increase in the contract sum. At the end of each month, the Contractor shall make one Claim for any adverse weather days occurring within the month. The Claim must be accompanied by sufficient documentation evidencing the adverse days and the impact on construction. Failure to make such Claim within twenty-one (21) days from the last day of the month shall prohibit any future claims for adverse days for that month.

15.1.5.3 Add the following Subparagraph:

The following are considered reasonably anticipated days of adverse weather on a monthly basis:

January	<u>11</u> days	July	<u>6</u> days
February	<u>10</u> days	August	<u>5</u> days
March	<u>8</u> days	September	<u>4</u> days
April	<u>7</u> days	October	<u>3</u> days
May	<u>5</u> days	November	<u>5</u> days
June	<u>6</u> days	December	<u>8</u> days

The Contractor shall ask for total adverse weather days. The Contractor's request shall be considered only for days over the allowable number of days stated above.

Note: Contract is on a calendar day basis.

15.2 INITIAL DECISION

15.2.1 In the second sentence, delete the word "will" and replace with: "shall always".

In the second sentence, delete the phrase: "unless otherwise indicated in the Agreement."

In the third sentence, delete the word "mediation" and replace with: "litigation".

In the third sentence, delete: "unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered."

15.2.5 In the middle of the first sentence, delete all after the phrase: "rejecting the Claim".

In the second sentence, delete the phrase: "and the Architect, if the Architect is not serving as the Initial Decision Maker."

In the third sentence, delete all after: "binding on the parties" and add the following: "except that the Owner may reject the solution or suggest a compromise or both."

15.2.6 Delete Paragraph.

Delete Subparagraph 15.2.6.1

15.3 MEDIATION

Delete Article 15.3

15.4 ARBITRATION

Delete Article 15.4