



# AIA<sup>®</sup> Document A201<sup>™</sup> – 2007

## General Conditions of the Contract for Construction

### for the following PROJECT:

*(Name and location or address)*

Slidell Memorial Hospital Women's Imaging Center  
1495 Gause Blvd. (Corner of Gause Boulevard and Lakewood Drive)  
Slidell, Louisiana 70458

### THE OWNER:

*(Name, legal status and address)*

St. Tammany Parish Hospital Service District No. 2  
dba Slidell Memorial Hospital  
1001 Gause Blvd.  
Slidell, Louisiana 70458

### THE ARCHITECT:

*(Name, legal status and address)*

Dammon Engineering, Inc.  
An Architectural and Engineering Corporation  
1095 Florida Ave.  
Slidell, Louisiana 70458  
985-649-5832

### ADDITIONS AND DELETIONS:

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### TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	OWNER
3	CONTRACTOR
4	ARCHITECT
5	SUBCONTRACTORS
6	CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
7	CHANGES IN THE WORK
8	TIME
9	PAYMENTS AND COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
11	INSURANCE AND BONDS
12	UNCOVERING AND CORRECTION OF WORK
13	MISCELLANEOUS PROVISIONS

Init.

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14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES



Init.

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## INDEX

(Numbers and Topics in Bold are Section Headings)

### Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3**

### Access to Work

**3.16**, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,  
10.2.8, 13.4.2, 13.7.1, 14.1, 15.2

Addenda

1.1.1, 3.11.1

Additional Costs, Claims for

3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, 15.1.4

### Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.5**

Additional Insured

11.1.4

### Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.5**

### Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

### Allowances

**3.8**, 7.3.8

All-risk Insurance

11.3.1, 11.3.1.1

### Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7.1, 9.10,

11.1.3

Approvals

2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10,  
4.2.7, 9.3.2, 13.5.1

### Arbitration

8.3.1, 11.3.10, 13.1.1, 15.3.2, **15.4**

## ARCHITECT

### 4

Architect, Definition of

#### 4.1.1

Architect, Extent of Authority

2.4.1, 3.12.7, 4.1, 4.2, 5.2, 6.3.1, 7.1.2, 7.3.7, 7.4,  
9.2.1, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1,  
12.2.1, 13.5.1, 13.5.2, 14.2.2, 14.2.4, 15.1.3, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3,  
4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4.1, 9.4.2,  
9.5.3, 9.6.4, 15.1.3, 15.2

Architect's Additional Services and Expenses

2.4.1, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 4.2, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.4.1, 3.1.3, 3.5.1, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5.1, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3.1,  
7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2.1, 9.4.1, 9.5, 9.8.4, 9.9.1,  
13.5.2, 15.2, 15.3

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.5

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.5.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1,  
3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18,  
4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,  
9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, 13.5, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3.7

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

### Award of Subcontracts and Other Contracts for Portions of the Work

#### 5.2

### Basic Definitions

#### 1.1

Bidding Requirements

1.1.1, 5.2.1, 11.4.1

Binding Dispute Resolution

9.7.1, 11.3.9, 11.3.10, 13.1.1, 15.2.5, 15.2.6.1, 15.3.1,  
15.3.2, 15.4.1

### Boiler and Machinery Insurance

#### 11.3.2

Bonds, Lien

7.3.7.4, 9.10.2, 9.10.3

### Bonds, Performance, and Payment

7.3.7.4, 9.6.7, 9.10.3, 11.3.9, **11.4**

Building Permit  
3.7.1

**Capitalization**  
**1.3**

Certificate of Substantial Completion  
9.8.3, 9.8.4, 9.8.5

**Certificates for Payment**

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7.1,  
9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3

Certificates of Inspection, Testing or Approval  
13.5.4

Certificates of Insurance  
9.10.2, 11.1.3

**Change Orders**

1.1.1, 2.4.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11.1, 3.12.8, 4.2.8,  
5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.6, 7.3.9, 7.3.10, 8.3.1,  
9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2,  
15.1.3

**Change Orders, Definition of**

**7.2.1**

**CHANGES IN THE WORK**

2.2.1, 3.11, 4.2.8, **7**, 7.2.1, 7.3.1, 7.4, 7.4.1, 8.3.1,  
9.3.1.1, 11.3.9

**Claims, Definition of**

**15.1.1**

**CLAIMS AND DISPUTES**

3.2.4, 6.1.1, 6.3.1, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4  
Claims and Timely Assertion of Claims  
15.4.1

**Claims for Additional Cost**

3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, **15.1.4**

**Claims for Additional Time**

3.2.4, 3.7.4.6.1.1, 8.3.2, 10.3.2, **15.1.5**

**Concealed or Unknown Conditions, Claims for**  
**3.7.4**

Claims for Damages

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1,  
11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Claims Subject to Arbitration

15.3.1, 15.4.1

**Cleaning Up**

**3.15**, 6.3

Commencement of the Work, Conditions Relating to  
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3,  
6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1,  
15.1.4

**Commencement of the Work, Definition of**

**8.1.2**

**Communications Facilitating Contract**

**Administration**

3.9.1, **4.2.4**

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1,  
9.10, 12.2, 13.7, 14.1.2

**COMPLETION, PAYMENTS AND**

**9**

Completion, Substantial

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2,  
13.7

Compliance with Laws

1.6.1, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2,  
11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1,  
14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1,  
9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.4.4.2

**Consolidation or Joinder**

**15.4.4**

**CONSTRUCTION BY OWNER OR BY  
SEPARATE CONTRACTORS**

1.1.4, **6**

**Construction Change Directive, Definition of**

**7.3.1**

**Construction Change Directives**

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**,  
9.3.1.1

Construction Schedules, Contractor's

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

**Contingent Assignment of Subcontracts**

**5.4**, 14.2.2.2

**Continuing Contract Performance**

**15.1.3**

**Contract, Definition of**

**1.1.2**

**CONTRACT, TERMINATION OR  
SUSPENSION OF THE**

5.4.1.1, 11.3.9, **14**

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating  
to

3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1

**Contract Documents, The**

**1.1.1**

Contract Documents, Copies Furnished and Use of  
1.5.2, 2.2.5, 5.3

**Contract Documents, Definition of**

**1.1.1**

**Contract Sum**

3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, **9.1**, 9.4.2, 9.5.1.4, 9.6.7,  
9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4, 15.2.5

**Contract Sum, Definition of**

**9.1**

Contract Time

3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4,  
8.1.1, 8.2.1, 8.3.1, 9.5.1, 9.7.1, 10.3.2, 12.1.1, 14.3.2,  
15.1.5.1, 15.2.5

**Contract Time, Definition of**

**8.1.1**

Init.

## CONTRACTOR

### 3

**Contractor**, Definition of

#### 3.1, 6.1.2

#### **Contractor's Construction Schedules**

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Contractor's Employees

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1,

#### **Contractor's Liability Insurance**

### 11.1

Contractor's Relationship with Separate Contractors and Owner's Forces

3.12.5, 3.14.2, 4.2.4, 6, 11.3.7, 12.1.2, 12.2.4

Contractor's Relationship with Subcontractors

1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2, 11.3.7, 11.3.8

Contractor's Relationship with the Architect

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1

Contractor's Representations

3.2.1, 3.2.2, 3.5.1, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the Work

3.3.2, 3.18, 5.3.1, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents

3.2

Contractor's Right to Stop the Work

9.7

Contractor's Right to Terminate the Contract

14.1, 15.1.6

Contractor's Submittals

3.10, 3.11, 3.12.4, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.4.2

Contractor's Superintendent

3.9, 10.2.6

Contractor's Supervision and Construction

Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3

Contractual Liability Insurance

11.1.1.8, 11.2

Coordination and Correlation

1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications

1.5, 2.2.5, 3.11

Copyrights

1.5, 3.17

Correction of Work

2.3, 2.4, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2

#### **Correlation and Intent of the Contract Documents**

### 1.2

**Cost**, Definition of

7.3.7

Costs

2.4.1, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14

#### **Cutting and Patching**

3.14, 6.2.5

Damage to Construction of Owner or Separate

Contractors

3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3, 12.2.4

Damage to the Work

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4.1, 11.3.1, 12.2.4

Damages, Claims for

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Damages for Delay

6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2

**Date of Commencement of the Work**, Definition of

8.1.2

**Date of Substantial Completion**, Definition of

8.1.3

**Day**, Definition of

8.1.4

Decisions of the Architect

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2.1, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2

#### **Decisions to Withhold Certification**

9.4.1, 9.5, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance, Rejection and Correction of

2.3.1, 2.4.1, 3.5.1, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

**Defective Work**, Definition of

3.5.1

Definitions

1.1, 2.1.1, 3.1.1, 3.5.1, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1

#### **Delays and Extensions of Time**

3.2., 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4.1, 8.3, 9.5.1, 9.7.1, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5

Disputes

6.3.1, 7.3.9, 15.1, 15.2

#### **Documents and Samples at the Site**

3.11

**Drawings**, Definition of

1.1.5

Drawings and Specifications, Use and Ownership of

3.11

Effective Date of Insurance

8.2.2, 11.1.2

#### **Emergencies**

10.4, 14.1.1.2, 15.1.4

Employees, Contractor's

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

Equipment, Labor, Materials or  
1.1.3, 1.1.6, 3.4, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13.1,  
3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3,  
9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2  
Execution and Progress of the Work  
1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5.1,  
3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2,  
9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3  
Extensions of Time  
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4.1, 9.5.1, 9.7.1, 10.3.2,  
10.4.1, 14.3, 15.1.5, 15.2.5

#### **Failure of Payment**

9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2

#### **Faulty Work**

(See Defective or Nonconforming Work)

#### **Final Completion and Final Payment**

4.2.1, 4.2.9, 9.8.2, **9.10**, 11.1.2, 11.1.3, 11.3.1, 11.3.5,  
12.3.1, 14.2.4, 14.4.3

#### **Financial Arrangements, Owner's**

2.2.1, 13.2.2, 14.1.1.4

#### **Fire and Extended Coverage Insurance**

11.3.1.1

### **GENERAL PROVISIONS**

#### **1**

#### **Governing Law**

##### **13.1**

Guarantees (See Warranty)

#### **Hazardous Materials**

10.2.4, **10.3**

#### **Identification of Subcontractors and Suppliers**

5.2.1

#### **Indemnification**

3.17.1, **3.18**, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2,  
11.3.7

#### **Information and Services Required of the Owner**

2.1.2, **2.2**, 3.2.2, 3.12.4, 3.12.10, 6.1.3, 6.1.4, 6.2.5,  
9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4, 13.5.1,  
13.5.2, 14.1.1.4, 14.1.4, 15.1.3

#### **Initial Decision**

##### **15.2**

#### **Initial Decision Maker, Definition of**

1.1.8

#### **Initial Decision Maker, Decisions**

14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

#### **Initial Decision Maker, Extent of Authority**

14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4,  
15.2.5

#### **Injury or Damage to Person or Property**

**10.2.8**, 10.4.1

#### **Inspections**

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,  
9.9.2, 9.10.1, 12.2.1, 13.5

#### **Instructions to Bidders**

1.1.1

#### **Instructions to the Contractor**

3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2

#### **Instruments of Service, Definition of**

##### **1.1.7**

#### **Insurance**

3.18.1, 6.1.1, 7.3.7, 9.3.2, 9.8.4, 9.9.1, 9.10.2, **11**

#### **Insurance, Boiler and Machinery**

##### **11.3.2**

#### **Insurance, Contractor's Liability**

##### **11.1**

#### **Insurance, Effective Date of**

8.2.2, 11.1.2

#### **Insurance, Loss of Use**

##### **11.3.3**

#### **Insurance, Owner's Liability**

##### **11.2**

#### **Insurance, Property**

10.2.5, **11.3**

#### **Insurance, Stored Materials**

9.3.2, 11.4.1.4

### **INSURANCE AND BONDS**

#### **11**

#### **Insurance Companies, Consent to Partial Occupancy**

9.9.1, 11.4.1.5

#### **Insurance Companies, Settlement with**

11.4.10

#### **Intent of the Contract Documents**

1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4

#### **Interest**

##### **13.6**

#### **Interpretation**

1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1

#### **Interpretations, Written**

4.2.11, 4.2.12, 15.1.4

#### **Judgment on Final Award**

15.4.2

#### **Labor and Materials, Equipment**

1.1.3, 1.1.6, **3.4**, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,  
4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3,  
9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

#### **Labor Disputes**

8.3.1

#### **Laws and Regulations**

1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13.1, 4.1.1, 9.6.4, 9.9.1,  
10.2.2, 11.1.1, 11.3, 13.1.1, 13.4, 13.5.1, 13.5.2,  
13.6.1, 14, 15.2.8, 15.4

#### **Liens**

2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8

#### **Limitations, Statutes of**

12.2.5, 13.7, 15.4.1.1

#### **Limitations of Liability**

2.3.1, 3.2.2, 3.5.1, 3.12.10, 3.17.1, 3.18.1, 4.2.6, 4.2.7,  
4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3, 11.1.2,  
11.2, 11.3.7, 12.2.5, 13.4.2

#### **Limitations of Time**

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,  
5.2, 5.3.1, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2.1, 9.3.1, 9.3.3,  
9.4.1, 9.5, 9.6, 9.7.1, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5,  
11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15

## Loss of Use Insurance

### 11.3.3

#### Material Suppliers

1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5

#### Materials, Hazardous

10.2.4, **10.3**

#### Materials, Labor, Equipment and

1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

#### Means, Methods, Techniques, Sequences and Procedures of Construction

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

#### Mechanic's Lien

2.1.2, 15.2.8

#### Mediation

8.3.1, 10.3.5, 10.3.6, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1

#### Minor Changes in the Work

1.1.1, 3.12.8, 4.2.8, 7.1, **7.4**

## MISCELLANEOUS PROVISIONS

### 13

#### Modifications, Definition of

##### 1.1.1

#### Modifications to the Contract

1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7.1, 10.3.2, 11.3.1

#### Mutual Responsibility

##### 6.2

#### Nonconforming Work, Acceptance of

9.6.6, 9.9.3, **12.3**

#### Nonconforming Work, Rejection and Correction of

2.3.1, 2.4.1, 3.5.1, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2.1

#### Notice

2.2.1, 2.3.1, 2.4.1, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1, 9.7.1, 9.10, 10.2.2, 11.1.3, 11.4.6, 12.2.2.1, 13.3, 13.5.1, 13.5.2, 14.1, 14.2, 15.2.8, 15.4.1

#### Notice, Written

2.3.1, 2.4.1, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 9.7.1, 9.10, 10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, **13.3**, 14, 15.2.8, 15.4.1

#### Notice of Claims

3.7.4, 4.5, 10.2.8, **15.1.2**, 15.4

#### Notice of Testing and Inspections

13.5.1, 13.5.2

#### Observations, Contractor's

3.2, 3.7.4

#### Occupancy

2.2.2, 9.6.6, 9.8, 11.3.1.5

#### Orders, Written

1.1.1, 2.3, 3.9.2, 7, 8.2.2, 11.3.9, 12.1, 12.2.2.1, 13.5.2, 14.3.1

## OWNER

### 2

#### Owner, Definition of

##### 2.1.1

#### Owner, Information and Services Required of the

2.1.2, **2.2**, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.3, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3

#### Owner's Authority

1.5, 2.1.1, 2.3.1, 2.4.1, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3.1, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2, 12.3.1, 13.2.2, 14.3, 14.4, 15.2.7

#### Owner's Financial Capability

2.2.1, 13.2.2, 14.1.1.4

#### Owner's Liability Insurance

##### 11.2

#### Owner's Loss of Use Insurance

##### 11.3.3

#### Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

#### Owner's Right to Carry Out the Work

2.4, 14.2.2

#### Owner's Right to Clean Up

##### 6.3

#### Owner's Right to Perform Construction and to Award Separate Contracts

##### 6.1

#### Owner's Right to Stop the Work

##### 2.3

#### Owner's Right to Suspend the Work

14.3

#### Owner's Right to Terminate the Contract

14.2

#### Ownership and Use of Drawings, Specifications and Other Instruments of Service

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.2.5, 3.2.2, 3.11.1, 3.17.1, 4.2.12, 5.3.1

#### Partial Occupancy or Use

9.6.6, **9.9**, 11.3.1.5

#### Patching, Cutting and

**3.14**, 6.2.5

#### Patents

3.17

#### Payment, Applications for

4.2.5, 7.3.9, 9.2.1, **9.3**, 9.4, 9.5, 9.6.3, 9.7.1, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

#### Payment, Certificates for

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7.1, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4

#### Payment, Failure of

9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2

#### Payment, Final

4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 11.4.5, 12.3.1, 13.7, 14.2.4, 14.4.3

#### Payment Bond, Performance Bond and

7.3.7.4, 9.6.7, 9.10.3, 11.4.9, **11.4**

**Payments, Progress**

9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

**PAYMENTS AND COMPLETION****9**

Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 11.4.8, 14.2.1.2

PCB

10.3.1

**Performance Bond and Payment Bond**

7.3.7.4, 9.6.7, 9.10.3, 11.4.9, **11.4**

**Permits, Fees, Notices and Compliance with Laws**

2.2.2, **3.7**, 3.13, 7.3.7.4, 10.2.2

**PERSONS AND PROPERTY, PROTECTION OF****10**

Polychlorinated Biphenyl

10.3.1

**Product Data**, Definition of

**3.12.2****Product Data and Samples, Shop Drawings**

3.11, **3.12**, 4.2.7

**Progress and Completion**

4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.3

**Progress Payments**

9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

**Project**, Definition of the

**1.1.4**

Project Representatives

4.2.10

**Property Insurance**

10.2.5, **11.3**

**PROTECTION OF PERSONS AND PROPERTY****10**

Regulations and Laws

1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14, 15.2.8, 15.4

Rejection of Work

3.5.1, 4.2.6, 12.2.1

Releases and Waivers of Liens

9.10.2

Representations

3.2.1, 3.5.1, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2, 9.10.1

Representatives

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1, 5.1.2, 13.2.1

Responsibility for Those Performing the Work

3.3.2, 3.18, 4.2.3, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

**Review of Contract Documents and Field Conditions by Contractor**

**3.2**, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and Architect

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and Samples by Contractor

3.12

**Rights and Remedies**

1.1.2, 2.3, 2.4, 3.5.1, 3.7.4, 3.15.2, 4.2.6, 4.5, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4, **13.4**, 14, 15.4

**Royalties, Patents and Copyrights****3.17**

Rules and Notices for Arbitration

15.4.1

**Safety of Persons and Property**

**10.2**, 10.4

**Safety Precautions and Programs**

3.3.1, 4.2.2, 4.2.7, 5.3.1, **10.1**, 10.2, 10.4

**Samples**, Definition of

**3.12.3****Samples, Shop Drawings, Product Data and**

3.11, **3.12**, 4.2.7

**Samples at the Site, Documents and****3.11****Schedule of Values**

**9.2**, 9.3.1

Schedules, Construction

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Separate Contracts and Contractors

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 11.4.7, 12.1.2

**Shop Drawings**, Definition of

**3.12.1****Shop Drawings, Product Data and Samples**

3.11, **3.12**, 4.2.7

**Site, Use of**

**3.13**, 6.1.1, 6.2.1

Site Inspections

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.4.2, 9.10.1, 13.5

Site Visits, Architect's

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Special Inspections and Testing

4.2.6, 12.2.1, 13.5

**Specifications**, Definition of the

**1.1.6****Specifications, The**

1.1.1, **1.1.6**, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14

Statute of Limitations

13.7, 15.4.1.1

Stopping the Work

2.3, 9.7, 10.3, 14.1

Stored Materials

6.2.1, 9.3.2, 10.2.1.2, 10.2.4, 11.4.1.4

**Subcontractor**, Definition of

**5.1.1****SUBCONTRACTORS****5**

Subcontractors, Work by

1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

## **Subcontractual Relations**

**5.3**, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 11.4.7, 11.4.8, 14.1, 14.2.1

### **Submittals**

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3

### **Submittal Schedule**

3.10.2, 3.12.5, 4.2.7

## **Subrogation, Waivers of**

6.1.1, 11.4.5, **11.3.7**

## **Substantial Completion**

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 13.7

## **Substantial Completion, Definition of**

### **9.8.1**

#### **Substitution of Subcontractors**

5.2.3, 5.2.4

#### **Substitution of Architect**

4.1.3

#### **Substitutions of Materials**

3.4.2, 3.5.1, 7.3.8

## **Sub-subcontractor, Definition of**

### **5.1.2**

#### **Subsurface Conditions**

3.7.4

## **Successors and Assigns**

### **13.2**

## **Superintendent**

**3.9**, 10.2.6

## **Supervision and Construction Procedures**

1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.7, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.3

### **Surety**

5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7

#### **Surety, Consent of**

9.10.2, 9.10.3

### **Surveys**

2.2.3

## **Suspension by the Owner for Convenience**

### **14.3**

#### **Suspension of the Work**

5.4.2, 14.3

#### **Suspension or Termination of the Contract**

5.4.1.1, 11.4.9, 14

## **Taxes**

3.6, 3.8.2.1, 7.3.7.4

## **Termination by the Contractor**

**14.1**, 15.1.6

## **Termination by the Owner for Cause**

5.4.1.1, **14.2**, 15.1.6

## **Termination by the Owner for Convenience**

### **14.4**

#### **Termination of the Architect**

4.1.3

#### **Termination of the Contractor**

14.2.2

## **TERMINATION OR SUSPENSION OF THE**

## **CONTRACT**

### **14**

## **Tests and Inspections**

3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 11.4.1.1, 12.2.1, **13.5**

## **TIME**

### **8**

## **Time, Delays and Extensions of**

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4.1, **8.3**, 9.5.1, 9.7.1, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5

### **Time Limits**

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 4.4, 4.5, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.4.1.5, 11.4.6, 11.4.10, 12.2, 13.5, 13.7, 14, 15.1.2, 15.4

## **Time Limits on Claims**

3.7.4, 10.2.8, **13.7**, 15.1.2

### **Title to Work**

9.3.2, 9.3.3

## **Transmission of Data in Digital Form**

### **1.6**

## **UNCOVERING AND CORRECTION OF WORK**

### **12**

## **Uncovering of Work**

### **12.1**

#### **Unforeseen Conditions, Concealed or Unknown**

3.7.4, 8.3.1, 10.3

#### **Unit Prices**

7.3.3.2, 7.3.4

#### **Use of Documents**

1.1.1, 1.5, 2.2.5, 3.12.6, 5.3

## **Use of Site**

**3.13**, 6.1.1, 6.2.1

## **Values, Schedule of**

**9.2**, 9.3.1

#### **Waiver of Claims by the Architect**

13.4.2

#### **Waiver of Claims by the Contractor**

9.10.5, 11.4.7, 13.4.2, 15.1.6

#### **Waiver of Claims by the Owner**

9.9.3, 9.10.3, 9.10.4, 11.4.3, 11.4.5, 11.4.7, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6

#### **Waiver of Consequential Damages**

14.2.4, 15.1.6

#### **Waiver of Liens**

9.10.2, 9.10.4

## **Waivers of Subrogation**

6.1.1, 11.4.5, **11.3.7**

## **Warranty**

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, 13.7.1

### **Weather Delays**

15.1.5.2

## **Work, Definition of**

**1.1.3**

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Notice

2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.4.6, 12.2.2, 12.2.4, **13.3**, 14, 15.4.1

Written Orders

1.1.1, 2.3, 3.9, 7, 8.2.2, 11.4.9, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2



## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 BASIC DEFINITIONS

#### § 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

#### § 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

#### § 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

#### § 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### § 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

1.1.7.1 Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications. The Section in Division 1 – General Requirements specify detailed administrative and procedural requirements, which are applicable to all elements of the Construction Contract. The following documents are applicable to Division 1 – General Requirements:

- .1 Drawings
- .2 Bidding Requirements (will be included as part of the Contract Documents in the Owner/Contractor Agreement).
- .3 Owner/Contractor Agreement
- .4 Bonds
- .5 General Conditions
- .6 Supplementary Conditions

Init.

### § 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the Architect, who shall render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

### 1.1.9 MISCELLANEOUS DEFINITIONS

1.1.9.1 Terms "building code," and "code," refer to regulations of governmental entities having jurisdictions over the Project and the Work.

1.1.9.2 "Acceptable," "required," and "as directed" refer to or indicate work or materials that may be acceptable or approved by the Architect, as the Owner's representative during the construction phase, only to the extent the work or materials conform to the requirements of the Contract Documents and in no way shall be interpreted to imply any responsibility on the part of the Architect concerning the Contractor's obligations under the requirements of the Contract Documents.

1.1.9.3 Term "similar" means in its general sense and not necessarily identical.

1.1.9.4 Terms "shown," "indicated," "detailed," "noted," "scheduled," and terms of similar import, refer to requirements contained in Contract Documents.

1.1.9.5 "Defective work" includes but is not limited to movable or adjustable work which has not remained in good working order including hardware, weatherstripping, doors, windows, drawers, apparatus, machinery and electrical and mechanical equipment, except for normal wear.

1.1.9.6 The terms Knowledge, recognize and discover, their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows, recognizes, and discovers in exercising appropriately and in accordance with industry standards, the care, skill and diligence required by the Contract Documents. Analogously, the expression reasonably inferable and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a Contractor familiar with the Project and exercising the care, skill and diligence required of the Contractor by the Contract Documents.

1.1.9.7 When the word "provide" including derivatives thereof is used, it shall mean to properly fabricate, transport, deliver, install, erect, construct, test and furnish all labor, materials, equipment and related items necessary to complete the Work as required by the Contract Documents.

1.1.9.8 The term "persistently" and other similar expressions, as used in reference to the Contractor, shall be interpreted to mean any combination of material acts and omissions, which causes the Owner or the Architect to reasonably conclude that the Contractor will not complete the Work within the Contract Time, for the Contract Sum or in substantial compliance with the requirements of the Contract Documents.

### § 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

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

1.2.4 In the case of inconsistencies within or between portions of the Contract Documents, the Contractor shall (1) provide the better quality or greater quantity of Work; or (2) comply with the more stringent requirements, either or both in accordance with the Architect's interpretation. The terms and conditions of paragraph 1.2.4 however, shall

not relieve the Contractor of any of the obligations set forth in Paragraph 3.2, or any other provisions of the Contract Documents.

1.2.4.1 In connection with the Drawings, specified dimensions shall take precedence over scaled measurements and large scale drawings take precedence over small scale drawings.

1.2.4.2 Before ordering any materials or performing any Work, the Contractor and each Subcontractor shall verify measurements at the Project Site and shall be responsible for the correctness of such measurements. No additional compensation will be allowed on account of differences between actual dimensions and the dimensions indicated on the Drawings. Any difference between field measurements and dimensions set out in the Contract Documents shall be submitted to the Architect for resolution before proceeding with the Work.

### § 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

### § 1.4 INTERPRETATION

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

### § 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

## ARTICLE 2 OWNER

### § 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing to Architect and Contractor a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Any changes in the designation of a representative shall be made in writing. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

## § 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

## § 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

## § 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## 2.5 EXTENT OF OWNER RIGHTS

2.5.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any right of the Owner granted in the Contract Documents, at law or in equity.

2.5.2 In no event will the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, services, or procedures or for safety precautions and programs in connections with the Work, notwithstanding any rights and authority granted the Owner in the Contract Documents.

## ARTICLE 3 CONTRACTOR

### § 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

### § 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. The Contractor and each Subcontractor have evaluated and satisfied themselves as to the conditions and limitation under which the Work is to be performed, including, without limitation (1) the locations, conditions, layout and nature of the Project site and surrounding areas; (2) the prevailing climatic conditions; (3) anticipated labor supply and costs; (4) availability and cost of materials, tools and equipment; and (5) other similar issues which in any way may affect the cost or time for performing the Work. The Owner assumes no responsibility or liability for the safety of the Project. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either of the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of the Contract Documents.

3.2.1.1 After notifying the Architect, in writing, of any error, inconsistency, or omission discovered in the Contract Documents, the Contractor shall not proceed with any Work so affected without Architect's written interpretation and decision.

3.2.1.2 The Architect shall have the final authority to determine whether any change or modification should be made, and no change or modifications of any kind shall be made except on the Architect's written instructions.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. The Contractor shall satisfy itself as to the accuracy of all grades, elevations, dimensions and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work which is apparent from a reasonable inspection. Any errors due to the Contractor's failure to so verify all such grades, elevations locations or dimensions shall be promptly rectified by the Contractor without any additional cost to the Owner or adjustment to the Contract Time.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3,-

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the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### § 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work. Further, the Contractor shall be fully and solely responsible for the jobsite safety.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### § 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

3.4.3 The products specified or indicated on the Drawings or in the Specifications are used only to denote the quality standard of product desired. The term "equal" or "or equal," used in the Specifications is defined as meaning "equal in the professional judgment of the Architect." Approval of other products or requests for substitution shall be at the Architect's discretion and in accordance with provisions of the Bidding Requirements or General Requirements of the Specifications.

3.4.4 A request made by the Contractor for a substitution is a representation to the Architect as follows:

- .1 The Contractor has investigated the proposed substitute and determined that it is equal or superior in all respects to that specified.
- .2 The Contractor will provide the same warranty for the substitute product as for that specified.
- .3 The Contractor will coordinate the installation of the accepted substitute, making such changes as may be required to complete the Work in all respects.

*(Paragraph deleted)*

### § 3.5 WARRANTY

The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.5.1 All warranties shall take effect on the date of Substantial Completion of the Work or designated portion thereof which includes the items covered by warranties, not on the date of installation of any specific product.

### § 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

3.6.1 Taxes include, without limitation, Old Age Pension, Unemployment and any other and all taxes imposed by local, City, Parish, or the Federal Government and include such expenses or taxes as a part of the stipulated Contract sum.

### § 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 Except as set forth in Paragraph 2.2.2, the Contractor shall include in the Contract Sum and secure, pay for, and, as soon as practicable, furnish the Owner with copies or certificates of all permits including, without limitation, all building permits as required by governmental authorities having jurisdiction over the Project, and fees, licenses, and inspections necessary for the proper execution and completion of the Work. All construction charges, assessments, or inspection fees as may be imposed by any municipal agency or utility company are included in the Contract Sum and are the Contractor's responsibility.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

3.7.3.1 The Contractor, at his own expense, shall record, prior to commencement of the Work, a Notice of Contract and required performance and payment bonds with the Clerk of Court or Recorder of Mortgages of the Parish where the Work is to be performed. Contractor shall furnish the Architect and Owner with all recordation information, including date, time, book and folio number.

§ 3.7.4 **Concealed or Unknown Conditions.** Contractor represents that it has investigated the site and is familiar with all known, apparent, or reasonably discoverable conditions, subsurface or otherwise, which will be encountered at the site, and that Contractor has taken those conditions into account in establishing the Contract Sum and the Contract Time, as well as all other conditions concerning the performance of the Work, including without limitation, underground and above ground utilities, work space restrictions, work hour restrictions, noise restrictions, restrictions on site ingress and egress, weather conditions, ground water, dewatering requirements, temporary and permanent utilities relocation, ventilations requirements, and all other restrictions, demands, and requirements needed for the timely and adequate performance of the Work required by the contract Documents, and all such conditions have been assumed by Contractor and are reflected and incorporated into the Contract Sum and The Contract Time, Subject to the foregoing, if the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall

continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### § 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### § 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Contractor shall include identification of the critical path, i.e. where any delay in the completion of these tasks will lengthen the Projects completion, unless appropriate action is taken.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

3.10.4 In the event the Architect determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the Owner, upon the recommendation of the Architect, shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities, and (3) other similar measures (hereinafter referred to as "Recovery Measures"). Such

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Recovery measures shall continue until the progress of the Work achieves the stage of completion required by the Contract Documents. The Owner's right to require Recovery Measure is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

3.10.4.1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Recovery Measures required by the Owner under or pursuant to this Paragraph 1.10.4 unless the Recovery Measures were directed by the Owner to recover from delays for which the Contractor was entitled to an extension of the Contract Time pursuant to the Contract Documents, and said extension of time was timely and properly requested by Contractor and improperly denied by Owner.

3.10.4.2 The Owner may exercise the rights provided the Owner under pursuant to this Paragraph 3.10.4 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with the completion date set forth in the Contract Documents.

### **§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### **§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** Failure by the Contractor to submit Shop Drawings shall be at the Contractor's sole risk and may result in rejections of any completed or partially completed Work (by the Architect).

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific

deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional and who shall comply with reasonable requirements of the Owner regarding qualifications and insurance. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

3.12.11 Additional information and procedures for handling Shop Drawings, Product Data and Samples are specified in the General Requirements (Division 1 of the Specifications).

### § 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

3.13.1 The Owner shall have the right to use any and all portions of the site and the Work in accordance with Article 6, provided that such occupancy does not hamper the Contractor or prevent his efficient completion of the Work. Such use shall not constitute an acceptance of the Contractor's work in whole or in part.

### § 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

3.14.3 Additional information and procedures for Cutting and Patching is specified in the General Requirements (Division 1 of the Specifications).

### § 3.15 CLEANING UP

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

3.15.3 Additional information and procedures for Cleaning Up is specified in the General Requirements (Division 1 of the Specifications).

### § 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

### § 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

### § 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions or breach of contract of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## ARTICLE 4 ARCHITECT

### § 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

## § 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

## § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents. There will be no restriction on the Owner having a representative.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

*(Paragraph deleted)*

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, at the pre-construction conference, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. No payments will be due and payable to the Contractor until the Contractor submits the information required in this Section.

§ 5.2.2 The Contractor shall be solely responsible for selection and performance of all Subcontractor and suppliers. The Contractor shall not be entitled to an increase in the Contract Time or the Contract Sum due to a problem with performance or non-performance of a Subcontractor or supplier.

§ 5.2.3 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

*(Paragraphs deleted)*

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## § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

- § 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that
- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
  - .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall not be legally responsible for all of the successor contractor's obligations under the subcontract.

*(Paragraph deleted)*

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

### § 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

### § 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Except as permitted in Section 7.3 and Paragraph 9.7.2, a change in the Contract Sum or the Contract Time may be accomplished only by Change Order or by a Construction Change Directive signed by the Owner's representative. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance or alterations or additions to the Work and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Owner, shall be the basis of any claim for an increase in the amount due under the Contract Documents or a change in the Contract Time or any time period provided for in the Contract Documents.

### § 7.2 CHANGE ORDERS

#### § 7.2.1

A Change Order is a written  
(Paragraphs deleted)

order to the Contractor signed by the Owner and the Architect, issued after execution of the Contract, authorizing a change in the work of 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 indicated his agreement therewith, including the adjustment in the Contract Sum and/or the Contract Time.

7.2.2 "Cost of the Work" for the purchase of Change Orders shall be costs required to be incurred in performance of the Work and paid by the contractor and Subcontractor which shall consist of:

1. Wages paid to direct labor personnel, delineating a labor burden markup for applicable payroll taxes, worker's compensation insurance, unemployment compensation, and social security taxes.
2. Cost of all materials and supplies, including the identification of each item and its cost.
3. Reasonable rental rates for machinery and equipment.
4. Other documented direct costs.

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 18% of the direct cost of any portion of Work, as specifically set out in paragraph 7.2.4 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 After a Change Order has been approved, no future requests for extensions of time or additional cost shall be considered or recoverable for that Change Order work.

7.2.5 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 in Article 15. 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 adversely affected the date of Substantial Completion.

7.2.6 Cost of Work whether General Contract cost or Sub-Contract cost shall not apply to the following:

1. Salaries or other compensation of the Contractor's personnel at the Contractor's principal office and branch offices not specifically charged to the project.
2. Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the work.
3. Overhead and general expenses of any kind or the cost of any item not specifically and expressly included above in Cost of the Work.
4. Cost of supervision not specifically required by the Change Order unless said change order extends the project duration.

7.2.7 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.

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; calculated in accordance with paragraph 7.2, but not to exceed a specified amount; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**§ 7.3.7** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.2 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Other documented direct costs of the Work.

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

- .1 Salaries or other compensation of the Contractor's personnel at the Contractor's principal office and branch offices.
- .2 Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the work.
- .3 Overhead and general expenses of any kind or the cost of any item not specifically and expressly included above in cost of the Work.
- .4 Cost of supervision not specifically required by the Change Order.

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

7.3.11 In subparagraph 7.3.6, an allowance for the combined overhead and profit for Change Orders and Construction Change Directives included in the total cost to the Owner shall be based on the following schedule:

- .1 For the Contractor, for work performed by the Contractor's own forces, 10 percent of the cost.
- .2 For the Contractor, for work performed by the Contractor's Subcontractor, 8 percent of the amount due the Subcontractor.
- .3 For each Subcontractor or Sub-subcontractor, for work performed by the Subcontractor's or Sub-subcontractor's own force, 10 percent of the cost.
- .4 For each Subcontractor, for work performed by the Subcontractor's Sub-subcontractors, 5 percent of the amount due the Sub-subcontractor.
- .5 Cost to which overhead and profit is to be applied shall be determined in accordance with subparagraph 7.3.6.
- .6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their proprietary can be seen by inspection, shall be accompanied by a complete itemization of cost including labor, materials, subcontracts and equipment cost. Labor and materials shall be itemized in the manner

prescribed above. Where major cost items are subcontracts, they shall be itemized also. In no case will a change be approved without such itemization.

.7 Overhead and profit shall not exceed a total of 18% of the direct cost of any portion of the work.

#### § 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

### ARTICLE 8 TIME

#### § 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 Contract Time shall be based on Consecutive Calendar Days (Weekdays, Saturdays, Sundays and Holidays inclusive). A Calendar Day is one of 24 hours beginning at 12:00 midnight.

8.1.5 Contractor shall commence work under this Contract on date specified in the Notice to Proceed and fully complete the Work of the Project within number of Consecutive Calendar days (Weekdays, Saturdays, Sundays and Holidays included) stated in the Agreement. The Contract Time shall not be changed by the Contractor's submission of a schedule which shows a completion date different than the Contract completion date, unless specifically authorized by Change Order.

#### § 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work. The Contractor agrees to commence work not later than five (5) days, unless noted otherwise, after the transmittal date of a written notice to proceed from the Owner or the issuance of the building permit, whichever is later, and to substantially complete the project within the contract time. 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 upon liquidated damages for each consecutive calendar day (Weekdays, Saturdays, Sundays and Holidays included) of delay until the work is substantially complete. Such Liquidated Damages shall be withheld by the Owner from the amounts due the Contractor for progress and/or final payments.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

#### § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may recommend, subject to Owner's approval. If the claim is not made within the time limits set out in Article 15, all rights for future claims for that month are waived.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

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**§ 8.3.3** This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

8.3.4 If the Contractor submits a schedule or a progress report indicating, or which otherwise expresses an intention to achieve, completion of the Work prior to any completion date required by the Contract Documents or the expiration of the Contract Time, the Owner will not be liable to the Contractor for any failure of the Contractor to so complete the Work by such date or time.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 CONTRACT SUM**

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

### **§ 9.2 SCHEDULE OF VALUES**

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.2.2 In general, the Contract Sum shall be distributed in accordance with the type of work designated by the Technical Sections of the Specifications with one additional line item for the value of jobsite overhead. In the case of large projects sections shall be subdivided further into component parts of the technical Sections as the Architect determines.

9.2.3 All line items shall be composed of a base dollar value to which shall be added a dollar value for home office overhead and a dollar value for profit.

9.2.4 Total of all items shall be equal to total Contract Sum. This schedule, when approved by Architect, will be used as the only basis for contractor's Applications for Payment.

### **§ 9.3 APPLICATIONS FOR PAYMENT**

**§ 9.3.1** Monthly, the Contractor shall submit to the Architect an Application and 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. One original copy shall be signed and notarized. Provide amount of copies as indicated in Division 1 of the Specification. An 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 set out below:

**§ 9.3.1.1** Retainage shall be 10% of the Contract Sum; except that on any public works contract of \$500,000 or more, the amount retained shall not exceed 5% of the Contract Sum.

**§ 9.3.1.2** Each application for Payment shall be accompanied by the following, all in the form and substance satisfactory to the Owner:

.1 A current Contractor's claim and lien waiver duly executed and an acknowledged sworn statement showing that all Subcontractors and material suppliers with whom the Contractor has entered into subcontracts or purchase orders, the amount of each such subcontract or purchase order, the amount requested for any Subcontractor and material suppliers and the requested progress payment and the amount to be paid to the Contractor for such progress payment, together with similar sworn statements from all such Subcontractors and material suppliers.

.2 Duly executed waivers of mechanic's and material supplier's claims and liens from all Subcontractors and when appropriate, from material suppliers and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment; and

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.3 All information and materials required to comply with the requirements of the Contract Documents or reasonable requested by the Owner or the Architect.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably 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.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

9.3.4 At the time when final payment for all work, less retainage, is requested, a list of exceptions and a dollar value related thereto will be prepared by the Architect. A monetary value will be assigned to each item so that, if necessary in the professional judgment of the Architect, a supplementary retainage can be withheld in addition to the normal retainage, to cover such exceptions to acceptance.

#### § 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;

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- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

## § 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment to the Contractor within twenty days after receipt of such Certificate of Payment.

§ 9.6.2 The Contractor shall pay each Subcontractor and each supplier of equipment and material no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor or Supplier is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's and suppliers portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor and each supplier of equipment and material, require each Subcontractor or Supplier to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

## § 9.7 FAILURE OF PAYMENT

9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding-dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to this Contract or the Contract Documents, that payment will be made promptly upon demand by the Owner. Notwithstanding anything contained in this Contract or the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses recoverable under applicable laws to cure any default of the Contractor in performance of the Work, or to correct defective Work, the Owner will have an absolute right to offset that amount against the Contract Sum and may, at the Owner's sole discretion, elect either to:

- .1 Deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner; or
- .2 Issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

## § 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use and the Owner has received a Certificate of Occupancy from regulatory authorities having jurisdiction over the Project.

9.8.1.1 As applicable, the Contractor shall comply with the provisions of the Public Works Act (R.S.38:2241 et seq.) including those provisions pertaining to the recordation of the Contract and performance and payment bonds, and the preservation of statutory claims. Upon Substantial Completion of the Work and on the recommendation of acceptance by the Architect, the Owner shall accept the work by executing a formal Acceptance or a Certificate of Substantial Completion and the Contractor shall file either the Acceptance or the Certificate with the Recorder of Mortgages or the Clerk of Court of the Parish in which the Work is located. Issuance of the Acceptance or the Certificate of Substantial Completion shall not constitute final acceptance of the Work.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, 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 or designated portion thereof is substantially complete. As a prerequisite to the work being accepted by Owner as substantially complete, the Owner must receive executed Roofing Contractor's and Roofing Manufacturer's guarantees, where roofing work is part of the Contract. Further, prior to Architect's inspection to determine Substantial Completion of the Work, the Contractor shall notify the Architect that the project is ready for inspection by the State Fire Marshal's office and any other regulatory authorities having jurisdiction over the Project. 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 or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, 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.

9.8.3.1 The Architect shall make this one additional inspection to determine Substantial Completion; if the work is still not acceptable, the Architect, and each of the Architect's principal consultants, shall be paid \$195.00/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.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

9.8.6 Warranties required by the Contract Documents shall commence on the date of Substantial Completion 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 expiration of the forty-five (45) days claim period, through no fault of the Architect or Owner, the Owner may declare the Contractor in default of the Contract and the surety shall be notified. If within thirty (30) days after notice of default, the surety has not completed the punch list, through no fault of the Architect or Owner, the Owner may, at its option, have the balance of the work completed by whatever means is most expedient and pay for such work with the unpaid funds remaining in the Contract Sum.

### § 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

### § 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. If the Architect does not find the work finally complete under the Contract Documents, the Architect shall make one additional inspection; if the work is still not completed, the Architect, and each of the Architect's principal consultants shall be paid \$195.00/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 Sum. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, and (6) a clear Lien and Privilege Certificate from the Clerk of Court for the Parish, State of Louisiana. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.10.2.1 Neither the final payment nor any part of the retainage shall become due until the forty-five (45) day period for filing statutory claims under the Public Works Act (R.S.38.2241 et seq.) has expired, the Contractor has delivered to the Owner a clear lien and privilege certificate issued by the Clerk of Court or recorder of Mortgages in the parish-

where the project is located, which certifies that no statutory claims have been recorded against the Project, and all affidavits consents and releases specified in paragraph 9.10.2 have been properly submitted.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**§ 9.10.4**

*(Paragraphs deleted)*

Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

**9.11 LIQUIDATED DAMAGES**

9.11.1 Should the Contractor fail to substantially complete the Work within the Contract Time or any properly granted extension thereof by Change Order, the Contractor shall be liable for and shall pay the Owner the sums stipulated in the Agreement as fixed, agreed, and Liquidated Damages for each calendar day of delay until the Work is substantially complete. It is further understood and agreed that Contractor's failure to achieve Substantial Completion on the date set forth in the Agreement shall constitute a default and breach of the Contract, and that the Contractor specifically waives formal notice of default.

9.11.2 The Contract Time as stated in consecutive calendar days and the Liquidated Damages as stated in Dollars per Day shall be stated in the Agreement.

*(Paragraph deleted)*

**ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

**§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

**§ 10.2 SAFETY OF PERSONS AND PROPERTY**

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

**§ 10.2.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on health and safety of persons or property or their protection from damage, injury or loss.

**§ 10.2.3** The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project Site and improvements thereon which could be affected by the performance of the Work. Any-

damage to such property or improvement arising out of the performance of the Work shall be promptly and adequately addressed and/or repaired by the Contractor at the Contractor's sole cost and expense.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

#### § 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

#### § 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos, lead, or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity. Notwithstanding the foregoing, Owner shall have no obligation to indemnify Contractor or its Subcontractors for any materials or substances encountered at the site if said materials or substances were placed or deposited at or about the site by Contractor, its Subcontractors, suppliers, material supplier, vendors

or their employees or agents at any time during construction of, or during Contractor's performance of the Work pursuant to the Contract Documents.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

#### § 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase and maintain, at its expense, insurance of the types and amounts indicated below in order to protect the Contractor, Owner and Architect from claims that may arise out-of or result from the Contractor's operations under the Contract, whether those operations are by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. The types of coverage and the limits of coverage required by this Subparagraph are as follows:

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*(Paragraphs deleted)*

All insurance furnished in compliance with this Article shall include the Owner and the Architect as additional insureds and shall waive rights of subrogation against the Owner and Architect. Insurance shall be with a Best's A-rated company or better, acceptable to and approved by the Owner and duly authorized to conduct business in the State of Louisiana. The Owner and Architect so stated on all Insurance Certificates shall be as indicated in the Agreement. All such insurance policies required herein shall be endorsed to reflect and insure any occupancy by the Owner at time of such occupancy.

Type of Coverage:	Limit:
Workman's Compensation and Occupational Disease:	Statutory
Employer's Liability	\$1,000,000.00
Bodily Injury by Accident	\$1,000,000.00 Each Accident
Bodily Injury by Disease	\$1,000,000.00 Each Employee
Bodily Injury by Disease	\$1,000,000.00 Policy Limit
Comprehensive General Liability	
Bodily Injury	\$1,000,000.00 Each Occurrence
Property Damage	\$1,000,000.00 Each Occurrence
Comprehensive Automobile Liability	\$1,000,000.00

§ 11.1.2 The insurance required by Section 11.1.1 must be in form and substance satisfactory to the Owner and must in all cases be written on an occurrence or claims-made basis. The insurance must be issued by a carrier satisfactory

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to the Owner and authorized to do business in Louisiana and shall be maintained without interruption from the date of commencement of the Work until the entire Work is completed, except that the products and completed operation's coverages must be maintained for at least an additional three-year period following completion of the Work.

§ 11.1.3 Prior to commencement of the work, the Contractor shall forward to the Owner and Architect, two (2) copies each of the Certificate of Insurance evidencing that all required insurance is in force, on an approved Certificate of Insurance Form executed by an authorized representative of the Insurance company. Copies of all policies must accompany the Certificate of Insurance. Each and every policy and Certificate shall contain an endorsement stating that the Insurance Company will not, prior to completion of project or any policy expiration date shown on the policy and certificate, whichever occurs first, terminate the policy or change any coverage therein without first mailing to the Owner and Architect, by registered mail, written notice of such action at least thirty days prior to the termination or change. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. Contractor's right to payment is conditioned upon compliance with this Section.

11.1.3.1 the Contractor must certify to the Owner and Architect that he has obtained similar Certificates of Insurance from each of his sub-contractors before their work commences. Each subcontractor must be covered by limits of 1 million per occurrence and 2 million in the aggregate.

11.1.3.2 Indemnity Agreement: The Contractor's Comprehensive General Liability Insurance shall cover the Contractor's contractual obligations under Section 3.18, and this coverage shall be expressly indicated on the Certificate of Insurance.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

11.1.5 Any and all deductibles for the insurance policies requested by the Section shall be assumed by and be at the sold risk and cost of the Contractor or Subcontractor.

#### 11.1.6 SUBCONTRACTOR

Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates from each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

#### 11.1.7 DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the Owner. At the option of the Owner, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Owner, its officers, officials, employees and volunteer or the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

#### 11.1.8 OTHER INSURANCE PROVISIONS

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

##### 11.1.8.1 General Liability and Automobile Liability Coverages

11.1.8.1.1 The Owner, its officers, employees and directors 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. The coverage shall contain no special limitation on the scope of protection afforded to the Owner, its officers, officials, employees or volunteers.

It is understood that the business auto policy under "Who is Insured" automatically provides liability

coverage in favor of the Owner.

11.1.8.1.2 Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Owner, its officers, officials, employees or directors.

11.1.8.1.3 The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

#### 11.1.8.2 Worker's Compensation and Employer's Liability Coverage

The insurer shall agree to waive all rights of subrogation against the Owner, its officers, employees, director for damages or losses arising from work performed by the Contractor for the Owner.

#### 11.1.8.3 All Coverages

Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified-mail, return receipts requested, has been given to the Owner.

#### 11.1.9 ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with an A.M. Best's rating of no less than A-VI

### § 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

### § 11.3 PROPERTY INSURANCE

§ 11.3.1 The Contractor shall procure and maintain during the life of this Contract an All Risk Builders Policy. The insurance shall include the interests of the Owner, Architect, the Contractor and all Sub-contractors as their interests may appear. Policy shall be of the all physical loss type, including flood. It shall be written on the completed Value Form. The policy shall carry a deductible not to exceed \$500.00. The deductible for flood shall not exceed \$2,500.00 and the deductible for wind shall not exceed 5 percent of the contract sum. The Owner, Architect and Contractor shall be named insureds. Should the Contractor desire to obtain broader Builders' Risk Insurance, the Contractor will purchase such broader coverage at its owner expense. Any difference between the Contractors furnished builder's Risk Insurance and the Contractor's usual risk insurance in any broader type coverage will not affect the Contractor's Liability to the Owner.

§ 11.3.1.1 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.2 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.3 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

*(Paragraphs deleted)*

### § 11.3.2 BOILER AND MACHINERY INSURANCE

The Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

### § 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

§ 11.3.4 If the Owner requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 Not used.

§ 11.3.6 Before an exposure to loss may occur, the Contractor shall file with the Owner a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior-written notice has been given to the Owner.

#### § 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Contractor's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any-applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other-special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.-

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

#### § 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor shall furnish a Performance Bond and a Labor and Material Payment Bond in form and substance satisfactory to the Owner, and without limitation, complying with the following specific requirements:

.1 The Bonds shall be executed by a good and solvent surety licensed in the State of Louisiana and approved by the Owner, and shall remain in effect for a period not less than five (5) years following the date of Substantial Completion of the Work;

.2 The Performance Bond and the Labor and Material Payment Bond shall each be in an amount equal to the Contract Sum; and

.3 The surety on both the Performance Bond and the Labor and Material Payment Bond shall agree that it shall be obligated under the Bonds to any successor, grantee or assignee of the Owner.

11.4.1.1 The Contractor shall deliver the required bonds to the Owner not later than the date of execution of the Agreement, or if the Work is commenced prior thereto in response to a "Notice to Proceed" or letter of intent, the Contractor shall prior to commencement of Work, submit written evidence satisfactory to the Owner such bonds will be issued. The Contractor shall also submit copies to the Architect.

11.4.1.2 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

**§ 11.4.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

11.4.3 The Contractor shall record, prior to commencement of the Work, the Contract (Public Works) or a Notice of Contract (Private Works) and the Performance and Payment bonds with the Recorder of Mortgages or the clerk of Court in the parish in which the Project is located.

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **§ 12.1 UNCOVERING OF WORK**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

### **§ 12.2 CORRECTION OF WORK**

#### **§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

12.2.1.1 Defective or nonconforming Work includes but is not limited to movable or adjustable work which has not remained in good working order including hardware, weatherstripping, doors, windows, drawers, apparatus, machinery and electrical and mechanical equipment, except for normal wear.

#### **§ 12.2.2 AFTER SUBSTANTIAL COMPLETION**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. If the Contractor fails to promptly and properly correct Work identified as defective and/or covered by a general or special warranty, the Owner may declare the Contractor is in default and notify the Surety. If the Surety fails to cure the default within thirty (30) days of receipt of notice of the default, the Owner may have the work corrected, repaired or replaced by whatever means is most expedient and seek reimbursement of the costs from either the Contractor or its Surety or both.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

The Contract shall be governed by the law of Louisiana.

### § 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

### § 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

### § 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Except as expressly provided in the Contract Documents, duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

## § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received and accepted, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

## § 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

## § 13.7 EQUAL OPPORTUNITY

The Contractor and the Contractor's Subcontractor's shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

13.7.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if:

1. the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .a Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .b An act of government, such as a declaration of national emergency, making material unavailable or which requires all Work to be stopped;
- .c Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents.

2. Suspensions, delays or interruptions of the Work by the Owner as described in Section 14.3 constitute in the aggregate more than 50 percent of the total number of days scheduled for completion, or 60 days in any 365 day period, whichever is less.

§ 14.1.2 If one of the reasons described in Section 14.1.1 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.3 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

*(Paragraph deleted)*

#### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents
- .5 **failure to complete the punchlist within the lien period as provided in 9.8.2.3.**

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

### § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

### § 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 Upon termination by the Owner for convenience, the Contractor will recover as its sole remedy payment for that portion of the Work and Contractor's portion of overhead and profit thereon, properly performed prior to the effective date of termination and for items properly and timely fabricated off the Project Site, delivered and stored in accordance with the Owner's instructions.

The Contractor shall be paid for all reasonable costs required to secure the site, terminate subcontracts and purchase orders (including restocking charges) and perform any other work necessary to effect the termination of the contract. The Contractor shall not be entitled to be paid its anticipated profit or overhead on work not performed prior to the termination. The contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits. The Owner will be credited for:

- .1 payments previously made to the Contractor for portions of the Work previously performed; and
- .2 the value for the materials, supplies, equipment, or other items that are to be retained by the Contractor, with acquiescence of Owner, and that are part of the Contract Sum.

14.4.4 Termination of a contract or a portion thereof, shall not relieve the Contractor of responsibility for the completed Work, nor shall it relieve the Surety of its obligation for any just claim arising from the work performed.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 CLAIMS

#### § 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

#### § 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Architect. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later; provided, however, that the Claimant shall use its best efforts to furnish the Architect and the other party, as expeditiously as possible, with notice of any Claim once such Claim is recognized, and shall cooperate with the Architect and the party-against whom the Claim is made in an effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such Claim.

**§ 15.1.3 CONTINUING CONTRACT PERFORMANCE**

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment.

**§ 15.1.4 CLAIMS FOR ADDITIONAL COST**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

**§ 15.1.5 CLAIMS FOR ADDITIONAL TIME**

**§ 15.1.5.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor’s Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ 15.1.5.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

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

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

The Contractor’s request for an extension of time due to adverse weather shall be considered only for those days which exceed the allowable number of days per month set forth herein. The Contract Time is computed on a calendar-day basis.

*(Paragraphs deleted)*

**§ 15.2 INITIAL DECISION**

**§ 15.2.1** Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Architect for initial decision. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered. Unless the Architect and all affected parties agree, the Architect will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Architect will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Architect is unable to resolve the Claim if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect’s sole discretion, it would be inappropriate for the Architect to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Architect may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Architect in rendering a decision.- The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Architect when the response or supporting data will be furnished or (3) advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any,- the Architect will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Architect will render an initial decision approving or rejecting the Claim, or indicating that the Architect- is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify- the parties of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding- on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### § 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived- as provided for in Sections 9.10.4 and 9.10.5 shall be subject to mediation as a condition precedent to binding dispute- resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or demand for arbitration, whichever is appropriate, but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place- where the Project is located. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### § 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

#### § 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 The Owner, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 The Owner, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

# Additions and Deletions Report for AIA<sup>®</sup> Document A201<sup>™</sup> – 2007

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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## PAGE 1

Slidell Memorial Hospital Women's Imaging Center  
1495 Gause Blvd. (Corner of Gause Boulevard and Lakewood Drive)  
Slidell, Louisiana 70458

...

*(Name, legal status and address)*

St. Tammany Parish Hospital Service District No. 2  
dba Slidell Memorial Hospital  
1001 Gause Blvd.  
Slidell, Louisiana 70458

...

Dammon Engineering, Inc.  
An Architectural and Engineering Corporation  
1095 Florida Ave.  
Slidell, Louisiana 70458  
985-649-5832

## PAGE 11

1.1.7.1 Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications. The Section in Division 1 – General Requirements specify detailed administrative and procedural requirements, which are applicable to all elements of the Construction Contract. The following documents are applicable to Division 1 – General Requirements:

- .1 Drawings
- .2 Bidding Requirements (will be included as part of the Contract Documents in the Owner/Contractor Agreement).
- .3 Owner/Contractor Agreement
- .4 Bonds
- .5 General Conditions
- .6 Supplementary Conditions
- .7 Specification Divisions 2 through 16.

The Initial Decision Maker is the ~~person identified in the Agreement to~~ Architect, who shall render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

### 1.1.9 MISCELLANEOUS DEFINITIONS

1.1.9.1 Terms "building code," and "code," refer to regulations of governmental entities having jurisdictions over the Project and the Work.

1.1.9.2 "Acceptable," "required," and "as directed" refer to or indicate work or materials that may be acceptable or approved by the Architect, as the Owner's representative during the construction phase, only to the extent the work or materials conform to the requirements of the Contract Documents and in no way shall be interpreted to imply any responsibility on the part of the Architect concerning the Contractor's obligations under the requirements of the Contract Documents.

1.1.9.3 Term "similar" means in its general sense and not necessarily identical.

1.1.9.4 Terms "shown," "indicated," "detailed," "noted," "scheduled," and terms of similar import, refer to requirements contained in Contract Documents.

1.1.9.5 "Defective work" includes but is not limited to movable or adjustable work which has not remained in good working order including hardware, weatherstripping, doors, windows, drawers, apparatus, machinery and electrical and mechanical equipment, except for normal wear.

1.1.9.6 The terms Knowledge, recognize and discover, their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows, recognizes, and discovers in exercising appropriately and in accordance with industry standards, the care, skill and diligence required by the Contract Documents. Analogously, the expression reasonably inferable and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a Contractor familiar with the Project and exercising the care, skill and diligence required of the Contractor by the Contract Documents.

1.1.9.7 When the word "provide" including derivatives thereof is used, it shall mean to properly fabricate, transport, deliver, install, erect, construct, test and furnish all labor, materials, equipment and related items necessary to complete the Work as required by the Contract Documents.

1.1.9.8 The term "persistently" and other similar expressions, as used in reference to the Contractor, shall be interpreted to mean any combination of material acts and omissions, which causes the Owner or the Architect to reasonably conclude that the Contractor will not complete the Work within the Contract Time, for the Contract Sum or in substantial compliance with the requirements of the Contract Documents.

## PAGE 12

1.2.4 In the case of inconsistencies within or between portions of the Contract Documents, the Contractor shall (1) provide the better quality or greater quantity of Work; or (2) comply with the more stringent requirements, either or both in accordance with the Architect's interpretation. The terms and conditions of paragraph 1.2.4 however, shall not relieve the Contractor of any of the obligations set forth in Paragraph 3.2, or any other provisions of the Contract Documents.

1.2.4.1 In connection with the Drawings, specified dimensions shall take precedence over scaled measurements and large scale drawings take precedence over small scale drawings.

1.2.4.2 Before ordering any materials or performing any Work, the Contractor and each Subcontractor shall verify measurements at the Project Site and shall be responsible for the correctness of such measurements. No additional compensation will be allowed on account of differences between actual dimensions and the dimensions indicated on the Drawings. Any difference between field measurements and dimensions set out in the Contract Documents shall be submitted to the Architect for resolution before proceeding with the Work.

## PAGE 13

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing to Architect and Contractor a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Any changes in the designation of a representative shall be made in writing. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement ~~or continuation~~ of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

...

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or ~~repeatedly~~ persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

...

## 2.5 EXTENT OF OWNER RIGHTS

2.5.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any right of the Owner granted in the Contract Documents, at law or in equity.

2.5.2 In no event will the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, services, or procedures or for safety precautions and programs in connections with the Work, notwithstanding any rights and authority granted the Owner in the Contract Documents.

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. The Contractor and each Subcontractor have evaluated and satisfied themselves as to the conditions and limitation under which the Work is to be performed, including, without limitation (1) the locations, conditions, layout and nature of the Project site and surrounding areas; (2) the prevailing climatic conditions; (3) anticipated labor supply and costs; (4) availability and cost of materials, tools and equipment; and (5) other similar issues which in any way may affect the cost or time for performing the Work. The Owner assumes no responsibility or liability for the safety of the Project. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either of the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of the Contract Documents.

3.2.1.1 After notifying the Architect, in writing, of any error, inconsistency, or omission discovered in the Contract Documents, the Contractor shall not proceed with any Work so affected without Architect's written interpretation and decision.

3.2.1.2 The Architect shall have the final authority to determine whether any change or modification should be made, and no change or modifications of any kind shall be made except on the Architect's written instructions.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These

obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. The Contractor shall satisfy itself as to the accuracy of all grades, elevations, dimensions and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work which is apparent from a reasonable inspection. Any errors due to the Contractor's failure to so verify all such grades, elevations locations or dimensions shall be promptly rectified by the Contractor without any additional cost to the Owner or adjustment to the Contract Time.

...

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for ~~differences between field measurements or conditions and the Contract Documents, or for~~ nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

#### PAGE 16

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work ~~under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, Further, the Contractor shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner required means, methods, techniques, sequences or procedures. safety.~~

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the ~~Work for, or on behalf of, the Contractor or any of its Subcontractors. Work.~~

...

§ 3.4.2 ~~Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.~~

3.4.3 The products specified or indicated on the Drawings or in the Specifications are used only to denote the quality standard of product desired. The term "equal" or "or equal," used in the Specifications is defined as meaning "equal in the professional judgment of the Architect." Approval of other products or requests for substitution shall be at the Architect's discretion and in accordance with provisions of the Bidding Requirements or General Requirements of the Specifications.

3.4.4 A request made by the Contractor for a substitution is a representation to the Architect as follows:

- .1 The Contractor has investigated the proposed substitute and determined that it is equal or superior in all respects to that specified.
- .2 The Contractor will provide the same warranty for the substitute product as for that specified.
- .3 The Contractor will coordinate the installation of the accepted substitute, making such changes as may be required to complete the Work in all respects.

~~§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.~~

The Contractor warrants to the Owner ~~and Architect~~ that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.5.1 All warranties shall take effect on the date of Substantial Completion of the Work or designated portion thereof which includes the items covered by warranties, not on the date of installation of any specific product.

#### PAGE 17

3.6.1 Taxes include, without limitation, Old Age Pension, Unemployment and any other and all taxes imposed by local, City, Parish, or the Federal Government and include such expenses or taxes as a part of the stipulated Contract sum.

~~§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for~~ Except as set forth in Paragraph 2.2.2, the Contractor shall include in the Contract Sum and secure, pay for, and, as soon as practicable, furnish the Owner with copies or certificates of all permits including, without limitation, all building permits as required by governmental authorities having jurisdiction over the Project, and fees, licenses, and inspections necessary for the proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. Work. All construction charges, assessments, or inspection fees as may be imposed by any municipal agency or utility company are included in the Contract Sum and are the Contractor's responsibility.

...

3.7.3.1 The Contractor, at his own expense, shall record, prior to commencement of the Work, a Notice of Contract and required performance and payment bonds with the Clerk of Court or Recorder of Mortgages of the Parish where the Work is to be performed. Contractor shall furnish the Architect and Owner with all recordation information, including date, time, book and folio number.

**§ 3.7.4 Concealed or Unknown Conditions.** ~~If Contractor represents that it has investigated the site and is familiar with all known, apparent, or reasonably discoverable conditions, subsurface or otherwise, which will be encountered at the site, and that Contractor has taken those conditions into account in establishing the Contract Sum and the Contract Time, as well as all other conditions concerning the performance of the Work, including without limitation, underground and above ground utilities, work space restrictions, work hour restrictions, noise restrictions, restrictions on site ingress and egress, weather conditions, ground water, dewatering requirements, temporary and permanent utilities relocation, ventilations requirements, and all other restrictions, demands, and requirements needed for the timely and adequate performance of the Work required by the contract Documents, and all such conditions have been assumed by Contractor and are reflected and incorporated into the Contract Sum and The Contract Time, Subject to the foregoing, if the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical~~

conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

## PAGE 18

- .2 ~~Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and~~
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

...

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Contractor shall include identification of the critical path, i.e. where any delay in the completion of these tasks will lengthen the Projects completion, unless appropriate action is taken.

...

3.10.4 In the event the Architect determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the Owner, upon the recommendation of the Architect, shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities, and (3) other similar measures (hereinafter referred to as "Recovery Measures"). Such Recovery measures shall continue until the progress of the Work achieves the stage of completion required by the Contract Documents. The Owner's right to require Recovery Measure is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

3.10.4.1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Recovery Measures required by the Owner under or pursuant to this Paragraph 1.10.4 unless the Recovery Measures were directed by the Owner to recover from delays for which the Contractor was entitled to an extension of the Contract Time pursuant to the Contract Documents, and said extension of time was timely and properly requested by Contractor and improperly denied by Owner.

3.10.4.2 The Owner may exercise the rights provided the Owner under pursuant to this Paragraph 3.10.4 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with the completion date set forth in the Contract Documents.

## PAGE 19

§ 3.12.7 ~~The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been~~

approved by the Architect. Failure by the Contractor to submit Shop Drawings shall be at the Contractor's sole risk and may result in rejections of any completed or partially completed Work (by the Architect).

**PAGE 20**

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such ~~professional~~ professional and who shall comply with reasonable requirements of the Owner regarding qualifications and insurance. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

3.12.11 Additional information and procedures for handling Shop Drawings, Product Data and Samples are specified in the General Requirements (Division 1 of the Specifications).

...

3.13.1 The Owner shall have the right to use any and all portions of the site and the Work in accordance with Article 6, provided that such occupancy does not hamper the Contractor or prevent his efficient completion of the Work. Such use shall not constitute an acceptance of the Contractor's work in whole or in part.

...

3.14.3 Additional information and procedures for Cutting and Patching is specified in the General Requirements (Division 1 of the Specifications).

**PAGE 21**

3.15.3 Additional information and procedures for Cleaning Up is specified in the General Requirements (Division 1 of the Specifications).

...

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible ~~property (other than the Work itself), property,~~ but only to the extent caused by the negligent acts or omissions or breach of contract of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate,

abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

...

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, ~~Contractor~~ and Architect. Consent shall not be unreasonably withheld.

## PAGE 23

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents. There will be no restriction on the Owner having a representative.

...

~~§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.~~ Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

~~§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.~~

...

§ 5.2.1 Unless otherwise stated in the Contract Documents ~~or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, Documents, the Contractor, at the pre-construction conference,~~ shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. ~~Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.~~ No payments will be due and payable to the Contractor until the Contractor submits the information required in this Section.

§ 5.2.2 The Contractor shall ~~not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.~~ be solely responsible for selection and performance of all Subcontractor and suppliers. The Contractor shall not be entitled to an increase in the Contract Time or the Contract Sum due to a problem with performance or non-performance of a Subcontractor or supplier.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

~~§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.~~

### ~~§ 5.3 SUBCONTRACTUAL RELATIONS~~

~~By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.~~

### PAGE 24

~~§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension. Assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall not be legally responsible for all of the successor contractor's obligations under the subcontract.~~

~~§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.~~

...

~~§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's ~~Contractor's~~ completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.~~

### PAGE 25

~~§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Except as permitted in Section 7.3 and Paragraph 9.7.2, a change in the Contract Sum or the Contract Time may be accomplished only by Change Order or by a Construction Change Directive signed by the Owner's representative. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance or alterations or additions to the Work and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the~~

Owner, shall be the basis of any claim for an increase in the amount due under the Contract Documents or a change in the Contract Time or any time period provided for in the Contract Documents.

...

A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
  - .2 The amount of the adjustment, if any, in the Contract Sum; and
  - .3 The extent of the adjustment, if any, in the Contract Time.
- order to the Contractor signed by the Owner and the Architect, issued after execution of the Contract, authorizing a change in the work of 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 indicated his agreement therewith, including the adjustment in the Contract Sum and/or the Contract Time.

7.2.2 "Cost of the Work" for the purchase of Change Orders shall be costs required to be incurred in performance of the Work and paid by the contractor and Subcontractor which shall consist of:

1. Wages paid to direct labor personnel, delineating a labor burden markup for applicable payroll taxes, worker's compensation insurance, unemployment compensation, and social security taxes.
2. Cost of all materials and supplies, including the identification of each item and its cost.
3. Reasonable rental rates for machinery and equipment.
4. Other documented direct costs.

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 18% of the direct cost of any portion of Work, as specifically set out in paragraph 7.2.4 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 After a Change Order has been approved, no future requests for extensions of time or additional cost shall be considered or recoverable for that Change Order work.

7.2.5 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 in Article 15. 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 adversely affected the date of Substantial Completion.

7.2.6 Cost of Work whether General Contract cost or Sub-Contract cost shall not apply to the following:

1. Salaries or other compensation of the Contractor's personnel at the Contractor's principal office and branch offices not specifically charged to the project.
2. Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the work.
3. Overhead and general expenses of any kind or the cost of any item not specifically and expressly included above in Cost of the Work.
4. Cost of supervision not specifically required by the Change Order unless said change order extends the project duration.

7.2.7 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.

**PAGE 26**

- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; calculated in accordance with paragraph 7.2, but not to exceed a specified amount; or

PAGE 27

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section ~~7.3.7.2~~ shall be limited to the following:

...

- .3 ~~Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others; equipment;~~

...

- .5 ~~Additional costs of supervision and field office personnel directly attributable to the change. Other documented direct costs of the Work.~~

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

- .1 Salaries or other compensation of the Contractor's personnel at the Contractor's principal office and branch offices.  
.2 Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the work.  
.3 Overhead and general expenses of any kind or the cost of any item not specifically and expressly included above in cost of the Work.  
.4 Cost of supervision not specifically required by the Change Order.

...

7.3.11 In subparagraph 7.3.6, an allowance for the combined overhead and profit for Change Orders and Construction Change Directives included in the total cost to the Owner shall be based on the following schedule:

- .1 For the Contractor, for work performed by the Contractor's own forces, 10 percent of the cost.  
.2 For the Contractor, for work performed by the Contractor's Subcontractor, 8 percent of the amount due the Subcontractor.  
.3 For each Subcontractor or Sub-subcontractor, for work performed by the Subcontractor's or Sub-subcontractor's own force, 10 percent of the cost.  
.4 For each Subcontractor, for work performed by the Subcontractor's Sub-subcontractors, 5 percent of the amount due the Sub-subcontractor.  
.5 Cost to which overhead and profit is to be applied shall be determined in accordance with subparagraph 7.3.6.  
.6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their proprietary can be seen by inspection, shall be accompanied by a complete itemization of cost including labor, materials, subcontracts and equipment cost. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also. In no case will a change be approved without such itemization.  
.7 Overhead and profit shall not exceed a total of 18% of the direct cost of any portion of the work.

PAGE 28

~~§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined. Contract Time shall be based on Consecutive Calendar Days (Weekdays, Saturdays, Sundays and Holidays inclusive). A Calendar Day is one of 24 hours beginning at 12:00 midnight.~~

8.1.5 Contractor shall commence work under this Contract on date specified in the Notice to Proceed and fully complete the Work of the Project within number of Consecutive Calendar days (Weekdays, Saturdays, Sundays and Holidays included) stated in the Agreement. The Contract Time shall not be changed by the Contractor's submission of a schedule which shows a completion date different than the Contract completion date, unless specifically authorized by Change Order.

...

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work. The Contractor agrees to commence work not later than five (5) days, unless noted otherwise, after the transmittal date of a written notice to proceed from the Owner or the issuance of the building permit, whichever is later, and to substantially complete the project within the contract time. 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 upon liquidated damages for each consecutive calendar day (Weekdays, Saturdays, Sundays and Holidays included) of delay until the work is substantially complete. Such Liquidated Damages shall be withheld by the Owner from the amounts due the Contractor for progress and/or final payments.

...

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, ~~unusual delay in deliveries,~~ unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may ~~determine, recommend,~~ subject to Owner's approval. If the claim is not made within the time limits set out in Article 15, all rights for future claims for that month are waived.

## PAGE 29

8.3.4 If the Contractor submits a schedule or a progress report indicating, or which otherwise expresses an intention to achieve, completion of the Work prior to any completion date required by the Contract Documents or the expiration of the Contract Time, the Owner will not be liable to the Contractor for any failure of the Contractor to so complete the Work by such date or time.

...

9.2.2 In general, the Contract Sum shall be distributed in accordance with the type of work designated by the Technical Sections of the Specifications with one additional line item for the value of jobsite overhead. In the case of large projects sections shall be subdivided further into component parts of the technical Sections as the Architect determines.

9.2.3 All line items shall be composed of a base dollar value to which shall be added a dollar value for home office overhead and a dollar value for profit.

9.2.4 Total of all items shall be equal to total Contract Sum. This schedule, when approved by Architect, will be used as the only basis for contractor's Applications for Payment.

§ 9.3.1 At least ten days before the date established for each progress payment, Monthly, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required

~~under Section 9.2., for completed portions of the Work. Such application shall be notarized, if required, and supported by such Application and 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 Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents the Architect may require. One original copy shall be signed and notarized. Provide amount of copies as indicated in Division 1 of the Specification. An 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 set out below:~~

~~§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders. Retainage shall be 10% of the Contract Sum; except that on any public works contract of \$500,000 or more, the amount retained shall not exceed 5% of the Contract Sum.~~

~~§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay. Each application for Payment shall be accompanied by the following, all in the form and substance satisfactory to the Owner:~~

~~.1 A current Contractor's claim and lien waiver duly executed and an acknowledged sworn statement showing that all Subcontractors and material suppliers with whom the Contractor has entered into subcontracts or purchase orders, the amount of each such subcontract or purchase order, the amount requested for any Subcontractor and material suppliers and the requested progress payment and the amount to be paid to the Contractor for such progress payment, together with similar sworn statements from all such Subcontractors and material suppliers.~~

~~.2 Duly executed waivers of mechanic's and material supplier's claims and liens from all Subcontractors and when appropriate, from material suppliers and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment; and~~

~~.3 All information and materials required to comply with the requirements of the Contract Documents or reasonable requested by the Owner or the Architect.~~

~~§ 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. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with 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, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site including applicable insurance.~~

## PAGE 30

~~9.3.4 At the time when final payment for all work, less retainage, is requested, a list of exceptions and a dollar value related thereto will be prepared by the Architect. A monetary value will be assigned to each item so that, if necessary in the professional judgment of the Architect, a supplementary retainage can be withheld in addition to the normal retainage, to cover such exceptions to acceptance.~~

## PAGE 31

~~.7 repeated/persistent failure to carry out the Work in accordance with the Contract Documents.~~

...

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect to the Contractor within twenty days after receipt of such Certificate of Payment.

§ 9.6.2 The Contractor shall pay each Subcontractor and each supplier of equipment and material no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor or Supplier is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's and suppliers portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor Subcontractor and each supplier of equipment and material, require each Subcontractor or Supplier to make payments to Sub-subcontractors in a similar manner.

...

9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to this Contract or the Contract Documents, that payment will be made promptly upon demand by the Owner. Notwithstanding anything contained in this Contract or the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses recoverable under applicable laws to cure any default of the Contractor in performance of the Work, or to correct defective Work, the Owner will have an absolute right to offset that amount against the Contract Sum and may, at the Owner's sole discretion, elect either to:

- .1 Deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner; or
- .2 Issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

## PAGE 32

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use and the Owner has received a Certificate of Occupancy from regulatory authorities having jurisdiction over the Project.

9.8.1.1 As applicable, the Contractor shall comply with the provisions of the Public Works Act (R.S.38:2241 et seq.) including those provisions pertaining to the recordation of the Contract and performance and payment bonds, and the preservation of statutory claims. Upon Substantial Completion of the Work and on the recommendation of acceptance by the Architect, the Owner shall accept the work by executing a formal Acceptance or a Certificate of Substantial Completion and the Contractor shall file either the Acceptance or the Certificate with the Recorder of Mortgages or the Clerk of Court of the Parish in which the Work is located. Issuance of the Acceptance or the Certificate of Substantial Completion shall not constitute final acceptance of the Work.

...

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. As a prerequisite to the work being accepted by Owner as substantially complete, the Owner must receive executed Roofing Contractor's and Roofing Manufacturer's guarantees, where roofing work is part of the Contract. Further, prior to Architect's inspection to determine Substantial Completion of the Work, the Contractor shall notify the Architect that the project is ready for inspection by the State Fire Marshal's office and any other regulatory authorities having jurisdiction over the Project. 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 or designated

portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, 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.

9.8.3.1 The Architect shall make this one additional inspection to determine Substantial Completion; if the work is still not acceptable, the Architect, and each of the Architect's principal consultants, shall be paid \$195.00/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.

~~§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.~~

~~§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.~~

9.8.6 Warranties required by the Contract Documents shall commence on the date of Substantial Completion 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 expiration of the forty-five (45) days claim period, through no fault of the Architect or Owner, the Owner may declare the Contractor in default of the Contract and the surety shall be notified. If within thirty (30) days after notice of default, the surety has not completed the punch list, through no fault of the Architect or Owner, the Owner may, at its option, have the balance of the work completed by whatever means is most expedient and pay for such work with the unpaid funds remaining in the Contract Sum.

## PAGE 33

~~§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, 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 a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.~~

...

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. If the Architect does not find the work finally complete under the Contract Documents, the Architect shall make one additional inspection; if the work is still not completed,

the Architect, and each of the Architect's principal consultants shall be paid \$195.00/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 Sum. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the ~~Owner~~ Owner, and (6) a clear Lien and Privilege Certificate from the Clerk of Court for the Parish, State of Louisiana. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.10.2.1 Neither the final payment nor any part of the retainage shall become due until the forty-five (45) day period for filing statutory claims under the Public Works Act (R.S.38.2241 et seq.) has expired, the Contractor has delivered to the Owner a clear lien and privilege certificate issued by the Clerk of Court or recorder of Mortgages in the parish where the project is located, which certifies that no statutory claims have been recorded against the Project, and all affidavits consents and releases specified in paragraph 9.10.2 have been properly submitted.

PAGE 34

**§ 9.10.4** ~~The making of final payment shall constitute a waiver of Claims by the Owner except those arising from~~  
~~.1 — liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;~~  
~~.2 — failure of the Work to comply with the requirements of the Contract Documents; or~~  
~~.3 — terms of special warranties required by the Contract Documents.~~ Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## 9.11 LIQUIDATED DAMAGES

9.11.1 Should the Contractor fail to substantially complete the Work within the Contract Time or any properly granted extension thereof by Change Order, the Contractor shall be liable for and shall pay the Owner the sums stipulated in the Agreement as fixed, agreed, and Liquidated Damages for each calendar day of delay until the Work is substantially complete. It is further understood and agreed that Contractor's failure to achieve Substantial Completion on the date set forth in the Agreement shall constitute a default and breach of the Contract, and that the Contractor specifically waives formal notice of default.

9.11.2 The Contract Time as stated in consecutive calendar days and the Liquidated Damages as stated in Dollars per Day shall be stated in the Agreement.

**§ 9.10.5** ~~Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.~~

...

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on health and safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project Site and improvements thereon which could be affected by the performance of the Work. Any damage to such property or improvement arising out of the performance of the Work shall be promptly and adequately addressed and/or repaired by the Contractor at the Contractor's sole cost and expense.

#### PAGE 35

§ 10.2.5 The Contractor shall promptly remedy damage and loss (~~other than damage or loss insured under property insurance required by the Contract Documents~~) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

...

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to ~~asbestos~~ asbestos, lead, or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. ~~The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection.~~ When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity. Notwithstanding the foregoing, Owner shall have no obligation to indemnify Contractor or its Subcontractors for any materials or substances encountered at the site if said materials or substances were placed or deposited at or about the site by Contractor, its Subcontractors, suppliers, material supplier, vendors or their

employees or agents at any time during construction of, or during Contractor's performance of the Work pursuant to the Contract Documents.

PAGE 36

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which and maintain, at its expense, insurance of the types and amounts indicated below in order to protect the Contractor, Owner and Architect from claims that may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a operations under the Contract, whether those operations are by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by any of them, them or by anyone for whose acts any of them may be liable:liable. The types of coverage and the limits of coverage required by this Subparagraph are as follows:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
  - .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
  - .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
  - .4 Claims for damages insured by usual personal injury liability coverage;
  - .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
  - .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
  - .7 Claims for bodily injury or property damage arising out of completed operations; and
  - .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.
- All insurance furnished in compliance with this Article shall include the Owner and the Architect as additional insureds and shall waive rights of subrogation against the Owner and Architect. Insurance shall be with a Best's A-rated company or better, acceptable to and approved by the Owner and duly authorized to conduct business in the State of Louisiana. The Owner and Architect so stated on all Insurance Certificates shall be as indicated in the Agreement. All such insurance policies required herein shall be endorsed to reflect and insure any occupancy by the Owner at time of such occupancy.

Type of Coverage:	Limit:
Workman's Compensation and Occupational Disease:	Statutory
Employer's Liability	\$1,000,000.00
Bodily Injury by Accident	\$1,000,000.00 Each Accident
Bodily Injury by Disease	\$1,000,000.00 Each Employee
Bodily Injury by Disease	\$1,000,000.00 Policy Limit
<b>Comprehensive General Liability</b>	
Bodily Injury	\$1,000,000.00 Each Occurrence
Property Damage	\$1,000,000.00 Each Occurrence
<b>Comprehensive Automobile Liability</b>	<b>\$1,000,000.00</b>

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether must be in form and substance satisfactory to the Owner and must in all cases be written on an occurrence or claims-made basis, basis. The insurance must be issued by a carrier satisfactory to the Owner and authorized to do business in Louisiana and shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents:the entire Work is completed,

except that the products and completed operation's coverages must be maintained for at least an additional three-year period following completion of the Work.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. Prior to commencement of the work, the Contractor shall forward to the Owner and Architect, two (2) copies each of the Certificate of Insurance evidencing that all required insurance is in force, on an approved Certificate of Insurance Form executed by an authorized representative of the Insurance company. Copies of all policies must accompany the Certificate of Insurance. Each and every policy and Certificate shall contain an endorsement stating that the Insurance Company will not, prior to completion of project or any policy expiration date shown on the policy and certificate, whichever occurs first, terminate the policy or change any coverage therein without first mailing to the Owner and Architect, by registered mail, written notice of such action at least thirty days prior to the termination or change. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. Contractor's right to payment is conditioned upon compliance with this Section.

11.1.3.1 the Contractor must certify to the Owner and Architect that he has obtained similar Certificates of Insurance from each of his sub-contractors before their work commences. Each subcontractor must be covered by limits of 1 million per occurrence and 2 million in the aggregate.

11.1.3.2 Indemnity Agreement: The Contractor's Comprehensive General Liability Insurance shall cover the Contractor's contractual obligations under Section 3.18, and this coverage shall be expressly indicated on the Certificate of Insurance.

## **PAGE 37**

11.1.5 Any and all deductibles for the insurance policies requested by the Section shall be assumed by and be at the sold risk and cost of the Contractor or Subcontractor.

### 11.1.6 SUBCONTRACTOR

Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates from each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

### 11.1.7 DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the Owner. At the option of the Owner, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Owner, its officers, officials, employees and volunteer or the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

### 11.1.8 OTHER INSURANCE PROVISIONS

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

#### 11.1.8.1 General Liability and Automobile Liability Coverages

11.1.8.1.1 The Owner, its officers, employees and directors 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. The coverage shall contain no special limitation on the scope of protection afforded to the Owner, its officers, officials, employees or volunteers.

It is understood that the business auto policy under "Who is Insured" automatically provides liability coverage in favor of the Owner.

11.1.8.1.2 Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Owner, its officers, officials, employees or directors.

11.1.8.1.3 The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

#### 11.1.8.2 Worker's Compensation and Employer's Liability Coverage

The insurer shall agree to waive all rights of subrogation against the Owner, its officers, employees, director for damages or losses arising from work performed by the Contractor for the Owner.

#### 11.1.8.3 All Coverages

Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipts requested, has been given to the Owner.

#### 11.1.9 ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with an A.M. Best's rating of no less than A-:VI

### **PAGE 38**

~~§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. The Contractor shall procure and maintain during the life of this Contract an All Risk Builders Policy. The insurance shall include the interests of the Owner, Architect, the Contractor and all Sub-contractors as their interests may appear. Policy shall be of the all physical loss type, including flood. It shall be written on the completed Value Form. The policy shall carry a deductible not to exceed \$500.00. The deductible for flood shall not exceed \$2,500.00 and the deductible for wind shall not exceed 5 percent of the contract sum. The Owner, Architect and Contractor shall be named insureds. Should the Contractor desire to obtain broader Builders' Risk Insurance, the Contractor will purchase such broader coverage at its owner expense. Any difference between the Contractors furnished builder's Risk Insurance and the Contractor's usual risk insurance in any broader type coverage will not affect the Contractor's Liability to the Owner.~~

~~§ 11.3.1.1 Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.~~

~~§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto. This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.~~

~~§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles. Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.~~

~~§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.~~

~~§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.~~

The ~~Owner-Contractor~~ shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

...

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. ~~The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.~~

~~§ 11.3.4 If the Contractor-Owner requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.~~

~~§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise. **Not used.**~~

~~§ 11.3.6 Before an exposure to loss may occur, the Owner-Contractor shall file with the Contractor-Owner a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor-Owner.~~

**PAGE 39**

~~§ 11.3.8 A loss insured under the Owner's-Contractor's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.~~

~~§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds~~

~~received as fiduciary.~~ The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

...

**§ 11.4.1** ~~The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.~~ Contractor shall furnish a Performance Bond and a Labor and Material Payment Bond in form and substance satisfactory to the Owner, and without limitation, complying with the following specific requirements:

.1 The Bonds shall be executed by a good and solvent surety licensed in the State of Louisiana and approved by the Owner, and shall remain in effect for a period not less than five (5) years following the date of Substantial Completion of the Work;

.2 The Performance Bond and the Labor and Material Payment Bond shall each be in an amount equal to the Contract Sum; and

.3 The surety on both the Performance Bond and the Labor and Material Payment Bond shall agree that it shall be obligated under the Bonds to any successor, grantee or assignee of the Owner.

11.4.1.1 The Contractor shall deliver the required bonds to the Owner not later than the date of execution of the Agreement, or if the Work is commenced prior thereto in response to a "Notice to Proceed" or letter of intent, the Contractor shall prior to commencement of Work, submit written evidence satisfactory to the Owner such bonds will be issued. The Contractor shall also submit copies to the Architect.

11.4.1.2 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

## PAGE 40

11.4.3 The Contractor shall record, prior to commencement of the Work, the Contract (Public Works) or a Notice of Contract (Private Works) and the Performance and Payment bonds with the Recorder of Mortgages or the clerk of Court in the parish in which the Project is located.

...

12.2.1.1 Defective or nonconforming Work includes but is not limited to movable or adjustable work which has not remained in good working order including hardware, weatherstripping, doors, windows, drawers, apparatus, machinery and electrical and mechanical equipment, except for normal wear.

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. If the Contractor fails to promptly and properly correct Work identified as defective and/or covered by a general or special warranty, the Owner may declare the Contractor is in default and notify the Surety. If the Surety fails to cure the default within thirty (30) days of receipt of notice of the default, the Owner may have the work corrected, repaired

or replaced by whatever means is most expedient and seek reimbursement of the costs from either the Contractor or its Surety or both.

**PAGE 41**

The Contract shall be governed by the law of ~~the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern~~ Section 15.4, Louisiana.

...

~~§ 13.4.1 Duties~~ Except as expressly provided in the Contract Documents, duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

**PAGE 42**

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received ~~or negotiations concluded, and accepted,~~ and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

...

**§ 13.7 TIME LIMITS ON CLAIMS EQUAL OPPORTUNITY**

~~The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.~~ Contractor and the Contractor's Subcontractor's shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to, the following:  
Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

13.7.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

...

§ 14.1.1 The Contractor may terminate the Contract if:

1. the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under a direct or indirect contract with the Contractor, for any of the following reasons:

~~1~~ a Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

- ~~2~~ b An act of government, such as a declaration of national emergency that emergency, making material unavailable or which requires all Work to be stopped;
- ~~3~~ c Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- ~~4~~ The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1-Documents.

2. Suspensions, delays or interruptions of the Work by the Owner as described in Section 14.3 constitute in the aggregate more than 50 percent of the total number of days scheduled for completion, or 60 days in any 365 day period, whichever is less.

~~§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less. If one of the reasons described in Section 14.1.1 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.~~

~~§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages. as provided in Section 14.1.3.~~

~~§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.~~

#### PAGE 43

- ~~4~~ otherwise is guilty of substantial breach of a provision of the Contract Documents. Documents
- ~~5~~ failure to complete the punchlist within the lien period as provided in 9.8.2.3.

#### PAGE 44

~~§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed. Upon termination by the Owner for convenience, the Contractor will recover as is sole remedy payment for that portion of the Work and Contractor's portion of overhead and profit thereon, properly performed prior to the effective date of termination and for items properly and timely fabricated off the Project Site, delivered and stored in accordance with the Owner's instructions.~~

The Contractor shall be paid for all reasonable costs required to secure the site, terminate subcontracts and purchase orders (including restocking charges) and perform any other work necessary to effect the termination of the contract. The Contractor shall not be entitled to be paid its anticipated profit or overhead on work not performed prior to the

termination. The contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits. The Owner will be credited for:

- .1 payments previously made to the Contractor for portions of the Work previously performed; and
- .2 the value for the materials, supplies, equipment, or other items that are to be retained by the Contractor, with acquiescence of Owner, and that are part of the Contract Sum.

14.4.4 Termination of a contract or a portion thereof, shall not relieve the Contractor of responsibility for the completed Work, nor shall it relieve the Surety of its obligation for any just claim arising from the work performed.

...

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Architect.. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later, is later; provided, however, that the Claimant shall use its best efforts to furnish the Architect and the other party, as expeditiously as possible, with notice of any Claim once such Claim is recognized, and shall cooperate with the Architect and the party against whom the Claim is made in an effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such Claim.

#### PAGE 45

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker. Payment.

...

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

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

The Contractor's request for an extension of time due to adverse weather shall be considered only for those days which exceed the allowable number of days per month set forth herein. The Contract Time is computed on a calendar-day basis.

#### **§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

- ~~2~~ — damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the ~~Initial Decision Maker~~ for initial decision. The Architect will serve as the ~~Initial Decision Maker~~, unless otherwise indicated in the Agreement. ~~Architect~~ for initial decision. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the ~~Initial Decision Maker~~ ~~Architect~~ with no decision having been rendered. Unless the ~~Initial Decision Maker~~ ~~Architect~~ and all affected parties agree, the ~~Initial Decision Maker~~ ~~Architect~~ will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The ~~Initial Decision Maker~~ ~~Architect~~ will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the ~~Initial Decision Maker~~ ~~Architect~~ is unable to resolve the Claim if the ~~Initial Decision Maker~~ ~~Architect~~ lacks sufficient information to evaluate the merits of the Claim or if the ~~Initial Decision Maker~~ ~~Architect~~ concludes that, in the ~~Initial Decision Maker's~~ ~~Architect's~~ sole discretion, it would be inappropriate for the ~~Initial Decision Maker~~ ~~Architect~~ to resolve the Claim.

§ 15.2.3 In evaluating Claims, the ~~Initial Decision Maker~~ ~~Architect~~ may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the ~~Initial Decision Maker~~ ~~Architect~~ in rendering a decision. The ~~Initial Decision Maker~~ ~~Architect~~ may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the ~~Initial Decision Maker~~ ~~Architect~~ requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the ~~Initial Decision Maker~~ ~~Architect~~ when the response or supporting data will be furnished or (3) advise the ~~Initial Decision Maker~~ ~~Architect~~ that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the ~~Initial Decision Maker~~ ~~Architect~~ will either reject or approve the Claim in whole or in part.

§ 15.2.5 The ~~Initial Decision Maker~~ ~~Architect~~ will render an initial decision approving or rejecting the Claim, or indicating that the ~~Initial Decision Maker~~ ~~Architect~~ is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties ~~and the Architect, if the Architect is not serving as the Initial Decision Maker~~, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

#### PAGE 46

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections ~~9.10.4, 9.10.5, and 15.1.6~~ 9.10.4 and 9.10.5 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of ~~binding dispute resolution proceedings~~ a complaint or demand for arbitration, whichever is appropriate, but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless

stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is ~~located, unless another location is mutually agreed upon.~~ located. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

#### PAGE 47

§ 15.4.4.1 ~~Either party, The Owner,~~ at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 ~~Either party, The Owner,~~ at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, Emmett G. "Pete" Dammon, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:36:36 on 09/30/2010 under Order No. 0776289247\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007 - General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

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*(Signed)*

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*(Title)*

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*(Dated)*