

DOCUMENT 007300

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions modify, change, delete from, or add to the *General Conditions of the Contract for Construction, AIA Document A201 - 2007 Instructions*.

Where any Article of the General Conditions is modified or any Paragraph, Subparagraph or Clause thereof is modified or deleted by these supplements, the unaltered provisions of that Article, Paragraph, Subparagraph or Clause shall remain in effect.

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

**ARTICLE 1  
GENERAL PROVISIONS**

**1.1 DEFINITIONS**

**1.1.1 THE CONTRACT DOCUMENTS**

In Subparagraph 1.1.1 delete the third sentence, and add the following sentence:  
The Contract Documents shall include the Bidding Documents as listed in Article 9, of the A101 –2007 Agreement between Owner and Contractor and any modifications made thereto by addenda.

**1.1.9 through 1.116** Add the following paragraphs after paragraph 1.1.8:

**1.1.9 PROJECT MANUAL**

The Project Manual is a volume assembled for the Work that may include bidding requirements, samples forms, Conditions of the Contract, Specifications, Drawings and Addendum issued prior to Bid Opening.

**1.1.10 PRODUCT**

The term “Product” includes materials, systems and equipment.

**1.1.11 PROVIDE**

The term “Provide” means the furnishing and installing of a product, complete in place, operating, tested and approved: and includes paying for the cost of all labor, materials, equipment, tools, construction equipment and machinery, permits, water, heat, gas, electricity, utilities, shipping, transportation, taxes and all other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**1.1.12 BUILDING CODE AND CODE**

The terms “building code” and “code” refer to regulations of governmental entities having jurisdiction.

**1.1.13 “SHOWN,” “INDICATED,” “DETAILED,” “NOTED,” “SCHEDULED”**

The terms “shown,” “indicated,” “detailed,” “noted,” “scheduled,” and terms of similar import, refer to requirements contained in the Contract Documents.

**1.1.14 “ACCEPTABLE,” “APPROVED,” “REQUIRED,” AND “AS DIRECTED”**

The terms “acceptable,” “approved,” “required,” and “as directed” refer to or indicate work or materials that may be acceptable or approved by the Architect, as the Owner’s agent, 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 Paragraphs 3.3, 3.11, 3.12, 4.2, 10.2.

**1.1.15 ‘KNOWLEDGE’ AND ‘RECOGNIZED’**

The terms “knowledge” and “recognized” , 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, or should know, recognizes, or should recognize, in exercising the care, skill and diligence required by the Contract Documents. Analogously, the expression “reasonably inferable” and similar terms of the Contract Documents shall be interpreted to mean reasonably inferable by a bidding the Project and exercising the care, skill and diligence required of the Contractor by the Contract Documents.

**1.1.16 “NIC” AND “NOT IN CONTRACT**

The terms “NIC” and “Not in Contract” indicate items which are shown or indicated for convenience but are not included as part of this Contract.

**1.2.1 After the last sentence, add the following:**

In the event of a discrepancy in the Contract Documents, the more specific and more detailed descriptive information will take precedence over the general and less detailed description. In case of doubt, the Contractor shall assume that the owner intends that the higher quality, more complete method, system, or process is required. Any work, labor, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce a functionally complete Project or part thereof, will be supplied by the Contractor whether or not specifically stated in the Contract Documents. Reference to standard specifications, manuals, or codes of any technical society, organization, or association or to the laws or regulations of any governmental authority, whether such reference is specific or by implication shall mean the latest standard specifications, manual, code or laws or regulations in effect at the time of the opening of the bids (or the date of the Contract if no advertised bids), unless otherwise specifically stated. However, no provision of any standard specification, manual, or code shall be effective to change the amount of the contract or to change the duties or the responsibilities of the Owner, Contractor or Architect or any of their consultants, agents or employees from those set forth in the Contract Documents.

## ARTICLE 2 OWNER

### 2.1.2 Add the following after the end of the paragraph:

The Owner reserves the right to require the Contractor, all subcontractors and material suppliers to provide lien releases at any time. The Owner reserves the right to withhold progress payments until such lien releases are received for all work for which prior progress payments have been made. Upon the Owner's demand for lien releases (either verbally or written), the Contractor, all subcontractors and material suppliers shall provide such releases with every payment request until Final Acceptance of the Project.

## 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

### 2.2.1 Delete this paragraph.

### 2.2.3. Add at the end of the sentence:

Notwithstanding, the Owner does not guarantee the accuracy of surveys provided regarding the location of utility lines, cables, phone lines, pipes or pipelines or the presence or absence of easements. The Contractor shall confirm the location of each utility and make further investigation of all structural, surface and subsurface conditions of the site of the Project.

### 2.5 Add 2.5 and 2.6 as follows:

#### 2.5 OWNER'S REPRESENTATIVE

The Architect or Engineer or other professional retained by the Owner to design the Project has the responsibility to administer the Contract for Construction, including observation by himself and his consultants. The assignment of an Owner's Representative in no way transfers any of the professionals of record responsibilities to the Owner.

#### 2.6 OWNERS RIGHT TO AUDIT

The Contractor shall keep full and accurate records of all costs incurred and items invoiced in connection with the Work. These records shall be made available and open to audit by the Owner or its authorized representatives, or the Legislative Auditor for the State of Louisiana during the performance of the Work and for a period of three (3) years after Final Payment.

## ARTICLE 3 CONTRACTOR

### 3.2.1 Add the following at the end of the paragraph:

The Contractor thoroughly understands the Contract Documents and their intent and purpose. The Owner assumes no responsibility or liability for the physical condition or safety of the

Project site or any improvements located on the site. The Contractor is solely responsible for providing a safe place for the performance of the Work. Contractor shall comply with the provisions of the Louisiana Underground Utilities and Facilities Damage Prevention law, R.S. 40:1749.11 et al, as amended prior to any portions of the Work that may require excavation including but not limited to pile driving, digging, auguring, boring, backfilling, dredging, compressing, plowing-in, trenching, ditching, tunneling, land leveling, grading and or mechanical probing. Damage to any existing underground utilities by the Contractor shall be repaired at the Contractor's sole expense if surveys or other information that has been provided or is available to the contractor indicate the location of said utilities. The Contractor shall undertake to make such further investigations, and coordinate with the Owner to determine the appropriate course of action. Once the course of action is determined, the owner reserves the right to make the appropriate modifications and back-charge the contractor if immediate action is not taken.

**3.2.5 Add the following 3.2.5:**

**3.2.5** Building materials to be incorporated into the Work shall either be certified, in writing, by the manufacturer to be asbestos free or be inspected and tested by accredited testing laboratories and certified to be free of asbestos content in accordance with applicable federal standards, including but not limited to the Asbestos Hazard Emergency Response Act (AHERA) and the Toxic Substance Control Act (TSCA). The word "asbestos" means the Asbestiform, Tremolite, and Actinolite. Copies of tests reports shall be furnished to the Architect. Material discovered to contain asbestos shall be removed immediately at the Contractor's sole cost and expense using current standards of the Louisiana Department of Environmental Quality (DEQ).

**3.3.4 Add the following paragraph:**

**3.3.4** The Contractor shall take all precautions necessary to prevent loss or damage caused by vandalism, theft, burglary, pilferage or any unexplained disappearance of property of the Owner. The Contractor shall have full responsibility for the security of such property of the owner for any such loss, damage or injury.

**3.5 Add the following sentence to the end of the Paragraph:**

The Contractor shall warrant and guarantee all material and workmanship for a period of one calendar year from the date of recordation of a certificate of Substantial Completion. This warranty shall be in addition to and not in limitation of any other warranty or remedy provided by law or by the Contract Documents.

**3.6 TAXES**

At the beginning of the sentence, add: "Unless otherwise provided in the Contract Documents,"

**3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS**

**Add 3.7.1.1**

**3.7.1.1** Before any Work begins, or within thirty (30) days from the date the Contract is executed, whichever occurs first, the Contractor, at his own expense, shall record the Contract and Bond or Bonds required with the Clerk of Court for the required parish or county. The Contractor shall furnish the Architect and Owner with a Certificate of Recordation, including date, time, book, and folio number. No payment shall be made until Owner received certificate of recordation.

### **3.8 SUPERINTENDENT**

#### **3.8.1 : Add the following sentence to the end of the paragraph:**

“All communications potentially having a bearing on the project schedule, scope or cost shall be documented in writing by the superintendent, and distributed to the Architect. Other communications shall be similarly documented on written request in each case.”

### **3.9 CONTRACTOR’S CONSTRUCTION SCHEDULES**

#### **3.9.1 : Add the following sentence to the end of the paragraph:**

The Contractor shall include with the schedule, for the Owner’s and Architect’s information, a network analysis to identify those tasks which are on the critical path to completion. Note where any delay in the completion of these tasks will lengthen the project timescale. A revised schedule showing an updated critical path to completion shall be submitted monthly, with each Application and Certificate for Payment. No payment will be made until this schedule is received.

#### **3.10.3 : Add the following sentence to the end of the paragraph:**

If the work is not on schedule, as determined by the Architect, and the Contractor fails to take action to bring the work on schedule, then the Contractor shall be deemed in default under this Contract and the progress of the work shall be deemed unsatisfactory. Such default may be considered grounds for termination by the Owner for cause in accordance with 14.2.

#### **3.10.4 Add the following:**

Submittal by the contractor of a schedule or other documentation showing a completion date for his work prior to the completion date stated in the contract shall not impose any obligation or responsibility on the Owner or Architect for the earlier completion date.

#### **3.12.7 Add at the end of the sentence:**

Should the Contractor, subcontractor or sub-subcontractor install, construct, erect or perform any portion of the Work without approval of any required submittal, the Contractor shall bear the cost, responsibility and delay for removal, replacement and/or correction of any and all items, materials and/or labor.

### **3.13 Use of Site, Add the following sections:**

**3.13.1** The Contractor acknowledges that the Contractor has inspected the site prior to award and accepted the areas for parking, storage and lay-down of materials and access to the site. The Owner will not be required to alter or interrupt any other operations at the Project site.

**3.13.2** The Contractor and any entity for which the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner.

**3.13.3** Without the prior written approval of the Owner, the Contractor shall not permit any worker to use any existing facilities (lavatories, toilets, entrances or similar items) at the Project site other than those designated in the Contract Documents.

### **Add the following Sections:**

### **3.19 LOG OF CHANGES**

The Contractor shall maintain a current log of all RFI's, Change Orders and Construction Change Directives at the site of the Project and shall provide the Owner and Architect access to the same as requested. All such logs must be updated and reviewed at monthly project meetings.

### **3.20 FAILURE TO PERFORM WORK**

Contractor shall be liable to the Owner for all cost or damages that the Owner incurs as a result of the Contractor's failure to perform the Work, or any part thereof, in accordance with the Contract Documents. Contractor's failure to perform shall include, but not be limited to, the failure of its subcontractors and/or suppliers of any tier to perform. The Contractor's liability to the Owner shall include, but not be limited to (1) the increased cost of performance, including extended services of the Architect, Owner's Construction Manager and other consultants, resulting from the Contractor's failure to comply with the Contract Documents; (2) costs of corrective or warranty work; (3) liability to third parties; (4) re-procurement costs; (5) attorney fees and related costs, including costs incurred in enforcing Owner's rights under the Contract Documents; and (6) liquidated damages.

### **3.21 LIENS**

In the event a lien is filed by anyone in relation to the Work, the Owner shall have the right (1) to require the Contractor furnish to the Owner a release of a Lien or claim recorded by the person or entity filling the claim; (2) to require the Contractor to discharge the Lien by posting a bond with the Clerk of Court within five (5) calendar days of notice by the Owner to the Contractor; and/or (3) to retain out of any payment due or thereafter to become due an amount sufficient to indemnify the Owner against any Lien or claims of a Lien, including bond premiums and attorney fees and to apply the same in such manner as Owner deems necessary to satisfy such claim and Liens.

In the event such Lien is not discharged, the Contractor at its sole cost and expense, including attorney fees, shall hold harmless and defend Owner of and from any and all claims, lawsuits, causes of actions and demands of any person or entity asserting or claiming any right as a result of any Lien or claim recorded or unrecorded, against the Contract Funds or the Owner's property.

The Owner shall have the right to terminate the Contract for default or to bond off said Lien (s) all costs incurred as a result thereof, including but not limited to, bond premiums and attorney fees.

Prior to the receipt of partial or Final Payment, as appropriate, Contractor shall provide the Owner a partial or final release of any liens or claims and a partial or final release of all Liens and claims of all persons furnishing labor and/or materials to the Work with satisfactory evidence that there are no other Liens or claims whatsoever outstanding against the Work or Contract.

### **3.22 WORK RELATED TO EXISTING FACILITIES**

**3.22.1** The Contractor shall not perform Work in existing buildings that will interfere with normal operations, normal traffic flow, produce excessive noise or shut down utilities without forty-eight (48) hours written notice to the Owner and then only with their concurrence.

**3.22.2** All means of egress shall be maintained at all times during school occupancy to comply with exit requirements in the NFPA 101 Life Safety Code.

**3.22.3** The Contractor shall not allow traffic or operations to encumber vehicle or pedestrian traffic during occupied hours to include before school and after school programs. Space for parking of Contractor's personnel and subcontractors is designated in the Contract Documents.

## **ARTICLE 4 ARCHITECT**

### **4.1 GENERAL**

Delete Subparagraph 4.1.1 and substitute the following:

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

### **4.2 ADMINISTRATION OF THE CONTRACT**

**4.2.1** In the first sentence, delete the phrase "the date the Architect issues the final Certificate for Payment" and replace with the phrase "*expiration of (1) one year correction period.*"

**4.2.10** Delete the second sentence of this paragraph.

## **ARTICLE 5 SUBCONTRACTORS**

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

Delete Subparagraph 5.2.1, and substitute the following:

**5.2.1** Unless otherwise required by the Contract Documents, the Contractor shall furnish at the Pre-Construction Conference, to the Owner and the Architect, the following prior to commencement of any work: No Contractor payments shall be made until this information is received in detail.

- a) Fixed job site overhead cost itemized with documentation to support daily rates.
- b) A written list of the names of the Persons or entities (including those who are to furnish materials or equipment fabricated to a special design), proposed for each of the principal portions of the Work.
- c) Labor Burden by trade for both Subcontractors and General Contractor.
- d) Internal Rate Charges for all significant company owned equipment.
- e) Preliminary Schedule for Architect and Owner review. It is imperative that the schedule includes a critical path to completion. This Schedule shall be due within 14 calendar days following award of the contract.
- f) Contact list for General Contractor to include Project Manager and Superintendent.

**5.2.4** Add the following: The Contractor shall notify the Architect and Owner of any change or substitution of any Subcontractor, and the owner reserves the right to make objections prior to commencement of work.

## **ARTICLE 7 CHANGES IN THE WORK**

### **7.1 GENERAL**

**7.1.3 Add the following sentence at the end of the paragraph:**

Contractor shall not proceed without executed/signed Change Order or other written authorization by the Owner.

### **7.2 CHANGE ORDERS**

**Add new : 7.2.1.4** Any and all adjustments to the Contract Time requested or claimed by the Contractor as a result of a Change Order shall require the following written documentation and justification:

- a) The Contractor's most recent schedule in use prior to the change.
- b) A revised schedule indicating how the Change affects the Critical Path.
- c) Changes that affect or concern activities containing float or slack time (i.e. not on critical path) that can be accomplished within such float or slack time shall not result in an increase in the Contract Time.

**Add the following new paragraphs:**

**7.2.2** Before a Change Order is prepared, the Contractor shall provide and deliver to the Architect the following information, not subject to waiver, within ten days after being notified to prepare said Change Order:

1. An itemized list of material and labor cost for each Subcontractor's and/or Sub-subcontractor's Work, including quantities and unit prices for each item of material.
2. An itemized list of material and labor cost for the General Contractor's Work, including quantities and unit prices for each item of labor and each item of material.
3. An updated project schedule clearly showing the impact the proposed change might have on the critical path to completion.

**7.2.3** After a Change Order has been approved, no future request for extension/adjustments of Contract Time, Sum or cost shall be considered for that particular Change Order

**7.2.4** The Architect will prepare a draft of the proposed Change Order. If all parties are in agreement to the scope of work changes and the Change Order is signed within 14 days of the original issuance, it shall be made part of the Contract Documents. If agreement is not reached within that time frame, the Owner reserves the right to instruct the Architect to issue a Change Directive, which will be administered per section 7.3.

### **7.3 CONSTRUCTION CHANGE DIRECTIVES**

**7.3.7** Delete the following phrase from the end of the first sentence: “the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount.” Replace with the following phrase: “section 7.3.7.6 found below.”

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

**Add : 7.3.7.6** Portions of profit and overhead listed above that will be included in the Change Order, shall not exceed the following:

1. For the Contractor for work that is performed with its own forces, not to exceed 15% of the cost of the items listed above.
2. For the Contractor for work performed by his Subcontractor, 5% of the amount due the Subcontractor.
3. For each Subcontractor, or Subcontractor involved, for work performed by that Subcontractor’s of Subcontractor’s own forces, 15%.
4. For each Subcontractor, for work performed by the Subcontractor’s Subcontractors, 5% of the amount due to the Subcontractor.
5. In order to facilitate checking of quotations for extras or credits, all proposals shall be accompanied by a complete itemization of costs including labor, materials, and subcontractors. Labor and materials shall be itemized in the manner specified above. Where major cost items are Subcontractor’s cost items, they shall be itemized also.

**Add 7.3.11 and 7.3.12**

**7.3.11** Changes in the Work performed by the Contractor without approval or consent of the Owner shall be performed at no cost to the Owner and without adjustment in the Contract Time.

**7.3.12** By executing the Change Order, the Contractor acknowledges that:

1. The Owner bears no responsibility for the conditions resulting in the change to the scope of work.
2. The Change Order is for the full and final amount of the Contract Sum and the Contract Time adjustments due the Contractor for all additional Work related to the Change Order.
3. Any stated extension of Contract Time is equitable in nature and the Contractor waives any further claims for any additional Contract Time or any Contract Sum for whatever reason and of whatever kind, whether direct or indirect costs, profit, overhead or any other expenses for the work, enumerated in the Change Order and any and all claims for an extension of Contract Time or additional Contract Sum are waived in their entirety.

**ARTICLE 8  
TIME**

**8.2 PROGRESS AND COMPLETION**

**Add the following paragraphs to Subparagraph 8.2.1:**

Completion of the work must be within the Time for Completion stated in the Agreement, subject to such extensions as may be granted under Section 8.3. The Contractor agrees to commence

work not later than fourteen (14) days after the transmittal date of Written Notice to Proceed from the Owner and to substantially complete the project within the time stated in the Contract. The owner shall be entitled to the sum stated in the Contract Documents. Such Liquidated Damages shall be withheld by the owner from the amounts due the Contractor for progress payments.

### **8.3 DELAYS AND EXTENSIONS OF TIME**

**8.3.1** In the first sentence after the words "owner pending" delete the words "mediation and arbitration" and replace with the word "litigation". Delete the last word "determine" through the end of the sentence and substitute the following:

"...recommend, subject to Owner's approval of Change Order. If the claim is not made within the limits of Article 15, all right for future claims for that month are waived."

To the end of paragraph 8.3.1, add: "In any instance, the Contractor will be required to submit an updated project schedule, clearly showing the impact on the critical path to completion. In no instance will additional time be granted if the critical path to completion is not impacted."

#### **Add 8.3.4 and 8.3.5**

**8.3.4** The Owner's operations will be impacted and delayed if the project is not substantially complete within 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 and agreed liquidated damages for each consecutive calendar day (Saturday's, Sunday's and holidays included), of delay until the Work is substantially complete or, as applicable until the Work is finally complete or the Punch List is complete (whichever occurs last). The Owner shall be paid the sum stated in the Contract Documents for liquidated damages.

Such liquidated damages shall be withheld by the Owner from the amounts due the Contractor for progress payments and deducted from the Contract Sum by a Construction Change Directive signed only by the Owner and Architect. If no funds are remaining, the Contractor shall pay the amount of liquidated damages within 15 days of written notification of the amount due.

**8.3.5** If at any time the Work lags, sufficient increased Work forces and overtime hours, including weekends shall be provided by the Contractor to maintain the schedule to insure that the Project is completed in accordance with the time set forth by the Contract Documents. Said overtime and cost of additional Work forces shall be paid for by the Contractor.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **9.2 SCHEDULE OF VALUES**

**Delete Subparagraph 9.2 and substitute the following 9.2 and 9.2.1:**

**9.2** At the Pre-Construction Meeting, the Contractor shall submit to the Architect and Owner a

Schedule of Values allocated to the various portions of the Work, providing a detailed breakdown of the Contract Sum. The Contractor shall also submit such data to support and substantiate the accuracy of the schedule as the Architect and the Owner may require. The contents of the Project Manual shall be used as a basis for format for listing cost of Work.

**9.2.1** The schedule of values shall be submitted on AIA Documents G 703 – 1992, Continuation Sheet, submitted in detail.

1. Use the Index of the Project Manual to list the description of Work required under column B of G 703. List costs of Work for each Division of the Specifications. The cost for each division shall include labor, materials, to be shown separately.
2. Under the General Conditions and Division 1, costs of Work of General conditions, Supplementary Conditions, Temporary Requirements, and Cleaning shall be listed separately with separate cost indicated for Insurance, Bonds, Temporary requirements, and Cleaning, listed separately thereafter and shall be paid for monthly, spread out during the entire period of the Contract. Large sums requested by the Contractor in an early part of the Contract, for items listed in this Paragraph, shall be submitted with invoices, marked paid, showing that these bills have been paid. Up-front unidentified cost of Work shall not be arbitrarily lumped under the General Conditions and Division 1.
3. Round off cost figures of each heading to the nearest dollar. The total of all items shall equal the total Contract Sum.
4. For a multiple site or location Contract, the Schedule of Values shall be allocated for each separate site or location.

### **9.3 APPLICATIONS FOR PAYMENT**

**Delete Subparagraph 9.3.1 substitute the following:**

**9.3.1** Monthly, the Contractor shall submit to the Architect an Application & Certificate for Payment on the AIA Document G702-1992, accompanied by AIA Document G703-1992, a Current Schedule, a notarized Contractor's Waiver and Release of Liens to Owner and supported by any additional data substantiating the Contractor's right to payment as the Owner or the Architect may require.

Change Orders and Construction Change Directives shall be individually identified as a separate item in any application for payment.

A Draft application for payment is to be provided and reviewed by the Architect and Owner at the Monthly Progress Meeting. The Final Monthly Application for Payment shall be submitted following the monthly meeting for the value of labor and materials incorporated into the work and of materials, suitably stored, at the site as of the twenty-fifth day of the preceding month, less normal retainage as follows, per R.S.38:2248:

- A) Projects with Contract price up to \$500,000.00 - 10% of the Contract price.
- B) Projects with Contract price of \$500,000.00, or more - 5% of the Contract price.
- C) No payment will be made until the revised schedule required by 3.10.1 is received.
- D) The normal retainage shall not be due and payable to the Contractor until after substantial completion and expiration of the forty-five day lien period and submission by the Contractor to the Architect of a clear lien certificate and invoice for retainage."

**9.5.1 add 9.5.1.8 and 9.5.1.9 as follows:**

**9.5.1.8** the value of the Punch List:

**9.5.1.9** or rejection of any part of the Work by any governmental authority having jurisdiction over the Project.

## **9.6 PROGRESS PAYMENTS**

**9.6.2 Delete the phrase: “no later than seven days” from the first sentence.**

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

"R.S. 9:2784 (A) and (C) requires a Contractor or Subcontractor to make payment due to each Subcontractor and supplier within fourteen (14) consecutive days of the receipt of payment from the Owner. If not paid, a penalty in the amount of 1/2 of 1% per day is due, up to a maximum of 15%, from the expiration date until paid. The contractor or subcontractor, whichever is applicable, is solely responsible for payment of a penalty."

**9.6.4 Add the following to the end of the Subparagraph:**

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

## **9.7 FAILURE OF PAYMENT**

**Delete Subparagraph 9.7.**

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

## **9.8 SUBSTANTIAL COMPLETION**

**9.8.1** Substantial Completion is the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use and when all required occupancy permits, if any, have been issued and copies of the same delivered to the Owner.

The Architect shall determine if the Project is substantially complete in accordance with the Contract Documents.

**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 and request the Architect's review. 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** The Work will not be considered suitable for Substantial Completion review until a) all Project systems included in the Work are operational as designed; b) designated instruction

of the Owner's personnel in the operations systems has been completed; and c) all finishes within the Contract Documents are in place.

In general, the only remaining Work shall be minor in nature, so that the Owner may occupy the building on a certain date and the completion of the Work by the Contractor will not materially interfere or hamper the normal business operations of the Owner. A further prerequisite to the Work being accepted as Substantially Complete, is the Owner's receipt of the Roofing Manufacturer's warranties, where roof Work is a part of the Contract, and all other Required Warranties and Operating and Maintenance manuals

**9.8.4** Upon receipt of the request for review and Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. The Contractor shall also notify the Architect when the Project is ready for inspection by the State Fire Marshall's Office. The Contractor and his mechanical, electrical and fire alarm/fire suppressive Subcontractors shall attend all inspections for Substantial Completion and inspections for occupancy conducted by the Louisiana State Fire Marshal, and other local officials.

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 items 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. The Architect will make only two (2) such inspections to determine Substantial Completion, after which the Contractor shall pay the Architect at the rate established in the Owner-Architect Agreement.

**9.8.5** In addition to the inspection described in 9.8.4, upon receipt of the Contractor's list described in 9.8.2, the Architect shall prepare a "Punch List" of exceptions and the dollar value of each item. The monetary value assigned to this list will be **twice** of the estimated actual value of the items to be completed or corrected. Cost of these items shall be prepared in the same format as the schedule of values. No funds assigned for the Punch List value shall be due the Contractor until all the Punch list items are completed and accepted by the Architect.

If the dollar value of the Punch List exceeds the remaining Contract Sum less the retainage amount, then the Project shall not be accepted as substantially complete.

As a further condition of obtaining certification of Substantial Completion, the Contractor shall certify that all remaining Work will be completed within Forty Five (45) consecutive calendar days following the date of Substantial Completion, or as otherwise agreed upon.

If the remaining funds are less than that required to complete the Work, the Contractor shall pay the difference within 10 calendar days of notice thereof.

**9.8.6** When the Work or designated portion thereof is substantially complete as determined by the Architect, the Architect will prepare a Certificate of Completion that 1) shall establish the date of Substantial Completion, 2) shall establish responsibilities of the Owner and

Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and 3) shall fix the 'punch list period' of forty-five (45) calendar days or such other agreed upon period within which the Contractor shall finish all items on the Punch 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.

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

Upon receipt of a fully executed Certificate of Substantial Completion with an attached Punch List, the Contractor shall record the Certificate of Substantial Completion, within 72 hours of issuance with the Clerk of Court in the Parish of Ascension, Louisiana and provide the recording information to the Owner and Architect.

**9.9.1 Delete section 9.9.1 and substitute the following:**

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

**9.10 FINAL COMPLETION AND FINAL PAYMENT**

**9.10.1** After the first sentence, add the following:

If the Architect does not find the work acceptable under the Contract Documents, the Architect shall make one additional inspection. If the work is still not acceptable, the Architect, and each of the Architect's principal consultants, shall be paid at the rate established in the Owner-Architect Agreement, 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, or if no funds remain, paid directly by the Contractor or its surety.

**9.10.2** Add the following to the end of the first sentence: (6) Neither the final payment nor any part of the retained percentage shall become due to the Contractor, until the Contractor delivers to the Owner a Certificate by the Clerk of Court of the Parish that the Owner's Substantial Completion Certificate has been recorded, more than 45 days has elapsed since the recordation, no liens have been recorded affecting this property, and all affidavits, consents and releases specified in these General Conditions."

**9.10.2** Add this sentence at the end of the paragraph:

Upon receipt by the Architect of all Project close-out documents and a recommendation for acceptance of final completion, a close-out meeting will be scheduled by the Architect and Owner with the Contractor for the review and acceptance of all of the above identified items. Provided all items are complete and accepted by the Owner, the Owner will then authorize the issuance of the Final Payment.

**9.11 LIQUIDATED DAMAGES**

**ADD 9.11** To the extent that such are due, owing, and payable to the Owner pursuant to the terms of the Contract, the Contractor and the Contractor's Surety agree and shall be liable for and pay to the Owner the sum stipulated in the Contract Documents as liquidated damages, which are to start on the first day after the final date of the contract and continue until the date of Substantial Completion, as issued by the Architect. Any liquidated damages shall be deducted from the remaining Contract Funds by a Construction Change Directive signed only by the Architect and Owner, or if no funds remain, to be paid by the Contractor or the Contractor's Surety.

In addition, if the "punch list" items are not complete before the end of the 45 day 'punch list' period, the contractor will be charged additional liquidated damages in an amount equal to half of the stipulated liquidated damages indicated in the Instructions to Bidders for this project. The Contractor shall also pay the expenses of the Architect as provided hereafter and the Owner may hold the Contractor in default. If the Owner finds the Contractor is in default, the Surety shall be notified. If within thirty (30) days after notification, the Surety has not completed the Punch List, the Owner may, at its option, contract to have the balance of the Work completed and pay for such Work with unpaid funds remaining in the Contract Sum. Finding the Contractor in default shall constitute a reason for disqualification of the Contractor from bidding on future contracts with the owner. If the Surety fails to complete the Punch List within the stipulated time period, the Owner may not accept bonds submitted from the company in the future.

**ARTICLE 10  
PROTECTION OF PERSONS AND PROPERTY**

**10.2 SAFETY OF PERSONS AND PROPERTY**

**10.2.1 Add the following sub-sections:**

.4 the indoor air quality of buildings where employees and visitors occupy the areas adjacent to or near the work on the Project site;

.5 the exhaust systems and existing fresh air intake devices to prevent dust or fumes caused by the Work entering such systems; and

.6 the Contractor expressly agrees that it is exclusively responsible for compliance with the Occupational Safety and Health Act (OSHA) and state and local regulations for the construction in that it is the "employer" within the meaning of those regulations. It is the expressed intent of the parties that the Contractor, not the Architect, nor the Owner are in charge of the Work. Any provision in the Contract Documents in conflict with

this paragraph shall not be null and void.

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

After the last sentence, add the following:

Contractor shall provide for the marking of all underground utilities prior to any digging, excavation or other disturbance of earth and provide the Louisiana One Call reference number to the Architect and Owner.

#### **10.2.9. SECURITY OF SITE**

Contractor shall immediately make an oral report to the Architect and the Owner and promptly provide a written report to the Architect and Owner, about all accidents arising out of or in connection with the Work that cause death, injury, interrupts utility services or property damage.

#### **10.3 HAZARDOUS MATERIALS**

**10.3.1** In the second sentence after "(PCB)" add "or lead"

After the last sentence, add the following:

Mold is not considered to be hazardous for the purposes of this Section; however, the Contractor shall notify the Owner and the Architect, in writing, of the presence of any suspected black mold on building components in any affected area of the Project.

**10.3.2** After the first sentence, delete all remaining sentences. Add at the end "When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. If appropriate, by Change Order or Change Directive, the Contract Time may be extended accordingly and the Contract Sum may be adjusted to allow for the Contractor's reasonable costs of shut-down, delay and start-up."

**10.3.3** Delete Subparagraph 10.3.3.

#### **10.4 EMERGENCIES**

Delete Subparagraph 10.4 and substitute the following:

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

### **ARTICLE 11 INSURANCE AND BONDS**

Add the following sentence to the end of 11.1.2: All policies and certificates of insurance of the Contractor/Subcontractor shall contain the following clauses:

**11.1.2.1** The Contractor/Subcontractor's insurer will have no right of recovery or subrogation against the Owner, it being the intention of the parties that the insurance policies so affected shall protect both parties and the primary coverage for any and all losses covered by the below described insurance.

**11.1.2.2** The Owner shall be named as an additional insured as regards negligence by the contractor (ISO Forms CG 20 10, Current form approved for use in Louisiana).

**11.1.2.3** The insurance companies issuing the policy or policies shall have no direct recourse against the Owner for payment of any premiums or for assessments under any form of policy.

**11.1.2.4** Any and all deductibles in the below described insurance policies shall be assumed by and be at the sole risk of the Contractor or Subcontractor.

Add the following behind section **11.1.3**:

The Contractor/Subcontractor, prior to commencing work, shall provide at his own expense, proof of the following insurance coverages required by the contract to the Owner in insurance companies authorized in the State of Louisiana. Operations to be performed by contract to be shown on the Certificate. Insurance is to be placed with insurers with an A. M. Best's rating of no less than "A" or above or be a qualified self-insured with "A" rated reinsurance; preference will be given to admitted (LIGA) insurers. This rating requirement will be waived for the workers' compensation coverage.

Thirty days prior notice of cancellation shall be given to the Owner by registered mail, return receipt requested, on all of the required coverage provided to the Owner. Ten day notice shall be required for cancellation due to non-payment. All notices will name the Contractor/ Subcontractor and identify the contract number.

Insurance coverage specified in the GENERAL CONDITIONS (AIA Document A201, 2007 Edition) to be provided by the Contractor, and any other insurance described below shall be furnished with the following minimum limits:

**11.1.3.1** Workers' Compensation : \$1,000,000 limit required.

**11.1.3.2** Commercial General Liability Insurance with a combined single limit per occurrence for bodily injury and property damage. This insurance shall include coverage for bodily injury and property damage, and indicate on the Certificate of Insurance which of the seven (7) coverages required below is not included in the policy, if any:

- 1 Premises - Operations;
- 2 Broad Form Contractual Liability;
- 3 Products and Completed Operations;
- 4 Use of Contractors and Subcontractors;
- 5 Personal Injury;
- 6 Broad Form Property Damage;
- 7 Explosion, Collapse and Underground (XCU) Coverage.

NOTE: On the certification of insurance, under the description of operations, the following wording is required: THE AGGREGATE LOSS LIMIT APPLIES TO EACH PROJECT, or

a copy of ISO form CG2503 (Current form approved for use in Louisiana) shall be submitted.

Note: the Products and Completed Operations shall not have a sunset clause.

**COMBINED SINGLE LIMIT (CSL) - AMOUNT OF INSURANCE REQUIRED**

Type of Construction	Projects under \$1,000,000	Projects Over \$1,000,000
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**New Buildings/Renovations:**

-Each Occurrence/ Minimum Limit	\$1,000,000	\$3,000,000
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-Aggregate (Applicable to this Contract ONLY)	\$2,000,000	\$6,000,000
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**Renovations:** *The building(s) value for this Project will be identified in the Contract documents.*

**11.1.3.3** Business Automobile Liability Insurance with a combined single limit of \$1,000,000 per occurrence for bodily injury and property damage, unless otherwise indicated. This insurance shall include for bodily injury and property damage the following coverages:

- 1 Owned automobiles;
- 2 Hired automobiles;
- 3 Non-owned automobiles.

**11.1.3.4** An Umbrella Policy may be used to meet minimum requirements.

**11.1.4 INSURANCE REQUIREMENTS FOR CONTRACTORS**

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. It is the Contractor's responsibility to assure that all coverages required in this contract are obtained and maintained through the completion of the project. This also includes extended coverages for periods beyond the contract terms when appropriate. The cost of such insurance shall be included in the Contractor's bid.

**11.1.4.1 MINIMUM SCOPE OF INSURANCE**

Coverage shall be at least as broad as:

**11.1.4.1.1** Insurance Services Office Commercial General Liability coverage ("occurrence") form CG 0001. (Current form approved for use in Louisiana.) "Claims Made" form is unacceptable. The "occurrence form" shall not have a "sunset clause".

**11.1.4.1.2** Insurance Services Office form number CA 0001 (Current form approved for use in Louisiana.) covering Automobile Liability. The policy shall provide coverage for owned, hired, and non-owned coverage. If an automobile is to be utilized in the

execution of this contract, and the vendor/contractor does not own a vehicle, then proof of hired and non-owned coverage is sufficient.

**11.1.4.1.3** Workers' Compensation insurance as required by the Labor Code of the State of Louisiana, including Employers Liability insurance.

**11.1.4.2 MINIMUM LIMITS OF INSURANCE**

Contractor shall maintain limits no less than that provided in the previous subsections.

**11.1.4.3 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 volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

**11.1.4.4 OTHER INSURANCE PROVISIONS**

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

**11.1.4.4.1 General Liability and Automobile Liability Coverages**

**11.1.4.4.1.1** The Owner, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "additional insureds" as respects liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations 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 an Insured" automatically provides liability coverage in favor of the owner.

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

**11.1.4.4.1.3** 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.

**11.1.4.4.2 All Coverages**

Each insurance policy required by this clause 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 receipt requested, has been given to the Owner.

**11.1.4.5 VERIFICATION OF COVERAGE**

Contractor shall furnish the Owner with certificates of insurance effecting coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

The certificates are to be received and reviewed by the Owner before work commences. The Owner reserves the right to require complete, certified copies of all required insurance policies, at any time.

**Delete section 11.2 – Owner’s Liability Insurance**

**Delete section 11.3** (and all sub-sections 11.3.1 through 11.3.10) – Property Insurance, and replace entire section with the following:

**11.3.1** The Contractor shall purchase and maintain property insurance upon the entire work included in the contract for an amount equal to the greater of the full-completed value or the amount of the construction contract including any amendments thereto .  
The general contractor’s policy shall provide “ALL RISK” Builder’s Risk insurance (extended to include the perils of wind, collapse, vandalism/malicious mischief, and theft, including theft of materials whether or not attached to any structure.) The “All Risk” Builder’s Risk Insurance must also cover architects’ and engineers’ fees that may be necessary to provide plans and specifications and supervision of work for the repair and/or replacement of property damage caused by a covered peril not to exceed 10% of the cost of those repair and/or replacements. The policy must include the interest of the Owner, Contractor and Subcontractors. All property losses shall be made payable to and adjusted with the Owner.

**11.3.2** All policies of insurance shall be approved by the Owner and Owner Insurance advisor prior to the inception of any work.

**11.3.3** Other insurance required is as follows:

**11.3.3.1** Owner's Protective Liability Insurance shall be furnished by the Contractor and naming the Owner as the Insured.

	Projects Under	Projects Over
	\$1,000,000	\$1,000,000
CSL - Each Occurrence	\$1,000,000	\$3,000,000

**11.3.3.2** Asbestos Abatement Liability-(required when asbestos abatement is included in the work) The contractor or subcontractor who will be doing the asbestos abatement as outlined in this contract shall obtain and maintain such liability coverage for the asbestos abatement hazard and exposure with minimum limits of \$1,000,000 per occurrence for the duration of the project. The policy shall name the State of Louisiana, all State departments, agencies, boards and commissions as an additional insured for the project. The policy shall be written on an "occurrence" form without a sunset clause. Claims-made coverage is unacceptable. The insurance company shall have an A.M. Best rating of at least A-:VI or better. (pertains to this section only)

**11.3.3.3** If, at any time, any of the said policies shall be or become unsatisfactory to the Owner, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the Owner, the Contractor/Subcontractor shall promptly obtain a new policy, submit the same to the Owner for approval and submit a certificate thereof as hereinabove provided.

Upon failure of the Contractor/Subcontractor to furnish, deliver and maintain such insurance as above provided, this contract, at the election of the Owner, may be forthwith declared suspended, discontinued or terminated.

Failure of the Contractor/Subcontractor to take out and/or to maintain or the taking out and/or

maintenance of any required insurance, shall not relieve the Contractor/Subcontractor from any liability under the contract, nor shall the insurance requirements be construed to conflict with the obligations of the Contractor/Subcontractor concerning indemnification.

The Owner reserves the right to require complete, certified copies of all required insurance policies, at any time.

**11.3.4 RISKS AND INDEMNIFICATIONS ASSUMED BY THE CONTRACTOR** Neither the acceptance of the completed work nor payment therefore shall release the Contractor/Subcontractor from his obligations from the insurance requirements or indemnification agreement.

**11.3.4.1** Additional insurance may be required on an individual basis for extra hazardous contracts and specific service agreements. If such additional insurance is required for a specific contract, that requirement will be described in the "Special Conditions" of the contract specifications.

**11.3.4.2** If any of the Property and Casualty insurance requirements are not complied with at their renewal dates, payments to the Contractor/Subcontractor will be withheld until those requirements have been met, or at the option of the Owner, the Owner may pay the Renewal Premium and withhold such payments from any monies due the Contractor/Subcontractor.

### **11.3.5 SUBCONTRACTORS**

Contractor shall include all subcontractors as insureds 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.

### **11.3.6 CERTIFICATE OF INSURANCE**

Contractor shall furnish the Owner with certificates of insurance affecting coverage required by this clause. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates of insurance must also contain the following in the "Description of Operations" section:

The certificates are to be provided to the Owner within 15 days of the award of the contract and prior to the signing of the contract.

The Owner reserves the right to require complete, certified copies of all required insurance policies, at any time.

### **11.4 PERFORMANCE AND PAYMENT BOND**

**11.4.1** Delete the phrase, "The Owner shall have the right to require the Contractor to" and replace with the phrase, "The Contractor shall".

Add the following Subparagraph **11.4.3**:

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

Within thirty (30) days of the execution of the Contract Between Owner and Contractor, the

Contractor shall record the Contract and the Performance and Payment Bond with the Clerk of Court of St. Tammany Parish. The Contractor shall also provide the owner with a copy of the Standard Recorded contract.

**11.5 OTHER INSURANCE or FAILURE TO OBTAIN REQUIRED INSURANCE**

The contractor has the right to purchase coverage or self-insure any exposures not required by the bid specifications or contract documents, but shall be held liable for all losses, deductibles, self-insurance for coverages not required.

Contractor shall also be liable for any losses that occur where insurance is contractually required but not procured or purchased by the Contractor or permitted to lapse or be cancelled.

**11.6 STATUS OF EMPLOYEES OF CONTRACTOR AND SUBCONTRACTORS - STATUTORY EMPLOYER STATUS**

**11.6 STATUTORY EMPLOYER STATUS**

All Contractors must comply with the directives of Act 315 of the 1997 Louisiana Regular Session regarding guidelines for determining statutory employer status under La R.S. 23:1061, effective June 17, 1997, and in consideration thereof:

**ARTICLE 12  
UNCOVERING AND CORRECTION OF WORK**

**12.2.2 AFTER SUBSTANTIAL COMPLETION**

**12.2.2.1** At the end of the paragraph add the following sentences:

"If the Contractor fails to correct Work identified as defective and covered by warranties, the Owner may hold the Contractor in default. If the Owner finds the Contractor is in default, the Surety shall be notified.

Finding the Contractor in default shall constitute a reason for disqualification of the Contractor from bidding on future APSB contracts.

**ARTICLE 13  
MISCELLANEOUS PROVISIONS**

**13.1 GOVERNING LAW**

Delete the remainder of the paragraph beginning after the word "located"

**13.2 SUCCESSORS AND ASSIGNS**

**13.2.1** In the second sentence, Delete "Except as.....13.2.2,"

**13.2.2** Delete paragraph.

**13.4 RIGHTS AND REMEDIES**

Add the following clause 13.4.3.

**13.4.3** The 23<sup>rd</sup> Judicial District Court in and for the Parish of Ascension, State of Louisiana shall have sole and exclusive jurisdiction and venue in any action brought under or pertaining to this contract. All disputes between the parties shall be filed in the state court of Louisiana. In the event of diversity for purposes of federal court jurisdiction or any other cause of action that may allow for federal court jurisdiction or venue, the Contractor, its surety, its Subcontractors and suppliers specifically waive any right or cause of action to be filed, transferred, removed, or tried in any federal court.

### **13.5 TESTS AND INSPECTIONS**

**13.5.1** In Subparagraph 13.5.1 delete the second sentence and substitute the following: The Contractor shall make arrangements for such tests, inspections and approvals with the Testing Laboratory provided by the Owner, and the Owner shall bear all related costs of tests, inspections and approvals."

Delete the last sentence of Subparagraph 13.5.1.

### **13.6 INTEREST**

Delete Paragraph 13.6.

### **13.7 TIME LIMITS ON CLAIMS**

Delete paragraph 13.7. (See La. R.S. 38:2189)

**13.8** Add 13.8 as follows:

### **13.8 PROGRESS AND COORDINATION MEETINGS**

**13.8.1** A Pre-Construction meeting shall be held prior to the start of the Work. The following shall be in attendance: Owner, Architect and Consultants, Contractor and Superintendent, major Sub-contractors and representatives of separate Contractors, when applicable. The Contractor shall submit to the Architect and Owner prior to or at the preconstruction meeting the following: (1) list of major Sub-contractors and their contact information, (2) a list of Sub-contractors' Superintendent and Project Manager with 24 hour phone numbers and (3) tentative (CPM) Construction Progress Schedule and submittal schedule. There will be no substitutions made to the Sub-Contractor List after submitting at the preconstruction meeting without written approval by Owner's Representative, after requested in writing by the Contractor.

**13.8.2** Progress and coordination meetings will be held monthly on site or as charged in writing by the Owner or Architect. The Architect shall generate and distribute minutes of each meeting to all participants within seven (7) days of each meeting. The following are expected to attend: The Contractor represented by its Project Manager or principal, the Contractor's Project Superintendent, the Sub-contractors and material suppliers requested by the Owner or Architect.

**ARTICLE 14  
TERMINATION OR SUSPENSION OF THE CONTRACT**

**14.1 TERMINATION BY THE CONTRACTOR**

Delete clause 14.1.1.4.

**14.1.3** After the word "profit", add the following "for Work completed prior to stoppage". Add at the end of the sentence: The Contractor shall not be entitled to recover consequential damages or profit or overhead for any portion of the Work of the Contract that has not been performed.

**14.2 TERMINATION BY THE OWNER FOR CAUSE**

Add the following clause:

**14.2.1.5** "Fails to complete the punch list within the lien period as provided in section 9.8."

**14.2.3** Add the following sentence:

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

**14.2.3.1** Add the following:

Liquidated damages have been established and the termination by the Owner under this Article will not relieve the Contractor and/or Surety of their obligations under the liquidated damages provision of the Contract. The Contractor and/or Surety shall be liable to the Owner for per diem liquidated damages. Termination by the Owner shall not suspend assessment of liquidated damages against the Contractor or the Surety.

**14.2.4** After the word "damages" in Line 2, add: "*, including, but not limited to, liquidated or stipulated damages*".

**14.2.5** Add the following Subparagraph:

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

**ARTICLE 15  
CLAIMS AND DISPUTES**

**15.1 CLAIMS**

**15.1.1** In the first sentence of subparagraph 15.1.1, add the phrase "extension of time," after the word "money".

**15.1.2** Add the following to the end of the paragraph:

The Initial Decision Maker (IDM) shall provide a written decision to the Contractor and the Owner within 21 days of receipt of the claim. The IDM may (1) approve the Claim or (2) reject

the Claim in whole or part. The IDM's decision is final and binding on the parties but subject to litigation. A "Reservation of Rights" and similar stipulations shall not be recognized under this contract as having any effect. Any party making a claim must make a claim as defined herein within the time limits provided.

**15.1.3** In the second sentence of the subparagraph, delete "the decisions of the Initial Decision Maker" and replace with "his/her decision".

**15.1.5.1** Delete second sentence.

**15.1.5.2** Delete paragraph 15.1.5.2 and substitute the following:

In planning the construction schedule within the agreed Contract Time, it shall be understood that the Contractor has anticipated the amount of adverse weather conditions normal to the Project site of the Work for the season or seasons of the year involved. Only those weather delays attributed to other than normal weather conditions will be considered by the Architect and Owner. If adverse weather conditions are the basis for a claim for additional time, the Contractor shall document that weather conditions had an adverse effect on the scheduled construction. Documentation must include National Weather Service reports, Daily Log Reports and general description of work planned, that could not be executed. Note that half days will be considered and the Contractor will be allowed consideration of time lost due cleaning the site. An increase in the contract time due to weather shall not be cause for an increase in the contract sum.

**15.1.5.3** Add the following Subparagraph:

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

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

Normal anticipated adverse rainfall as indicated above for the area of the Project site shall not be cause for an extension of the Contract Time. The Contractor shall anticipate the number of days specified above as a minimum number of days of rain per month with additional wet adverse work conditions following the above number of days of rainfall. The Contractor shall ask for total adverse weather days, the Contractor's request shall be considered only for days over the allowable number of days stated above.

Note: Contract is on a calendar day basis.

All Contractor requests and documentation for extension in Time for rain or wet conditions for a particular month shall be delivered to the Architect promptly prior to the second Tuesday of the following month. (For example, for a claim for rain days in July, if the first day of August is on a Tuesday, the second Tuesday is August 8, hence, all requests for rain days in July would be delivered to the Architect on or prior to August 8. No consideration will be granted by the Owner for claims for rain days when the Contractor does not submit claims on time as specified above.

**15.1.6 Claims for Consequential Damages**

Delete this paragraph in its entirety.

**15.2 INITIAL DECISION**

Note that per this agreement, the ARCHITECT shall serve as the INITIAL DECISION MAKER.

**15.2.1** In sentence two, delete the phrase, “unless otherwise indicated in the Agreement.”

**15.2.3** Delete the last sentence.

**15.2.5** From the second sentence, delete the phrase, “and the Architect, if the Architect is not serving as the Initial Decision Maker”

**15.2.5** At the end of the third sentence, change “binding dispute resolution” to “litigation”.

**15.2.6** Delete the phrase, “subject to the terms of Section 15.2.6.1.”

**15.2.6.1** Delete this section in its entirety.

**15.2.8** Delete this section in its entirety.

**15.3 MEDIATION**

Delete and replace with:

**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, may be subject to mediation as a condition precedent to filing a lawsuit.

**15.3.2** The parties may endeavor to resolve their Claims by mediation [non-binding] which, unless the parties mutually agree otherwise, shall be administered by a Mediation Service with offices in the parish of the project. 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 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.

**15.4 ARBITRATION**

**15.4.1** Delete this section.

**15.4.2** Delete this section.

**15.4.3** Delete this section.

NOTE: Disputes arising under this contract are not subject to arbitration. The word arbitration in the contract documents is hereby deleted and revised/ changed to “litigation” wherever the word arbitration may be found.

**15.4.4 CONSOLIDATION OR JOINDER**

Delete sections 15.4.4.1 through 15.4.4.3 and replace with the following:

**15.4.4.1** The Owner, Architect, and Contractor grant to each other and to any other interested party all rights to joinder and consolidation that exist in the fact or law.  
Add the following as Article 16:

**ARTICLE 16  
EQUAL OPPORTUNITY**

**16.1** The Contractor and all Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin or for any other reason. 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 nondiscrimination.

**16.2** The Contractor and all Subcontractors shall, in all solicitations or advertisement 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.

END OF DOCUMENT 007300