

SECTION IIIB - SUPPLEMENTARY CONDITIONS

SUPPLEMENTARY CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

ST. TAMMANY PARISH SCHOOL BOARD

The General Conditions of the Contract for Construction, AIA Document A201, 1997 Edition, Articles 1 through 14 inclusive, is a part of this Contract, and is incorporated as fully as if herein set forth. For brevity, AIA Document A201 is also referred to in the Contract Documents as the “General Conditions”.

Printed copies of AIA Document A201 can be purchased from the local chapters of the American Institute of Architects, or from the American Institute of Architects, 1735 Massachusetts Avenue, N.W., Washington D.C. 2006.

The following supplements modify, change, delete from or add to the “General Conditions of the Contract for Construction”, AIA Document A201, Fifteenth Edition, 1997. Where any portion of the General Conditions is modified or deleted by these Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect.

ARTICLE 1 - GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 In Paragraph 1.1.1 delete the last sentence of Subparagraph 1.1.1 of the General Conditions of the Contract for Construction and add the following: “The Contract Documents shall include the Bidding Documents as listed in the Instructions to Bidders and any modifications made thereto by addenda. The Contract Documents shall also include the required Completion Time set out in the Instructions to Bidders, and the Contractor agrees to the Liquidated Damages set out in the Instructions to Bidders and any other costs, damages, additional architect, engineer or consultant fees or attorney fees incurred by Owner resulting in whole or in part from Contractor’s failure to complete the work timely in accordance with the Contract Documents.”

§ 1.1.2 In the fourth sentence, after the word “Sub-subcontractor” add the word “or” then after the “(3)” delete the words “between the Owner and Architect or (4)”. Also, at the end of this Subparagraph, add the following sentence: “Notwithstanding the foregoing, the Owner shall be considered a third party beneficiary of any contract or agreement between the Contractor and a Subcontractor.”

§ 1.1.5 After the word “Documents” and before the word “showing”, add the words “wherever located and whenever issued”.

§ 1.1.7 After the word “include” and before the word “the”, add the words “, without limitation,”.

Add the following Subparagraphs § 1.1.8 through § 1.1.12:

§ 1.1.8 CORRECTION PERIOD

The period of time in which the contractor shall, in accordance with Article 12, correct work failing to conform to the Contract Documents or if it is rejected, remove it and replace it with Work conforming to the Contract Documents.

§ 1.1.9 APPROVED

When the words “approved”, “satisfactory”, “proper”, or “as directed” are used, approval by the Architect shall be understood.

§ 1.1.10 ADDENDA

Addenda are written or graphic instruments issued prior to the date of the opening of the bids and which modify or interpret the Bidding Documents, including the Drawings and Specifications, by additions, deletions, clarifications or corrections.

§ 1.1.11 KNOWLEDGE

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 or its Subcontractors know or should know, recognize or should recognize and discover or should discover in exercising the care, skill and diligence required by the Contract Documents, by the law, or by generally accepted construction principles.

§ 1.1.12 PERSISTENTLY

The phrase “persistently fails” and other similar expressions, as used in reference to the Contractor shall be interpreted to mean any combination of acts or omissions which cause 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.

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§ § 1.2 EXECUTION OF CONTRACT DOCUMENTS

§ 1.2.1 Add the following to Subparagraph 1.2.1:

The Owner may record a duplicate original of the Agreement and Bonds with the Clerk of Court for the Parish of St. Tammany.

§ 1.2.2 Add the following to Subparagraph 1.2.2:

The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, (5) Owner's continued occupation and use of existing buildings throughout the school year, and (6) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the project site or any improvements located on the project site. 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 the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Subparagraph 1.2.2.

Add the following Subparagraphs to 1.2:

§ 1.2.4 Any reference to standards (such as ASTM - American Society for Testing and Materials), shall mean the latest edition of such standards published prior to the date of the Specifications, in accordance with the abbreviation referred to in the Technical Provisions. Where such a reference is made, the applicable standard is hereby made a part of the Specification which refers to it to the same extent as if written out in that specification in full.

§ 1.2.5 In the event of a conflict or discrepancy between scaled dimensions and given dimensions, given dimensions shall take precedence over scaled dimensions. Although the Drawings are drawn to scale, as indicated, and dimensions are given, in the case of remodeling or reconstruction work, or in fitting work to existing conditions, the Contractor shall work to measurements of existing construction.

§ 1.2.6 In the event the Contractor, who has declared to the Owner that he has read, reviewed and familiarized himself with the Contract Documents and work site, has any question or believes a discrepancy exists between the Contract Documents and the Drawings, or has any question concerning any provision in the Contract Documents or Drawings, the Contractor is obligated to bring the question or discrepancy to the attention of the Owner and Architect prior to commencement of any work.

§ 1.2.7 Should the Contractor fail to timely request interpretations of questionable items in the Contract Documents prior to executing the Work, including as set forth in paragraph 3.2.1, neither the Owner nor the Architect will thereafter entertain any claim for additional costs or time.

§ 1.2.8 Where a discrepancy or inconsistency appears to exist between any of the Contract Documents regarding quantity or quality, or both, of labor and materials to be furnished for the Work, the greater quantity or higher quality shall govern and will be presumed to be included in the Contract Sum. When a general term or provision in the Contract Documents conflicts with a more specific term, the more specific term or provision in the Contract Documents governs.

§ 1.2.9 Where a given material is indicated on any of the Drawings, it is intended that such material be used throughout the length and height of walls, partitions, spandrels, panels, windows, lights, or in the assembly detail in which it occurs, for other similar locations throughout the building or Project, unless another material is indicated.

§ 1.2.10 All manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents.

§ 1.2.11 Test boring or soils test information, if made accessible to the Contractor, is not warranted by the Owner as an accurate or approximate indication of sub-surface conditions, and no claims for extra cost or extension of time resulting from reliance by the Contractor on such information shall be allowed.

§ 1.6 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

§ 1.6.1 In the fifth sentence, between the words "use" and "solely", add the words "of the Contractor".

Add the following sentence at the end of section 1.6.1: "The limitation provided for herein shall in no way affect the Owner's right to use the Drawings, Specifications and other documents as provided for by law or as specified by Owner."

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ARTICLE 2 - OWNER

§ 2.1 DEFINITION

Delete Subparagraph 2.1.1.

Delete Subparagraph 2.1.2.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

Delete Subparagraph 2.2.1.

§ 2.2.3 Delete the word “shall” and substitute the word “may”, and delete the last sentence and substitute the following:

The Owner does not warrant, in any way, any survey that may be furnished. The Contractor shall exercise proper precautions relating to the safe performance of the work.

§ 2.2.5 Delete Subparagraph 2.2.5 and substitute the following:

The Contractor will be furnished, free of charge, up to ten (10) copies of the Drawings and Project Manual. Any additional copies will be furnished at the cost of reproduction, postage and handling.

§ 2.4 OWNER’S RIGHT TO CARRY OUT THE WORK

§ 2.4.1 Delete the entire section and add the following:

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) 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 may be issued by the Owner deducting from payments then or thereafter due the Contractor the reasonable cost of additional services made necessary by such default, neglect or failure. The Owner may also claim any such costs as an offset to payment alleged to be due to Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 - CONTRACTOR

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 In the last sentence. change the word “promptly” to the words “immediately”. Add the following after the last sentence “However, Contractor shall plan ahead in performing work on the Project, and any request for information submitted by the Contractor to the Architect or its engineers, consultants or agents, must be submitted at the monthly construction meeting. The Contractor will not be entitled to a response by the Architect or its engineers or agents to the request for information until the monthly meeting following the monthly meeting at which the request for information was submitted. Nothing shall preclude the Architect or its engineers, consultants or agents from responding in a more timely fashion.”

§ 3.2.3 Delete the last sentence of Subparagraph 3.2.3.

Add the following subparagraphs to Article 3.2:

§ 3.2.4 The exactness of grades, elevations, dimensions, or locations given on any drawings issued by the Architect, or the work installed by other contractors, is not warranted or guaranteed by the Architect or its consultants or engineers or the Owner or its consultants or engineers.

§ 3.2.5 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, the Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor’s failure to so verify all such grades, elevations, dimensions or locations shall be promptly corrected by the Contractor without any additional cost to the Owner.

§ 3.2.6 The mechanical and electrical drawings are diagrammatic only, and are not intended to show the exact physical locations or configurations of work. Such work shall be installed to clear all obstructions, permit proper clearances for the work of other trades, and present an orderly appearance where exposed. Exact locations of fixtures and outlets, and of all other devices visible in finished spaces, shall be obtained from the Architect before the work is roughed in; work installed without such information from the Architect shall be relocated at the Contractor’s expense.

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§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 After the second sentence, Delete all words to the end of subparagraph 3.3.1.

§ 3.3.2 Delete subparagraph 3.3.2 and the new subparagraph 3.3.2 shall read:

The Contractor and its surety shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and any entity or other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors. All contracts entered between Contractor and its Subcontractors shall provide that Owner is a third party beneficiary of any contract or agreement between Contractor and its Subcontractors.

Add the following Subparagraphs 3.3.4, 3.3.5, 3.3.6 and 3.3.7 to 3.3:

§ 3.3.4 The Contractor is the coordinator and expediter of the total construction process and all of its parts, in accordance with the Contract Documents. The Contractor shall provide sufficient supervisory staff in the field to enable efficient and expeditious handling of all matters. There shall be a Project Manager assigned by the Contractor in its home office, as well as in the field.

§ 3.3.5 The Contractor shall take all precautions necessary to prevent loss or damage caused by vandalism, theft, burglary, pilferage, or unexplained disappearance of property of the Owner, whether or not forming part of the Work, located within those areas of the Project to which the Contractor has access. The Contractor shall have full responsibility for the security of such property of the Owner for any such loss, damage, or injury, except such as may be directly caused by agents or employees of the Owner.

§ 3.3.6 The Contractor shall retain a competent registered professional engineer or registered land surveyor, acceptable to the Owner and Architect, who shall establish the exterior lines and required elevations of all buildings and structures to be erected on the site and shall establish sufficient lines and grades for the construction of associated work including, but not limited to, roads, utilities, and site grading. The engineer or land surveyor shall certify the actual location of the constructed facilities in relation to property lines, building lines, easements, and other restrictive boundaries.

§ 3.3.7 The Contractor shall establish the building grades, lines, levels, column, wall and partition lines required by the various Subcontractors in laying out their work.

§ 3.4 LABOR AND MATERIALS

Add the following sentence to the end of Subparagraph 3.4.1:

§ 3.4.1 The word "provide" including derivatives shall mean to properly fabricate, complete, transport, deliver, install, erect, construct, test and furnish all labor, materials, equipment, apparatus, appurtenance, and all items and expenses necessary to properly complete the work in accordance with the terms of the Contract Documents and specifications, and ready for operation or use under the terms of the Specifications.

§ 3.4.2 Delete the words "with a Change Order" and substitute "with the procedures outlined herein."

Add the following Subparagraphs 3.4.2.1 through 3.4.2.6 after Subparagraph 3.4.2:

§ 3.4.2.1 The Contractor may furnish equal brand products or equipment other than those specified in the Contract Documents, provided the Contractor submits for prior approval a particular product other than a product specified in the Contract Documents no later than ten (10) calendar days prior to the date for the opening of the bids and the Architect issues an addendum providing approval of the product or equipment submitted. The name of a certain brand, make, manufacturer or definite specification is to denote the quality standard of the article desired; sets forth the general style, type, character; and is regarded merely as a standard. However, a Contractor must furnish the certain brand or particular brand set forth in the Contract Documents or a product approved prior to the bid opening.

§ 3.4.2.2 The term "or approved equal" is not necessarily limited to the physical or technical properties of the product or material but encompasses the finish, color, texture and other pertinent qualities in like regard. Failure to satisfy in any one respect may result in rejection of substitute products.

§ 3.4.2.3 If, after execution of the Contract and prior to submittal of applicable shop drawings, the Contractor desires to submit an alternate product in lieu of what has been specified or shown in the Contract Documents, the Contractor may do so in writing and set forth the following:

§ 3.4.2.3.1 Reasons the substitution is necessary to include a full explanation of the proposed substitution and submittal of all supporting data including technical information, catalogue cuts, warranties, test results, installation, instructions, operating procedures, and other like information necessary for complete evaluation of the substitution.

§ 3.4.2.3.2 The adjustment, if any, in the time of completion of the Contract and the construction schedule in the event a

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substitution is acceptable.

§ 3.4.2.3.3 An affidavit stating that the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect.

§ 3.4.2.4 Proposals for substitutions shall be submitted to the Architect with a copy to the Owner in sufficient time to allow the Architect no less than ten (10) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated herein.

§ 3.4.2.5 Substitutions or alternates submitted in accordance with Subparagraph above may be rejected without explanation and will be considered only under one or more of the following conditions:

§ 3.4.2.5.1 Required for compliance with interpretation of code requirements or insurance regulations then existing;

§ 3.4.2.5.2 Unavailability of specified products, through no fault of the Contractor;

§ 3.4.2.5.3 Subsequent information discloses inability of specified products to perform properly or to fit in designated space; or

§ 3.4.2.5.4 Manufacturers/fabricator refuses to certify or guarantee performance of specified product as required.

§ 3.4.2.6 Any additional cost, or any loss or damage arising from the substitution of any product, material or equipment for those originally specified, including costs of changes of all other work affected by the substitution, shall be borne by the Contractor, notwithstanding approval or acceptance of such substitution by the Owner or the Architect, unless such substitution was made at the written request or direction of the Owner or the Architect.

Add the following Subparagraph 3.4.4 after Subparagraph 3.4.3:

§ 3.4.4 The Contractor shall only employ labor on the Project or in connection with the Work capable of working harmoniously with all trades, crafts and any other individuals associated with the Project. The Contractor shall also use its best efforts to minimize the likelihood of any strike, work stoppage or any other labor disturbance.

§ 3.5 WARRANTY

§ 3.5.1 After the word "quality", add "free of lead, asbestos, and other toxic material,"

Add the following Subparagraphs 3.5.2 through 3.5.3 to 3.5:

§ 3.5.2 Any warranty provided in paragraph 3.5.1 shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law.

§ 3.5.3 The Contractor shall secure any and all written warranties or guarantees referred to in respective Specifications Sections. As a condition precedent to its right of final payment, Contractor shall deliver to the Architect for review and transmittal to Owner two copies of all manufacturer's warranties or guarantees, operational manuals and instructions, service contracts and other warranties or guarantees as required. The Contractor shall require each Subcontractor to execute a satisfactory written warranty or guarantee in which the Contractor and the Owner are named as beneficiaries.

§ 3.7 PERMITS, FEES AND NOTICES

Delete Subparagraph 3.7.1 and add in its place the following:

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work. In addition, the Contractor shall secure certificates of inspection, use, occupancy, permits and licenses with all such certifications to be delivered when the Contractor considers the Work substantially complete under paragraph 9.8 hereof in order to allow the Owner to accept the Project upon substantial completion as provided for in Louisiana Revised Statute 38:2241.1.

§ 3.7.3 Change the word "promptly" to read "immediately".

Add the following phrase to the end of the first sentence in Subparagraph 3.7.3:

"unless such laws, statutes, ordinances, building codes, rules and regulations bear upon the performance of the Work"

§ 3.7.4 Change the word "appropriate" to "full". Add the following phrase at the end of the last sentence in Subparagraph 3.7.4 after the word correction "and any damages sustained by the Owner".

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§ 3.9 SUPERINTENDENT

Add the following sentence at the end of Paragraph 3.9.1.

“Any personnel change to the Superintendent or Project Manager must be reviewed and approved by the Owner. Resume’s and references of the proposed new Superintendent or Project Manager must be submitted to the Owner. If the Superintendent or Project Manager is not performing his or her responsibilities properly, then, at the request of the Owner, the Contractor shall replace the Superintendent or Project Manager.”

§ 3.10 CONTRACTOR’S CONSTRUCTION SCHEDULES

Delete Subparagraph 3.10.1 and in its place substitute the following:

§ 3.10.1 The Contractor shall prepare and submit within thirty (30) calendar days of the date of the Notice to Proceed, or such other time as requested by the Owner or Architect, for the Owner’s and Architect’s information, a Construction Schedule.

- (1) Unless otherwise specified, the Construction Schedule required shall be a detailed precedence-style critical path method (CPM) or other format satisfactory to the Owner and Architect which shall, at a minimum, provide a graphic representation of all activities and events that will occur during the performance of the Work; identify each phase of construction and occupancy, provide logic of the construction schedule, set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents, and identify tasks that are on the critical path of construction.
- (2) If not accepted, the Construction Schedule shall be promptly revised by the Contractor in accordance with the recommendation of the Owner or Architect and resubmitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise the Owner and Architect of any delays or potential delays. In addition, the Contractor shall provide an updated Construction Schedule to reflect actual conditions with each Application for Payment or if requested by either the Owner or the Architect. In the event the progress report indicates any delays, the Contractor shall take corrective measures necessary to expedite the progress of the construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment and facilities, and (3) other similar measures. Any such measures are solely for the purpose of ensuring the Contractor’s compliance with the Contract Time allowed by the Contract Documents. The Contractor shall not be entitled to any adjustment in the Contract Sum in connection with such measures. In no event shall any progress report constitute an adjustment in the Contract Time or the Contract Sum unless such an adjustment is agreed to by the Owner and authorized pursuant to a written Change Order.
- (3) Contractor agrees that failure of the Contractor to provide a network analysis to identify any task on the critical path may be a basis for the refusal by the Owner to grant any additional time to complete the project, or may be a basis to reduce or deny any Claim by Contractor for additional cost. In the event that Contractor makes any Claim or demand for adjustment in the contract sum, additional cost or damages associated with any delay in completing the Project, regardless of the cause of any such delay or the type of delay claim, Contractor agrees to provide to the Owner complete and unredacted copies of any and all documents pertaining to Contractor’s original bid for the Project, including any and all notes in connection with preparation of the bid, all estimate worksheets or similar items, all quotations from Subcontractors and suppliers, all contracts with Subcontractors and any and all final estimate tally sheets. In the event of any claim for equitable adjustment delay or damages for delay by Contractor, whether made directly by Contractor or an attempt as a pass-through claim by a Subcontractor, Contractor waives, without any reservation, any and all claims of privilege pertaining to any bid documents or contract documents, or other similar documents in its Project file. and hereby acknowledges and agrees with Owner that there shall be no claim or defense to production of these documents that any of these documents are proprietary in nature, in defense of releasing said information to the Owner or to any other interested party. Whether as a result of any claim or otherwise as requested by Owner or Architect, Contractor shall provide to Owner and Architect, on written request by either Owner or Architect, the identity of the computer software utilized for preparation and production of any CPM Schedule. Further, on written request by either the Owner or Architect, the Contractor shall provide to the Owner and Architect, monthly computer processing of all computer-produced CPM Schedules and time/cost schedules and reports generated from monthly Project updates, a hard copy listing of all Project schedule changes, and associated data, made at the update and an electronic file of this data, including an electronic file of any and all data associated with the project and CPM schedule pertaining to the project. Upon request by the Owner or Architect, Contractor shall export all underlying data pertaining to an CPM Schedule, any schedule update or any other information pertaining to the CPM Schedule. These reports and this information shall be submitted with and substantively support the Contractor’s monthly payment request. The Architect, through or in coordination with the Owner, shall identify the different report formats that the Contractor shall provide based upon the monthly schedule updates. This provision applies to claims of Subcontractors being made to or against the Contractor, and Contractor is required to and shall ensure that this contractual provision is incorporated in any and all subcontracts entered with Subcontractors, whether by reference to this agreement or otherwise.
- (4) Any revision or update to the schedule will be subject to the written approval of the Owner.

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§ 3.10.3 Change the words, “perform the Work in general accordance with” to read “conform to”.

Add Subparagraph 3.10.4:

§ 3.10.4 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner’s premises. The Contractor shall, upon the Owner’s request, reschedule any portion of the Work affecting the Owner’s operation of the premises during the hours when the premises are not in operation. Any postponement, rescheduling or performance of the Work under this Paragraph may be grounds for an extension of the Contract Time, if allowed under Subparagraph 8.3.1, and an adjustment in the Contract Sum if:

- (1) The performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents; and
- (2) Such rescheduling or postponement is required for the convenience of the Owner and such rescheduling or postponement is shown by Contractor at the time of the postponement or rescheduling to be a matter that affects the critical path of construction.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

§ 3.11.1 In the last sentence, after the word “Work”, add the words “and prior to final payment. These as-built documents shall also be provided to the Owner in AutoCAD, Revit, PDF or other readable format as applicable and as requested by the Owner”

§ 3.12 SHOP DRAWINGS PRODUCT DATA AND SAMPLES

§ 3.12.7 Delete Subparagraph 3.12.7.

§ 3.12.9 Delete the last sentence.

§ 3.12.10 Delete Subparagraph 3.12.10 and in its place substitute the following:

§ 3.12.10 When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the Contractor shall provide the person or party providing the certification with full information on the relevant performance requirements and on the materials, systems, or equipment that are expected to operate or be utilized at the Project site. The certification shall be based upon performance under the operating conditions generally prevailing or expected at the Project site. The Architect shall be entitled to rely upon the accuracy and completeness of such certificates.

Add the following Subparagraphs to 3.12:

§ 3.12.11 All shop drawings for any architectural, structural, mechanical or electrical work must be submitted to and approved by the Architect. The Contractor represents and warrants that all shop drawings shall be prepared by persons and entities possessing the expertise and experience in the trade for which the shop drawing is prepared and, if required by the Architect or applicable law, by a licensed engineer. Any shop drawing that indicates insufficient study of drawings and specifications, illegible portions, or gross errors, will be rejected outright and Owner will require that the Contractor resubmit such drawing in a manner consistent with the information contained in the Contract Documents. Such rejections, if any, shall not constitute a reason for granting Contractor additional time to perform the work involved and shall not be a basis for any additional payment to Contractor.

§ 3.12.12 Faxed copies of shop drawings will not be accepted.

§ 3.13 USE OF SITE

Delete Subparagraph 3.13.1 and substitute the following:

§ 3.13.1 The right of possession of the premises and the improvements made thereon by the Contractor shall remain at all times the property of the Owner. The Contractor’s right to entry and use thereof arises solely from the permission granted by the Owner under the Contract Documents. The Contractor shall confine its apparatus, the storage of materials and the operations of its workmen to limits indicated by law, ordinances, the work limit line and staging area as shown on Site Plan, and areas made available by the Owner, and shall not unreasonably encumber the premises with its materials or equipment. Only materials and equipment which are to be used directly in the Work shall be brought and stored on the Project site by the Contractor. Protection of construction materials and equipment stored at the Project site from weather, theft, damage and all other causes is solely the responsibility of the Contractor.

Add the following Subparagraphs 3.13.2 through 3.13.5 to 3.13:

§ 3.13.2 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which consent may be withheld in the sole discretion of the Owner.

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§ 3.13.3 Contractor shall ensure that the Work, at all times, is performed in the manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. All public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions. Contractor shall use its best efforts to not interfere with the occupancy of (1) any area and buildings adjacent to the site of the Work or (2) the building in the event of partial occupancy.

§ 3.13.4 Without the prior written approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances and parking areas other than those designated by the Owner.

§ 3.13.5 The Contractor shall repair at its own expense any damage from operations under its supervision or direction caused to Owner’s property and facilities on the site and access routes thereto.

§ 3.15 CLEANING UP

§ 3.15.2 Delete Subparagraph 3.15.2 and substitute the following:

The Contractor shall clean up the project site and work performed as provided in the Contract Documents.

§ 3.17 ROYALTIES AND PATENTS

Delete Subparagraph 3.17.1 and in its place add the following:

The Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation of the Work of any invention, design, process, product or device which is the subject of patent rights, trademarks, copy rights, trade secrets or proprietary information held by others. Contractor shall indemnify and hold harmless Owner and Architect and anyone directly or indirectly employed or contracted by either of them from and against all claims, damages, losses and expenses, including attorneys’ fees and court and arbitration costs, arising out of any infringement of patent rights, trademarks, copy rights, trade secrets or proprietary information incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device and shall defend all such claims in connection with any alleged infringement of such rights. This indemnification obligation is not limited to but in addition to the insurance obligations of the performance bond required in connection with this Agreement. For an asbestos or lead abatement project, the provisions of this Subparagraph will apply concerning any process for the removal of asbestos or lead containing materials.

§ 3.18 INDEMNIFICATION

Add Subparagraph 3.18.3 to 3.18.

§ 3.18.3 The obligations of the Contractor under this Paragraph 3.18 shall not extend to the liability of the Architect, the Architect’s consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, the Architect’s consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 4 - ADMINISTRATION OF THE CONTRACT

§ 4.1 ARCHITECT

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.”

Delete Subparagraphs 4.1.2 and 4.1.3.

§ 4.2 ARCHITECT’S ADMINISTRATION OF THE CONTRACT

§ 4.2.2 In the last sentence, delete the words “, except as provided in Section 3.3.1”.

§ 4.2.5 Between the words “Architect’s” and “evaluations”, add the words “observations of the progress of the work and”.

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§ 4.2.10 Add the following sentence to the end of Subsection 4.2.10:
“There will be no restriction of the Owner having a Representative.”

§ 4.2.11 In the last sentence, after the number “15”, add the word “calendar”.

§ 4.3 CLAIMS AND DISPUTES

§ 4.3.2 Delete Subparagraph 4.3.2 and substitute the following:

Time Limits on Claims. Claims by any Claimant, the Contractor or any Subcontractor or sub-subcontractor must be made within twenty-one (21) calendar days after occurrence of the event giving rise to such Claim; provided, however, that Contractor shall use its best efforts to furnish the Architect and the other party or Owner, as expeditiously as possible, with notice of any Claim including, and without limitation, those in connection with concealed or unknown conditions, once such Claim is recognized and shall cooperate with the Architect and the Owner and shall make every 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. Claims must be made by written notice and in no event will any claim be accepted or considered if not made within this twenty-one (21) calendar day time limit. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner as set out in this sub-paragraph. Any notice of claim must clearly identify the alleged cause and the nature of the claim to include data and information then available to the claimant which will facilitate proper verification and evaluation of the claim. This provision on claims applies to claims of Subcontractors being made to or against the Contractor, and Contractor is required to and shall ensure that this contractual provision is incorporated in any and all subcontracts entered with Subcontractors, whether by reference to this agreement or otherwise. Neither Contractor nor any Subcontractor shall have any claim or right of action to bring a claim against Owner to recover costs of damages, or obtain equitable adjustment of the Contract for delays in performing the Contract unless any such Claim is submitted to the Architect and the Owner within the time limits of Subparagraph 4.3.2.

§ 4.3.3 In Subparagraph 4.3.3, delete the words Aor as provided in Section 9.7.1 and Article 14”.

§ 4.3.4 In the first sentence, change the word “promptly” to “immediately”. And add the word “calendar” between the number “21” and the word “days”.

In the fourth sentence, change the number “21” to “10 calendar”.

In the last sentence, delete the words “the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if”.

Add the following language to Subparagraph 4.3.4:

No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition which is not submitted by the Contractor or Subcontractor, in writing to the Architect and Owner, within the time period set out in this Subparagraph 4.3.4, and which does not differ materially from those conditions disclosed or which reasonably should have been disclosed by the Contractor’s (1) prior inspections, tests, reviews and preconstruction services for the Project, or (2) inspections, tests, reviews and preconstruction services which the Contractor had the opportunity to make or should have performed in connection with the Project.

Add the following language to Subparagraph 4.3.6:

No change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Contract Sum or a change in the Contract Time unless and until such alteration or addition has been authorized by a Change Order executed and issued in accordance with and in strict compliance with the requirements of the Contract Documents.

Any claim by the Contractor for increased cost for delay shall be asserted in accordance with the delays provided in Subparagraph 4.3.2 unless the time is extended in writing by the Owner. No course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, shall be the basis for any claim to an increase in the Contract Sum or change in the Contract Time. No claim for additional cost shall be allowed due to a problem with the performance or non-performance of a subcontractor.

No claim shall be valid unless so made. In the event that Contractor makes any claim or demand for adjustment in the contract sum, additional cost or damages associated with any delay in completing the Project, regardless of the cause of any such delay or the type of delay claim, Contractor agrees to provide to the Owner complete and unredacted copies of any and all documents pertaining to Contractor’s original bid for the Project, including any and all notes in connection with preparation of the bid, all estimate worksheets or similar items, all quotations from subcontractors and suppliers, all contracts with Subcontractors and any and all final estimate tally sheets. Whether as a result of any claim or otherwise as requested by Owner or Architect, Contractor

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shall provide to Owner and Architect, on written request by either Owner or Architect, the identity of the computer software utilized for preparation and production of any CPM Schedule. Further, on written request by either the Owner or Architect, the Contractor shall provide to the Owner and Architect, monthly computer processing of all computer-produced CPM Schedules and time/cost schedules and reports generated from monthly Project updates, a hard copy listing of all Project schedule changes, and associated data, made at the update and an electronic file of this data, including an electronic file of any and all data associated with the project and CPM schedule pertaining to the project. Upon request by the Owner or Architect, Contractor shall export all underlying data pertaining to an CPM Schedule, any schedule update or any other information pertaining to the CPM Schedule. These reports and this information shall be submitted with and substantively support the Contractor’s monthly payment request. The Architect, through or in coordination with the Owner, shall identify the different report formats that the Contractor shall provide based upon the monthly schedule updates, In the event of any claim for adjustment or damages for delay by Contractor, whether made directly by Contractor or as a pass through claim by a Subcontractor, Contractor waives, without any reservation, any and all claims of privilege pertaining to any bid documents or contract documents, or other similar documents in its Project file and hereby acknowledges and agrees with Owner that there shall be no claim or defense to production of these documents that any of these documents are proprietary in nature, in defense of releasing said information to the Owner or to any other interested party. This provision applies to claims of Subcontractors being made to or against the Contractor, and Contractor is required to and shall ensure that this contractual provision is incorporated in any and all subcontracts entered with Subcontractors, whether by reference to this agreement or otherwise.

Delete Subparagraph 4.3.7.2 and substitute the following:

If adverse weather conditions are the basis for a claim for additional time, the Contractor shall document that weather conditions had an adverse effect on the scheduled construction. An increase in the contract time due to weather shall not be cause for an increase in the contract sum.

Add the following Subparagraphs 4.3.7.3 through 4.3.7.5:

§ 4.3.7.3 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

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.

§ 4.3.7.4 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given to the Architect and Owner. No claim for additional time shall be allowed due to a problem with the performance or non-performance of a subcontractor.

§ 4.3.7.5 No Claim for additional time made for whatever cause will be approved unless and until the Contractor demonstrates to the satisfaction of the Owner that the Completion Time for the Work has itself been adversely affected by the actions, events, or circumstances cited in the claim. The mere fact that some portion of the Work may be affected is not sufficient to establish an entitlement to an extension to the Contract Time. The baseline against which any such Claim for additional time will be judged will be the Approved Project Schedule, updated and revised as required by the Contract Documents. The granting by the Owner of additional time for completion of the Work on the Project shall not be a basis for an increase in the Contract Sum and shall not be a basis for Contractor to make a Claim for adjustment in the Contract Sum or to seek damages for delay in completion of the Project. This provision also applies to claims of Subcontractors being made to or against the Contractor, and Contractor is required to and shall ensure that this contractual provision is incorporated in any and all subcontracts entered with Subcontractors, whether by reference to this agreement or otherwise.

§ 4.3.8 Change the words “within a reasonable time not exceeding 21 days” to “at once, but not more than 3 working days”.

§ 4.3.10 Add the following at the end of Paragraph 4.3.10: “This waiver of Claims for Consequential Damages by the Contractor includes any and all damages that are sought by Contractor against Owner. The only Claims that are not waived by the Contractor are those for damages for delay or for equitable adjustment to the Contract Sum that the law may provide cannot be waived.”

§ 4.4 RESOLUTION OF CLAIMS AND DISPUTES

Delete Subparagraph 4.4.1 and substitute the following:

§ 4.4.1 **Decision of Architect.** Claims, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for action as provided in Paragraph 4.4 if the Claimant recognizes the Claim prior to the date of final payment. A decision by the Architect, as provided in Subparagraph 4.4.4, shall be required as a condition precedent to litigation of a Claim between the Contractor and Owner as to all such matters arising prior to the date final payment is due, regardless of (1) whether

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such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent litigation in the event (1) the position of Architect is vacant, (2) the Architect has not received evidence or has failed to render a decision within agreed time limits, (3) the Architect has failed to take action required under Subparagraph 4.4.4 within 30 days after the Claim is made, (4) 45 days have passed after the Claim has been referred to the Architect or (5) the Claim relates to a mechanic's lien.

Delete Subparagraph 4.4.2 and substitute the following:

§ 4.4.2 The Architect will review Claims and take one or more of the following preliminary actions within ten days of receipt of a Claim: (1) request additional supporting data from the Claimant, (2) submit a schedule to the parties indicating when the Architect expects to take action, (3) reject the Claim in whole or in part, stating reasons for rejection, or (5) suggest a compromise. An Architect's failure to take any such action shall not be used as a basis for liability on the part of the Owner, and shall not be considered as a basis for approval of any such Claim.

Delete Subparagraph 4.4.3 and substitute the following:

§ 4.4.3 If a Claim has been resolved, the Architect will prepare or obtain appropriate documentation.

Delete Subparagraph 4.4.4 and substitute the following:

§ 4.4.4 If a Claim has not been resolved, the party making the Claim shall, within ten calendar days after the Architect's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the architect, (2) modify the initial Claim or (3) notify the Architect that the initial Claim stands.

Delete Subparagraph 4.4.5 and substitute the following:

§ 4.4.5 If a Claim has not been resolved after consideration of the foregoing and if further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within seven days, which decision shall be final and binding on the parties, but subject to litigation. Upon expiration of such time period, the Architect will render to the parties the Architect's written decision relative to the Claim, including any recommended change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

Delete Subparagraphs 4.4.6 through 4.4.8.

§ 4.5 MEDIATION - Delete Article 4.5

§ 4.6 ARBITRATION - Delete Article 4.6

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 Architect, in writing, the names of the persons or entities, including those who furnish materials or equipment, proposed for each of the portions of the Work. No Contractor payments shall be made until the information is received.

Delete Subparagraph 5.2.2 and substitute the following:

§ 5.2.2 The Contractor shall be solely responsible for selection and performance of all Subcontractors. The Contractor shall not be entitled to claims for additional time and/or increase in the Contract Sum due to a problem with performance or non-performance of a Subcontractor.

Delete Subparagraph 5.2.3 and substitute the following:

§ 5.2.3 The Contractor shall notify the Owner when a Subcontractor is to be changed and substituted with another Subcontractor.

Delete Subparagraph 5.2.4.

§ 5.3 SUB CONTRACTUAL RELATIONS

Delete Subparagraph 5.3.1 and in its place substitute the following:

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§ 5.3.1 All Work performed for Contractor by a Subcontractor or a sub-subcontractor will be pursuant to an appropriate agreement between Contractor and Subcontractor or Subcontractor and sub-subcontractor which specifically binds the Subcontractor or sub-subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the Owner and Architect and contains applicable waiver of subrogation provisions, and which makes the Owner a third party beneficiary of any such agreement. Nothing in these Contract Documents shall provide, in favor of any person or organization other than the Contractor, a right of action against the Owner. No provision in law that requires a portion of this Contract to be severed as between Owner and Contractor shall require that any such provision be severed from the contract or agreement between Contractor and Subcontractor, and any such provision shall remain in force and effect as between Contractor and Subcontractor.

§ 5.4 **CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

Delete Subparagraph 5.4.1 and substitute in its place the following:

§ 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 Paragraph 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and
- 2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

Delete Subparagraph 5.4.2 and substitute in its place the following:

§ 5.4.2 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor in the event of the exercise of an assignment for those obligations of the Contractor that accrue subsequent to the Owner’s exercise of any rights under this conditional assignment.

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 In the last line, change the words “in Section 4.3” to read “elsewhere in the Contract Documents.”

§ 6.1.3 In the last line, change the word “Other” to read “Owner”.

Delete Subparagraph 6.1.4.

§ 6.2 **MUTUAL RESPONSIBILITY**

§ 6.2.3 Delete the second sentence.

§ 6.2.4 In the last line, change the words “in Section 10.2.5” to read “elsewhere in the Contract Documents.”

Delete Subparagraph 6.2.5.

ARTICLE 7 - CHANGES IN THE WORK

§ 7.1 **GENERAL**

Delete Subparagraph 7.1.1 and substitute the following:

§ 7.1.1 Changes in the Work may be accomplished after execution of the Agreement and Bonds and without invalidating the Contract and Bonds, by Change Order, Constructive Change Directive or order for a minor change in the Work provided such changes are within the scope of the Contract Documents and subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. Any change outside the scope of the Contract Documents in excess of \$150,000.00 shall be let out for public bid as provided by Louisiana Revised Statute 38:2212. Approval of any Change Order is subject to compliance with law and Owner policies on Change Orders.

Add the following Subparagraph 7.1.4:

§ 7.1.4 Any change pertaining to the Work which is not required to be put out for public bid, shall be negotiated in the best interest of the Owner or let out for public bid. When the change is negotiated, the change order in accordance with law, shall be fully documented and itemized as to the Contractor’s cost, including material quantities, material costs, taxes, insurance, wages, employee benefits, other related costs, profit and overhead. When unit prices are contained in the initial Contract, no deviations shall be allowed in computing negotiated changes. The Contractor shall provide and deliver to the Architect the above

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information including any application for extension in the Contract Time, within ten (10) days after being notified to prepare a Change Order.

§ 7.2 CHANGE ORDERS

Add the following Subparagraph 7.2.3:

§ 7.2.3 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the Contract Time. In the event a Change Order increases the Contract Sum, Contractor shall include the Work covered by such Change Orders in Applications for Payment.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

Change Subparagraph 7.3.6 as follows:

In the first sentence, delete the words, “a reasonable allowance for overhead and profit...” and substitute “an allowance for overhead and profit in accordance with clauses 7.3.10.1 through 7.3.10.6 below.”

Add the following to the end of Subparagraph 7.3.7:

Any credit to the Owner shall be the sum of the materials and labor costs and sub-contract costs.

Delete Subparagraph 7.3.8.

Add the following Subparagraphs 7.3.10, 7.3.11 and 7.3.12 to 7.3.

§ 7.3.10 In Subparagraph 7.3.6, the allowance for the combined overhead and profit 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, up to fifteen (15%) percent of the cost.
- 2 For the Contractor, for Work performed by the Contractor’s Subcontractor, up to ten (10%) percent of the amount due the Subcontractor.
- 3 For each Subcontractor or Sub-subcontractor involved, for Work performed by the Subcontractor’s or Sub-subcontractor’s own forces, up to fifteen (15%) percent of the cost.
- 4 For each Subcontractor, for Work performed by the Subcontractor’s Sub-subcontractor’s, up to ten (10%) 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 propriety can be seen by inspection, shall be accomplished by a complete itemization of costs including labor, materials and Subcontracts. 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 if itemization is required by law.

§ 7.3.11 Any credit to the Owner resulting from a change in the Work shall be the sum of:

- 1 Contractor’s material, equipment costs not incurred, labor cost and other sums not actually expended.
- 2 Subcontractor’s and/or Sub-subcontractor’s material, equipment costs not incurred, labor cost and other sums not actually expended.

§ 7.3.12 In any Change Order, no allowance or itemization of costs shall be allowed for salaries or other compensation of the Contractor’s personnel at the Contractor’s principal office and branch offices; any part of the Contractor’s capital expenses, including interest; overhead and general expenses of any kind not included above in cost of the work; cost of supervision not specifically required by the Change Order; and costs due to negligence, including but not limited to correction of defective or nonconforming work.

ARTICLE 8 - TIME

§ 8.1 DEFINITIONS

Delete Subparagraph 8.1.2 and substitute the following:

§ 8.1.2 A Notice to Proceed shall designate a date for commencement of the Contract Time established in the Contract Documents. The

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date shall not be postponed by the failure of the Contractor or of persons or entities for whom the Contractor is responsible to act. A written Notice to Proceed shall be issued by the Architect when directed by the Owner.

Add the following Subparagraph 8.1.5:

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

§ 8.2 PROGRESS AND COMPLETION

Delete the last sentence of Subparagraph 8.2.2.

§ 8.3 DELAYS AND EXTENSION OF TIME

§ 8.3.1 In Subparagraph 8.3.1 in the first sentence after the words "owner pending" delete the words "mediation and arbitration" and add the word "litigation" and delete the remainder of the last sentence after "extended by Change Order" and add the following:

"to the extent such delay prevents the Contractor from achieving substantial completion within the Contract Time as evidenced by the critical path of the schedule and if performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (1) is not caused or could not have been anticipated by the Contractor, (2) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay, (3) is of a duration not less than one (1) day, and (4) affects the critical path of the progress of the Work."

Add the following Subparagraph 8.3.1.1:

§ 8.3.1.1 An extension of Contract Time, to the extent allowed under Paragraph 8.3, shall be the sole remedy of the Contractor for any (1) delay in the commencement of the Work, (2) hindrance or obstruction in the performance of the Work, (3) loss of productivity, unless a delay is caused by acts of the Owner which interfere with the Contractor's performance of the Work and only to the extent that such acts continue after the Contractor furnishes the Owner and Architect with written notice of such interference. In no event shall the Contractor be entitled any indirect cost, consequential damages, lost opportunity cost, impact damages or other similar claims. The Owner's exercise of any of its rights or remedies under the Contract Documents such as ordering changes in the Work, suspension, or correction of the Work, shall not be construed as an act of interference with the Contractor's performance of the Work.

Add the following Subparagraph 8.3.4 to 8.3:

§ 8.3.4 If the Contractor submits a progress report indicating, or otherwise expresses an intention to achieve, completion of the Work prior to any completion date required by the Contract Documents or expiration of the Contract Time, no liability of the Owner to the Contractor for any failure of the Contractor to so complete the Work shall be created or implied.

Add the following paragraph 8.4 to Article 8:

§ 8.4 LIQUIDATED DAMAGES

§ 8.4.1 Time is of the essence in completing the Work, and, in the event of delay on the part of the Contractor in completing the Work as specified beyond the date set forth in the Contract Documents as adjusted by Change Orders, it is distinctly understood and agreed that a deduction shall be made from the Contract Sum at a rate as stated in the Instructions to Bidders plus any compensation for the Architect's services and expenses made necessary for each and every day of delay until the Work is complete. This is not a penalty but agreed upon liquidated damages for delay. The calculations shall be for each and every calendar day exclusive of the day within which completion was required and up to and including the date of completion of the Work as determined by the Architect and Owner. The expiration of the time stipulated without the work having been completed shall in itself constitute a default without the necessity of any notice being given to the Contractor or its Surety. The Contractor and its Surety agree that the above mentioned sums shall be deducted at any time in the sole discretion of the Owner from the Contract Sum by means of a written adjustment executed by the Owner without the Contractor's signature, it specifically having been agreed upon in advance as a measure of damage to the Owner on account of the Contractor's delay. Nothing herein shall preclude Owner from claiming any other damages for loss sustained as a result of Contractor's delay in completing the Project.

ARTICLE 9 - PAYMENTS AND COMPLETION

§ 9.2 SCHEDULE OF VALUES

Add the following Subparagraph 9.2.2 to Paragraph 9.2:

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§ 9.2.2 The Contractor and each Subcontractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on the AIA Application for Payment Form or other form approved by the Architect and Owner. The form shall be divided in detail sufficient to exhibit all areas of the Work and phases of the Work if applicable, by convenient units, by amounts identified for warranties and close out documentation, and shall be updated as required by either the Owner or Architect as necessary to reflect (1) description of the Work listing labor and materials separately, (2) total value, (3) percent of the Work completed to date, (4) value of Work completed to date, (5) percent of the previous amount billed, (6) previous amount billed, (7) current percent completed, and (8) value of Work completed to date. Any breakdown which fails to provide sufficient detail may be rejected. If a trade breakdown is initially approved and subsequently used but is found later to be improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve, exclusive of the normal retainage, to complete the Work. The schedule shall be coordinated with Subparagraph 3.10 if requested by the Owner.

§ 9.3 APPLICATIONS FOR PAYMENT

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

§ 9.3.1 On or about the 1st day of each month, the Contractor shall, unless otherwise agreed to in writing by the Owner, submit to the Architect an Application for Payment Form, through the last day of each month, supported by any additional data substantiating the Contractor's right to payment as the Owner or the Architect may require. Application for Payment shall be submitted on or about the first of each month which application shall represent a consistent billing cycle of not less than 30 days for the value of labor and materials incorporated into the work and of materials, suitably stored, at the site, less normal retainage allowed in accordance with Louisiana Revised Statute 38:2248. The normal retainage shall not be due the Contractor until after substantial completion and expiration of the forty-five day lien period and submission to the Architect of a clear lien certificate and invoice for retainage. Contractor waives and relinquishes any claim for payment, whether to the Owner or otherwise, not submitted within the twenty-one (21) day time period set out in paragraph 4.3.2. In no event shall Contractor be allowed to bring a claim or lawsuit against the Owner for any payment if a Sworn Statement of Claim has not been filed with the Clerk of Court for St. Tammany Parish within forty-five (45) days of substantial completion of the project. Nothing herein shall preclude payment to Contractor for work performed on punch list items after substantial completion or for sums due for retainage.

Delete Subparagraph 9.3.2 and substitute the following:

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. 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 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 applicable insurance, storage, and transportation to the site for such materials and equipment stored off the site.

At the end of paragraph 9.3.3 add the following sentence:

The Contractor further warrants that upon submittal of an application for payment, all work that entitles the Contractor to payment has been completed in accordance with the Contract Documents and specifications, and Contractor acknowledges that, in no event, shall payment be due for work that has not been performed.

Add new Subparagraph 9.3.4 as follows:

§ 9.3.4 Contractor expressly undertakes to defend the Owner and indemnify and hold it harmless, at the Contractor's sole expense including payment of all attorney's fees incurred by the Owner, against any actions, lawsuits, or proceedings brought against the Owner as a result of any claim or lien filed against the Contract funds, the Work, the site of any of the Work, the Project site and any improvements thereon, or for payments due them from the Contractor. The Contractor hereby agrees to indemnify and hold Owner harmless against any lawsuit, claim or lien and agrees to pay any judgment or claim or lien resulting from any such actions, lawsuits or proceedings, including attorney's fees, costs and interest. Contractor further agrees to pay to the Owner all costs, including attorney fees, incurred by Owner as a result of Contractor's failure or refusal to make payment to any Subcontractor, lienholder or claimant. This includes payment to the Owner for all costs, including attorney fees, incurred in the event that Owner is required to institute any concursus proceeding in connection with payment of any of the Contract Sum due or allegedly due.

Add the following Subparagraph 9.3.5 as follows:

§ 9.3.5 The Owner may release any funds withheld due to a lien or affidavit of a claim if the Contractor obtains security acceptable to the Owner or a lien bond which is (1) issued by a surety acceptable to the Owner, (2) in form and substance satisfactory to the Owner and the Clerk of Court and (3) an amount of not less than 125% of such lien claim or affidavit of claim or as provided by law. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or other obligations under Paragraph 9.3, including, without limitation, the duty to defend and indemnify the Owner. The cost of any

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premiums incurred in connection with any such bonds and securities shall be the responsibility of the Contractor and shall not be part of, or cause any adjustment to, the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

Delete “or” at the end of Subparagraph 9.5.1.6 and add the following Supplementary Subparagraphs 9.5.1.8, .9, and .10 to 9.5.1 after the words “Contract Documents” at the end of Subparagraph 9.5.1.7:

§ 9.5.1.8 Completed Work has been damaged which requires correction or replacement;

§ 9.5.1.9 Correction of defective Work by Owner or completion of the Work by the Owner;

§ 9.5.1.10 Belief or knowledge by the Architect of an occurrence of an event justifying termination for cause; or

§ 9.5.1.11 Failure to complete the punch list within the 45 day lien period.

§ 9.6 PROGRESS PAYMENTS

In Subparagraph 9.6.1, after the word “Documents” delete the words “and shall so notify the Architect” and add the following:

provided, however, Owner may refuse to make payment of the amount recommended by the Architect and the Owner may withhold from any payment an amount based on:

- 1 The Owner’s estimate of the value of any claims made against the Owner on account of the Contractor’s Work;
- 2 The Owner’s estimate of the value of any claim it has asserted against the Contractor;
- 3 125% of the amount of any lien or affidavit of claim that has been filed in the Mortgage Records for the Parish in which the Project is located in connection with the Work; or
- 4 Other items such as liquidated damages, additional architect fees or attorney fees or costs which allow the Owner to withhold or set-off against any amount recommended by the Architect.

Delete Subparagraphs 9.6.3, 9.6.4, 9.6.5 and 9.6.7 from Article 9.6.

§ 9.7 FAILURE OF PAYMENT

Delete Subparagraph 9.7.1 from Article 9.7.

§ 9.8 SUBSTANTIAL COMPLETION

Delete Subparagraph 9.8.1 and substitute the following:

§ 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. Upon the recommendation of the Architect to the Owner that the Project is complete or substantially complete, the Owner at a public meeting may approve the Certificate of Substantial Completion and direct its recordation in the mortgage records of the Clerk of Court of St. Tammany Parish. The Contractor shall at his expense record the certificate of Substantial Completion and provide the recordation information to the Architect and Owner. The time for the Correction Period shall begin on the date the acceptance is filed and recorded in the Mortgage Records.

Delete Subparagraph 9.8.3 and substitute the following:

§ 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. A prerequisite to the Work being accepted as substantially complete, is the Owner’s receipt of the executed Roofing Contractor’s and Roofing Manufacturer’s guarantees or other documentation acceptable by the Owner, where roofing work is part of the Contract. If the Architect’s inspection discloses any item, whether or not included on the Contractor’s list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, the Contractor shall, before acceptance of the Work as substantially complete, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. In no event shall acceptance of the work, or a part thereof, as substantially complete, constitute a right of Contractor to payment under the Contract for work not yet performed by the Contractor and Contractor agrees that no such sum shall be due until completion of that work.

Delete Subparagraph 9.8.4 and substitute the following:

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§ 9.8.4 The Certificate of Substantial Completion from the Architect shall include as an attachment the list of minor corrective items (punch list) to be completed by the Contractor, together with the estimated cost of completing such minor corrective items. In addition, the Certificate of Substantial Completion shall designate that the Contractor shall complete the list of minor corrective items within forty-five (45) days of the date of the Owner's acceptance of the Certificate. At the end of the forty-five (45) day period, without further notice to Contractor, the Owner shall have the option of either completing the items identified on the list of minor corrective items (punch list) and retaining the cost of the work done, including any additional architect fees from the Contract Sum, or calling on the Surety to complete the minor corrective items under the performance bond and/or labor and material payment bond.

Delete Subparagraph 9.8.5 and substitute the following:

§ 9.8.5 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.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

Add to Subparagraph 9.10.1, after the first sentence, the following:

If the Architect does not find the Work acceptable under the Contract Documents after the first review of punch list items subsequent to substantial completion, 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 \$125.00/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.

Add to Subparagraph 9.10.2 the following at the end of the first sentence:

, (6)A Certificate from the Clerk of Court for the Parish of St. Tammany which shall be dated at least forty-six (46) days subsequent to the date of recordation in the same office of the acceptance of substantial completion for the Owner and to the effect that no liens or claims for labor or materials have been recorded against the Project, (7) all warranties and guarantees required under or pursuant to the Contract Documents, which shall be submitted by the Architect to the Owner for acceptance as part of the final Application for Payment, (8) all operation manuals and training of Owner's staff in the operation of mechanical, electrical, heating and air conditioning systems, and (9) reproducible drawings (as-builts) accepted by the Architect.

Delete Subparagraph 9.10.4.

Add the following Paragraph 9.11 to Article 9:

§ 9.11 LIQUIDATED DAMAGES

§ 9.11.1 The Contractor and the Contractor's Surety, if any, shall be liable for and shall pay the Owner the sums stipulated in Subparagraph 8.4.1 and as set forth in the Instructions to Bidders as liquidated damages and sums stipulated or agreed in Subparagraph 8.4.1 for additional Architect fees incurred by the Owner or charged to the Owner for each calendar day of delay until the Work is determined to be complete by the Architect and Owner.

ARTICLE 10 - PROTECTION OF PERSONS AND PROPERTY

§ 10.2 SAFETY OF PERSONS AND PROPERTY

Add to Subparagraph 10.2.2, in the first sentence, between the words "bearing on" and "safety", add the words, "the health and".

Delete, in Subparagraph 10.2.5, the words, "directly or indirectly"

Add Subparagraph 10.2.8:

§ 10.2.8 Any fines levied against the Owner due to the Contractor's (or its subcontractor's) failure to comply with OSHA standards or other Federal, State, and local regulations shall be paid by the Contractor. If any such fines are not promptly paid, then the amount of the fine may be withheld by the Owner from payment to the Contractor.

§ 10.3 HAZARDOUS MATERIALS

Add to Subparagraph 10.3.1, in the first sentence, after "(PCB)" add "or lead".

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Delete Subparagraph 10.3.2 and substitute the following:

§ 10.3.2 In the event the Contractor encounters on the site material reasonably believed to be asbestos, lead, or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos, lead, or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed immediately following the occurrence of any one of the following events (1) the Owner causes remedial Work to be performed which results in the absence of asbestos, lead or polychlorinated biphenyl (PCB), or (2) the Owner and the Contractor by written agreement, decide to resume performance of the Work, or (3) the Work may safely and lawfully proceed as determined by an appropriate governmental authority or as evidenced by a written report to both the Owner and Contractor which is prepared by an environmental engineer. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the project site by the Contractor or any Subcontractor, any materialmen, or supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work which are hazardous, toxic or comprised of any items that are hazardous or toxic.

Delete Subparagraph 10.3.3.

Delete from Subparagraph 10.4 all words following the word "Contractor".

Delete Subparagraph 10.5.

§ 10.6 EMERGENCIES

Delete Subparagraph 10.6.1 and substitute the following:

§ 10.6.1 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.

ARTICLE 11 – INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

Delete from Subparagraph 11.1.2 “, whether written on an occurrence or claims-made basis;” from the second sentence

Add the following subparagraph 11.1.4:

The following general requirements to apply to all insurance required under ARTICLE 11:

§ 11.1.4.1 General Conditions

- a. 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 and subcontractors. The cost of such insurance shall be included in the Contractor's bid.
- b. Insurance provided by the Contractor shall be with a reliable company with an A.M. Best's rating of no less than A-, acceptable to and approved by the Owner, and authorized to do business in Louisiana. This requirement will be waived for workers' compensation coverage only for those companies who participate in the State of Louisiana Workers' Compensation Assigned Risk Pool.
- c. The Owner and Architect must be included as additional insured on the general liability policy.
- d. All Workers Compensation policies must be endorsed with a waiver of subrogation.
- e. Each policy shall contain a provision signed by the agent of the company stipulating that the policy will not be canceled without thirty (30) days prior written notice to the Owner.
- f. Any and all policy deductibles shall be paid by the Contractor.
- g. All certificates of insurance shall be delivered to the Owner within ten days of the award of the Contract by the Owner. Bidders in submitting a proposal agree to submit certified copies of their insurance policies to the Owner for review.

SECTION IIIB - SUPPLEMENTARY CONDITIONS

h. Claims made policies are not acceptable to the Owner and cannot be used to comply with insurance requirements of this Contract.

§ 11.1.4.2 All policies and certificates of insurance of the Contractor/Subcontractor shall contain the following clauses:

11.1.4.2.1 The Contractor/Subcontractor's insurers will have no right of recovery or subrogation against the Owner, it being the intention of the parties that the insurance policies shall protect both parties, and Owner's insurance, if any, will not be utilized to cover any loss.

11.1.4.2.2 The Owner shall be named as an additional insured by the Contractor (ISO Forms CG 20 10, Current form approved for use in Louisiana).

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

11.1.4.2.4 Any and all deductibles in the insurance policies shall be assumed by and be at the sole risk of the Contractor whether a claim is made against the Owner or its agents or employees.

11.1.4.2.5 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's bond shall guarantee payment of losses and related investigations, claim administration and defense expenses.

11.1.4.2.6 This provision applies to Contractor and Subcontractors, and Contractor is required to and shall ensure that contractual provisions providing waiver of subrogation and any other provision relating to insurance is incorporated in any and all subcontracts entered with Subcontractors, whether by reference to this agreement or otherwise.

§ 11.1.5 INSURANCE

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 by insurance companies authorized in the State of Louisiana. Insurance is to be placed with insurers with an A. M. Best's rating of no less than A-. This rating requirement will be waived for the workers' compensation coverage and policies written through Lloyds of London or Institute of London Underwriter (ILU) companies.

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. All notices will name the Contractor/ Subcontractor and identify the contract number.

Insurance coverage specified in the GENERAL CONDITIONS (AIA Document A 201, 1997 Edition) to be provided by the Contractor, and any other insurance described below shall be furnished with the following minimum limits:

§ 11.1.5.1 Workers' Compensation - Statutory - in compliance with the Compensation Law of the State. Exception: Employers liability to be \$1,000,000 when work is to be over water and involves maritime exposures.

§ 11.1.5.2 Commercial General Liability Insurance with a combined single limit per occurrence for bodily injury and property damage. 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". 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 are not included in the policy, if any:

1. Premises B 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.

COMBINED SINGLE LIMIT (CSL) - AMOUNT OF INSURANCE REQUIRED

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<u>Type of Construction</u>	<u>Projects Under \$100,000</u>	<u>Projects \$100,001 - \$1,000,000</u>	<u>Projects Over \$1,000,000</u>
New Buildings:			
- Each Occurrence/ Minimum Limit	\$500,000	\$1,000,000	\$3,000,000
- Aggregate (Applicable to this Contract ONLY)	\$500,000	\$1,000,000	\$3,000,000
Renovations: <i>The building(s) value for this Project is: \$</i> _____			
- Each Occurrence/ Minimum Limit	\$500,000*** (Depends On Building Value)	\$1,000,000*** (Depends On Building Value)	\$3,000,000*** (Depends On Building Value)
- Aggregate (Applicable to this Contract ONLY)	\$500,000*** (Depends On Building Value)	\$1,000,000*** (Depends On Building Value)	\$3,000,000*** (Depends On Building Value)

***While the minimum combined single limit of \$500,000 is required for all renovations, the value of a building shall be multiplied by 10% and insurance requirements will be increased at \$1,000,000 intervals and rounded to the nearest \$1,000,000. Example: Renovation on \$33,000,000 building would require \$3,000,000 minimum combined single limit of coverage. Maximum limit required is \$5,000,000.00 regardless of building value.

§ 11.1.5.3 Business Automobile Liability Insurance with a combined single limit of \$1,000,000 per occurrence for bodily injury and property damage, unless otherwise indicated. Insurance Services Office form number CA 0001 covering Automobile Liability (Current form approved for use in Louisiana.) 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. This insurance shall include for bodily injury and property damage the following coverages:

1. Owned automobiles;
2. Hired automobiles;
3. Non-owned automobiles.
4. Medical Payments: \$5,000.00 minimum

§ 11.1.5.4 An Umbrella Policy may be used to meet minimum requirements.

§ 11.1.6 All property losses shall be made payable to and adjusted with the Owner.

§ 11.1.7 All policies of insurance or declarations of coverage amounts and types shall be approved by the Owner prior to the inception of any work.

§ 11.1.8 Other insurance required is as follows:

§ 11.1.8.1 Owner’s Protective Liability Insurance shall be furnished by the Contractor and naming the St. Tammany Parish School Board as the Insured.

	<u>Projects Under</u> <u>\$100,000</u>	<u>Projects \$100,001 -</u> <u>\$1,000,000</u>	<u>Projects Over</u> <u>\$1,000,000</u>
CSL - Each Occurrence	\$500,000	\$1,000,000	\$3,000,000

§ 11.1.8.2 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 St. Tammany Parish School Board 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 or written through Lloyds of London or Institute of London Underwriter (ILU) companies.

§ 11.1.9 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

SECTION IIIB - SUPPLEMENTARY CONDITIONS

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. Should Contractor fail to obtain any insurance required under this Contract then the Owner is entitled to a reduction in the Contract sum for what insurance would reasonably have cost the Contractor.

§ 11.1.10 **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.

§ 11.1.10.1 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.

§ 11.1.10.2 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.

§ 11.1.10.3 All property losses shall be made payable to and adjusted with the Owner.

§ 11.1.10.4 All policies and certificates of insurance shall be approved by the Owner prior to the inception of any work.

§ 11.1.10.5 If at any time any of the foregoing 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, upon notice to that effect from the Owner, 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 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 or otherwise limit 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.

§ 11.1.11 **SUBCONTRACTORS**

Contractor shall be responsible for ensuring that subcontractors have insurance to protect the Owner and Contractor from liability for any and all claims arising out of the Work performed on the Project and shall ensure that the Contractor and each subcontractor waives any claim for subrogation against the Owner, including any claims for subrogation of workers' compensation carriers or self-insurers of workers' compensation. To the extent that Contractor fails to comply with this provision, or if any claims is made by any subcontractor, or any person or entity performing work on the Project for the Contractor or subcontractor, Contractor agrees to defend, indemnify and hold the Owner harmless from any and all claims brought against the Owner, or its agents or employees, arising out of the Project. This includes the agreement that the Owner be paid all attorney fees and costs associated with any claim in defense of the Owner or its agents or employees. The Contractor is required to and shall ensure that this contractual provision is incorporated in any and all subcontracts entered with Subcontractors, whether by reference to this agreement or otherwise.

§ 11.1.12 **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:

If the Contractor is a General Contractor, then so state.

If the Contractor is a specialty contractor, then so state and provide the list of specialties for which the contractor is insured.

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

§ 11.2 **OWNER'S LIABILITY INSURANCE**

Delete paragraph 11.2 and its subparagraph.

SECTION IIIB - SUPPLEMENTARY CONDITIONS

§ 11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

Delete Paragraph 11.3 and Subparagraphs 11.3.1, 11.3.2, and 11.3.3

§ 11.4 PROPERTY INSURANCE

Delete all Subparagraphs 11.4.1 through 11.4.10 and substitute the following:

§ 11.4.1 The contractor shall provide builder’s risk insurance to protect the Owner, the Contractor and Subcontractors for loss with coverage in an amount equal to the sum of the Contract award. The policy shall insure against all risk of loss or damage. The Contractor shall be responsible for any deductible on any policy of insurance if a claim is made under the policy. Builder’s risk insurance shall name the Owner as an additional insured.

ARTICLE 12 - UNCOVERING AND CORRECTION OF WORK

§ 12.2 CORRECTION OF WORK

Add the following to the end of Subparagraph 12.2.1.1:

If prior to the date of Substantial Completion, the Contractor, a Subcontractor or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, the Contractor shall cause such item to be restored to “like new” condition at no expense to the Owner.

Delete Subparagraph 12.2.2.1 and substitute the following:

§ 12.2.2.1 If, within one year after the date of the recordation of the certificate of Substantial Completion or Acceptance in the mortgage records for the Parish of St. Tammany, the Work or any portion thereof is found by the Architect or Owner not to be in accordance with the requirements of the Contract Documents, the Contractor shall correct such Work or if it is rejected by the Owner or Architect, remove such Work from the site and replace it with Work in accordance with the Contract Documents. If circumstances exist, including, but not limited to an emergency, the Owner may have any such Work corrected or removed and replaced. In such event, the Contractor shall reimburse the Owner for all costs and damages, including compensation for the Architect’s services and expenses made necessary thereby. This period of correction of one year shall be extended as to respective portions of the Work performed after the date of the filing of the Certificate of Substantial Completion. This obligation under this subparagraph 12.2.2 shall survive acceptance of the Work under the Contract Documents and termination of the Agreement. The Architect shall give written notice promptly after the discovery of any condition of nonconforming work. Further, this obligation is in addition to and does not limit any general warranty provided by law or specified in the Contract Documents. Nothing in this Subparagraph shall be construed to limit any warranty or contract provision in favor of the Owner, and any time for the Owner to bring a claim or lawsuit for breach of contract or warranty shall accrue in accordance with law.

Delete Subparagraph 12.2.2.3.

Add to Subparagraph 12.2.5 the following:

Further, nothing contained in this Paragraph 12.2 shall limit, in any manner, any provisions of law establishing a longer time period within which the Owner can seek to enforce obligations of the Contractor or its Subcontractors.

ARTICLE 13 - MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

Delete from Subparagraph 13.1.1 “place where the Project is located” and insert the words “State of Louisiana”.

Add the following Subparagraph 13.1.2 to 13.1:

The Contractor and its Surety consent to and yield to the exclusive venue and jurisdiction of the 22nd Judicial District Court for the Parish of St. Tammany and waive any and all claims of entitlement to removal of any case from this jurisdiction, including any removal of any claim to any Federal Court.

§ 13.2 SUCCESSORS AND ASSIGNS

Delete from Subparagraph 13.2.1, in the second sentence, the words, “Except as provided in Section 13.2.2” and the words, “as a whole”.

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Delete Subparagraph 13.2.2.

§ 13.3 WRITTEN NOTICE

Delete from Subparagraph 13.3.1, the words, “if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or”.

§ 13.4 RIGHTS AND REMEDIES

Add the following Subparagraph 13.4.3:

§ 13.4.3 Nothing contained in the Contract Documents shall create a contractual relationship or any cause of action in favor of a third party against the Owner.

§ 13.6 INTEREST

Delete Subparagraph 13.6.1 and substitute the following:

§ 13.6.1 No interest is due by the Owner for any late payment.

§ 13.7 COMMENCEMENT OF STATUTORY OF LIMITATION PERIOD

Delete paragraph and subparagraph 13.7.1 and its subparts thereunder in their entirety and in its place substitute the following:

§ 13.7 PRESCRIPTION

§ 13.7.1 Any action against the Contractor on the Contract or on any Bond or against the Contractor or Surety or both on the Bonds furnished by the Contractor, all in connection with the construction, alteration or repair of any public works shall prescribe only as provided by law. However, in no event shall any claim be made against the Owner outside of or later than forty-five (45) days from the filing with the Clerk of Court for the Parish of St. Tammany the Notice of Substantial Completion. Other Claims against the Owner must still be made within the time limits set forth in Section 4.3.2.

Add the following paragraphs 13.8 through 13.12.1

§ 13.8 WORK CONTINUATION AND PAYMENT

§ 13.8.1 Unless otherwise agreed in writing, the Contractor shall carry on the Work, maintain the Schedule of the Work pending any claim or lawsuit, and, if so, the Owner shall continue to make payments in accordance with the provisions of the Contract Documents except as to any item in dispute.

§ 13.9 ARBITRATION

§ 13.9.1 All references within the Contract Documents referring to or including provisions for arbitration are stricken, deleted and deemed void. No provision shall be construed as authorizing or including provisions for arbitration. However, the parties may, subsequent to any dispute, agree to arbitration to settle a dispute.

§ 13.10 ATTORNEY’S FEES

§ 13.10.1 If as a result of any action or lawsuit filed by the Contractor or any of its Subcontractors against the Owner it is necessary for the Owner to retain an attorney to represent the Owner, the Contractor shall pay all legal fees and associated costs incurred by the Owner, if the Owner is the prevailing party on any claim or lawsuit brought by Contractor or any of its Subcontractors, whether Owner prevails on all or a portion of any claim or lawsuit.

§ 13.10.2 In the event it is necessary for Owner to retain an attorney or to file suit or any claim, demand or defense as a result of a breach by the Contractor of any of the Contractor’s obligations in the Contract Documents or pursuant to law, including, but not limited, failing to comply with the provisions of the plans and specifications or failing to perform in a good and workmanlike manner, or failing to perform its work timely, or any other breaches of the Contractor’s obligations, the Contractor shall pay to Owner and will be deemed liable for any and all attorney’s fees and associated costs, and court costs incurred by Owner. This includes, but is not limited to, payment of attorney fees and costs associated with Owner being required to institute any concursus type proceeding or other proceeding that may be required by law.

§ 13.10.3 If as a result of any action or lawsuit filed by the Contractor or any of its Subcontractors against the Architect and its Consulting Engineers, a Geotechnical Engineer, or any person or entity acting on behalf of the Owner, it is necessary for the Architect and its Consulting Engineers, a Geotechnical Engineer, or any person or entity acting on behalf of the Owner to

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retain an attorney to represent the Architect and its Consulting Engineers, a Geotechnical Engineer, or any person or entity acting on behalf of the Owner, the Contractor or any of its Subcontractors shall pay all legal fees and associated costs incurred by the Architect and its Consulting Engineers, a Geotechnical Engineer, or any person or entity acting on behalf of the Owner if any of them are a prevailing party on any claim or lawsuit brought by Contractor or any of its Consulting Engineers, in proportion and to the extent the Architect and its Consulting Engineers, a Geotechnical Engineer, or any person or entity acting on behalf of the Owner is the prevailing party.

§ 13.11 PRECONSTRUCTION CONFERENCE

13.11.1 No later than fifteen (15) days after the date of the Notice to Proceed, a conference will be held to review the Contractor's schedule and Schedule of Values submitted to the Architect together with a review of the Contractor's plans for proceeding with the Work and such other items as may be designated by the Architect. The meeting will be convened by the Architect with a representative of the Owner and the Project representatives of the Contractor. The mere approval of the Schedule of Values by the Owner or Architect shall not be a basis for calculation of amounts due on any claim made by Contractor.

§ 13.12 PROJECT MEETINGS

§ 13.12.1 Monthly Project Meetings will be held at which the Architect, Owner's representative, and Project Representative, if any, shall be present. The Contractor and the primary Subcontractors shall also be represented. The Contractor is responsible to prepare the minutes of the meeting and to distribute them to all parties within five (5) days of the date of the monthly Project Meeting.

ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

Delete Paragraphs 14.1 and 14.1.1 and all subparagraphs of 14.1.1

Delete from Subparagraph 14.1.3 the words "14.1.1 or"

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

Add the following Subparagraphs to 14.2.1:

- .5 becomes insolvent, seeking relief in bankruptcy, is placed in bankruptcy involuntarily, or makes a general assignment for the benefit of the creditors and fails to provide adequate assurances, the adequacy of which the Owner will be the sole judge, of the Contractor's future performance in accordance with the requirements of the Contract Documents;
- .6 disregards the authority of the Architect;
- .7 loses charge of the property of the Contractor resulting in a trustee, receiver, custodian or agent appointed under applicable law or under contract;
- .8 breaches any warranty made by the Contractor under or required pursuant to the Contract Documents; or
- .9 fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than ten (10) working days, except as permitted under the Contract Documents.
- .10 Failure to complete the punch list within the lien period as provided in 9.8.2.

Delete from Subparagraph 14.2.2, the words " , upon certification by the Architect that sufficient cause exists to justify such action"

Delete from Subparagraph 14.2.2.3 the last sentence commencing with the word "Upon" and ending with "Work".

Add the following sentence to Subparagraph 14.2.3:

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

Add the following Subparagraph 14.2.5:

§ 14.2.5 If an agreed sum of liquidated damages has been established or payment of additional fees and expenses, architect or otherwise, has been agreed by Contractor, termination by the Owner under this Article will not relieve the Contractor and surety of their obligations under the liquidated damages provisions or for payment of additional fees and expenses provisions (i.e. including without limitation additional architect or design service fees) and the Contractor and/or surety shall be liable to the Owner for per

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diem liquidated damages or any such other damages or expenses agreed to by Contractor.

Add the following Subparagraph 14.2.6:

§ 14.2.6 In the event that the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1 and it is later determined that said termination for cause was improper, unwarranted, or otherwise invalid, then the provisions of Subparagraph 14.4, TERMINATION BY THE OWNER FOR CONVENIENCE, shall apply. The Contract shall be deemed TERMINATED BY THE OWNER FOR CONVENIENCE from the day of the original Notice of Termination by the Owner for Cause.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

Delete Subparagraph 14.3.2.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

Delete from Subparagraph 14.4.3, the words “, and costs incurred by reason of such termination along with reasonable overhead and profit on the Work not executed.”

ARTICLE 15 - EQUAL OPPORTUNITY EMPLOYMENT

Add the following Subparagraphs 15.1 and 15.2 as Article 15:

§ 15.1 The Contractor and all subcontractors shall not discriminate against any employee or applicant for employment in accordance with Louisiana Revised Statute 23:301, *et seq.* or any other applicable law, including but not limited to Louisiana Revised Statute 23:332 and Louisiana Revised Statute 23:334.

§ 15.2 The Contractor and all subcontractors shall, in all solicitations or advertisement for employment placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or age.

END OF SECTION IIIB

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