



ADDENDUM NO. 2

EXHIBIT 8

DRAFT GENERAL CONDITIONS OF THE CONTRACT (AIA A201-2017 as modified by the State)

REQUEST FOR QUALIFICATIONS

**PART A: PRE-SITE RESTORATION SERVICES and
PART B: SITE RESTORATION SERVICES (Construction Management at Risk)**

Project No. 431-PA27-002

June 5, 2026

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Orphaned Well Site Remediation and Restoration Management
Project No. 431-PA27-002

THE OWNER:

(Name, legal status and address)

THE ARCHITECT:

(Name, legal status and address)

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. The Contract Documents as listed in the Request for Proposals and any modifications made thereto by addenda.

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

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

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

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

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

§ 1.8 *Intentionally Omitted.*

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have

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express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce lien rights.

§ 2.2 *Intentionally Omitted.*

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 The Owner shall provide documentation substantiating its rights under Louisiana Law at La. R.S. 30:80, et seq., to enter upon land subject to its authority.

§ 2.3.2 The term Architect, when used in the Contract Documents, shall mean the prime Design Professional (Architect, Engineer of Record, or Design Professional), or his authorized representative, lawfully licensed to practice architecture, engineering, etc., in the State of Louisiana, identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall retain an engineer lawfully licensed to practice engineering, or an entity lawfully practicing engineering, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish locations for the sites of the Project. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe and legal performance of the Work.

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

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

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of 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 default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Owner and the designated Owner's Representative may, pursuant to Section 9.5.1, withhold or nullify a Payment Application Review Summary without discrepancies in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect or designated Owner's Representative's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the sites, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor’s review is made in the Contractor’s capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor’s notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor’s best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor’s proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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

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

§ 3.4 Labor and Materials

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

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3

Contractor and its employees, officers, agents, representatives, and Subcontractors shall conduct themselves

in an appropriate and professional manner, in accordance with the Owner's requirements, at all times while working

on the Project. Any such individual who behaves in an inappropriate manner or who engages in the use of inappropriate language or conduct while in the performance of the Work, as determined by the Owner, shall be removed from the Project at the Owner's request. Such individual shall not be permitted to return without the written permission of the Owner. The Owner shall not be responsible or liable to Contractor or any Subcontractor for any additional costs, expenses, losses, claims or damages incurred by Contractor or its Subcontractor as a result of the removal of an individual from the Project pursuant to this Section. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

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

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Article 9.

§ 3.6 Taxes

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

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for any permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. Such permits may include, but shall not be limited to, coastal use permits, Army Corps permits, and/or local permits.

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

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

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, during the course of the Work, the Contractor discovers human remains, unmarked burial or archaeological sites, burial artifacts, or wetlands, which are not indicated in the Contract Documents, the Contractor shall follow all procedures mandated by the State and Federal law, including but not limited to La R.S. 8:671 et seq., the Office of Coastal Protection and Restoration, and Sections 401 & 404 of the Federal Clean Water Act. Request for adjustment of the Contract Sum and Contract Time arising from the existence of such remains or features shall be submitted in writing to the Owner pursuant to the Contract Documents. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 *Intentionally Omitted. Intentionally Omitted*

§ 3.9 Superintendent

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. For projects with a contract sum greater than \$1,000,000.00, the Contractor shall include with the schedule, for the Owner's and Architect's information, a network analysis to identify those tasks which are on the critical path, i.e., where any delay in the completion of these tasks will lengthen the project timescale, unless action is taken. A revised schedule shall be submitted with each Application and Certification for Payment. No payment shall be made until this schedule is received.

§ 3.10.2

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

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect. If the Work is not on schedule, as determined by the Architect, and the Contractor fails to take action to bring the Work on schedule, then the Contractor shall be deemed in default under this Contract and the progress of the Work shall be deemed unsatisfactory. Such default may be considered grounds for termination by the Owner for cause in accordance with Section 14.2.

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

§ 3.10.5 In the event the Owner employs a commissioning consultant, the Contractor shall cooperate fully in the commissioning process and shall require all subcontractors and others under his control to cooperate. The purpose of such services shall be to ensure that all systems perform correctly and interactively according to the provisions of the Contract Documents.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. This requirement is of the essence of the contract. The Architect shall determine the value of these documents and this amount shall not be approved for payment to the Contractor until all of the listed documents are delivered to the Architect in good order, completely marked with field changes and otherwise complete in all aspects.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1

Where applicable, shop drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work shall be provided to the Owner.

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

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

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

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

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

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals,

provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

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

§ 3.14 Cutting and Patching

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

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

§ 3.15 Cleaning Up

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

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

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law,

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

agents, servants, employees, and volunteers.

Contractor agrees to investigate, handle, respond to provide defense for and defend any such claims, demands, suits or causes of action as its sole expense and agrees to bear all other costs and expenses related thereto, even if the claims, demands, suits, or causes of action are groundless, false, or fraudulent. The Owner may, but is not required to, consult with the Contractor in the defense claims, but this shall not affect the Contractor's responsibility for the handling of expenses of all claims.

The duty to defend is wholly independent of and separate from the duty to indemnify and such duty to defend exists regardless of any ultimate liability of Owner. In any and all claims against any of the Indemnitees by any employee of the Contractor or more of its subcontractors, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the compensation or benefits payable under Section 11 will not be limited in any way by any limitation in the amount or type of damages, compensation or benefits payable under any worker's compensation acts, disability benefit acts or other employee benefit acts. This indemnity applies during the entire period of the Contract and shall survive the expiration or termination of the Contract until such time as any action or accounting of any matter covered by such indemnity is determined by a court in a final unappealable ruling as being barred by the applicable statute of limitations.

The Contractor agrees to commence defense of the Owner immediately upon tender provided however, that defense counsel shall be approved by the Owner in writing and acceptance, or rejection, of counsel shall be at Owner's sole discretion whereupon alternate counsel shall be provided by Contractor. In the event the Owner is found, after a trial on the merits, contributorily negligent, an equalizing payment for costs of defense shall be made to Contractor at a pro-rata share of liability after the trial of the matter and after a final unappealable judgment is rendered. There shall be no interest accrued on any such amount.

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

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement. The term "Architect" is used in the Contract Documents interchangeably with "Engineer," "Engineer of Record" or "Design Professional."

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

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

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will support the designated Owner's Representative in providing administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date of final payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to

make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor may communicate directly with each other, when deemed necessary by the Owner, and the Owner will notify the Architect and Owner's Representatives of any decisions. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the designated Owner's Representative's evaluations of the Contractor's Applications for Payment, the designated Owner's Representative will review the amounts due the Contractor and will issue Payment Application Review Summaries with or without discrepancies, whichever is applicable.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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

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

§ 4.2.10

If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any

change in the duties, responsibilities and limitations of authority of the Project representatives. There shall be no restriction on the Owner having a Representative. The Owner shall notify the Contractor of any change in the duties, responsibilities, and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretation required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretation until 15 days after written request is made for them.

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

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14

The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within interpretation required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to such interpretation until 15 days after written request is made for them. If appropriate, the Architect

will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1

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

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to

whom the Contractor has made reasonable objection. The Contractor shall be solely responsible for selection and performance of all subcontractors. The Contractor shall not be entitled to claims for additional time and/or an increase in the contract sum due to a problem with performance or nonperformance of a subcontractor.

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

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

§ 5.3 Subcontractual Relations

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

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work may be assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted as agreed to by both the Subcontractor and the Owner for increases in cost resulting from the suspension.

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1

The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

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

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

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

§ 6.2 Mutual Responsibility

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

§ 6.2.2 If part of the Contractor’s Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor’s Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner’s or Separate Contractor’s completed or partially completed construction is fit and proper to receive the Contractor’s Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

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

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

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

§ 6.3 Owner’s Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by

the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.1.4 As part of the Pre-construction conference submittals, the Contractor shall submit the following prior to the

Contractor's initial request for payment

- .1 Fixed job site overhead cost itemized with documentation to support daily rates.
- .2 Bond Premium Rate with supporting information from the General Contractor's carrier.
- .3 Labor Burden by trade for both Subcontractors and General Contractor. The Labor Burden shall be supported by the Worker's Compensation and Employer's Liability Insurance Policy Information Page. Provide for all trades.
- .4 Internal Rate Charges for all significant company owned equipment.

§ 7.1.5 If the Contractor fails to submit the aforementioned documentation as part of the pre-construction submittals, then pay applications shall not be processed until such time as the Owner receives this information.

§ 7.2 Change Orders

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

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 "Cost of the Work" for the purpose of Change Orders shall be the eligible costs required to be incurred in performance of the Work and paid by the Contractor and Subcontractors

§ 7.2.3 Before a Change order is prepared, the Contractor shall prepare and deliver to the Architect the following information concerning the Cost of the Work, not subject to waiver, within a reasonable time after being notified to prepare said Change Order.

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

§ 7.2.5 In the event of a delay in the critical path, the Contractor shall submit all changes or adjustments to the Contract Time within twenty-one (21) days of the event giving rise to the delay. The Contractor shall submit documentation and justification for the adjustment by performing a critical path analysis of its most recent schedule in use prior to the change, which shows an extension in critical path activities.

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

§ 7.3 Construction Change Directives

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

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

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

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

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

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

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 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

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending litigation; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may recommend, subject to Owner's approval by Change Order. If the claim is not made within the limits of Article 15, all rights for future claims for that month are waived.

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial

inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

At the Pre-Construction Conference, the Contractor shall submit to the Owner and the Architect a Schedule of Values prepared as follows:

§ 9.2.1 The attached Schedule of Values Format shall be used. If applicable, the cost of Work for each section listed under each division shall be given. The cost for each section shall include Labor, Materials, and Overhead.

§ 9.2.2 The Total of all items shall equal the Total Contract Sum. This schedule, when approved by the Architect, shall be used as a basis for the Contractor's Applications for Payment and it may be used for determining the cost of the Work in deductive change orders, when a specific item of Work listed on the Schedule of Values is to be removed. Once the Schedule of Values is submitted at the Pre-Construction Conference, the schedule shall not be modified without approval from the Owner and Architect.

§ 9.3 Applications for Payment

§ 9.3.1

Monthly, the Contractor shall submit to the Owner Representative an Application & Certificate for Payment on the AIA Document G702-1992, accompanied by AIA Document G703-1992, and supported by any additional data substantiating the Contractor's right to payment as the Owner may require. Application for Payment shall be submitted on or about the first of each month for the value of labor and materials incorporated into the Work and of materials, suitably stored, at the site as of the twenty-fifth day of the preceding month, less normal retainage per La R.S. 38:2248 and referenced in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

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

9.3.1.4 The normal retainage shall not be due the Contractor until after substantial completion and expiration of the forty-five (45) day lien period and submission to the Architect of a clear lien certificate, consent of surety, and invoice for retainage.

§ 9.3.2 *Intentionally Omitted.*

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Payment Application Review Summary without discrepancies have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Payment Application Review Summaries Without Discrepancies

§ 9.4.1

Designated Owner's Representative will, within fourteen (14) days after receipt of the Contractor's complete and accurate Application for Payment in the format proscribed by Owner, either issue to the Owner Payment

Application Review Summary without discrepancies, with a copy to the Contractor, for such amounts as the designated Owner Representative determines is properly due, or notify the Contractor and Owner in writing of the designated Owner's Representative's reasoning for issuing a Payment Application Review Summary with discrepancies as provided in Section 9.5.1.

§ 9.4.2

The issuance of a Payment Application Review Summary without discrepancies will constitute a representation by the designated Owner's Representative to the Owner, based on the designated Owner's Representative's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the designated Owner's Representative's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents by the Architect upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the designated Owner's Representative. The issuance of a Payment Application Review Summary without discrepancies will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Payment Application Review Summary without discrepancies will not be a representation that the Architect or designated Owner's Representative has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Payment Application Review Summaries with Discrepancies

§ 9.5.1 The designated Owner's Representative may issue a Payment Application Review Summary with discrepancies in whole or in part, to the extent reasonably necessary to protect the Owner, if in the designated Owner's Representative's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the designated Owner's Representative is unable to issue a Payment Application Review Summary without discrepancies in the amount of the Application, the designated Owner's Representative will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and designated Owner's Representative cannot agree on a revised amount, the designated Owner's Representative will promptly issue a Payment Application Review Summary without discrepancies for the amount for which the designated Owner's Representative is able to make such representations to the Owner. The designated Owner's Representative may also issue a Payment Application Review Summary with discrepancies or, because of subsequently discovered evidence, may notify the Owner of any impacts to, in whole or part, a Payment Application Review Summary without discrepancies previously issued, to such extent as may be necessary in the designated Owner's Representative's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

Regardless of the designated Owner's Representative's decision to issue a Payment Application Review Summary with or without discrepancies, Owner maintains the right to review Owner's Representative's decision and make the final payment decision.

§ 9.5.2 When either party disputes the designated Owner's Representative's decision to issue a Payment Application Review Summary with Discrepancies under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the above reasons for withholding a Payment Application Review Summary without discrepancies are removed, a Payment Application Review Summary without discrepancies will be issued for amounts previously withheld.

§ 9.5.4 If the designated Owner's Representative withholds issuance of a Payment Application Review Summary without discrepancies under Section 9.5.1.3, the Owner may, at its sole option, review Owner's Representative's Payment Application Review Summary and Exhibits and make the final payment decision.

§ 9.6 Progress Payments to Subcontractors and to Material and Equipment Suppliers

§ 9.6.1 After the designated Owner's Representative has issued a Payment Application Review Summary without discrepancies, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the designated Owner's Representative.

§ 9.6.2 The Contractor shall pay to each Subcontractor, after receipt of payment from the Owner, the amount which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. La R.S. 9:2784 (A) and (C) require a Contractor or Subcontractor to make payment due to each Subcontractor and supplier within fourteen (14) consecutive days of the receipt of the payment from the Owner. If not paid, a penalty in the amount of ½ of 1% per day is due, up to a maximum of 15% from the expiration date until paid. The Contractor or Subcontractor, whichever is applicable, is solely responsible for payment of a penalty.

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

§ 9.6.4 Neither the Owner, the designated Owner's Representative, nor the Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law. Pursuant to La. R.S. 38:2242 and La. R.S. 38:2242.2, when the Owner receives any claim of nonpayment arising out of the Contract, the Owner shall deduct 125% of such claim from the Contract Sum. The Contractor, or any interested party, may deposit security, in accordance with La. R.S. 38:2242.2, guaranteeing payment of the claim with the recorder of mortgages of the parish where the Work has been done. When the Owner receives original proof of such guarantee from the recorder of mortgages, the claim deduction will be added back to the Contract Sum.

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

§ 9.6.6

A Payment Application Review Summary without discrepancies, a progress payment, or partial or entire use of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any

fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Intentionally Omitted.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Substantial Completion can mean either Substantial Completion of the Entirety of the Work or of a portion of the Work at a specific oilfield site.

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

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. 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 utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

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

§ 9.8.5 When the preparation of the punch list is complete the Architect shall prepare a Recommendation of Acceptance incorporating the punch list and submit it to the Owner. Upon approval of the Recommendation of Acceptance, the Owner may issue a Notice of Acceptance which shall establish the Date of Substantial Completion. The Contractor shall record the Notice of Acceptance with the Clerk of Court in the Parish in which the Work has been performed. If the Notice of Acceptance has not been recorded seven (7) days after issuance, the Owner may record the Acceptance at the Contractor's expense. All additive Change Orders must be processed before issuance of the Recommendation of Acceptance. The Owner shall not be responsible for payment for any Work associated with Change Orders that are not incorporated into the Contract at the time of the Recommendation of Acceptance.

§ 9.8.6 Warranties required by the Contract Documents shall commence on the date of Acceptance of the Work unless otherwise agreed to in writing by the Owner and Contractor. Unless otherwise agreed to in writing by the Owner and Contractor, security, maintenance, heat, utilities, damage to the Work not covered by the punch list and insurance shall become the Owner's responsibility on the Date of Substantial Completion.

§ 9.8.7 If all punch list items have not been completed by the end of the forty-five (45) day lien period, through no fault of the Architect or Owner, the Owner may hold the Contractor in default. If the Owner finds the Contractor is in default, the Surety shall be notified. If within forty-five (45) days after notification, the Surety has not completed the punch list, through no fault of the Architect or Owner, the Owner may, at his option, contract to have the balance of the Work completed and pay for such Work with unpaid funds remaining in the Contract sum. Finding the Contractor in default shall constitute a reason for disqualification of the Contractor from bidding on future State contracts. If the Surety fails to complete the punch list within the stipulated time period, the Owner may not accept bonds submitted, in the future, by the Surety.

§ 9.9 *Intentionally Omitted.*

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that all of the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly notify the Owner and designated Owner's Representative that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents. Upon notice by the Architect, the Owner's Representative will review the Final Completion Application for Payment from the Contractor and prepare the associated Review Summary for delivery to the Owner. If the Architect does not find the Work acceptable under the Contract Documents, the Architect shall make one additional inspection; if the Work is still not acceptable, the Architect, and each of the Architect's principal consultants, shall be paid in accordance with the rate set forth in their contract with Owner or Architect for their time at the Project site, for each additional inspection, to be withheld from the unpaid funds remaining in the Contract sum. The payment shall be made by the Owner and deducted from the construction contract funds.

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

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

§ 9.10.4 The making of final payment shall not constitute a waiver of Claims by the Owner for those arising from

- .1 Liens, claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner after final payment.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

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

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

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

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

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

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

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

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of

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

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB) or lead, encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately advise the Owner and Architect of the condition and shall obtain any and all required permits and/or permissions to remediate the affected area and notify the Owner and the Architect of the disposition of the disposal of same.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. The Contract time shall be extended appropriately.

§ 10.3.3 The Contractor shall be held to the standard of an expert for purposes of remediation of contaminated materials. Therefore to the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

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

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

§ 10.4 Emergencies

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

ARTICLE 11 Insurance and Bonds

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

§ 11.2 Minimum Scope and Limits of Insurance

§ 11.2.1 Workers Compensation Worker's Compensation insurance shall be in compliance with the Worker's Compensation law of the Contractor's headquarters. Employers Liability is included with a minimum limit of \$1,000,000 per accident/ per disease/per employee. If Work is to be performed over water and involves maritime exposure, applicable LHWCA, Jones Act or other maritime law coverage shall be included. A.M. Best's insurance company rating requirement may be waived for Worker's compensation coverage only if insured through a self-insured fund. The Worker's Compensation coverage shall also provide the following:

- .1 Statutory coverage and Employer's liability.
- .2 Waiver of Subrogation in favor of: The State of Louisiana, all State Departments, Agencies, Board and commissions, its officers, directors, agents and employees with respect to any work done by the Insured under contract.
- .3 No restriction in coverage for use of explosives.

§ 11.2.2 Commercial General Liability Commercial General Liability insurance, including Personal and Advertising Injury Liability and Products and Completed Operations Liability, shall have a minimum limit per occurrence based on the project value. The Insurance Services Office (ISO) Commercial General Liability occurrence coverage form CG 00 01 (current form approved for use in Louisiana), or equivalent, is to be used in the policy. Claims-made form is unacceptable. The aggregate loss limit must apply to each project if said policy is not policy specific. ISO form CG 25 03 (current form approved for use in Louisiana), or equivalent, shall be submitted. The State project number, including part number, and project name shall be included on the endorsement.

The Commercial General Liability policy shall also provide the following:

- A. Minimum limits of \$4,000,000 per occurrence; \$8,000,000.00 in aggregate.
- B. The State of Louisiana, all State Departments, Agencies, Board and Commissions, its officers, directors, agents, and employees are to be added as Additional Insureds as respects liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor, premises owned, occupied or used by the Contractor. ISO Form CG 20 10 (for ongoing work) AND CG 20 37 (for completed work) (current forms approved for use in Louisiana), or equivalent, are to be used.
- C. Waiver of Subrogation in favor of: The State of Louisiana, all State Departments, Agencies, Board and Commissions, its officers, directors, agents and employees with respect to any work done by the insured under contract.
- D. Products-Completed Operations
- E. Broad Form Property Damage
- F. This policy shall be issued on a Primary Non-Contributory basis.
- G. XCU – Explosion / Collapse / Underground
- H. No restriction in coverage for use of explosives

Maximum per occurrence limit required is \$10,000,000 regardless of the building value. The per-project aggregate limit is then calculated as twice the per occurrence limit.

§ 11.2.3 Automobile Liability

Auto mobile Liability Insurance shall have a minimum combined single limit per occurrence of \$1,000,000. ISO form number CA 00 01 (current form approved for use in Louisiana), or equivalent, is to be used in the policy. This insurance shall include third-party bodily injury and property damage liability for owned, hired and non-owned automobiles. Automobile liability policy shall also provide the following:

- .1 Owned/Non Owned/Hired Automobiles.
- .2 Additional Insured – State of Louisiana, all State Departments, Agencies, Boards and Commissions, its officers, directors, agents, and employees are to be included as additional insureds with respect to any work done by the insured under contract.
- .3 Waiver of Subrogation in favor of: The State of Louisiana, all State Departments, Agencies, Board and Commissions, its officers, directors, agents and employees with respect to any work done by the insured under Contract.
- .4 Policy shall be issued on a Primary Non-Contributory basis.

- .5 The Construction Manager may achieve the required limits and coverage for Commercial General Liability, Automobile Liability and Employers Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Commercial General Liability, Commercial Automobile Liability, and Employers Liability and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. The excess policy shall also follow form over the underlying Additional Insured requirements, Waiver of Subrogation and Primary Non-Contributory requirements,

§ 11.2.4 Excess Umbrella

Excess Umbrella Insurance may be used to meet the minimum requirements for General Liability and Automobile Liability only.

§ 11.2.5 Builder's Risk *Intentionally Omitted*

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

- .1 Pollution Liability including Clean up \$4,000,000.00 per occurrence; \$8,000,000.00 in aggregate.
- .2 Underground Resources \$1,000,000.00 per occurrence, \$2,000,000.00 in aggregate.
- .3 Blowout & Cratering - \$4,000,000.00 per occurrence; \$8,000,000.00 in aggregate. The State of Louisiana, all State Departments, Agencies, Board and Commissions, its officers, directors, agents and employees shall be considered an Additional Insured with a Waiver of Subrogation with respects to Pollution Liability and Underground Resources with a Waiver of Subrogation in favor of The State of Louisiana, all State Departments, Agencies, Board and Commissions, its officers, directors, agents and employees on Blowout and Cratering.

§ 11.2.7 Deductibles and Self-Insured Retentions

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

§ 11.3 OTHER INSURANCE PROVISIONS

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

§ 11.3.1.1 Worker's Compensation and Employers Liability Coverage

§ 11.3.1.1.1 To the fullest allowed by law, the insurer shall agree to waive all rights to subrogation against the

Owner, its officers, agents, employees and volunteers for losses arising from Work performed by the Contractor for the Owner.

§ 11.3.1.2 Commercial General Liability Coverage

§ 11.3.1.2.1 The Owner, its officers, agents, employees and volunteers are to be added as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor, premises owned, occupied or used by the Contractor. ISO

Form CG 20 10 (for ongoing work) AND CG 20 37 (for completed work) (current forms approved for use in Louisiana), or equivalent, are to be used.

§ 11.3.1.2.2 The Contractor's insurance shall be primary as respects the Owner, its officers, agents, employees and volunteers for any and all losses that occur under the contract. The coverage shall contain no special limitations on the scope of protection afforded to the Owner, its officers, officials, employees or volunteers. Any insurance or self-insurance maintained by the Owner shall be excess and non-contributory of the Contractor's insurance.

§ 11.3.1.3 Builder's Risk

The policy must include an endorsement providing the following:

In the event of a disagreement regarding a loss covered by the policy, which may also be covered by a State of

Louisiana self-insurance or commercial property policy through the Office of Risk Management (ORM), Contractor and its insurer agree to follow the following procedure to establish coverage and/or the amount of loss:

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

§ 11.3.1.4 All Coverages

§ 11.3.1.4.1

All policies must be endorsed to require thirty (30) days written notice of cancellation to the Agency. Ten-day written notice of cancellation is acceptable for non-payment of premium. Notifications shall comply with the standard cancellation provisions in the Contractor's policy. In addition, Contractor is required to notify Agency of policy cancellations or reductions in limits. Neither the acceptance of the completed Work nor the payment thereof shall release the Contractor from the obligations of the insurance requirements or indemnification agreement. Any failure of the Contractor to comply with reporting provisions of the policy shall not affect coverage provided to the Owner, its officers, agents, employees and volunteers.

§ 11.3.1.4.2 Neither the acceptance of the completed Work nor the payment thereof shall release the Contractor from the obligations of the insurance requirements or indemnification agreement.

§ 11.3.1.4.3 Any failure of the Contractor to comply with reporting provisions of the policy shall not affect coverage provided to the Owner, its officers, agents, employees and volunteers.

§ 11.3.2 Acceptability of Insurers

All required insurance shall be provided by a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located. Insurance shall be placed with insurers with an A.M. Best's rating of A-

: VI or higher. This rating requirement may be waived for Worker's compensation coverage only. If at any time an insurer issuing any such policy does not meet the minimum A.M. Best rating, the Contractor shall obtain a policy with an insurer that meets the A.M. Best rating and shall submit another certificate of insurance within 30 days.

§ 11.3.3 Verification of Coverage

Contractor shall furnish the Owner with Certificates of Insurance reflecting proof of required coverage. The

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

State of Louisiana
Department of Conservation and Energy
617 N 3rd St, Baton Rouge, LA 70802
Attn: Project# _____

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

Upon Failure of the Contractor to furnish, deliver and maintain required insurance, this contract, at t of the Agency, may be suspended, discontinued, or terminated. Failure of the Contractor to purchase and/or maintain any required insurance shall not relieve the Contractor from any liability or indemnification under the contract. If the Contractor does not meet the insurance requirements at policy renewal, at the option of the Owner, payment to the Contractor may be withheld until the requirements have been met, OR the Owner may pay the renewal premium and withhold such payment from any monies due to the Contractor, OR the contract may be suspended or terminated for cause.

§ 11.3.4 Subcontractors

Contractor shall include all subcontractors as insureds under its policies OR shall be responsible for verifying and maintaining the certificates provided by each subcontractor. Subcontractors shall be subject to all of the requirements stated herein. The Owner reserves the right to request copies of subcontractors' certificates at any time. If Contractor does not verify subcontractors' insurance as described above, Owner has the right to withhold payments to the Contractor until the requirements have been met.

§ 11.3.5 Statutory Employer and Workers' Compensation Indemnity: Contractor shall provide services contemplated under this agreement as an independent contractor and not as an employee, agent, joint venturer, subcontractor, or partner of the Owner. Nothing in this agreement shall be construed as creating any other relationship between Contractor and Owner, or between any employee, agent, joint venturer, subcontractor, or agent of Contractor and the Owner. During the term of this agreement, all persons employed by Contractor shall be an employee of the Contractor for purposes of the Contractor's benefit programs for plans now existing or hereafter created workers' compensation, compensation and payment, and withholding of federal, state, and local income, social security, unemployment, Medicare, and other payroll taxes. Contractor acknowledges independent contractor status within the meaning of "Louisiana Workers" compensation law, specifically Louisiana Revised Statute 23:1021(7). Contractor is rendering a service, other than manual labor, for a specified recompense for a specified result either as a unit or as a whole, under the control of the Owner as to the result of this work only, and not as to the means by which such result is accomplished.

The parties also hereby agree that the State of Louisiana, its departments, agencies, agents and employees shall in no circumstance be or be considered as, the employer or statutory employer of Contractor, its owners, agents, and employees. The parties further agree that Contractor is a wholly independent contractor and is exclusively responsible for its employees, owners, and agents. Contractor hereby agrees to protect, defend, indemnify, and hold harmless the State of Louisiana, its departments, agencies, Officers, agents, and employees harmless from any such assertion or claim that may arise from the performance of this contract.

§ 11.3.6 Indemnification/ Hold Harmless Agreement

Contractor agrees to protect, defend, indemnify, save, and hold harmless, the State of Louisiana, all State Departments, Agencies, Boards and Commissions, its officers, agents, servants, employees and volunteers, from and against any and all claims, damages, expenses and liability arising out of injury or death to any

person or the damage, loss or destruction of any property which may occur, or in any way grow out of, any act or omission of Contractor, its agents, servants and employees, or any and all costs, expenses and/or attorney fees incurred by Contractor as a result of any claims demands, suits or causes of action, except those claims, demands, suits or causes of action arising out of the negligence of the State of Louisiana, all State Departments, Agencies, Boards, Commissions, its officers, agents, servants, employees and volunteers. Contractor agrees to investigate, handle, respond to, provide defense for and defend any such claims, demands, suits or causes of action at its sole expense and agrees to bear all other costs and expenses related thereto, even if the claims, demands, suits, or causes of action are groundless, false or fraudulent. The State of Louisiana may, but is not required to, consult with the Contractor in the defense of claims, but this shall not affect the Contractor's responsibility for the handling and expenses of all claims. The duty to defend under this Section 11 is wholly independent of and separate from the duty to indemnify and such duty to defend exists regardless of any ultimate liability of Subcontractor. In any and all claims against any of the Indemnitees by any employee of the Subcontractor or one of its subcontractors, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under Section 11 will not be limited in any way by any limitation in the amount or type of damages, compensation or benefits payable under any worker's compensation acts, disability benefit acts or other employee benefit acts. This indemnity applies during the entire period of the Subcontract and shall survive the expiration or termination of the Subcontract until such time as any action or accounting of any matter covered by such indemnity is determined by a court in a final and unappealable ruling as being barred by the applicable statute of limitations. The Contractor agrees to commence defense of the State immediately upon tender provided however, that defense counsel shall be approved by the State in writing and acceptance, or rejection, of counsel shall be at the Owner's sole discretion whereupon alternate counsel shall be provided by Contractor.

§ 11.4 PERFORMANCE AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. Said surety bonds, from a company or companies lawfully authorized to issue surety bonds in the State of Louisiana, shall be as follows:

TYPE	PENAL SUM
Payment Bond	Fifteen Million Dollars (\$15,000,000.00)
Performance Bond	Fifteen Million Dollars (\$15,000,000.00)

Payment and Performance Bonds shall be AIA Document A312, Payment Bond and Performance Bond, or contain provisions identical to AIA Document AA312, current as of the date of this Agreement.

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

§ 11.4.3 Recordation of Contract and Bond [La R.S. 38:2241 thru 38:2241.1]

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract

Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If the Contractor fails to correct Work identified as defective within a thirty (30) day period, through no fault of the Designer, the Owner may hold the Contractor in default. If the Owner finds the Contractor in default, the Surety shall be notified. If within thirty (30) days after notification, the Surety has not corrected the nonconforming Work, through no fault of the Architect or Owner, the Owner may contract to have nonconforming Work corrected and hold the Surety and Contractor responsible for the cost, including architectural fees and other indirect costs. If the Surety fails to correct the Work within the stipulated time period and fails to meet its obligation to pay the costs, the Owner may elect not to accept bonds submitted in the future by the Surety. Finding the Contractor in default shall constitute a reason for disqualification of the Contractor from bidding on future state contracts.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1

In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work as to the entirety of the Work or to a designated portion thereof (including upon Substantial Completion of the Work at each individual oilfield site) or after the date for commencement of warranties established under any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work, or Work covered by warranties, within a thirty (30) day period, through no fault of the Architect or Owner, the Owner may hold the Contractor in default. If the Owner finds the Contractor is in default, the Surety shall be notified. If within thirty (30) days after notification, the Surety has not corrected the non-conforming or warranty Work, through no fault of the Architect or Owner, the Owner may contract to have the nonconforming or warranty Work corrected and hold the Surety responsible for the cost including architects fees and other indirect costs. Corrections by the Owner shall be in accordance with Section 2.4. If the Surety fails to correct the nonconforming or warranty Work within the stipulated time period and fails to meet its obligation to pay the costs, the Owner may not accept bonds submitted, in the future, by the Surety.

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

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

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

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for

correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the State of Louisiana.

§ 13.2 Successors and Assigns

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

§ 13.2.2 *Intentionally Omitted.*

§ 13.3 Rights and Remedies

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

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

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

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. The Contractor shall make arrangements for such tests, inspections and approvals with the Testing Laboratory provided by the Owner, and the Contractor shall bear all related cost of tests, inspections and approvals as part of the Guaranteed Maximum Price. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs shall be at the Owner's expense.

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

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

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

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

§ 13.5 *Intentionally Omitted.*

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

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

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead, on Work not executed, and costs incurred by reason of such termination.

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

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents; or
- .5 failure to complete the punch list within the lien period as provided in Section 9.8.7.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. Termination by the Owner shall not suspend assessment of liquidated damages against the Surety.

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

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

§ 14.3 Suspension by the Owner for Convenience

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

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

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

§ 14.4 Termination by the Owner for Convenience

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

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement, if any, and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. A reservation of rights and similar stipulations shall not be recognized under this Contract as having any effect. A party must make a claim as defined herein within the time limits provided.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The designated Owner's Representative will issue a Payment Application Review Summary without Discrepancy in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Contractor shall document that weather conditions had an adverse effect on the scheduled construction. An increase in the contract time due to weather shall not be cause for an increase in the contract sum. At the end of each month, the Contractor shall make one Claim for any adverse weather days occurring within the month. The Claim must be accompanied by sufficient documentation evidencing the adverse days and the impact on construction. Failure to make such Claim within twenty-one (21) days from the last day of the month shall prohibit any future claims for adverse days for that month. No additional adverse weather days shall be granted after the original or extended contract completion date, except those adverse weather days associated with a National Weather Service named storm or federally declared weather related disaster directly affecting the project site.

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

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

§ 15.1.7 Waiver of Claims for Consequential Damages

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

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, and for losses of financing, business, and reputation arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3 and 10.4, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

Claim.

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

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

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties except that the Owner may reject the decision or suggest a compromise or both.

§ 15.2.6 *Intentionally Omitted.*

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

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

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§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the

Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.8 Building Information Models Use and Reliance

~~Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees~~Intentionally Omitted.

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

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 ~~Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.~~

§ 2.2.2 ~~Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.~~

§ 2.2.3 ~~After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~

§ 2.2.4 ~~Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.~~

Intentionally Omitted.

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

§ 2.3.2 ~~The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture~~The Owner shall provide documentation substantiating its rights under Louisiana Law at La. R.S. 30:80, et seq., to enter upon land subject to its authority.

§ 2.3.2 The term Architect, when used in the Contract Documents, shall mean the prime Design Professional (Architect, Engineer of Record, or Design Professional), or his authorized representative, lawfully licensed to

practice architecture, engineering, etc., in the State of Louisiana, identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall retain an engineer lawfully licensed to practice engineering, or an entity lawfully practicing engineering, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 ~~If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.~~

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

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If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of 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 default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the ~~Architect~~ Owner and the ~~Architect~~ designated Owner's Representative may, pursuant to Section 9.5.1, withhold or nullify a ~~Certificate for Payment~~ Payment Application Review Summary without discrepancies in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the ~~Architect's~~ Architect or designated Owner's Representative's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. ~~If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.~~

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the ~~sites~~ sites, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, ~~as well as the information furnished by the Owner pursuant to Section 2.3.4,~~ shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.-

§ 3.4.3 The

~~Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work and its employees, officers, agents, representatives, and Subcontractors shall conduct themselves~~

in an appropriate and professional manner, in accordance with the Owner's requirements, at all times while working

on the Project. Any such individual who behaves in an inappropriate manner or who engages in the use of inappropriate language or conduct while in the performance of the Work, as determined by the Owner, shall be removed from the Project at the Owner's request. Such individual shall not be permitted to return without the written permission of the Owner. The Owner shall not be responsible or liable to Contractor or any Subcontractor for any additional costs, expenses, losses, claims or damages incurred by Contractor or its Subcontractor as a result of the removal of an individual from the Project pursuant to this Section. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

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

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with ~~Section~~ Article 9.8.4.

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for ~~the building permit as well as for other~~ any permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. Such permits may include, but shall not be limited to, coastal use permits, Army Corps permits, and/or local permits.

§ 3.7.5 If, ~~in~~ during the course of the Work, the Contractor ~~encounters~~ discovers human remains or recognizes the existence of ~~burial markers, archaeological sites or wetlands, unmarked burial or archaeological sites, burial artifacts, or wetlands, which are~~ not indicated in the Contract Documents, the Contractor shall ~~immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in~~ follow all procedures mandated by the State and Federal law, including but not limited to La R.S. 8:671 et seq., the Office of Coastal Protection and Restoration, and Sections 401 & 404 of the Federal Clean Water Act. Request for adjustment of the Contract Sum and Contract Time arising from the existence of such remains or features ~~may~~ shall be made as provided in Article 15.

§ 3.8 Allowances

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

§ 3.8.2 ~~Unless otherwise provided in the Contract Documents,~~

- ~~1~~ — allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

~~2~~—Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

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~~3~~—whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2 submitted in writing to the Owner pursuant to the Contract Documents. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

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

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

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. For projects with a contract sum greater than \$1,000,000.00, the Contractor shall include with the schedule, for the Owner's and Architect's information, a network analysis to identify those tasks which are on the critical path, i.e., where any delay in the completion of these tasks will lengthen the project timescale, unless action is taken. A revised schedule shall be submitted with each Application and Certification for Payment. No payment shall be made until this schedule is received.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect. If the Work is not on schedule, as determined by the Architect, and the Contractor fails to take action to bring the Work on schedule, then the Contractor shall be deemed in default under this Contract and the progress of the Work shall be deemed unsatisfactory. Such default may be considered grounds for termination by the Owner for cause in accordance with Section 14.2.

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

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§ 3.10.5 In the event the Owner employs a commissioning consultant, the Contractor shall cooperate fully in the commissioning process and shall require all subcontractors and others under his control to cooperate. The purpose of such services shall be to ensure that all systems perform correctly and interactively according to the provisions of the Contract Documents.

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. This requirement is of the essence of the contract. The Architect shall determine the value of these documents and this amount shall not be approved for payment to the Contractor until all of the listed documents

are delivered to the Architect in good order, completely marked with field changes and otherwise complete in all aspects.

§ 3.12.1 Shop Drawings are

Where applicable, shop drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work shall be provided to the Owner.

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§ 3.18.1 To the fullest extent permitted by law, ~~the~~

Contractor ~~shall agree to protect, defend, indemnify, save, and hold harmless, the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. State of Louisiana, all State Departments, Agencies, Boards and Commissions, its officers, agents, servants, employees, and volunteers, from and against any and all claims, damages, expenses, and liability arising out of injury or death to any person or the damage, loss or destruction of any property which may occur, or in any way grow out of, any act or omission of Contractor, its officers, agents, servants, employees, and volunteers, or any and all costs, expenses and/or attorney fees incurred by Contractor as a result of any claims, demands, suits, or causes of action, except those claims, demands, suits or causes of action arising out of the negligence of the State of Louisiana, all State Departments, Agencies, Boards, Commissions, its officers, agents, servants, employees, and volunteers.~~

Contractor agrees to investigate, handle, respond to provide defense for and defend any such claims, demands, suits or causes of action as its sole expense and agrees to bear all other costs and expenses related thereto, even if the claims, demands, suits, or causes of action are groundless, false, or fraudulent. The Owner may, but is not required to, consult with the Contractor in the defense claims, but this shall not affect the Contractor's responsibility for the handling of expenses of all claims.

The duty to defend is wholly independent of and separate from the duty to indemnify and such duty to defend exists regardless of any ultimate liability of Owner. In any and all claims against any of the Indemnitees by any employee of the Contractor or more of its subcontractors, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the compensation or benefits payable under Section 11 will not be limited in any way by any limitation in the amount or type of damages, compensation or benefits payable under any worker's compensation acts, disability benefit acts or other employee benefit acts. This indemnity applies during the entire period of the Contract and shall survive the expiration or termination of the Contract until such time as any action or accounting of any matter covered by such indemnity is determined by a court in a final unappealable ruling as being barred by the applicable statute of limitations.

The Contractor agrees to commence defense of the Owner immediately upon tender provided however, that defense counsel shall be approved by the Owner in writing and acceptance, or rejection, of counsel shall be at Owner's sole discretion whereupon alternate counsel shall be provided by Contractor. In the event the Owner is found, after a trial on the merits, contributorily negligent, an equalizing payment for costs of defense shall be made to Contractor at a pro-rata share of liability after the trial of the matter and after a final unappealable judgment is rendered. There shall be no interest accrued on any such amount.

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§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement. The term “Architect” is used in the Contract Documents interchangeably with “Engineer,” “Engineer of Record” or “Design Professional.”

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

§ 4.2.1 The Architect will ~~provide~~ support the designated Owner’s Representative in providing administration of the Contract as described in the Contract Documents and will be an Owner’s representative during construction until the date the Architect issues the final Certificate for Payment of final payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

~~The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect’s services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project may communicate directly with each other, when deemed necessary by the Owner, and~~

the Owner will notify the Architect and Owner’s Representatives of any decisions. Communications by and with the Architect’s consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect’s designated Owner’s Representative’s evaluations of the Contractor’s Applications for Payment, the Architect designated Owner’s Representative will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts Payment Application Review Summaries with or without discrepancies, whichever is applicable.

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

If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect’s responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives. There shall be no restriction on the

Owner having a Representative. The Owner shall notify the Contractor of any change in the duties, responsibilities, and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect’s response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretation required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretation until 15 days after written request is made for them.

The Architect will review and respond to requests for information about the Contract Documents. The-

Architect’s response to such requests will be made in writing within any time limits agreed upon or otherwise with-

reasonable promptness. If appropriate, the Architect no agreement is made concerning the time within interpretation required of the Architect

shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to such interpretation until 15 days after written request is made for them. If appropriate, the Architect

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~~Unless otherwise stated in required by the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, shall furnish at the Pre-Construction Conference, to the Owner and the Architect, in writing, the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection) proposed for each of the principal portions of the Work. No Contractor payments shall be made until this information is received.~~

~~§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. The Contractor shall be solely responsible for selection and performance of all subcontractors. The Contractor shall not be entitled to claims for additional time and/or an increase in the contract sum due to a problem with performance or nonperformance of a subcontractor.~~

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

§ 5.4.1 Each subcontract agreement for a portion of the Work is may be assigned by the Contractor to the Owner, provided that

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§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted as agreed to by both the Subcontractor and the Owner for increases in cost resulting from the suspension.

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§ 7.1.4 As part of the Pre-construction conference submittals, the Contractor shall submit the following prior to the Contractor's initial request for payment

.1 Fixed job site overhead cost itemized with documentation to support daily rates.

.2 Bond Premium Rate with supporting information from the General Contractor's carrier.

.3 Labor Burden by trade for both Subcontractors and General Contractor. The Labor Burden shall be supported by the Worker's Compensation and Employer's Liability Insurance Policy Information Page. Provide for all trades.

.4 Internal Rate Charges for all significant company owned equipment.

§ 7.1.5 If the Contractor fails to submit the aforementioned documentation as part of the pre-construction submittals, then pay applications shall not be processed until such time as the Owner receives this information.

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

§ 7.2.2 “Cost of the Work” for the purpose of Change Orders shall be the eligible costs required to be incurred in performance of the Work and paid by the Contractor and Subcontractors

§ 7.2.3 Before a Change order is prepared, the Contractor shall prepare and deliver to the Architect the following information concerning the Cost of the Work, not subject to waiver, within a reasonable time after being notified to prepare said Change Order.

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

§ 7.2.5 In the event of a delay in the critical path, the Contractor shall submit all changes or adjustments to the Contract Time within twenty-one (21) days of the event giving rise to the delay. The Contractor shall submit documentation and justification for the adjustment by performing a critical path analysis of its most recent schedule in use prior to the change, which shows an extension in critical path activities.

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

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead ~~and profit~~ as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

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

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~~§ 7.3.9 Pending final determination of the total cost/costs of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive amounts not in dispute for such changes in the Work shall be included in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect’s professional judgment, to be reasonably justified. The Architect’s interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15 accompanied by a Change Order indicating the parties’ agreement with part or all of such costs.~~

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

§ 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.

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending ~~mediation and binding dispute resolution~~ litigation; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may ~~determine~~ recommend, subject to Owner's approval by Change Order. If the claim is not made within the limits of Article 15, all rights for future claims for that month are waived.

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

Values prepared as follows:

§ 9.2.1 The attached Schedule of Values Format shall be used. If applicable, the cost of Work for each section listed under each division shall be given. The cost for each section shall include Labor, Materials, and Overhead.

§ 9.2.2 The Total of all items shall equal the Total Contract Sum. This schedule, when approved by the Architect, shall be used as a basis for the Contractor's Applications for Payment and it may be used for determining the cost of the Work in deductive change orders, when a specific item of Work listed on the Schedule of Values is to be removed. Once the Schedule of Values is submitted at the Pre-Construction Conference, the schedule shall not be modified without approval from the Owner and Architect.

§ 9.3.1 At least ten days before the date established for each progress payment

Monthly, the Contractor shall submit to the Architect an itemized Owner Representative an Application & Certificate for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for on the AIA Document G702-1992, accompanied by AIA Document G703-1992, and supported by any additional data substantiating the Contractor's right to payment as the Owner may require. Application for Payment shall be submitted on or about the first of each month for the value of labor and materials incorporated into the Work and of materials, suitably stored, at the site as of the twenty-fifth day of the preceding month, less normal retainage per La R.S. 38:2248 and referenced in the Contract Documents.

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§ 9.3.2 Unless otherwise provided in the Contract Documents, payments **1.3** No payment 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 the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site until the revised schedule required by Section 3.10.1 is received.

9.3.1.4 The normal retainage shall not be due the Contractor until after substantial completion and expiration of the forty-five (45) day lien period and submission to the Architect of a clear lien certificate, consent of surety, and invoice for retainage.

§ 9.3.2 Intentionally Omitted.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment Payment Application Review Summary without discrepancies have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment Payment Application Review Summaries Without Discrepancies

§ 9.4.1 The Architect

Designated Owner's Representative will, within sevenfourteen (14) days after receipt of the Contractor's complete and accurate Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment in the format proscribed by Owner, either issue to the Owner Payment Application Review Summary without discrepancies, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect, for such amounts as the designated Owner Representative determines is properly due, and/or notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole in writing of the designated Owner's Representative's reasoning for issuing a Payment Application Review Summary with discrepancies as provided in Section 9.5.1.

The issuance of a Certificate for Payment Payment Application Review Summary without discrepancies will constitute a representation by the Architect designated Owner's Representative to the Owner, based on the Architect's designated Owner's Representative's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's designated Owner's Representative's knowledge, information, and belief, the Work has progressed to the point indicated; and that the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents by the Architect upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect designated Owner's Representative. The issuance of a Payment Application Review Summary without discrepancies will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Payment Application Review Summary without discrepancies will not be a representation that the Architect or designated Owner's Representative has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences; or procedures; (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification Payment Application Review Summaries with Discrepancies

§ 9.5.1 The Architect may withhold a Certificate for Payment designated Owner's Representative may issue a

Payment Application Review Summary with discrepancies in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's designated Owner's Representative's opinion the representations to the Owner required by Section-9.4.2 cannot be made. If the Architect designated Owner's Representative is unable to ~~certify payment~~ issue a Payment Application Review Summary without discrepancies in the amount of the Application, the Architect designated Owner's Representative will notify the Contractor and Owner as provided in Section-9.4.1. If the Contractor and Architect designated Owner's Representative cannot agree on a revised amount, the Architect designated Owner's Representative will promptly issue a Certificate for Payment Payment Application Review Summary without discrepancies for the amount for which the Architect designated Owner's Representative is able to make such representations to the Owner. The Architect designated Owner's Representative may also ~~withhold a Certificate for Payment~~ issue a Payment Application Review Summary with discrepancies or, because of subsequently discovered evidence, may ~~nullify the~~ notify the Owner of any impacts to, ~~in whole or a part of a Certificate for Payment~~ part, a Payment Application Review Summary without discrepancies previously issued, to such extent as may be necessary in the Architect's designated Owner's Representative's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section-3.3.2, because of

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- .2 third party claims filed or reasonable evidence indicating probable filing of such claims; unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or ~~suppliers~~ for labor, materials or equipment;
- .5 damage to the Owner or a ~~Separate Contractor~~ separate contractor;

Regardless of the designated Owner's Representative's decision to issue a Payment Application Review Summary with or without discrepancies, Owner maintains the right to review Owner's Representative's decision and make the final payment decision.

§ 9.5.2 When either party disputes the Architect's designated Owner's Representative's decision regarding a Certificate for Payment to issue a Payment Application Review Summary with Discrepancies under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the above reasons for withholding certification a Payment Application Review Summary without discrepancies are removed, ~~certification will be made~~ a Payment Application Review Summary without discrepancies will be issued for amounts previously withheld.

§ 9.5.4 If the Architect designated Owner's Representative ~~withholds certification for payment~~ issuance of a Payment Application Review Summary without discrepancies under Section-9.5.1.3, the Owner may, at its sole option, ~~issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment~~ review Owner's Representative's Payment Application Review Summary and Exhibits and make the final payment decision.

§ 9.6 Progress Payments to Subcontractors and to Material and Equipment Suppliers

§ 9.6.1 After the Architect designated Owner's Representative has issued a Certificate for Payment Payment Application Review Summary without discrepancies, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect designated Owner's Representative.

§ 9.6.2 The Contractor shall pay to each Subcontractor, ~~no later than seven days~~ after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. La R.S. 9:2784 (A) and (C) require a Contractor or Subcontractor to make payment due to each Subcontractor and supplier within fourteen (14) consecutive days of the receipt of the payment from the Owner. If

not paid, a penalty in the amount of ½ of 1% per day is due, up to a maximum of 15% from the expiration date until paid. The Contractor or Subcontractor, whichever is applicable, is solely responsible for payment of a penalty.

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

~~§ 9.6.4 The Neither the Owner, has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law the designated Owner's Representative, nor the Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law. Pursuant to La. R.S. 38:2242 and La. R.S. 38:2242.2, when the Owner receives any claim of nonpayment arising out of the Contract, the Owner shall deduct 125% of such claim from the Contract Sum. The Contractor, or any interested party, may deposit security, in accordance with La. R.S. 38:2242.2, guaranteeing payment of the claim with the recorder of mortgages of the parish where the Work has been done. When the Owner receives original proof of such guarantee from the recorder of mortgages, the claim deduction will be added back to the Contract Sum.~~

~~§ 9.6.6 A Certificate for Payment~~

~~A Payment Application Review Summary without discrepancies, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.~~

~~§ 9.7 Failure of Payment~~

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

~~§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Substantial Completion can mean either Substantial Completion of the Entirety of the Work or of a portion of the Work at a specific oilfield site.~~

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~~§ 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. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.~~

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

Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

~~§ 9.8.5~~ The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. Architect determines that the Project is Substantially Complete, he shall prepare a punch list of exceptions and the dollar value related thereto. The monetary value assigned to this list will be the sum of the cost estimate for each particular item the Architect develops based on the mobilization, labor, material and equipment costs of correcting the item and shall be retained from the monies owed to the contractor, above and beyond the standard lien retainage. The cost of these items shall be prepared in the same format as the schedule of values. At the end of the forty-five (45) day lien period payment shall be approved for all punch list items completed up to that time. After that payment, none of the remaining funds shall be due the contractor until all punch list items are completed and are accepted by the Architect. If the dollar value of the punch list exceeds the amount of funds, less the retainage amount, in the remaining balance of the Contract, then the Project shall not be considered as substantially complete. If funds remaining are less than that required to complete the Work, the Contractor shall pay the difference.

§ 9.9 Partial Occupancy or Use

~~§ 9.9.1~~ The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect. ~~8.5~~ When the preparation of the punch list is complete the Architect shall prepare a Recommendation of Acceptance incorporating the punch list and submit it to the Owner. Upon approval of the Recommendation of Acceptance, the Owner may issue a Notice of Acceptance which shall establish the Date of Substantial Completion. The Contractor shall record the Notice of Acceptance with the Clerk of Court in the Parish in which the Work has been performed. If the Notice of Acceptance has not been recorded seven (7) days after issuance, the Owner may record the Acceptance at the Contractor's expense. All additive Change Orders must be processed before issuance of the Recommendation of Acceptance. The Owner shall not be responsible for payment for any Work associated with Change Orders that are not incorporated into the Contract at the time of the Recommendation of Acceptance.

~~§ 9.8.6~~ Warranties required by the Contract Documents shall commence on the date of Acceptance of the Work unless otherwise agreed to in writing by the Owner and Contractor. Unless otherwise agreed to in writing by the Owner and Contractor, security, maintenance, heat, utilities, damage to the Work not covered by the punch list and insurance shall become the Owner's responsibility on the Date of Substantial Completion.

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

~~§ 9.9.3~~ Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents. 7 If all punch list items have not been completed by the end of the forty-five (45) day lien period, through no fault of the Architect or Owner, the Owner may hold the Contractor in default. If the Owner finds the Contractor is in default, the Surety shall be notified. If within forty-five (45) days after notification, the Surety has not completed the punch list, through no fault of the Architect or Owner, the Owner may, at his option, contract to have the balance of the Work completed and pay for such Work with unpaid funds remaining in the Contract sum. Finding the Contractor in default shall constitute a reason for disqualification of the Contractor from bidding on future State contracts. If the Surety fails to complete the punch list within the stipulated time period, the Owner may not accept bonds submitted, in the future, by the Surety.

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§ 9.9 Intentionally Omitted.

§ 9.10.1 Upon receipt of the Contractor's notice that all of the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating notify the Owner and designated Owner's Representative that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents ~~and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.~~ Upon notice by the Architect, the Owner's Representative will review the Final Completion Application for Payment from the Contractor and prepare the associated Review Summary for delivery to the Owner.

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

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

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

§ 9.10.4 The making of final payment shall not constitute a waiver of Claims by the Owner ~~except for~~ those arising from

- .1 ~~Liens, Claims~~ Liens, claims, security interests, or encumbrances arising out of the Contract and unsettled;

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.4 audits performed by the Owner, ~~if permitted by the Contract Documents~~, after final payment.

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

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

§ 10.3.3 ~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors~~ be extended appropriately.

§ 10.3.3 The Contractor shall be held to the standard of an expert for purposes of remediation of contaminated materials. Therefore to the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section-10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

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

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

§ 10.3.6 ~~If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred~~ 4 Emergencies

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

§ 10.4 Emergencies

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

ARTICLE 11 — INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds **ARTICLE 11 Insurance and Bonds**

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

§ 11.2 Minimum Scope and Limits of Insurance

§ 11.2.1 ~~The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents~~ **Workers Compensation** Worker's Compensation insurance shall be in compliance with the Worker's Compensation law of the Contractor's headquarters. Employers Liability is included with a minimum limit of \$1,000,000 per accident/ per disease/per employee. If Work is to be performed over water and involves maritime exposure, applicable LHWCA, Jones Act or other maritime law coverage shall be included. A.M. Best's insurance company rating requirement may be waived for Worker's compensation coverage only if insured through a self-insured fund. The Worker's Compensation coverage shall also provide the following:

- .1 Statutory coverage and Employer's liability.
- .2 Waiver of Subrogation in favor of: The State of Louisiana, all State Departments, Agencies, Board and commissions, its officers, directors, agents and employees with respect to any work done by the Insured under contract.
- .3 No restriction in coverage for use of explosives.

§ 11.2.2 ~~The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located~~ **Commercial General Liability** Commercial General Liability insurance, including Personal and Advertising Injury Liability and Products and Completed Operations Liability, shall have a minimum limit per occurrence based on the project value. The Insurance Services Office (ISO) Commercial General Liability occurrence coverage form CG 00 01 (current form approved for use in Louisiana), or equivalent, is to be used in the policy. Claims-made form is unacceptable. The aggregate loss limit must apply to each project if said policy is not policy specific. ISO form CG 25 03 (current form approved for use in Louisiana), or equivalent, shall be submitted. The State project number, including part number, and project name shall be included on the endorsement.

§ 11.1.3 ~~Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.~~ The Commercial General Liability policy shall also provide the following:

- A. Minimum limits of \$4,000,000 per occurrence; \$8,000,000.00 in aggregate.

- B. The State of Louisiana, all State Departments, Agencies, Board and Commissions, its officers, directors, agents, and employees are to be added as Additional Insureds as respects liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor, premises owned, occupied or used by the Contractor. ISO Form CG 20 10 (for ongoing work) AND CG 20 37 (for completed work) (current forms approved for use in Louisiana), or equivalent, are to be used.
- C. C. Waiver of Subrogation in favor of: The State of Louisiana, all State Departments, Agencies, Board and Commissions, its officers, directors, agents and employees with respect to any work done by the insured under contract.
- D. Products-Completed Operations
- E. Broad Form Property Damage
- F. This policy shall be issued on a Primary Non-Contributory basis.
- G. XCU – Explosion / Collapse / Underground
- H. No restriction in coverage for use of explosives

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Maximum per occurrence limit required is \$10,000,000 regardless of the building value. The per-project aggregate limit is then calculated as twice the per occurrence limit.

§ 11.12.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.
Automobile Liability

Auto mobile Liability Insurance shall have a minimum combined single limit per occurrence of \$1,000,000. ISO form number CA 00 01 (current form approved for use in Louisiana), or equivalent, is to be used in the policy. This insurance shall include third-party bodily injury and property damage liability for owned, hired and non-owned automobiles. Automobile liability policy shall also provide the following:

- .1 Owned/Non Owned/Hired Automobiles.
- .2 Additional Insured – State of Louisiana, all State Departments, Agencies, Boards and Commissions, its officers, directors, agents, and employees are to be included as additional insureds with respect to any work done by the insured under contract.
- .3 Waiver of Subrogation in favor of: The State of Louisiana, all State Departments, Agencies, Board and Commissions, its officers, directors, agents and employees with respect to any work done by the insured under Contract.
- .4 Policy shall be issued on a Primary Non-Contributory basis.

- .5 The Construction Manager may achieve the required limits and coverage for Commercial General Liability, Automobile Liability and Employers Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Commercial General Liability, Commercial Automobile Liability, and Employers Liability and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. The excess policy shall also follow form over the underlying Additional Insured requirements, Waiver of Subrogation and Primary Non-Contributory requirements.

§ 11.2.4 Excess Umbrella

Excess Umbrella Insurance may be used to meet the minimum requirements for General Liability and Automobile Liability only.

§ 11.2-Owner's Insurance.5 Builder's Risk Intentionally Omitted

~~§ 11.2.4 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.~~ **6** **Pollution Liability.** Pollution Liability insurance, including gradual release as well as sudden and accidental, shall have a minimum limit of not less than \$1,000,000 per claim. A claims-made form will be acceptable. A policy period inception date of no later than the first day of anticipated Work under this contract and an expiration date of no earlier than 30 days after anticipated completion of all Work under the contract shall be provided. There shall be an extended reporting period of at least 24 months, with full reinstatement of limits, from the expiration date of the policy if the policy is not renewed. The policy shall not be cancelled for any reason, except non-payment of premium. Pollution liability policy shall also provide the following:

- .1 Pollution Liability including Clean up \$4,000,000.00 per occurrence; \$8,000,000.00 in aggregate.
- .2 Underground Resources \$1,000,000.00 per occurrence, \$2,000,000.00 in aggregate.

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- .3 Blowout & Cratering - \$4,000,000.00 per occurrence; \$8,000,000.00 in aggregate. The State of Louisiana, all State Departments, Agencies, Board and Commissions, its officers, directors, agents and employees shall be considered an Additional Insured with a Waiver of Subrogation with respects to Pollution Liability and Underground Resources with a Waiver of Subrogation in favor of The State of Louisiana, all State Departments, Agencies, Board and Commissions, its officers, directors, agents and employees on Blowout and Cratering.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto. **7 Deductibles and Self-Insured Retentions**

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

responsible for all deductibles and self-insured retentions.

§ 11.3 OTHER INSURANCE PROVISIONS

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

§ 11.3.1.1 Worker's Compensation and Employers Liability Coverage

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

§ 11.3.1.2 Commercial General Liability Coverage

§ 11.3.1.2.1 The Owner, its officers, agents, employees and volunteers are to be added as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor, premises owned, occupied or used by the Contractor. ISO Form CG 20 10 (for ongoing work) AND CG 20 37 (for completed work) (current forms approved for use in Louisiana), or equivalent, are to be used.

§ 11.3.1.2.2 The Contractor's insurance shall be primary as respects the Owner, its officers, agents, employees and volunteers for any and all losses that occur under the contract. The coverage shall contain no special limitations on the scope of protection afforded to the Owner, its officers, officials, employees or volunteers. Any insurance or self-insurance maintained by the Owner shall be excess and non-contributory of the Contractor's insurance.

§ 11.3.1.3 Builder's Risk

The policy must include an endorsement providing the following:

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

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not

~~pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.~~ Any party to a loss may written demand for an appraisal of the matter in disagreement. Within 20 days of receipt of written demand, the Contractor's insurer and either ORM or its commercial insurance company shall each select a competent and impartial appraiser and notify the other of the appraiser selected. The two appraisers shall select a competent and impartial umpire. The appraisers shall then identify the policy or policies under which the loss is insured and, if necessary, state separately the value of the property and the amount of the loss that must be borne by each policy. If the two appraisers fail to agree, they shall submit their differences to the umpire. A written decision by any two shall determine the policy or policies and the amount of the loss. Each insurance company agrees that the decision of the appraisers and the umpire if involved shall be binding and final and that neither party will resort to litigation. Each of the two parties shall pay its chosen appraiser and bear the cost of the umpire equally.

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§ 11.3.1.4 All Coverages

§ 11.3.1.4.1

All policies must be endorsed to require thirty (30) days written notice of cancellation to the Agency. Ten-day written notice of cancellation is acceptable for non-payment of premium. Notifications shall comply with the standard cancellation provisions in the Contractor's policy. In addition, Contractor is required to notify Agency of policy cancellations or reductions in limits. Neither the acceptance of the completed Work nor the payment thereof shall release the Contractor from the obligations of the insurance requirements or indemnification agreement. Any failure of the Contractor to comply with reporting provisions of the policy shall not affect coverage provided to the Owner, its officers, agents, employees and volunteers.

§ 11.3.1.4.2 Neither the acceptance of the completed Work nor the payment thereof shall release the Contractor from the obligations of the insurance requirements or indemnification agreement.

§ 11.3.1.4.3 Any failure of the Contractor to comply with reporting provisions of the policy shall not affect coverage provided to the Owner, its officers, agents, employees and volunteers.

§ 11.3.2 Acceptability of Insurers

All required insurance shall be provided by a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located. Insurance shall be placed with insurers with an A.M. Best's rating of A-

: VI or higher. This rating requirement may be waived for Worker's compensation coverage only. If at any time an insurer issuing any such policy does not meet the minimum A.M. Best rating, the Contractor shall obtain a policy with an insurer that meets the A.M. Best rating and shall submit another certificate of insurance within 30 days.

§ 11.3.3 Verification of Coverage

Contractor shall furnish the Owner with Certificates of Insurance reflecting proof of required coverage. The

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

State of Louisiana

Department of Conservation and Energy

617 N 3rd St, Baton Rouge, LA 70802

Attn: Project# _____

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

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Upon Failure of the Contractor to furnish, deliver and maintain required insurance, this contract, at t of the Agency, may be suspended, discontinued, or terminated. Failure of the Contractor to purchase and/or maintain any required insurance shall not relieve the Contractor from any liability or indemnification under the contract. If the Contractor does not meet the insurance requirements at policy renewal, at the option of the Owner, payment to the Contractor may be withheld until the requirements have been met, OR the Owner may pay the renewal premium and withhold such payment from any monies due to the Contractor, OR the contract may be suspended or terminated for cause.

§ 11.3.4 Subcontractors

Contractor shall include all subcontractors as insureds under its policies OR shall be responsible for verifying and maintaining the certificates provided by each subcontractor. Subcontractors shall be subject to all of the requirements stated herein. The Owner reserves the right to request copies of subcontractors' certificates at any time. If Contractor does not verify subcontractors' insurance as described above, Owner has the right to withhold payments to the Contractor until the requirements have been met.

~~§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~
5 Statutory Employer and Workers' Compensation Indemnity:
Contractor shall provide services contemplated under this agreement as an independent contractor and not as an employee, agent, joint venturer, subcontractor, or partner of the Owner. Nothing in this agreement shall be construed as creating any other relationship between Contractor and Owner, or between any employee, agent, joint venturer, subcontractor, or agent of Contractor and the Owner. During the term of this agreement, all persons employed by Contractor shall be an employee of the Contractor for purposes of the Contractor's benefit programs for plans now existing or hereafter created workers' compensation, compensation and payment, and withholding of federal, state, and local income, social security, unemployment, Medicare, and other payroll taxes. Contractor acknowledges independent contractor status within the meaning of "Louisiana Workers" compensation law, specifically Louisiana Revised Statute 23:1021(7). Contractor is rendering a service, other than manual labor, for a specified recompense for a specified result either as a unit or as a whole, under the control of the Owner as to the result of this work only, and not as to the means by which such result is accomplished.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the

proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work. The parties also hereby agree that the State of Louisiana, its departments, agencies, agents and employees shall in no circumstance be or be considered as, the employer or statutory employer of Contractor, its owners, agents, and employees. The parties further agree that Contractor is a wholly independent contractor and is exclusively responsible for its employees, owners, and agents. Contractor hereby agrees to protect, defend, indemnify, and hold harmless the State of Louisiana, its departments, agencies, Officers, agents, and employees harmless from any such assertion or claim that may arise from the performance of this contract.

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§ 11.3.6 Indemnification/ Hold Harmless Agreement

Contractor agrees to protect, defend, indemnify, save, and hold harmless, the State of Louisiana, all State Departments, Agencies, Boards and Commissions, its officers, agents, servants, employees and volunteers, from and against any and all claims, damages, expenses and liability arising out of injury or death to any person or the damage, loss or destruction of any property which may occur, or in any way grow out of, any act or omission of Contractor, its agents, servants and employees, or any and all costs, expenses and/or attorney fees incurred by Contractor as a result of any claims demands, suits or causes of action, except those claims, demands, suits or causes of action arising out of the negligence of the State of Louisiana, all State Departments, Agencies, Boards, Commissions, its officers, agents, servants, employees and volunteers. Contractor agrees to investigate, handle, respond to, provide defense for and defend any such claims, demands, suits or causes of action at its sole expense and agrees to bear all other costs and expenses related thereto, even if the claims, demands, suits, or causes of action are groundless, false or fraudulent. The State of Louisiana may, but is not required to, consult with the Contractor in the defense of claims, but this shall not affect the Contractor's responsibility for the handling and expenses of all claims. The duty to defend under this Section 11 is wholly independent of and separate from the duty to indemnify and such duty to defend exists regardless of any ultimate liability of Subcontractor. In any and all claims against any of the Indemnitees by any employee of the Subcontractor or one of its subcontractors, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under Section 11 will not be limited in any way by any limitation in the amount or type of damages, compensation or benefits payable under any worker's compensation acts, disability benefit acts or other employee benefit acts. This indemnity applies during the entire period of the Subcontract and shall survive the expiration or termination of the Subcontract until such time as any action or accounting of any matter covered by such indemnity is determined by a court in a final and unappealable ruling as being barred by the applicable statute of limitations. The Contractor agrees to commence defense of the State immediately upon tender provided however, that defense counsel shall be approved by the State in writing and acceptance, or rejection, of counsel shall be at the Owner's sole discretion whereupon alternate counsel shall be provided by Contractor.

§ 11.4 PERFORMANCE AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. Said surety bonds, from a company or companies lawfully authorized to issue surety bonds in the State of Louisiana, shall be as follows:

<u>TYPE</u>	<u>PENAL SUM</u>
<u>Payment Bond</u>	<u>Fifteen Million Dollars (\$15,000,000.00)</u>
<u>Performance Bond</u>	<u>Fifteen Million Dollars (\$15,000,000.00)</u>

Payment and Performance Bonds shall be AIA Document A312, Payment Bond and Performance Bond, or contain provisions identical to AIA Document AA312, current as of the date of this Agreement.

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

shall authorize a copy to be furnished.

§ 11.4.3 Recordation of Contract and Bond [La R.S. 38:2241 thru 38:2241.1]

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

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The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If the Contractor fails to correct Work identified as defective within a thirty (30) day period, through no fault of the Designer, the Owner may hold the Contractor in default. If the Owner finds the Contractor in default, the Surety shall be notified. If within thirty (30) days after notification, the Surety has not corrected the nonconforming Work, through no fault of the Architect or Owner, the Owner may contract to have nonconforming Work corrected and hold the Surety and Contractor responsible for the cost, including architectural fees and other indirect costs. If the Surety fails to correct the Work within the stipulated time period and fails to meet its obligation to pay the costs, the Owner may elect not to accept bonds submitted in the future by the Surety. Finding the Contractor in default shall constitute a reason for disqualification of the Contractor from bidding on future state contracts.

In addition to the Contractor's obligations under Section-3.5, if, within one year after the date of Substantial Completion of the Work ~~or as to the entirety of the Work or to a designated portion thereof (including upon Substantial Completion of the Work at each individual oilfield site)~~ or after the date for commencement of warranties established under ~~Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents,~~ any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work, or Work covered by warranties, within a reasonable time during that thirty (30) day period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5, through no fault of the Architect or Owner, the Owner may hold the Contractor in default. If the Owner finds the Contractor is in default, the Surety shall be notified. If within thirty (30) days after notification, the Surety has not corrected the non-conforming or warranty Work, through no fault of the Architect or Owner, the Owner may contract to have the nonconforming or warranty Work corrected and hold the Surety responsible for the cost including architects fees and other indirect costs. Corrections by the Owner shall be in accordance with Section 2.4. If the Surety fails to correct the nonconforming or warranty Work within the stipulated time period and fails to meet its obligation to pay the costs, the Owner may not accept bonds submitted, in the future, by the Surety.

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The Contract shall be governed by the law of the ~~place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern~~ Section 15.4 State of Louisiana.

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

§ 13.2.2 ~~The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents.~~

~~The Contractor shall execute all consents reasonably required to facilitate the assignment~~Intentionally Omitted.

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

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. ~~Unless otherwise provided, the~~The Contractor shall make arrangements for such tests, inspections, and approvals with ~~an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals~~the Testing Laboratory provided by the Owner, and the Contractor shall bear all related cost of tests, inspections and approvals as part of the Guaranteed Maximum Price. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. ~~The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.~~

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval ~~not included under Section 13.4.1~~, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, ~~except as provided in Section 13.4.3~~, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval ~~under Sections 13.4.1 and 13.4.2~~ reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

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§ 13.5 Interest

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

- ~~.2~~ An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- ~~.3~~ Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- ~~.4~~ ~~The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead ~~and profit~~, on Work not executed, and costs incurred by reason of such termination.

- ~~.3~~ repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- ~~.4~~ otherwise is guilty of substantial breach of a provision of the Contract Documents; or
- ~~.5~~ failure to complete the punch list within the lien period as provided in Section 9.8.7.

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§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. Termination by the Owner shall not suspend assessment of liquidated damages against the Surety.

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

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

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The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement, if any, and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. A reservation of rights and similar stipulations shall not be recognized under this Contract as having any effect. A party must make a claim as defined herein within the time limits provided.

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in ~~Section 9.7 and~~ Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. ~~The Architect designated~~ Owner's Representative will issue Certificates for Payments Payment Application Review Summary without Discrepancy in accordance with the decision of the Initial Decision Maker.

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§ 15.1.6.2 ~~If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.~~ Contractor shall document that weather conditions had an adverse effect on the scheduled construction. An increase in the contract time due to weather shall not be cause for an increase in the contract sum. At the end of each month, the Contractor shall make one Claim for any adverse weather days occurring within the month. The Claim must be accompanied by sufficient documentation evidencing the adverse days and the impact on construction. Failure to make such Claim within twenty-one (21) days from the last day of the month shall prohibit any future claims for adverse days for that month. No additional adverse weather days shall be granted after the original or extended contract completion date, except those adverse weather days associated with a National Weather Service named storm or federally declared weather related disaster directly affecting the project site.

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

January 11 days

July 6 days

February 10 days

August 5 days

March 8 days

September 4 days

April 7 days

October 3 days

May 5 days

November 5 days

June 6 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.

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, ~~profit~~, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, and for losses of financing, business, and reputation, ~~and for loss of profit, except anticipated profit~~ arising directly from the Work.

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, and 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

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

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§ 15.3 Mediation

§ 15.3.1 ~~Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.~~

§ 15.3.2 ~~The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction~~

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

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

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

§ 15.4 Arbitration

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

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

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

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

§ 15.4.4 Consolidation or Joinder

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

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

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

Variable Information

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Orphaned Well Site Remediation and Restoration Management

Project No. 431-PA27-002