



ADDENDUM NO. 4

## **REQUEST FOR QUALIFICATIONS**

**PART A: PRE-CONSTRUCTION SERVICES and  
PART B: CONSTRUCTION SERVICES (Construction Manager at Risk)**

**Center for Medical Education and Wellness  
LSU Health Sciences Center - Shreveport  
Louisiana State University  
Project No. 19-604S-15-01, F.19002219**

April 28, 2020

**ITEM NO. 1: EXHIBIT 9 - AIA A201-2017 as modified by Owner**

This Addendum No. 4 includes Exhibit 9 – General Conditions of the Contract for Construction (AIA A201-2017 as modified by Owner) in its entirety (attached).

**END OF ADDENDUM**

# AIA® Document A201™ - 2017

## General Conditions of the Contract for Construction

April 28, 2020

### For the following PROJECT:

**Center for Medical Education and Wellness  
LSU Health Sciences Center - Shreveport  
Louisiana State University  
Project No. 19-604S-15-01, F.19002219**

### THE OWNER:

**State of Louisiana  
Office of the Governor  
Division of Administration  
Office of Facility Planning and Control  
Claiborne Office Building, 1201 North Third Street, Suite 7-160  
Baton Rouge, LA 70804-9095**

### THE ARCHITECT:

**Coleman Partners, LLC / Perkins+Will, LLC, A Joint Venture  
3377 North Blvd  
Baton Rouge, LA 70806**

### THE CONSTRUCTION MANAGER:

*(Name, legal status and address)*

**To Be Determined**

#### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

## TABLE OF ARTICLES

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

# AIA<sup>®</sup> Document A201<sup>™</sup> – 2017

## *General Conditions of the Contract for Construction*

### 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 Construction Manager as a Constructor (Part A: Pre-Construction Services and Part B: Construction Services) where the basis of payment is the Cost of the Work plus a Fee with a Guaranteed Maximum Price (GMP), AIA Document A133-2009 as modified by Owner (hereinafter referred to as the Agreement). The Contract Documents consist of the Agreement Between Owner and Construction Manager as Constructor - AIA A133-2009 as modified by the Owner; General Conditions of the Contract for Construction - AIA Document A201-2017 as modified by Owner; Owner's Documents which include the Drawings, Project Manuals including Specifications, all Exhibits, Supplementary Instructions, and Provisions; the Owner's Request for Qualifications (RFQ); Addenda issued during the RFQ proposal period and acknowledged by the Proposers; Addenda and post-proposal Addenda; the Construction Manager's Proposal (Statement of Qualifications) including all Attachments and Exhibits issued in response to the RFQ; the Construction Manager's Cost Proposal, the Construction Manager's Guaranteed Maximum Price (GMP) Proposal accepted by the Owner (Attachment No. 1 to Part B Agreement); and the Construction Manager's Project Schedule as described in Section 9.2 herein, hereinafter collectively referred to as the "Contract Documents," are hereby incorporated by reference and are made a part of this Construction Management Agreement Between the Owner and the Construction Manager.

##### § 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 an Amendment (or modification). A modification to the Contract 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 shall not be construed to create a contractual relationship of any kind (1) between the Construction Manager 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 Construction Manager. 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 Construction Manager to fulfill the Construction Manager'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, the Construction Manager and the Construction Manager's Subcontractors of any level or tier, under their respective agreements. Instruments of Service include, but are not limited to, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### **§ 1.1.8 The Project Manual(s)**

The Project Manual(s) are volumes assembled for the Work that include, but are not limited to, these General Conditions (AIA Document A201, 2017 edition as modified by the Owner), the specifications, medical equipment lists, furniture specifications, information technology specifications, signage specifications and all addenda, exhibits and supplements issued prior to the execution of the Agreement. When specified by the Contract, the Project Manual(s) will additionally include bidding requirements, bidding documents, and sample forms.

#### **§1.1.9 Other Definitions**

For all other definitions refer to the RFQ.

#### **§ 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 Construction Manager 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 Construction Manager. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Construction Manager 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 Order of Precedence**

In the event of any inconsistent or incompatible provisions within the Contract Documents, the priority and precedence of the Contract Documents shall be as follows: (1) the executed AIA A133-2009 Agreement between the Owner and Construction Manager as modified by Owner, including any contract amendments, (2) AIA A201-2017 General Conditions of the Contract for Construction, (3) Addenda, Change Orders, Construction Change Directives, (4) the Drawings, Specifications and Project Manuals, (5) the Construction Manager's Guaranteed Maximum Price Proposal, (6) the Construction Manager's Cost Proposal, (7) the terms of the Owner's Request for Contract (RFQ), and (8) the terms of the Construction Manager's Proposal in response to the Owner's RFQ, including Project Schedule, accepted by the Owner.

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Construction Manager in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. The Construction Manager and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation:

1. The location, condition, layout and nature of the Project site and surrounding areas,
2. Generally prevailing climactic conditions,
3. Anticipated labor supply and costs,
4. Availability and costs of materials, tools and equipment,
5. Anticipated material and labor costs escalation, and
6. Other similar issues.

The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site, notwithstanding Article 15 which permits claims for unknown conditions. Except as set forth in Paragraph 10.3.1 herein, the Construction Manager shall be solely responsible for providing a safe place for the performance of the Work, notwithstanding Article 15 which permits claims for unknown conditions. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Construction Manager or any Subcontractor of any level or tier to comply with the requirements of this Paragraph 1.2.2.

**§ 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. In the event of inconsistencies within or between parts of the Contract Documents, the Construction Manager shall (1) provide the higher quality or the greater quantity of Work, or (2) comply with the more stringent requirement; either or both, in accordance with the Architect's interpretation. If the Architect's interpretation of the Contract Documents causes an increase in the Cost of the Work, the Construction Manager shall be entitled to file a claim for such additional costs in accordance with Paragraph 15.1.4 herein. The terms and conditions of this Paragraph 1.2.3 shall not relieve the Construction Manager of any obligations set forth in Sections 3.2 and 3.7 herein.

### **§ 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 Owner shall own the Contract Documents and all Instruments of Service, including all rights thereto.

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

### **§1.5.3 CONFIDENTIALITY**

The Construction Manager warrants and represents to the Owner that he shall not knowingly or negligently communicate or disclose at any time to any person or entity any information in connection with the Work or the Project, except: (1) with the prior written consent of the Owner, (2) information that was in the public domain prior to the date of this Agreement, (3) information which becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Construction Manager, or (4) as may be required to perform the Work or by any applicable law.

**§1.5.4** The Construction Manager, at any time upon the request of the Owner, shall immediately return and surrender to the Owner all, with the exception of one (1) photocopy of each document referenced within this paragraph which the Construction Manager may retain for its files, copies of any materials, records, notices, memoranda, drawings, recordings, specifications and mockups and any other documents furnished by the Owner or the Architect to the Construction Manager. In allowing the Construction Manager to retain these documents, no rights of ownership or use of these documents are conveyed to the Construction Manager by the Owner.

**§1.5.5** The Construction Manager shall specifically cause all Subcontractors of any level or tier or any other person or entity performing any services, or furnishing any materials or equipment, for the Work, to warrant and represent all items as set forth in this Section 1.5.

**§1.5.6** The representations and warranties contained in this Section 1.5 shall survive the complete performance of the Work and/or termination of this Agreement

## **§ 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 protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties may choose to use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, or other mutually agreed to means to establish the protocols for the development, use, transmission, and exchange of digital data.

### **§ 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 protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202–2013, Project Building Information Modeling Protocol Form, or other mutually agreed to means, 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.

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

### **§ 2.2 Not Used**

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

§ 2.3.1 Except for permits and fees that are the responsibility of the Construction Manager 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, 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 surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Construction Manager shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 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 Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Construction Manager one electronic 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 Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager are both subject to prior approval of the Architect and the Architect shall, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment 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 additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Construction Manager shall pay the difference to the Owner within ten (10) consecutive calendar days. If the Construction Manager disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Construction Manager may file a Claim pursuant to Article 15.

## **ARTICLE 3 CONSTRUCTION MANAGER**

### **§ 3.1 General**

**§ 3.1.1** The Construction Manager 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 Construction Manager shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Construction Manager shall designate in writing a representative who shall have express authority to bind the Construction Manager with respect to all matters under this Contract. The term “Construction Manager” means the Construction Manager or the Construction Manager’s authorized representative.

**§ 3.1.2** The Construction Manager shall perform the Work in accordance with the Contract Documents.

**§ 3.1.3** The Construction Manager 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 Construction Manager.

### **§ 3.2 Review of Contract Documents and Field Conditions by Construction Manager**

**§ 3.2.1** Execution of the Contract by the Construction Manager is a representation that the Construction Manager has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. No increase in the Contract Sum will be made on the Construction Manager’s behalf due to any errors or negligence of the Construction Manager, or due to the failure of the Construction Manager to fulfill these requirements represented by its execution of the Contract.

**§ 3.2.2** Because the Contract Documents are complementary, the Construction Manager 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 Construction Manager and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Construction Manager shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require. It is recognized that the Construction Manager’s review is made in the Construction Manager’s capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Construction Manager shall be responsible for recognizing and reporting to the Architect and Owner any obvious errors, inconsistencies, or omissions in the Contract Documents which a reasonable Construction Manager should have observed or discovered under similar circumstances.

**§ 3.2.3** The Construction Manager 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 Construction Manager shall promptly report to the Architect

any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as specified in Paragraph 3.2.5 herein.

**§ 3.2.4** If the Construction Manager believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Construction Manager's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Construction Manager shall submit Claims as provided in Article 15. If the Construction Manager fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Construction Manager shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Construction Manager had performed such obligations. If the Construction Manager performs those obligations, the Construction Manager 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.

**§3.2.5** Requests for clarification or additional information shall be in writing and shall be on the "Request for Information" form in Prolog Manager 2008/Prolog Website software system or other mutually agreed to means.

### **§ 3.3 Supervision and Construction Procedures**

**§ 3.3.1** The Construction Manager shall supervise and direct the Work, using the Construction Manager's best skill and attention. The Construction Manager 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 Construction Manager 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 Construction Manager determines that such means, methods, techniques, sequences or procedures may not be safe, the Construction Manager 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 Construction Manager's proposed alternative, the Construction Manager shall perform the Work using its alternative means, methods, techniques, sequences, or procedures. In laying out the Work, the Construction Manager shall verify all dimensions and immediately notify the Architect of any errors or discrepancies in dimensions.

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

**§ 3.3.3** The Construction Manager 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 Construction Manager shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**§ 3.4.2** The Construction Manager is prohibited from making substitutions unless deemed acceptable by the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

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

**§ 3.4.4** Construction Manager 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 site. Any such individual who behaves in an inappropriate manner or who engages in the use of inappropriate language or conduct while on Owner's property, as determined by the Owner or Construction Manager, shall be removed from the Project. Such individual shall not be permitted to return without the written permission of the Owner. The Owner shall not be responsible or liable to Construction Manager or any Subcontractor of any level or tier for any additional costs, expenses, losses, claims, or damages incurred by Construction Manager or its Subcontractor of any level or tier as a result of the removal of an individual from the Owner's property pursuant to this Paragraph.

### **§ 3.5 Warranty**

**§ 3.5.1** The Construction Manager 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 Construction Manager further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Construction Manager's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Construction Manager, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Construction Manager 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 9.8.4.—The Construction Manager agrees to assign to the Owner at the time of final completion of the Work, any and all manufacturers' warranties relating to equipment, materials and labor used in the Work and further agrees to perform the Work in such a manner so as to preserve any and all manufacturers' warranties. Construction Manager agrees to warrant the quality of the Work, materials, and equipment provided for a period of one year from the date of Substantial Completion, or for such longer period as provided by the manufacturer or required by

the Contract Documents. Construction Manager agrees to make all necessary repairs to the Work and to replace or repair any defective material or equipment during the warranty period. Nothing in this paragraph shall modify or affect the statutory time period for correcting nonconforming or defective work.

### **§ 3.6 Taxes**

The Construction Manager shall pay sales, consumer, use and similar taxes for the Work provided by the Construction Manager 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 Construction Manager shall secure and pay for relevant 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. Given that the State of Louisiana is the Owner, there are certain permits (Building Permit) and fees that are not applicable to the Project. Construction Manager and Owner agree to conduct a review of required permits, fees, and other related agency required costs prior to Construction Manager's submission of its GMP Proposal to the Owner. Final determination of applicability of permits and fees and responsibility for payment thereof shall be determined prior to submission of the GMP Proposal and costs determined to be the Construction Manager's responsibility shall be included in the GMP Proposal.

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

### **§ 3.7.4 Concealed or Unknown Conditions**

If the Construction Manager 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 Construction Manager shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 15 calendar 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 Construction Manager'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 Construction Manager, stating the reasons. The Architect may be consulted by either the Construction Manager

or Owner regarding a claim; however, the Owner will be the final decision maker regarding claims made by the Construction Manager and its Subcontractors of any level or tier.

**§ 3.7.5** If, in the course of the Work, the Construction Manager encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Construction Manager shall follow all procedures mandated by State and Federal law, including but not limited to sections 401 and 404 of the Federal Clean Water Act. The Construction Manager shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features shall be submitted in writing to the Owner in accordance with the Contract Documents.

### **§ 3.8 Allowances**

**§ 3.8.1** No Allowances shall be included within the Guaranteed Maximum Price.

### **§ 3.9 Construction Management Staff**

**§ 3.9.1** The Construction Manager shall employ a competent Construction Management Staff who shall be in attendance at the Project site during performance of the Work and represent the Construction Manager. Communications given to the Construction Management Staff shall be as binding as if given to the Construction Manager. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed upon written request in each case.

**§ 3.9.2** Within its response to the Owner's RFQ, the Construction Manager shall submit the names and qualifications of its proposed Key Personnel. After notice of award of Part A: Pre-Construction Services and approval of the proposed Key Personnel by the Owner, these individuals shall be listed as Key Individuals within the Part A: Pre-Construction Services Agreement, and shall not be replaced or removed from the Project without the consent of the Owner, which consent shall not be unreasonably withheld or delayed. In the event the Owner gives its consent to the replacement of, or requests the replacement of, the previously approved Key Personnel during the life of the Project, the Construction Manager, shall, within 15 days of the Owner's approval or request for such replacement, submit in writing to the Owner and Architect the name and qualifications of the proposed replacement Key Personnel. The Owner may reply within 15 days to the Construction Manager in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed replacement personnel or (2) that the Owner requires additional time to review the information submitted by the Construction Manager. Failure of the Owner to reply within the 15 day period shall constitute notice of no reasonable objection to the proposed replacement personnel. The Construction Manager shall not employ Key Personnel on the Project to whom the Owner or Architect has made a reasonable and timely objection.

**§ 3.9.3** The Construction Manager shall not employ a Construction Management Staff or staff member to whom the Owner or Architect has made reasonable and timely objection.

### **§ 3.10 Construction Manager's Construction and Submittal Schedules**

#### **§ 3.10.1 Preliminary Construction Schedule**

**§ 3.10.1.1** Within thirty (30) days of receipt of the Owner's Notice To Proceed (NTP) with Part A: Pre-Construction Services, the Construction Manager shall complete an evaluation of the Owner's proposed Project Schedule and sequence of Work, and submit its Preliminary Project

Schedule for the Owner and Architect's review, and approval by the Owner. The Construction Manager's Preliminary Schedule shall employ Critical Path Method logic and be prepared in the manner and format, and in the level of detail, as required by the Owner. The Preliminary CPM Schedule shall coordinate and integrate the responsibilities, activities, and requirements of the Owner, Architect, and Construction Manager, including but not limited to, the Construction Manager's Pre-Construction Services tasks and deliverables, milestone dates for the receipt and approval of pertinent information, submission of a Guaranteed Maximum Price (GMP) Proposal, proposed Construction Phase activity sequences and durations, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed dates of formal Acceptance (Substantial Completion) for all Parts or Phases of the Project, as identified in Article 1 of the Part A: Pre-Construction Services Agreement. Following approval by the Owner, the Construction Manager shall update its Preliminary Project Schedule as necessary during the Pre-Construction Services phase of the Project to reflect revised designs or new information. If updates of the Construction Manager's Preliminary Project Schedule indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect. The Construction Manager's Preliminary Construction Schedule shall reflect the Owner's milestone dates and Time for Completion of the Project as set forth in Exhibit 5 of the Owner's RFQ, including any subsequent adjustments to the Preliminary Project Schedule issued by the Owner.

**§3.10.1.2** As a component of its Guaranteed Maximum Price Proposal, the Construction Manager shall submit its baseline CPM Schedule for completion of the Project. This baseline schedule, which shall be based on the Project duration established in the Owner's Preliminary Project Schedule included within Exhibit 5 of the RFQ, as adjusted, shall include all elements as required in 3.10.1.1 above. Following the Owner's acceptance of the Construction Manager's GMP Proposal, and execution of Amendment to Contract for the Part B – Construction services, the Construction Manager shall update its baseline CPM Schedule to reflect the Date of Commencement and Date of Acceptance (Substantial Completion) established within the Owner's Notice to Proceed with Part B: Construction Services. The Date of Acceptance (Substantial Completion) shall be the date after which Liquidated Damages would be assessed if the Construction Manager fails to complete the Project within the allowable time, as stipulated in the "Project Scope, Cost, and Time Summary".

**§3.10.1.3** This base line CPM Schedule shall be cost loaded at the Level 3 summary level consistent with the Construction Manager's GMP Schedule of Values to reflect Subcontractor pricing previously obtained, its estimates of the Cost of the Work for which Subcontractor pricing has not yet been obtained, and its previously accepted fixed Staffing and Site Office Costs and Fee, organized and properly allocated by trade category and Part of the Project.

### **§3.10.2 Construction Schedules**

**§3.10.2.1** Within 30 days of the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price Proposal, execution of the Part B: Construction Services Agreement, and receipt of the Owner's Notice to Proceed (NTP) with Construction Services, the Construction Manager shall further develop, complete, and submit to the Owner for approval, its fully cost and manpower loaded Level 4 CPM Schedule meeting the requirements of the Contract Documents. The Construction Manager shall routinely, but in no case less than monthly, update its approved CPM

schedule to reflect changes in logic and sequence, progress, the buy-out of Subcontractor trade/bid packages, and the award of Subcontractor Agreements, in accordance with Section 5.2 herein.

**§3.10.2.2** The Construction Manager's CPM Schedule shall include a submittal schedule component which, at a minimum, shall include dates for the submission, review, and approval of all required Submittals, including mock-ups, shop drawings, samples, and product data. The submittal schedule component only of the Construction Manager's CPM Schedule shall require review and approval by the Architect; such approval shall not be unreasonably delayed or withheld. The submittal schedule component of the Construction Manager's CPM Schedule shall allow the Owner and Architect reasonable time for the review and appropriate action on submittals. If the Construction Manager fails to achieve and maintain the submission dates for Submittals as established in the submittal component of its CPM Schedule approved by the Architect, the Construction Manager shall not be entitled to any increase in the Contract Sum, or extension of the Contract Time, based on the time required for review of submittals.

**§3.10.2.3** The Construction Manager shall submit its most current progressed and updated schedule to the Owner and Architect with each monthly Application for Payment. No payment shall be made to the Construction Manager until its updated CPM Schedule is received and approved by the Owner.

**§3.10.2.4** The Construction Manager shall perform the Work in general accordance with the most recent progressed and updated CPM Schedule approved by the Owner and in accordance with the Contract Documents. If the Work is not being completed in accordance with the approved CPM Schedule, as determined by the Owner and Architect, and the Construction Manager fails to take timely and appropriate action to bring the performance of the Work into compliance with the approved CPM Schedule, upon written notice by the Owner, the Construction Manager shall be required to submit to the Owner for approval a Recovery Schedule to bring the progress of the Work into compliance with the approved CPM Schedule. The Construction Manager shall be responsible for all costs incurred by its implementation of the required Recovery Schedule without adjustment of the Contract Sum. If the Construction Manager fails to bring the progress of the Work into compliance with the approved CPM Schedule through implementation of the required Recovery Schedule, the Construction Manager may 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 herein.

**§3.10.2.5** The Construction Manager's CPM Schedule or other documentation indicating a completion date for the Project, or portion thereof, in advance of the contractual completion date stated in the Agreement shall not impose any obligation, responsibility, or liability, including, but not limited to, additional cost, on the Owner or Architect due to the earlier completion date or inability to meet an earlier completion date.

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

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

The Construction Manager shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, and State Fire Marshal review documents, 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.

### **§ 3.12 Shop Drawings, Product Data and Samples**

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

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Construction Manager 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. In some cases Mock Ups of rooms or assemblies may be required by the Contract Documents. Mock ups will be treated as samples for the purpose of review and approval by the Owner and Architect.

**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Construction Manager 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 Construction Manager 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 Construction Managers.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager 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 Construction Manager 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 Architect approves, or takes other appropriate action on, the respective submittal.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager 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. The Architect's revision to a submittal shall not constitute a change to the Contract Documents nor authorization for the Construction Manager to proceed with Work not required by the Contract Documents. In the event the Construction Manager believes the Architect's revision of a submittal will create a change to a Contract Document, or will cause a change to the Contract Sum or Contract Time, the Construction Manager shall promptly notify the Owner and Architect in writing and submit its claim for such additional cost and/or time in accordance with Article 15. If the Construction Manager proceeds with such revisions which it believes will impact the Contract Sum or Contract Time prior to gaining the written approval of the Owner to do so, the Construction Manager shall be solely responsible for any additional cost or time caused by the Architect's revisions to a submittal.

**§ 3.12.10** The Construction Manager 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 Construction Manager needs to provide such services in order to carry out the Construction Manager's responsibilities for construction means, methods, techniques, sequences, and procedures. The Construction Manager 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 Construction Manager by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Construction Manager shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Construction Manager 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, accuracy, and completeness of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Construction Manager 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. The Construction Manager shall not be responsible for adequacy of the performance and design criteria specified in the Contract Documents.

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

### **§ 3.13 Use of Site**

The Construction Manager 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. The Construction Manager's use of the Project site shall be in accordance with the requirements of this Section and related paragraphs, and the Construction Manager's most current Site Logistics Plan approved by the Owner, as referenced below in Paragraph 3.13.2 and required by Part A and Part B of the Construction Management Agreement. In addition, the Construction Manager shall maintain unobstructed, clean, and appropriately marked pathways to means of emergency exit egress in all portions of the Work for its employees, Subcontractors, and others throughout the duration of the Project.

**§3.13.1** Construction Manager shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. Without limitation of any other provision of the Contract Documents, Construction Manager shall ensure that (1) all public ways, streets, sidewalks, walkways, right of ways, alleys, and private property adjacent to, or in the vicinity of, the Project site, and (2) all portions of the Project completed and occupied by the Owner in advance of the completion of the entire Project, remain safe and clean at all times, free of dirt, dust, debris, trash, liquids, and/or any other materials or substances created by, or originating from, the construction activities for which it is responsible on the Project Site. Such requirement shall be at no additional cost to the Owner.

### **§3.13.2 Site Logistics Plans**

Pursuant to Part A: Pre-Construction Services Agreement, the Construction Manager shall develop and submit as a Pre-Construction phase deliverable for the Owner and Architect's review and approval by the Owner, the Construction Manager's Preliminary Site Logistics Plan. As a deliverable to be included within the Construction Manager's GMP Proposal, the Construction Manager shall submit its updated Site Logistics Plan to the Owner and Architect. The Construction Manager agrees to revise and update its Site Logistics Plan as required through the duration of the Project at no additional cost to the Owner.

### **§ 3.14 Cutting and Patching**

**§ 3.14.1** The Construction Manager 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 Construction Manager shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Construction Managers by cutting, patching, or otherwise altering such construction, or by excavation. The Construction Manager 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; such consent shall not be unreasonably delayed or withheld. The Construction Manager 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 Construction Manager 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 Construction Manager shall remove waste materials, rubbish, the Construction Manager's tools, construction equipment, machinery, and surplus materials from and about the Project.

**§ 3.15.2** If the Construction Manager 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 Construction Manager.

### **§ 3.16 Access to Work**

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

### **§ 3.17 Royalties, Patents and Copyrights**

The Construction Manager shall pay all royalties and license fees. The Construction Manager 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 the Construction Manager has reason to believe that the required design, process, or product is an infringement of a copyright or a patent, the Construction Manager shall be responsible for such loss unless such information is promptly furnished to the Owner and Architect.

### **§ 3.18 Indemnification**

**§ 3.18.1** To the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Construction Manager, a Subcontractor of any level or tier, 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.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Construction Manager, a Subcontractor of any level or tier, 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 Construction Manager 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.

**§ 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, Construction Manager, and Architect. Consent shall not be unreasonably delayed or withheld.

**§ 4.1.3** If the employment of the Architect is terminated, the Owner shall employ a successor architect whose status under the Contract Documents shall be that of the Architect.

### **§ 4.2 Administration of the Contract**

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will advise and assist the Owner during construction until the date the final payment is due and as required during the one year period for warranty/correction of Work as described Section 12.2 herein. 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, to endeavor to guard the Owner against defects and deficiencies in the Work, and to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. 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 Construction Manager's rights and responsibilities under the Contract Documents, except as provided in Paragraph 3.3.1 herein.

**§ 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 Construction Manager, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Construction Manager'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 Construction Manager, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

#### **§ 4.2.4 Communications**

The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner may communicate directly with the Construction Manager and/or Architect about any matter involving the Project or the Contract Documents. The Owner and Construction Manager shall involve the Architect in all discussions relating to the Project or Contract Documents. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors of any level or tier and suppliers shall be through the Construction Manager. Communications by and with Separate Contractors shall be through the Owner.

**§ 4.2.5** The Owner and Architect shall review all of the Construction Manager's Applications for Payment. In the case of a dispute or disagreement regarding an Application for Payment, the Architect may be consulted; however, the Owner shall make the final determination regarding payment.

**§ 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 Construction Manager, Subcontractors of any level or tier, 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 Construction Manager'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 actions will be taken in accordance with the Submittal Schedule component of the Construction Manager's CPM Schedule approved by the Architect and 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 Construction Manager as required by the Contract Documents. The Architect's review of the Construction Manager's submittals shall not relieve the Construction Manager 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 review and recommend to the Owner actions related to Change Order Proposals prepared by the Construction Manager. The Architect may prepare Construction Change Directives for the Owner's approval and may authorize minor changes in the Work as provided in Section 7.4 herein. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Paragraph 3.7.4 herein.

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Acceptance (Substantial Completion) and the date of final completion; issue Recommendation(s) of Acceptance 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 Construction Manager pursuant to Section 9.10 and issue a final Certificate for Payment pursuant to Section 9.10. Due to varying needs for occupancy dates targeted in the Owner's activation plans for various Phases of this Project, it is anticipated that Notices of Acceptance, including partial Notices of Acceptance or Partial Occupancy, may be issued upon the Construction Manager's completion and the Owner's occupancy of the individual phases, or portions thereof, of the Project as identified within the Contract Documents. Warranties for Work completed by the Construction Manager shall commence upon the dates indicated in the Notices of Acceptance executed by the Construction Manager, Owner, and Architect for each portion or Part of the Project as it is completed and occupied by the Owner.

**§ 4.2.10** The Architect will provide project representatives to assist in carrying out the Architect's responsibilities at the site. Upon the request of the Construction Manager, the duties, responsibilities, and limitations of authority of such project representatives shall be set forth in an exhibit to the Contract Documents. There will be no restriction on the Owner's having Representatives on the Project Site.

**§ 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 Construction Manager. 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 or 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.

**§ 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 Construction Manager, 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 which interpretation required of the Architect or 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. 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 Construction Manager 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.

**§ 5.1.3** The Costs included within a Subcontractor’s or Sub-subcontractor’s Cost of the Work shall be in accordance with Articles 4 and 5 of the Part B: Construction Services Agreement, as modified by the Owner.

### **§5.2 Award Of Subcontracts For Performance Of The Work**

#### **§5.2.1 Trade / Bid Strategy**

During Part A: Pre-Construction Services, the Construction Manager shall develop, and submit for approval by the Owner, a comprehensive Trade/Bid Strategy which divides the Work into Subcontractor bid packages, maximizes the opportunities for Louisiana contractors to participate in the Project, develops Subcontractor interest in the Project, includes the solicitation of competitive pricing from pre-qualified Subcontractors, and provides for the award of Subcontractor agreements for the performance of the Work.

#### **§5.2.2 Elements Of The Trade / Bid Strategy**

The Construction Manager’s Trade/Bid Strategy shall include, but not necessarily be limited to, the following:

1. The division of the entire Work into Subcontractor trade/bid packages specifically designed to maximize the opportunity for qualified Louisiana contractors and subcontractors of all trades and sub-trades, and of any size contracting entity, from small to large, to compete for the award of Work of the Project;
2. The development of comprehensive, scope/bid packages that will allow qualified contractors and subcontractors to provide competitive pricing for the individual scopes of work with minimal qualifications, exceptions, and scope exclusions;
3. A plan for the advertisement of the availability of the Work and the development of maximum contractor/subcontractor interest in the Project;
4. The development of minimum contractor/subcontractor qualifications appropriate to individual bid/scope packages and the complexity of the Project;
5. A strategy for the solicitation of competitive pricing from those contractors and subcontractors pre-qualified to submit pricing for each scope/bid package;
6. A contractor/subcontractor protest procedure allowing a two-stage administrative review of pre-qualification and/or award decisions; and
7. A schedule for the development and implementation of the Trade/Bid Strategy, and the award of subcontractor agreements, for each bid/scope package.

### **§5.2.3 Implementation of the Approved Trade / Bid Strategy**

Following acceptance of the Construction Manager's Trade/Bid Strategy by the Owner, the Construction Manager shall implement its Strategy in accordance with the agreed upon schedule.

### **§5.2.4 Solicitation of Subcontractor Pricing**

The Construction Manager shall not be required to contract with, or solicit bids from, any Subcontractor or entity with whom it has a reasonable objection. In addition, the Construction Manager shall not contract with, or solicit bids from, a proposed person or entity with whom the Owner or Architect has a reasonable objection. Therefore, following mutual agreement between the Owner and Construction Manager regarding the pool of pre-qualified prospective bidders for individual bid/scope packages, the Construction Manager shall solicit pricing from the pool of pre-qualified bidders for each respective bid/scope package.

### **§5.2.5 Award of Subcontracts**

Following receipt of competitive pricing for bid/scope package, the Construction Manager shall review the results of the bid solicitation with the Owner and award the work for each bid package to the pre-qualified bidder who submits the lowest net cost responsive bid. Upon notice of award to the successful contractor/subcontractor, the Construction Manager shall immediately execute a Subcontractor Agreement with the awarded Subcontractor. However, should new information not previously known be discovered regarding a Subcontractor's history, experience, or capability to perform the Work of any trade/bid package following receipt of Subcontractor bids, the Construction Manager shall not be required to contract with any Subcontractor or entity with whom it has a reasonable objection. In addition, the Construction Manager shall not contract with a proposed person or entity with whom the Owner or Architect has a reasonable objection.

**§5.2.6** The Construction Manager shall not be entitled to claims for additional time and/or an increase in the Contract Sum due to the alleged poor performance or non-performance of an awarded Subcontractor who was previously deemed qualified to submit competitive pricing on any bid/scope package. Owner and Architect shall not be responsible for a Subcontractor's failure to comply with the Contract Documents. The Construction Manager shall provide a copy of each Subcontractor Agreement, with all exhibits and attachments including certificates of insurance and bonds, if applicable, to the Owner within seven (7) days of its execution.

### **§5.2.7 Substitution**

The Construction Manager shall notify the Owner in writing whenever it is unable to execute an agreement with an awarded Subcontractor, or whenever it deems it necessary to terminate a Subcontractor Agreement, and the Subcontractor substituted with another Subcontractor. Written approval of the proposed successor Subcontractor shall be obtained from the Owner prior to the Construction Manager's execution of a Subcontract Agreement with a successor Subcontractor. Such approval by the Owner shall not unreasonably be delayed or withheld.

## **§ 5.3 Subcontractual Relations**

By appropriate written agreement, the Construction Manager shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Construction Manager by terms of the Contract Documents, and to assume toward the Construction Manager all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Construction Manager, 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 Construction Manager that the Construction Manager, by the Contract Documents, has against the Owner. Where appropriate, the Construction Manager shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Construction Manager 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 is assigned by the Construction Manager 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 Construction Manager; 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 Construction Manager'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 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 Construction Manager or other entity. If the Owner assigns the subcontract to a successor Construction Manager or other entity, the Owner shall nevertheless remain legally responsible for all of the successor Construction Manager'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 subrogation. If the Construction Manager claims that delay or additional cost is involved because of such action by the Owner, the Construction Manager shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term “Construction Manager” in the Contract Documents in each case shall mean the Construction Manager who executes each separate Owner-Construction Manager 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 Construction Manager, who shall cooperate with them. The Construction Manager shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Construction Manager 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 Construction Manager, Separate Contractors, and the Owner until subsequently revised. All construction schedules must be coordinated with and approved by the Owner.

## § 6.2 Mutual Responsibility

§ 6.2.1 The Construction Manager 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 Construction Manager’s construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Construction Manager’s Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Construction Manager 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 Construction Manager’s Work. Failure of the Construction Manager 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 Construction Manager’s Work, except as to defects not then reasonably discoverable.

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

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

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

## § 6.3 Owner’s Right to Clean Up

If a dispute arises among the Construction Manager, 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 Owner 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, Construction Manager, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Construction Manager. An order for a minor change in the Work, not affecting the Contract Sum or Contract Time, may be issued by the Architect alone.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Construction Manager shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. All supporting documentation shall be submitted in a format and level of detail suitable to the Owner and Architect. All costs of the Construction Manager and Subcontractor costs are subject to the audit provisions of the Contract Documents.

### **§ 7.2 Change Orders**

**§ 7.2.1** A Change Order is a written order to the Construction Manager signed by the Owner and the Architect, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Construction Manager indicates his agreement therewith, including the adjustment in the Contract Sum or the Contract Time.

**§ 7.2.2** After a Change Order has been presented, approved, and executed by the parties, no additional requests for extensions of time or additional compensation shall be awarded to the Construction Manager for the scope of Work included within or related to that Change Order.

**§ 7.2.3** The Construction Manager may be due extended fixed job-site overhead for time delays only as provided in Article 7 of the Part B: Construction Services (Construction Management at Risk) Agreement. A stoppage resulting in an extension of time is not allowed due to acts or omissions attributable to the Construction Manager or his forces. In all cases, the Construction Manager must notify the Architect and Owner in writing prior to any work stoppage. Reasonable proof of the cause of the stoppage shall be required by the Owner. In addition, reasonable proof that the stoppage affected the critical path and overall delivery schedule / Completion Date shall be required by the Owner.

**§ 7.2.4** Subcontractor Cost of the work shall not include the following:

1. Salaries or other compensation of personnel at their principal office and branch offices.
2. Any part of the capital expenses of Subcontractors, including interest on Subcontractors' capital employed for the Work.

3. Overhead and general expenses of any kind, or the cost of any item not specifically and expressly included in Articles 4 and 5 of Part B of the Construction Management Agreement as Cost of the Work and General Conditions items.
4. Cost of supervision not specifically required by the Change Order.

**§7.2.5** Where applicable, as provided by the Contract Documents, the cost to the Owner for Change Orders shall be determined by quantities and unit prices. The quantity of any item shall be documented as submitted by the Construction Manager and approved by the Architect. Unit prices shall cover cost of materials, installation, shipping, handling, warehousing, insurance, bonds, taxes, profit, overhead, and all other associated costs.

**§7.2.6** The cost to the Owner for Change Orders not determined on the basis of quantities and unit prices shall be determined by the method established in Subparagraph 7.3.3.3 herein.

**§7.2.7** Pursuant to Sections 9.5 and 9.6 herein, once a portion, component, or phase of the Project is accepted as Substantially Complete, the Owner will not accept, review, or approve any further Change Order Proposals from the Construction Manager for that portion, component or phase of work.

### **§ 7.3 Construction Change Directives**

**§ 7.3.1** A Construction Change Directive (CCD) is a written order prepared by the Architect and signed by the Owner and Architect directing a change in the Work prior to final 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, or adjustments to the Contract Sum and Contract Time.

**§ 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** Where a Construction Change Directive is reasonably anticipated to result in an adjustment to the Contract Sum and/or Contract Time, the Construction Manager shall provide, within 14 days and prior to proceeding with the Construction Change Directive, a Not-to-Exceed (NTE) Rough Order of Magnitude (ROM) adjustment to the Contract Sum and/or the Contract Time for review and approval by the Owner and Architect. The final costs and schedule impacts shall be calculated and the Construction Change Directive converted to a Change Order as soon as is practicable after the commencement of the Work described in the Construction Change Directive. The final adjustments to the Contract Sum and/or Contract Time shall be based on one of the following:

1. The mutual acceptance of a lump sum properly itemized cost and/or time extension supported by sufficient substantiating data to permit evaluation;
2. Unit prices stated in the Contract Documents or subsequently agreed upon; or
3. The actual and reasonable Costs and savings of those performing the Work attributable to the Construction Change Directive, including, in case of an increase in the Contract Sum, any amount due the Construction Manager and/or Subcontractors for additional overhead and profit as set forth in Paragraph 7.5.2 herein. In such case, the Construction Manager shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise stated in the

Construction Change Directive, it is agreed by the Parties that adjustments to the Contract Sum including adjustments due to changes to the Contract Time, resulting from Construction Change Directives shall be determined by this method.

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

If the Construction Manager 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 Construction Manager 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 Construction Manager 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 Upon receipt of a signed Construction Change Directive, and the Owner's approval of the NTE ROM cost and time impact, as provided in Paragraph 7.3.3 above, the Construction Manager shall promptly proceed with the change in the Work involved and advise the Owner and Architect of the Construction Manager's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 If the Construction Manager disagrees with the adjustment in the Contract Time or Sum, the Construction Manager may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.7 A Construction Change Directive signed by the Construction Manager indicates the Construction Manager's agreement therewith, including any adjustment of the Contract Sum and/or Contract Time, if provided within the CCD, or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order upon final determination of changes to Contract Sum and Contract Time as provided for in Section 7.5 herein.

§ 7.3.8 The amount of credit to be allowed by the Construction Manager 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 Owner. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost to the Owner for a Construction Change Directive, amounts confirmed by the Owner in writing as not in dispute for such changes in the Work may be included within a Change Order, and once Change Order is executed, the Construction Manager's Applications for Payment. The parties shall indicate their agreement with such undisputed costs by the execution of a Change Order adjusting the Contract Sum. For any portion of such cost that remains in dispute, either party shall retain its rights to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 The Owner shall make the final determination regarding all Construction Change Directives, including the amount of any payment.

#### **§ 7.4 Minor Changes in the Work**

The Architect shall have authority to recommend minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time that are consistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and Owner and shall be binding on the Owner and Construction Manager.

#### **§7.5 Costs of Changes and Allowable Mark up for Overhead and Profit**

##### **§7.5.1 Subcontractors and Sub-subcontractors**

For any adjustments to the Contract Sum which are based on other than the unit prices method, Subcontractors and Sub-subcontractors shall be allowed to charge, and agree to accept as payment for home office overhead and profit, the following percentages of costs attributable to change in the Work:

1. For Subcontractors: For additional Work ordered as described within Article 7 herein which shall be executed by Subcontractors, Subcontractors shall charge not more than eight percent (8%) mark-up for overhead and profit combined for Work performed by its own forces not involving Sub-subcontractors, and not more than four percent (4%) mark-up for overhead and profit combined for Work performed by Sub-subcontractors of any tier or level. Subcontractors shall provide a credit to the Owner of four percent (4%) for overhead and profit combined for any change which results in a net reduction in the Cost of the Work. In accordance with the Contract Documents, Subcontractor costs included within changes authorized by the Owner shall be based on actual allowable costs and are subject to the audit provisions of the Contract Documents.
2. For Sub-subcontractors: For additional Work ordered as described in Article 7 herein which shall be executed by Sub-subcontractors of any tier or level, Sub-subcontractors may charge not more than eight percent (8%) mark-up for overhead and profit combined for Work performed by its own forces not involving lower-tiered sub-subcontractors, and not more than four percent (4%) for overhead and profit combined for Work performed by Sub-subcontractors of any tier or level.

The Sub-subcontractor shall provide a credit to the Owner of four percent (4%) for overhead and profit combined for any changes which results in a net reduction in the Cost of the Work. In accordance with the Contract Documents, Sub-subcontractor costs included within changes authorized by the Owner shall be based on actual allowable costs and are subject to the audit provisions of the Contract Documents.

3. When both additions and credits are involved in any one change, the allowance for additional overhead and profit, if and where applicable, shall be calculated on the basis of the net increase, if any. Credits for the deletion of Work shall equal the sum of the following:
  - a. The actual labor cost that the Subcontractor(s) or Sub-subcontractor(s) would have incurred to perform the scope of Work deleted by the Owner authorized change including the cost of overhead and profit on self-performed work, insurance and taxes.
  - b. The actual unit cost of materials, supplies, products, equipment, and rental equipment that the Subcontractor(s) or Sub-subcontractor(s) would have used to perform the scope of Work deleted in the Owner authorized change, including shipping costs and taxes.
  - c. The actual cost of lower tiered subcontractors that the Subcontractor(s) and Sub-subcontractor(s) would have incurred in performing the scope of Work deleted by the Owner authorized change, including overhead and profit, insurance, bonds, and taxes.
  - d. The actual credit for the cost associated with lower limits required for Subcontractor(s) bonds, and Sub-subcontractor bonds, if applicable, as a result of the reduction in the scope of Work.
4. Additional Subcontractor General Conditions Costs: Additional costs for General Conditions may be included within the costs for changes by Subcontractors of any level where the proposed change involves an extension of the Contract Time, or when, in the opinion of the Owner, additional General Conditions are required by the change. In accordance with the Contract Documents, General Conditions costs included within the cost of changes authorized by the Owner shall be based on actual allowable costs and are subject to the audit provisions of the Contract Documents.
5. The cost of bonds, insurance, permits, and taxes to Subcontractors, and all Sub-subcontractors, vendors, and material suppliers, shall be considered direct costs of performing the Work. The actual increases or decreases in the cost of premiums for bonds, insurance, permit fees, and sales, use, or similar taxes related to the Work shall be included as direct Cost of the Work without markup. All insurance and bond costs are to be actual and auditable costs inclusive of all premium adjustments.

### **§7.5.2 Construction Manager**

For adjustments to the Contract Sum, and where and if allowed, the Construction Manager shall be allowed to charge, and accept as payment for home office overhead and profit, a percentage markup for additional Fee bearing the same relationship to the Cost of the Work performed by Subcontractors attributed to Owner authorized changes as the Construction Manager's Fee

stipulated in Article 5 of the Part B: Construction Services (Construction Management at Risk) Agreement bears to the Cost of the Work stipulated in same. For the duration of this Agreement, the Construction Manager's markup for overhead and profit shall not exceed the percentage set forth in the **"Project Scope, Cost, and Time Summary"** attached hereto as Attachment No. 1.

1. **Material Changes.** For changes to the Project initiated and authorized by the Owner which substantially alter the original scope of the Project, as described in Article 2 of the Part B: Construction Services (Construction Management at Risk) Agreement, the Contract Time, and/or the Contract Sum, the Construction Manager may charge not more than the percentage markup stipulated above for Fee (overhead and profit combined) for Work performed by Subcontractors of any tier or level. The amount of the Construction Manager's Fee shall be computed by multiplying the Cost of the Work approved by the Owner authorized change by not more than the percentage stipulated above. No additional profit shall be added on to overhead by compounding. All functions not performed on the jobsite shall be classified as home office overhead, and are defined in the Contract Documents.
2. **Routine Changes.** For routine changes authorized by the Owner which do not substantially alter the original scope of the Project, as described in Article 2 of the Part B: Construction Services (Construction Management at Risk) Agreement, the Construction Manager may charge not more than the percentage markup stipulated above for Fee (overhead and profit combined) for Work performed by Subcontractors of any tier or level. The amount of Fee shall be computed by multiplying the Cost of the Work approved by the Owner authorized change by not more than the percentage stipulated above. No additional profit shall be added on to overhead by compounding. All functions not performed on the jobsite shall be classified as home office overhead, and are defined in the Contract Documents. In accordance with Article 5 of Part B: Construction Services (Construction Management at Risk) Agreement, as modified by the Owner, the Construction Manager shall not be eligible to receive any additional Fee, or profit and overhead, on any adjustment to the Contract Sum until the Guaranteed Maximum Price exceeds the amount set forth in the **"Project Scope, Cost, and Time Summary"** attached hereto as Attachment Number One.
3. The cost of insurance, bonds, permits, and taxes to the Construction Manager shall be considered direct costs of performing the Work. The actual increases or decreases in the cost of premiums for insurance, bonds, permit fees (if any), and sales, use, or similar taxes related to the Work shall be included in the direct Cost of the Work without markup. All insurance and bond costs are to be actual and auditable costs inclusive of all premium adjustments.
4. When both additions and credits are involved in any one change, the allowance for additional Fee, if and when applicable, including overhead and profit, shall be calculated on the basis of the net increase, if any. Credits for the deletion of Work shall be calculated in the same manner as stipulated in Subparagraph 7.5.1.3 above.
5. Additional compensation for the Construction Manager's Staffing and Site Office costs may be included by the Construction Manager within the costs of changes

authorized by the Owner only where the proposed change involves an extension of the Contract Time, or when additional Staffing and Site Office Costs are, in the opinion of the Owner, actually required by the change. In accordance with the Contract Documents, any of the Construction Manager's Staffing and Site Office Costs approved for inclusion within the cost of an Owner authorized change shall be based on actual allowable costs and are subject to the audit provisions of the Contract Documents.

### **§7.5.3 Calculation and Substantiation of Cost of Changes**

All proposed costs for Owner authorized changes shall be calculated in accordance with the **Change Order Worksheet** attached and included within the Project Manual. For the cost of all changes negotiated on other than a unit cost basis, the Construction Manager and Subcontractors of all levels or tiers shall provide an itemization of costs in accordance with the Contract Documents, including calculations, measurements, actual cost records, production rates, equipment types and capacity, labor costs by craft (including itemized burden), and other information which may reasonably be required by the Owner to substantiate the costs included within Change Order Proposals submitted by the Construction Manager. Such substantiation of costs shall be prepared in the manner and format required by the Owner and submitted with the Change Order Proposal. All costs submitted for Owner authorized changes are subject to the audit provisions of the Contract Documents.

### **§7.5.4 Overtime Pay**

Overtime pay, when specifically authorized by the Owner in writing, shall be paid for by the Owner on the basis of premium payment only, plus the cost of insurance and taxes based on the premium payment. Overtime shall be defined as hours actually worked by hourly employees in excess of forty (40) hours per week. Overtime pay shall not be paid for the salaried employees of the Construction Manager or Subcontractors of any tier or level. Premiums paid to hourly employees of the Construction Manager or Subcontractors of any tier or level for off-shift, night, weekend work, or holiday work shall not have the same meaning as Overtime.

## **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 and/or the Owner's Notice to Proceed.

**§ 8.1.3** The date for the Acceptance (Substantial Completion) of the Project shall be established within the Owner's Notice to Proceed (NTP) with Part B: Construction Services, and shall be based upon the Date of Commencement established in the Owner's NTP and the number of consecutive calendar days for completion of the Project included within Exhibit 5 of the Owner's RFQ (180 calendar days) as adjusted. The date for Acceptance (Substantial Completion) of the Project shall be identified in the Construction Manager's CPM Schedule.

**§ 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 Construction Manager's submission of a schedule indicating an early completion date unless specifically authorized by Change Order.

## **§ 8.2 Progress and Completion**

**§ 8.2.1** Time is of the Essence, and completion of the Work must be within the Time for Completion stated in the Contract Documents, subject to such extensions as may be granted under Section 8.3 herein. The Construction Manager agrees to commence work with adequate forces not later than seven (7) days after the Date of Commencement established in the Owner's written Notice to Proceed with Part B: Construction Services and to Substantially Complete the Project within the Contract Time stipulated.

**§ 8.2.2** The Construction Manager is advised that the Owner will suffer financial loss if the Project is not Substantially Complete within the time set forth in contract. The fixed, agreed upon Liquidated Damages for each consecutive calendar day (Saturdays, Sundays, and holidays included) of delay until the Work of the Project is substantially complete and ready for Owner occupancy are as enumerated herein. The Construction Manager and the Construction Manager's Surety(s) shall be liable for and shall pay to the Owner, as the Owner's sole and exclusive remedy for the Construction Manager's failure to complete the Project within the duration set forth, the following sums as fixed, agreed upon Liquidated Damages for each calendar day of delay until the Project is Substantially Complete:

- a) Two Thousand Five Hundred Dollars (\$2,500.00) per calendar day for the first thirty (30) days the Project remains incomplete and not available for the Owner's occupancy and use;
- b) Five Thousand Dollars (\$5,000.00) per calendar day for days thirty-one (31) through sixty (60) the Project remains incomplete and not available for the Owner's occupancy or use, and
- c) Ten Thousand Dollars (\$10,000.00) per calendar day thereafter the Project remains incomplete and not available for the Owner's occupancy or use.

However, the Construction Manager's total liability for Liquidated Damages shall in no event exceed fifty percent (50%) of the Construction Manager's Fee, as adjusted per the Contract Documents.

Such Liquidated Damages shall be withheld by the Owner from the amounts due the Construction Manager for progress and/or final payments

**§ 8.2.3** The Construction Manager 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 Construction Manager and Owner.

**§ 8.2.4** The Construction Manager shall proceed expeditiously with adequate forces and shall achieve Acceptance (Substantial Completion) within the stipulated Contract Time.

## **§ 8.3 Delays and Extensions of Time**

**§ 8.3.1** If the Construction Manager is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either of them, or

of a Separate Contractor employed by the Owner; or by changes ordered in the Work; or by delay authorized by the Owner; or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may recommend, subject to Owner's approval of Change Order. In the event of such delay caused by the Owner as described within this Paragraph 8.3.1, the Construction Manager shall be compensated as provided by Article 7 of the Part B: Construction Services (Construction Management at Risk) Agreement, and the Contract Sum adjusted accordingly by Change Order.

### **§ 8.3.2 Fortuitous Event Extensions of Time**

Construction Manager shall be entitled to an extension of the Contract Time by Change Order for such reasonable time as the Architect may recommend for delays arising from unforeseeable causes beyond the control and without the fault or negligence of the Owner. The Construction Manager shall not be entitled to recover from the Owner associated costs. The Construction Manager hereby waives any and all claims for additional compensation or monetary damages arising out of or related to any such delay or interference caused by a Fortuitous Event, including, but not limited to, claims for additional Staffing and Site Office Costs or Fee; claims for extended general conditions costs; claims for delay damages, interference damages, impact damages, acceleration damages; and/or any other form of time-related damages.

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

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 Contract Sums**

The Contract Sums for Part A: Pre-Construction Services and Part B: Construction Services are stated in their respective Agreements inclusive of authorized amendments and adjustments, are the total amounts payable by the Owner to the Construction Manager for performance of Preconstruction and Construction Phase Services under the Contract Documents.

#### **§9.1.1 Pre-Construction Services Contract Sum**

Pre-Construction Services and its Contract Sum are referenced in Articles 2 and 4 (respectively) of the Part A: Pre-Construction Services Agreement. The Pre-Construction Services stipulated Fee is not to be included within the Construction Manager's Guaranteed Maximum Price Proposal submitted in accordance with Article 5 of the Construction Management Agreement.

#### **§9.1.2 Construction Services Contract Sum**

Construction Services and its Contract Sum, are stated as a Guaranteed Maximum Price, and stipulated in Articles 2 and 5 (respectively) of the Part B: Construction Services (Construction Management at Risk) Agreement.

### **§ 9.2 Schedule of Values**

The Construction Manager shall submit to the Owner within its Guaranteed Maximum Price Proposal a schedule of values, prepared in such form and manner, and supported by such data to substantiate its accuracy as the Owner may require, allocating the entire Guaranteed Maximum Price by phase and division of the Work. This schedule of values, unless objected to by the Owner, shall be used as the basis for the Construction Manager's cost and/or manpower loading of its CPM schedules required in Section 3.10 herein. The Construction Manager shall maintain and

update its schedule of values throughout the duration of the Project to accurately reflect the actual cost of each division of the Work for each phase of the Project.

### **§9.3 Construction Manager's Pre-Construction Services Payments**

The Construction Manager's invoices for Pre-Construction Services shall be prepared, submitted, approved, and paid in accordance with Article 4 of the Construction Management Agreement as modified by the RFQ.

### **§9.4 Construction Manager's Construction Services Payments**

**§9.4.1** Monthly, the Construction Manager shall meet with the Owner and Architect and review the percentage of the Work indicated as completed as of the last day of the month in the Construction Manager's approved cost and manpower loaded CPM Schedule compared to the Work observed in the field to be actually and properly complete. Based on the review of the Construction Manager's CPM Schedule and the site observations, the Construction Manager, Owner, and Architect shall determine and mutually agree on the allowable percentages and amounts due the Construction Manager for the Work completed, the amounts for materials stored on-site, and other items relating to the Application for Payment. In the absence of mutual agreement, the Owner shall determine the amount of the Construction Manager's Application for Payment due the Construction Manager. The Construction Manager shall then submit an Application for Payment to the Owner and Architect based on the percentages and amounts of the Work completed, materials stored on-site, and other items relating to the Application for Payment mutually agreed to, or determined by the Owner, less normal retainage of five percent (5.0%). Applications shall be submitted to the Owner and Architect prior to the fifth (5th) day of each month. Each Application for Payment shall be accompanied by the following in a form and substance satisfactory to the Owner:

1. A document identifying all Subcontractors and material supplier with whom the Construction Manager has entered into subcontracts; the amount of each such subcontract; the amount currently requested for payment by each subcontractor and material supplier; the amount to actually be paid to each such subcontractor and material supplier by the Construction Manager; and the amount to be paid to the Construction Manager from the requested progress payment.
2. Beginning with the second Application for Payment, a current Construction Manager's lien waiver indicating that, to the best of the Construction Manager's knowledge, information and belief, all Work for which Certificates for Payment have been previously issued and payments received from the Owner is free and clear of liens, claims, security interests, or encumbrances of any kind in favor of the Construction Manager, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work, and that all amounts previously requested by the Construction Manager, and received from the Owner, on account of Subcontractors and material suppliers, have been paid by the Construction Manager to the Subcontractors and material suppliers.
3. Beginning with the second Application for Payment, duly executed waivers of mechanics' liens from all Subcontractors and material suppliers establishing payment or satisfaction of payment of all amounts previously requested by the Construction Manager on behalf of such entities or persons in any previous application for payment.

4. Duly executed Construction Manager's affidavit and partial release of claims and liens, and similar partial release and waiver of claim for each Subcontractor or material supplier, for the requested progress payment to acknowledge the existence of any claim or lien against the Owner.

**§9.4.2** No payment will be made until the Construction Manager's CPM Schedule is approved by the Owner and the monthly revisions and updates as required by Section 3.10 herein are received by the Owner. Retainage withheld by the Owner shall not be due the Construction Manager until after Acceptance (Substantial Completion), expiration of the forty-five day lien period, submission to the Owner of a clear lien certificate and consent of surety, the Architect's receipt of the Construction Manager's record drawings, and Owner's receipt of the Architect's Certification for Payment from its review of the Construction Manager's invoice for retainage.

**§9.4.2.1** No payment will be made until the Construction Manager's Quality Control Plan as required by the Construction Management Agreement as modified by the RFQ has been updated as required.

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

**§9.4.3.1** The Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site without the Owner's prior approval.

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

## **§ 9.5 Certificates for Payment**

**§ 9.5.1** The Architect will, within 14 days after receipt of the Construction Manager's monthly Application for Payment, either issue a Certificate for Payment for such amount as the Owner and Architect determine is properly due, or notify the Construction Manager of the reasons for withholding approval as provided in Paragraph 9.6. herein.

**§9.5.1.1** In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination or audit of the documentation submitted or that the Architect has made exhaustive or

continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

**§9.5.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Construction Manager is entitled to payment in the amount certified.

### **§ 9.6 Decisions to Withhold Certification**

**§ 9.6.1** The Architect shall withhold a Certificate for Payment, in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion, the representations to the Owner required by Paragraph 9.5 herein cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect shall notify the Construction Manager and Owner as provided in Subparagraph 9.5.1 above. If the Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect has the duty and shall also withhold a Certificate for Payment or, because of subsequently discovered evidence, nullify the whole or a part of a Certificate for Payment previously issued, to such extent as is necessary in the Architect's opinion to protect the Owner from loss for which the Construction Manager is responsible, including loss resulting from acts and omissions described in Paragraph 3.3.2 herein, 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 Construction Manager;
3. Failure of the Construction Manager 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.

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

## **§ 9.7 Progress Payments**

**§ 9.7.1** After the Architect has issued a Certificate for Payment, the Owner shall approve and make payment to the Construction Manager within 30 days of receipt of Certificate for Payment.

**§ 9.7.2** The Construction Manager shall pay each Subcontractor after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Construction Manager on account of the Subcontractor's portion of the Work. The Construction Manager shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Construction Manager or Subcontractor shall make payment to each Subcontractor and supplier within fourteen (14) consecutive days of the receipt of payment from the Owner. If not paid, a penalty in the amount of 1/2 of one-percent (0.5%) per day is due, up to a maximum of fifteen percent (15%), from the expiration date until paid. The Construction Manager or Subcontractor, whichever is applicable, is solely responsible for payment of a penalty.

**§ 9.7.2.1** Except with the Owner and Architect's prior approval, payments to Subcontractors shall be subject to retention of not less than five percent (5.0%).

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

**§ 9.7.4** The Owner and Architect shall not have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law. When the Owner receives any claim of non-payment arising out of the Contract, the Owner shall deduct one-hundred twenty-five percent (125%) of such claim from the Contract Sum. The Construction Manager, or any interested party, shall deposit security guaranteeing payment of the claim with the Recorder of Mortgages of the parish where the Work has been done. When the Owner receives original proof of such guarantee from the Recorder of Mortgages, the claim deduction will be added back to the Contract Sum.

**§ 9.7.5** The Construction Manager's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.7.2, 9.7.3, and 9.7.4.

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

**§ 9.7.7** Unless the Construction Manager provide the Owner with Payment Bonds in the full penal sum of the Contract Sum, payments received by the Construction Manager for Work properly performed by Subcontractors and suppliers shall be held by the Construction Manager for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Construction Manager for which payment was made by the Owner. Nothing contained herein shall:

1. require money to be placed in a separate account and not commingled with money of the Construction Manager,

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

## **§ 9.8 Acceptance (Substantial Completion)**

**§ 9.8.1** Acceptance (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. The Architect shall determine if the Project, or portion or phase thereof, is Substantially Complete in accordance with this Section.

**§ 9.8.2** When the Construction Manager considers that the Work is Substantially Complete, or a portion, subpart, or phase thereof which the Owner agrees to accept separately, the Construction Manager shall prepare and submit to the Architect and Owner 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 Construction Manager to complete all Work in accordance with the Contract Documents. In addition to submission of its list of Work yet to be completed, or Work requiring correction, as referenced above, the Construction Manager shall submit its completed and stamped final Test and Balance Report and Roofing Manufacturer and Roof Installer Warranties (where applicable) for the Project, or portion or phase thereof, to the Architect and Owner. The Architect and Owner's receipt of the Construction Manager's final Test and Balance Report indicating air and water flow values and pressure relationships and the Roofing Manufacturer and Roof Installer Warranties in compliance with the Contract Documents are prerequisites to the Architect's and Owner's inspection of the completed Work required in Paragraph 9.8.3 below.

**§ 9.8.3** Upon receipt of the Construction Manager's list and final stamped Test and Balance Report and Roofing Manufacturer and Roof Installer Warranties referenced above, and receipt of the Construction Manager's notification that the Work is ready for inspection by the State Fire Marshal's office, the Architect and Owner shall make an inspection to determine whether the Work is Substantially Complete. If the Architect's and Owner's inspection of the Work, and review of the final Test and Balance Report, discloses any item, whether or not included on the Construction Manager's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy and/or utilize the Work for its intended purpose, the Construction Manager shall, before acceptance of the Work as Substantially Complete by the Architect and Owner, complete or correct such item upon notification by the Architect and/or Owner.

The following items shall be prerequisite to the Project, or portion or phase thereof, being declared Substantially Complete by the Architect:

1. The Owner's receipt of the executed original Roofing Manufacturer's Warranty and Roof Installer's Guarantees, where applicable, and
2. Confirmation by the Architect that air and water flow values and pressure relationships indicated in the final Test and Balance Report, are accurate and in compliance with the Contract Documents.

If, following inspection, the Architect is unable to declare the Work to be Substantially Complete, the Construction Manager shall complete all necessary Work and make all required corrections, and when completed, the Construction Manager shall then submit a request for another inspection by the Architect and Owner to determine Substantial Completion.

**§ 9.8.4** When the Architect determines that the Project, or phase thereof, is Substantially Complete, the Architect shall prepare a “Recommendation of Acceptance” incorporating the punch list and submit it to the Owner. Upon Owner’s approval of the “Recommendation of Acceptance”, the Owner may issue a “Notice of Acceptance” which shall establish the Date of Acceptance (Substantial Completion). The Construction Manager 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 Construction Manager’s expense.

**§ 9.8.5** Warranties required by the Contract Documents shall commence on the date of Acceptance (Substantial Completion) of the Work unless otherwise agreed to in writing by the Owner and Construction Manager. Unless otherwise agreed to in writing by the Owner and Construction Manager, security, maintenance, heat, utilities, damage to the Work not covered by the punch list, and insurance shall become the Owner’s responsibility from the Date of Acceptance (Substantial Completion).

**§ 9.8.6** 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 Construction Manager in default. If the Owner finds the Construction Manager is in default, the Construction Manager’s Surety shall be notified. If within forty-five (45) days after notification, the Construction Manager’s Surety has not completed the punch list, through no fault of the Architect or Owner, the Owner may, at his option, place the Construction Manager in default, contract to have the balance of the Work completed and pay for such work with the unpaid funds remaining in the Contract Sum. Finding the Construction Manager in default shall constitute a reason for disqualification of the Construction Manager from bidding on future State of Louisiana contracts. If the Construction Manager’s Surety fails to complete the punch list within the stipulated time period, the Owner may not accept bonds submitted, in the future, by the surety.

## **§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** Partial Occupancy is that stage in the progress of the Work when a designated portion of the Work is sufficiently complete in accordance with the Contract Documents so the Owner can occupy and/or utilize the designated portion of the Work for its intended use. The Owner may occupy or use any Substantially Completed portion of the Work so designated by separate agreement with the Construction Manager and authorized by the public Authorities Having Jurisdiction over the Project. Such occupancy or use may commence provided the Owner and Construction Manager have accepted in writing the responsibilities assigned to each of them for payments, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Construction Manager considers the designated portion Substantially Complete, the Construction Manager shall, unless waived by the Owner in writing, prepare and submit to the Architect and Owner all lists and Reports required of the Construction Manager by Paragraph 9.8.2 and 9.8.3 herein. Consent of the Construction Manager to Owner’s partial occupancy or use shall not be unreasonable withheld or delayed.

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

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

### § 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Construction Manager's written notice that the Work is ready for final inspection and acceptance, and upon receipt of a final Application for Payment, the Architect and Owner will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information, and belief, and on the basis of the Architect and Owner's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Construction Manager and noted in the final Certificate is due and payable. If the Architect does not find the Work acceptable under the Contract Documents, the Architect and Owner shall make one additional inspection. If the Work is still not acceptable, the Architect, and each of the Architect's principal consultants, shall be paid \$175.00 per hour per person, plus reasonable expenses, for their time at the Project site, for each additional inspection, withheld from the unpaid funds remaining in the Part B: Construction Services Contract Sum. The payment shall be made by the Owner and deducted from Part B: Construction Services Contract funds. All warranties and guarantees required under, or pursuant to, the Contract Documents shall be assembled and delivered by the Construction Manager to the Architect as part of the final Application for Payment. The Architect will review the warranties and guarantees for completeness and if deemed complete will forward to the Owner. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by the Owner.

§9.10.1.1 Final payment shall be made by the Owner to the Construction Manager when:

1. The Contract has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct nonconforming or incomplete Work, as provided in Paragraph 12.2.2 herein, and to satisfy other requirements, if any, which necessarily survive final payment;
2. A final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner's accountants; and
3. The expiration of the 45 day Lien Notice period and the approval of the Construction Manager's final Certificate for Payment by the Architect.
4. The final payment invoice will be accompanied by the following documentation:
  1. Evidence of completion,
  2. Updated final statement,
  3. Final liquidated damages settlement statement,
  4. Clear Lien Certificate,
  5. Consent of Surety.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Construction Manager submits to the Architect and Owner, to the extent and in such form as may be designated by the Owner, the following:

1. The Construction Manager's affidavit and partial release of claims and liens for the requested progress payment,
2. Partial release and waiver of claims for all Subcontractors and material suppliers for the requested progress payment,
3. The Construction Manager's affidavit as to the status of liens and claims for the requested progress payment,
4. The Construction Manager's final affidavit and waiver of liens and release of claims,
5. A final affidavit from the Construction Manager, and each Subcontractor and/or material supplier, that all 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.
6. A final release and waiver of claims, liens, security interests, or encumbrances arising out of the Contract from all Subcontractor's and material suppliers,
7. A certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the Owner,
8. A written statement that the Construction Manager knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, and
9. Consent of surety to final payment.

If a Subcontractor or material supplier refuses to furnish the required releases, waiver, or affidavits, the Construction Manager may furnish a bond satisfactory to the Owner to indemnify the Owner against such claims, lien, or encumbrances. If such lien, claim, or encumbrance remains unsatisfied after payments are made, the Construction Manager shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Acceptance (Substantial Completion) of the Work, final completion thereof is materially delayed through no fault of the Construction Manager or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Construction Manager and certification by the Architect, 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 Construction Manager 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 any claims or rights by the Owner.

**§ 9.10.5** Acceptance of final payment by the Construction Manager, 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.

**§9.10.6** The amount of the final payment shall be calculated as follows:

1. Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting, the Construction Manager's fixed Staffing and Site Office Costs, and the Construction Manager's fixed Fee, but not more than the Guaranteed Maximum Price, as adjusted.
2. Subtract amounts, if any, for which the Owner or Architect withholds, in whole or in part, from a final Certificate for Payment as provided in Paragraph 9.6 herein or other provisions of the Contract Documents.
3. Subtract the aggregate of previous payments made by the Owner.

**§9.10.6.1** If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall promptly reimburse the difference to the Owner.

**§9.10.6.2** The Owner's accountants will review and report in writing on the Construction Manager's final accounting of the Cost of the Work within ninety (90) days after delivery of the final accounting to the Owner and Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Construction Manager's final accounting, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of Architect's reasons for withholding the Certificate for Payment.

**§9.10.7** If the Owner's accountants report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed without a further decision of the Architect. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

**§9.10.8** If, subsequent to final payment and at the Architect's request, the Construction Manager incurs costs described in Article 6 of the Part B: Construction Services (Construction Management at Risk) Agreement arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Staffing and Site Office Costs and Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price.

**§9.10.9** The Construction Manager shall file no mechanic's or material man's lien or maintain any claim against the Owner's real estate or improvements for or on account of any work done, labor performed, or materials furnished under this Part B: Construction Services (Construction Management at Risk) Agreement.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 Safety Precautions and Programs**

The Construction Manager 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 Construction Manager 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 Construction Manager, 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.

In addition to the provisions of this Article 10, the Construction Manager shall take all appropriate and reasonable measures to protect the Owner's representatives and agents, visitors, user agency staff, and employees from personal injury and property damage, and shall use reasonable care to not unduly disrupt the Owner's operations on the Project site or on adjacent properties. In the event the Construction Manager's operations interfere with or disrupt the Owner's operations, the Construction Manager agrees, upon request by a representative of the Owner authorized in advance to make such request, to cease such disruptive activities for such period of time as may be required by the Owner to complete the operations negatively impacted. Such requests by the Owner shall not constitute grounds for any claim for additional compensation and/or time by the Construction Manager or any Subcontractor of any level or tier. The Construction Manager shall also be responsible for those measures necessary to protect any property adjacent to the Project and any equipment and/or improvements relating thereto. Any damage to such property, equipment, or improvements shall be promptly repaired by the Construction Manager as a cost of the Work without adjustment to the Contract Sum.

### **§ 10.2.2 Construction Manager's Required Safety Plans**

The Construction Manager shall develop, submit for review by the Owner, maintain, revise as necessary, and implement throughout the duration of the Project, those Safety Plans required by the Part B: Construction Services (Construction Management at Risk) Agreement.

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

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

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

**§10.2.6** The Construction Manager shall promptly remedy damage and loss to property referred to in Subparagraphs 10.2.1.2 and 10.2.1.3 herein caused in whole or in part by the Construction Manager, 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 Construction Manager is responsible under Subparagraphs 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Construction Manager. The foregoing obligations of the Construction Manager are in addition to the Construction Manager's obligations under the Part B: Construction Services (Construction Management at Risk) Agreement.

**§10.2.7** The Construction Manager shall designate a responsible and qualified member of the Construction Manager's organization at the site whose sole duty shall be the prevention of accidents and administration of the Construction Manger's required Safety Plans referenced in Paragraph 10.2.2 above.

**§10.2.8** The Construction Manager shall not permit any portion of the construction or site to be loaded so as to cause damage or create an unsafe condition.

### **§ 10.2.9 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 immediately in the event of injury to persons, and in the event of damage to property, within 24 hours of the occur or discovery of the incident. 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 Construction Manager is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Construction Manager 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), encountered on the site by the Construction Manager, the Construction Manager shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

**§ 10.3.2** Upon receipt of the Construction Manager's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Construction Manager and, in the event such material or substance is found to be present, to cause it to be rendered harmless. When the laboratory or other qualified entity or individual advises the Owner, Architect, and Construction Manager in writing that Work in the affected area may continue, the Construction Manager shall resume work without delay.

**§ 10.3.3** Notwithstanding any provision herein to the contrary, the Owner, by this Agreement, does not agree to indemnify, hold harmless, exonerate, or assume the defense of Construction Manager or any other person or entity whatsoever, for any purpose whatsoever. However, in the event of a

hazardous material(s) being found on the Project site, the Owner agrees to issue a written change order to the Construction Manager if, in the opinion of the Owner, a change in the Contract Sum or Contract Time is required by the Contract Documents, appropriate, or necessary for the completion of the Work.

**§ 10.3.4** The Owner shall not be responsible for any of the materials or substances the Construction Manager brings to the site. The Construction Manager shall be solely responsible for the proper transportation, storage, or use of hazardous materials and/or substances if required by the contract documents.

**§ 10.3.5** The Construction Manager shall indemnify the Owner and remediate at its own expense any material or substance the Construction Manager, his contractors, or his subcontractors brings to the site and negligently mishandles and/or where it fails to perform its obligations under Paragraph 10.3.1.

#### **§ 10.4 Emergencies**

In an emergency affecting the safety of persons or property, the Construction Manager 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 Construction Manager on account of emergency work shall be determined as provided in Article 7 and Article 15 herein.

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

**Disregard the standard provisions of AIA 201-2017 and substitute the following:**

#### **§ 11.1 Construction Manager's Liability Insurance**

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

#### **§ 11.2 Minimum Scope and Limits of Insurance**

##### **11.2.1 Worker's Compensation**

Worker's Compensation insurance shall be in compliance with the Worker's Compensation law of the 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.

##### **11.2.2 Commercial General Liability**

Commercial General Liability insurance, including Personal and Advertising Injury Liability and Products and Completed Operations Liability, shall have a minimum limit per occurrence based on the project value. The Insurance Services

Office (ISO) Commercial General Liability occurrence coverage form CG 00 01 (current form approved for use in Louisiana), or equivalent, is to be used in the policy. Claims-made form is unacceptable.

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

**COMBINED SINGLE LIMIT (CSL) PER OCCURRENCE**

<b><u>Type of Construction</u></b>	<b><u>Projects up to \$1,000,000</u></b>	<b><u>Projects over \$1,000,000 up to \$10,000,000</u></b>	<b><u>Projects over \$10,000,000</u></b>
<b>New Buildings:</b>			
Each Occurrence			
Minimum Limit	\$1,000,000	\$2,000,000	\$4,000,000
Per Project Aggregate	\$2,000,000	\$4,000,000	\$8,000,000
<b>Renovations:</b>	<b>The building(s) value for the Project is \$ _____.</b>		
Each Occurrence			
Minimum Limit	\$1,000,000**	\$2,000,000**	\$4,000,000**
Per Project Aggregate	2 times per occur limit**	2 times per occur limit**	2 times per occur limit**

\*\*While the minimum Combined Single Limit of \$1,000,000 is required for any renovation, the limit is calculated by taking 10% of the building value and rounding it to the nearest \$1,000,000 to get the insurance limit. Example: Renovation on a \$33,000,000 building would have a calculated \$3,300,000 combined single limit of coverage (33,000,000 times .10 = 3,300,000 and then rounding down to \$3,000,000). If the calculated limit is less than the minimum limit listed in the above chart, then the amount needed is the minimum listed in the chart. Maximum

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

**11.2.3 Automobile Liability**

Automobile Liability Insurance shall have a minimum combined single limit per occurrence of \$1,000,000. ISO form number CA 00 01 (current form approved or 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.

## 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

11.2.5.1 Builder's Risk Insurance shall be in an amount equal to the amount of the construction contract including any amendments and shall be upon the entire Work included in the contract. The policy shall provide coverage equivalent to the ISO form number CP 10 20, Broad Form Causes of Loss (extended, if necessary, to include the perils of wind, earthquake, collapse, vandalism/malicious mischief, and theft, including theft of materials whether or not attached to any structure). The policy must include architects' and engineers' fees necessary to provide plans, specifications and supervision of Work for the repair and/or replacement of property damage caused by a covered peril, not to exceed 10% of the cost of the repair and/or replacement.

11.2.5.2 Flood coverage shall be provided by the Construction Manager on the first floor and below for all projects, except as otherwise noted. The builder's risk insurance policy, sub-limit for flood coverage shall not be less than ten percent (10%) of the total contract cost per occurrence. If flood is purchased as a separate policy, the limit shall be ten percent (10%) of the total contract cost per occurrence (with a max of \$500,000 if NFIP). Coverage for roofing projects shall **not** require flood coverage.

11.2.5.3 A Specialty Contractor may provide an installation floater in lieu of a Builder's Risk policy, with the similar coverage as the Builder's Risk policy, upon the system to be installed in an amount equal to the amount of the contract including any amendments. Flood coverage is not required.

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

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

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

## 11.2.7 Deductibles and Self-Insured Retentions

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

## § 11.3 Other Insurance Provisions

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

### 11.3.1.1 Worker's Compensation and Employers Liability Coverage

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

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

Any party to a loss may make written demand for an appraisal of the matter in disagreement. Within 20 days of receipt of written demand, the

Construction Manager'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 Professional Liability Coverage

Professional Liability Insurance shall be furnished by the Construction Manager based on an AFC (Construction Cost) of \$16,792,753 and a minimum Limit of Liability of \$2,000,000. No deductible shall be in excess of 5% of the amount of the policy. The Construction Manager shall be fully responsible to the Owner for his associates and his professional consultant work. Professional Liability coverage directly related to Pre-Construction Services and Construction Services for project design assist and construction of the total project rests solely with the Construction Manager.

#### 11.3.1.5 All Coverages

11.3.1.5.1 All policies must be endorsed to require 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, Construction Manager is required to notify Agency of policy cancellations or reductions in limits.

11.3.1.5.2 Neither the acceptance of the completed Work nor the payment thereof shall release Construction Manager from the obligations of the insurance requirements or indemnification agreement.

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

11.3.1.5.4 Any failure of the Construction Manager 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 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

Construction Manager 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

Name of Owner

Owner Address

City, State, Zip

Attn: Project # \_\_\_\_\_

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

Upon failure of the Construction Manager to furnish, deliver and maintain required insurance, this contract, at the election of the Agency, may be suspended, discontinued, or terminated. Failure of the Construction Manager to purchase and/or maintain any required insurance shall not relieve the Construction Manager from any liability or indemnification under the contract.

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

### 11.3.4 Subcontractors

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

certificates at any time.

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

#### 11.3.5 Worker's Compensation Indemnity

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

#### 11.3.6 Indemnification/Hold Harmless Agreement

Construction Manager 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 Construction Manager, its agents, servants and employees, or any and all costs, expenses and/or attorney fees incurred by Construction Manager 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. Construction Manager 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 Construction Manager in the defense of claims, but this shall not affect the Construction Manager's responsibility for the handling and expenses of all claims.

### **§ 11.4 Performance and Payment Bond**

**§11.4.1** The Owner shall require the Construction Manager to furnish Performance and Payment Bond(s) covering faithful performance of the Work and payment of obligations arising thereunder required in the Contract Documents on the date of execution of Part B: Construction Services

(Construction Management at Risk) Agreement and/or the Part A: Pre-Construction Services Agreement where Advanced Construction Start construction activities are amended therein. All Performance and Payment Bonds provided shall meet all statutory requirements for a public works project in the State of Louisiana, be in a form satisfactory to the Owner and, without limitation, comply with the following specific requirements:

1. Except as otherwise required by statute, the form and substance of such Performance and Payment Bonds shall be satisfactory to the Owner in the Owner's sole judgement.
2. Bonds shall be executed by a responsible surety licensed to do business in the State of Louisiana, with an A.M. Best's rating of no less than A or X. Bonds shall remain in effect for a period not less than two (2) years following the date of Acceptance (Substantial Completion) of the latest part or phase of the Project to be completed under this Contract and the time required to resolve any items of incomplete Work or the payment of any disputed amounts, whichever time period is longer.
3. The Construction Manager's Performance Bond and Labor and Materials Payment Bond(s) shall be equal to 100% of the amount of the Part B: Construction Services Agreement and 100% of the amount of any Advanced Construction Start construction amended into the Part A: Pre-Construction Services Agreement.
4. Bonds provided under this paragraph and required by the Contract Documents must display the surety's bond number. A rider including the following provision shall be attached to each bond:

"Surety agrees that in the event of any default by the Construction Manager in the Construction Manager's obligations to the Owner under the Contract, (specifying such default in detail), Surety shall have thirty (30) days from the time after receipt of such notice within which to cure such default, or such additional reasonable period of time as may be required if the nature of such default is such that it cannot be cured within thirty (30) days. Such notice of default shall be sent by certified or registered U.S. mail, return receipt requested, to the lender(s) and Owner."

## **§ 11.5 Subrogation Rights**

**§ 11.5.1** The Owner and Construction Manager reserve their respective rights against each other and the Construction Manager's subcontractors, sub-subcontractors, agents, and employees, each of the other; and 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 Part B: Construction Services (Construction Management at Risk) Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance.

**§ 11.5.2** 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 reserves 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.

## **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 Construction Manager's expense without change in the Contract Time or Contract Sum.

**§ 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 Construction Manager. If such Work is found to be in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is found to not be in accordance with the Contract Documents, such costs and the cost of correction shall be at the Construction Manager's expense unless the condition was caused by the Owner or a separate contractor of the Owner, in which event the Owner shall be responsible for payment of such costs

### **§ 12.2 Correction of Work**

#### **§ 12.2.1 Before or After Acceptance (Substantial Completion)**

The Construction Manager shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Acceptance (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 Construction Manager's expense.

#### **§ 12.2.2 After Acceptance (Substantial Completion)**

**§ 12.2.2.1** It is anticipated that separate phases, or combinations of phases, of the Project will be completed based on different dates of Acceptance (Substantial Completion). Therefore, it is anticipated that warranty periods for the individual phases, or combinations of phases, will commence on different dates, as to be indicated in Owner's Notice of Acceptance, for completed portions of the Project. If, within one (1) year after the dates of Acceptance (Substantial Completion) recommended by the Architect for each completed portion or phase of the Project, or within such longer period of time as may be prescribed by the Contract Documents, including Paragraph 12.2.4 herein, or by law, any of the work is found to be defective, the Construction Manager shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Construction Manager a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. In addition to the Construction Manager's obligations under Section 3.5 herein, if, within one (1) year after the date of Acceptance (Substantial Completion) of the Work or designated portion thereof, or after the date for commencement of warranties established under Paragraph 9.6.1 herein, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Construction Manager shall correct it within thirty (30) days after receipt of written notice from the Owner to do so unless the Owner has previously given the Construction Manager a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Construction

Manager fails to correct nonconforming Work within thirty (30) days following receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4 herein. If the Construction Manager fails to correct Work identified as defective and covered by warranties, the Owner may hold the Construction Manager in default. If the Owner finds the Construction Manager or a Subcontractor is in default, the Subcontractor's Surety, if any, shall be notified. Finding the Construction Manager or Subcontractor in default shall constitute a reason for disqualification of the Construction Manager or Subcontractor from bidding on future State of Louisiana contracts.

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

**§ 12.2.2.3** The one (1) year period for correction of Work shall not be extended by corrective Work performed by the Construction Manager pursuant to this Section 12.2. Construction Manager agrees to warrant the quality of the Work, materials, and equipment provided for a period of one (1) year from the dates of Acceptance (Substantial Completion), except where longer periods for certain items are provided in the Project Manuals or where a manufacturer's warranty is for a longer period. Construction Manager agrees to make all necessary repairs to the Work and to replace or repair any defective material and equipment during the warranty period. Construction Manager agrees to transfer all equipment and manufacturer's warranties to Owner for all equipment, materials, and products provided as part of the Project. Nothing in this Subparagraph shall be construed to waive or limit any other claims, actions, or warranties as may be made or brought on behalf of the Owner. This Subparagraph shall not require Construction Manager to repair or replace any Work, materials, or equipment damaged as a result of the negligence of the Owner.

**§ 12.2.3** The Construction Manager 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 Construction Manager nor accepted by the Owner.

**§ 12.2.3.1** If the Construction Manager does not correct such defective or non-conforming work within the time established within the Architect's or Owner's written notice to the Construction Manager, the Owner may correct the Work with its own or separate forces, and may store any replaced materials or equipment at the expense of the Construction Manager. If, upon the Owner's submission of an appropriately itemized invoice to the Construction Manager, the Construction Manager fails to reimburse the Owner its costs of such correction and storage within ten consecutive calendar days thereafter, the Owner may, upon ten additional days written notice, sell such materials and equipment through whatever means deemed appropriate by the Owner, and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Construction Manager including compensation for additional Architectural services and reasonable compensation for the Owners efforts. If such proceeds of sale do not cover all costs which the Construction Manager should have borne, the difference shall be charged to the Construction Manager and an appropriate Change Order shall be issued. If latent defects, or work not in compliance with the Contract Documents, are discovered after the termination or completion of this Agreement, the Construction Manager agrees to, within ten (10) consecutive calendar days, reimburse the Owner for its costs of correcting such work.

§ 12.2.3.2 If instead the Owner prefers to consider acceptance of 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 shall be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

§ 12.2.4 The Construction Manager shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Construction Manager'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 or any other Section of the Contract Documents shall be construed to establish a period of limitation with respect to other obligations the Construction Manager has under the Contract Documents. Establishment of the one (1) year period for correction of Work as described in Paragraph 12.2.2 relates only to the specific obligation of the Construction Manager 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 Construction Manager's liability with respect to the Construction Manager's obligations other than specifically to correct the Work. The Construction Manager's obligation to complete the Work in accordance with the Contract Documents or to correct Work found to not be in accordance with the Contract Documents, shall not be limited or restricted by the one-year general warranty provisions of this Agreement. In the event latent discoveries of Work not completed in accordance with the Contract Documents are brought to the attention of the Construction Manager by the Owner or Architect beyond the expiration of the one-year general warranty period, with the exception of nonconforming Work initially accepted by the Owner in writing per Section 12.3 below, the Construction Manager agrees to promptly correct, repair, or replace such defective Work at no additional cost to the Owner. Failure of the Construction Manager to promptly correct such Work found to not be in accordance with the requirements of the Contract Documents under this provision may constitute a reason for disqualification of the Construction Manager and Subcontractor(s) involved from bidding on future State of Louisiana contracts.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§ 13.1 Written Notice**

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

### **§ 13.2 Rights and Remedies**

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

§ 13.2.2 No action or failure to act by the Owner, Architect, or Construction Manager shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except for time periods stipulated in Article 15 requiring actions by the Parties regarding Claims, or as may be specifically agreed in writing.

### **§ 13.3 Tests and Inspections**

**§ 13.3.1** 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 Owner shall provide for and contract separately independent testing lab services for such tests, inspections, and approvals and bear all related costs of tests, inspections and approvals. The Construction Manager shall make arrangements for such tests, inspections, and approvals with the independent testing laboratory assigned by the Owner. The Construction Manager shall give the Architect and Owner seventy-two (72) hour prior notice of when and where tests and inspections are to be made so that the Architect and Owner may be present for such procedures

**§ 13.3.2** If such procedures for testing, inspection, or approval under Paragraph 13.3.1 herein reveal failure of 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 Construction Manager's expense. Costs incurred by Owner as a result of cancellations of testing lab services due solely to poor coordination on the part of the Construction Manager shall be reimbursed to the Owner at the Construction Manager's expense.

**§ 13.3.3** Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Construction Manager and promptly delivered to the Owner and Architect.

**§ 13.3.4** If the Architect and Owner are 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.

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

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

**§ 14.1** The Part B: Construction Services (Construction Management at Risk) Agreement may be terminated for the following reasons:

1. Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or
2. An act of government, such as a declaration of national emergency that requires all Work to be stopped.

**§ 14.2** The Construction Manager may terminate the Contract if:

1. Through no act or fault of the Construction Manager or a Subcontractor, Sub-subcontractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Construction Manager, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 herein constitute in the aggregate more than 100 percent (100%) of the

total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less, or

2. Because the Architect has not issued a Certificate for Payment and has not notified the Construction Manager of the reason for withholding certification as provided in Paragraph 9.6 herein, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents.

**§ 14.2.1** If one of the reasons described in Paragraph 14.2 above exists, the Construction Manager may, upon thirty (30) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work actually and properly executed, including reasonable overhead and profit for Work completed prior to stoppage, costs incurred by reason of such termination, and damages. The Construction Manager shall not be compensated for Work not actually and properly performed in accordance with the requirements of the Contract Documents, or for unrealized profit, overhead, or any other costs, fees, or expenses associated with unperformed Work. In no event shall total compensation to the Construction Manager exceed the Guaranteed Maximum Price, as adjusted. All sums paid to the Construction Manager following termination by the Construction Manager shall be substantiated to the satisfaction of the Owner and shall be subject to the audit provisions of this Agreement.

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

**§ 14.3.1** The Owner may terminate the Part A: Pre-Construction Services Agreement at any time and for any reason, or for its convenience, upon 30 days advanced written notice to the Construction Manager. In the event of such termination by the Owner, the Construction Manager shall be equitably compensated by the Owner on the basis of those Pre-Construction Services actually and properly performed by the Construction Manager prior to the effective date of termination not previously reimbursed by the Owner, provided the Construction Manager returns to the Owner all Instruments of Service, data, records, drawings, and documents in accordance with the Construction Management Agreement. The Construction Manager shall not be compensated for Work not actually and properly performed in accordance with the requirements of the Contract Documents, or for unrealized profit, overhead, or any other costs, fees, or expenses associated with unperformed Work. In no event shall total compensation to the Construction Manager exceed the Contract Sum, as adjusted. All sums paid to the Construction Manager following termination by the Owner shall be substantiated to the satisfaction of the Owner and shall be subject to the audit provisions of this Agreement.

**§ 14.3.2** The Owner may terminate the Part B: Construction Services (Construction Management at Risk) Agreement if the Construction Manager:

1. Repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
2. Fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Construction Manager and the Subcontractors;
3. Repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
4. Commits a breach of a provision of the Contract Documents; or
5. Fails to complete the punch list within the lien period as provided in Paragraph 9.8.4 herein.
6. Fails to comply with the Owner's construction safety policies and procedures or similar policies as outlined in Part B: Construction Services (Construction Management at Risk) Agreement.

**§ 14.3.3** When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Construction Manager and the Construction Manager's surety seven (7) days' written notice, terminate employment of the Construction Manager and may, subject to any prior rights of the surety:

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

**§ 14.3.4** When the Owner terminates the Construction Manager for one of the reasons stated in Paragraph 14.3.2. above, the Construction Manager 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.

**§14.3.5** If the unpaid balance of the Guaranteed Maximum Price, and adjustments thereto, exceeds costs of finishing the Work, including compensation for the Architect's and/or other Owner's consultant's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, the Construction Manager shall be compensated for any expenses actually incurred for the Cost of the Work and its Staffing and Site Costs not previously reimbursed by the Owner. The Construction Manager shall not be compensated for Work not actually and properly performed in accordance with the requirements of the Contract Documents, or for unrealized profit, overhead, or any other costs, fees, or expenses associated with unperformed Work. In no event shall total compensation to the Construction Manager exceed the Guaranteed Maximum Price, as adjusted. All sums paid to the Construction Manager following termination by the Owner shall be substantiated to the satisfaction of the Owner and shall be subject to the audit provisions of this Agreement. If such costs and damages exceed the unpaid balance of the Guaranteed Maximum Price, as adjusted, the Construction Manager shall, within 30 days, pay the difference to the Owner. The amount to be paid to the Construction Manager or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

**§14.3.6** Termination by the Owner under this Subparagraph will not relieve the Construction Manager and/or its surety of his obligations under the Liquidated Damages provisions of the Part B: Construction Services (Construction Management at Risk) Agreement, and the Construction Manager and/or surety shall be liable to the Owner for per diem Liquidated Damages.

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

As provided in Article 7 of Part B of the Construction Management Agreement, the Owner may order the Construction Manager in writing to suspend, delay, or interrupt the Work, in whole or in part, for such period of time as the Owner may determine. In the event of such suspension of the Work by the Owner, adjustments of the Contract Time, Contract Sum, and compensation to the Construction Manager shall be as provided in accordance with the provisions of Article 10 of the Construction Management Agreement. 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 Construction Manager is responsible; or
2. that an equitable adjustment is made or denied under another provision of the Contract.

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

**§ 14.5.1** The Owner may, at any time, terminate the Part B: Construction Services (Construction Management at Risk) Agreement in whole or in part, for the Owner's convenience and without cause. Termination by the Owner under this Section shall be by Notice of Termination delivered to the Construction Manager specifying the extent of termination and the effective date.

**§ 14.5.2** Upon receipt of a Notice of Termination for convenience, the Construction Manager shall immediately, in accordance with instructions from the Owner, proceed with the performance of the following duties, regardless of delay in determining or adjusting amounts due under this Paragraph:

1. Cease operations as specified in the notice;
2. Place no further orders and enter into no further subcontracts for materials, labor, services, or facilities, except if necessary to complete continued portions of the Contract;
3. Terminate all Subcontracts and orders to the extent they relate to the Work terminated;
4. Proceed to complete the performance of the Work not terminated; and
5. Take actions that may be necessary, or that the Owner may direct, for the protection and preservation of the terminated Work.

**§ 14.5.3** Upon the Construction Manager's receipt of a Notice of Termination for convenience, the Owner shall be credited for:

1. Payments previously made to the Construction Manager for the terminated portion of the Work;
2. Claims which the Owner has against the Construction Manager under the Contract pursuant to this Agreement for which the Construction Manager is determined to be at fault;
3. The value of materials, supplies, equipment, or other items that are to be disposed of by the Construction Manager that are part of the Contract Sum.

**§ 14.5.4** Upon such termination, the Construction Manager shall recover, as its sole remedy, payment for Work actually and properly performed in connection with the terminated portion of the Work to the effective date of termination and for items properly and timely fabricated off the Project site, delivered, and stored in accordance with the Owner's instructions. In addition, the Construction Manager shall be paid a prorated portion of its agreed upon Fee and Staffing and Site Office Costs, based on the scope of Work actually and properly performed by the Construction Manager prior to the date of termination. In no event shall the Construction Manager be compensated for unrealized profits, overhead, or any other costs, fees, or expenses associated with unperformed Work.

## **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 Construction Manager arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

#### **§ 15.1.2 Notice of Claims**

Claims by either the Owner or Construction Manager must be initiated by written notice to the other party and to the Architect. Claims by either party must be initiated within fifteen (15) days after occurrence of the event giving rise to such Claim, or within fifteen (15) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. "Reservation of Rights" or similar such 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 Continuing Contract Performance**

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Sections 7.3 and 9.10, and in Article 14 herein, the Construction Manager shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Construction Manager shall prepare Change Order Proposals for the Architect's and Owner's approval, and the Architect will issue Change Orders and Certificates for Payment in accordance with Owner's decision, provided, however, that the Construction Manager shall use its best efforts to furnish the Owner and Architect, as expeditiously as possible, with notice of any claim, including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Owner and Architect and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition which caused such claim.

#### **§ 15.1.4 Claims for Additional Cost**

If the Construction Manager wishes to make a Claim for an increase in the Contract Sum, the Construction Manager shall give the Owner and Architect written notice thereof within fifteen (15) days after occurrence of the event giving rise to such claim before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4 herein.

#### **§ 15.1.5 Claims for Additional Time**

**§ 15.1.5.1** If the Construction Manager wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Construction Manager'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 (1) Claim is necessary. If the Construction Manager wishes to make claim for an increase in the Contract Time, the Construction Manager shall give the Owner and Architect written notice thereof within fifteen (15) days after occurrence of the event giving rise to such claim. The Construction Manager shall have the burden of demonstrating the effect of the claimed delay on the Contract Time and Contract Sum, if any, and shall furnish the Owner and

Architect with detailed critical path (CPM) analysis or similar documentation relating thereto as the Owner and Architect may reasonably require.

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

1. Record of "normal weather conditions" established from historical weather data determined from climatological data sheets obtained from (U.S. Department of Commerce) National Weather Service Station for the locality closest to the project site for a ten-year period preceding the date of the Contract.
2. Weather data from National Weather Service for the time period cited in the claim for extension.
3. Copy of Superintendent's daily reports for the time period cited in the claim for extension.
4. Copy of the Construction Manager's Cost and Manpower Loaded CMP Schedule indicating critical path activities impacted.
5. Documentation by the Construction Manager that abnormal weather conditions actually caused delay in Project completion. Precipitation level must be more than a 'trace' for consideration as a basis of delay.

§ 15.1.5.2.1 The Construction Manager agrees that the Contract Time will not be extended due to normal inclement weather. For a time extension to be granted for abnormal inclement weather: (1) such weather must, in the reasonable opinion of the Owner, have actually had an adverse effect upon the progress of the Construction Manager's work which is of a critical nature; and (2) in the reasonable opinion of the Owner, the adverse effect must not have been due to any fault or negligence of the Construction Manager and could not have been avoided through proper planning, coordination, and implementation of adequate weather protection necessary to allow the Work to be continued without adverse effect upon labor production. The Construction Manager agrees that the fact abnormal inclement weather may occur does not, of itself, justify any time extension hereunder.

§ 15.1.5.2.2 The Construction Manager is advised that in preparing its CPM Schedule, the following number of days should be considered as reasonably anticipated days of inclement weather for the Project site on a monthly basis:

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

Should the Construction Manager request additional Time for completion of the Project based on inclement weather days, the Construction Manager's request shall be considered only for days in excess of the number of reasonably anticipated inclement weather days stated above.

**§ 15.1.5.2.3** The Construction Manager agrees that it shall not be entitled to a time extension for normal inclement weather which can be expected at the Project locale due to precipitation or temperature, based upon actual data from the U. S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) for the locale of the Project. The Construction Manager acknowledges and warrants that in making its proposal or bid and Construction Schedule for the Work, it gave due care and consideration to this expected number of calendar days of inclement weather for the locale of the Project, and allowed therefore, as well as the impact of inclement weather on subsequent Work. During the time of performance, should the expected number of calendar days of inclement weather for the locale of the Project be less than originally anticipated by the Construction Manager and the Owner, at the time of contracting, those days not so affected by inclement weather shall be considered float time in the Construction Schedule. Schedule float time shall be the property of the Project unless otherwise agreed to between the Owner and the Construction Manager.

**§ 15.1.5.2.4** No extension of time will be made for abnormal inclement weather after the principal portions of the Work are enclosed except for site work which critically affects the Contract Time. For the purpose of this Subparagraph 15.1.5.6, the term "enclosed" is defined to mean when the Work is sufficiently closed in (exterior walls up and roof in place) so as to permit any structure, or major portion thereof which is part of the Work, to be adequately heated or cooled so as to allow the various trades to perform their work.

**§ 15.1.5.2.5** If the total calendar days lost due to inclement weather, from the Date of Commencement established in the Owner's written Notice to Proceed until the Work is enclosed, exceeds the total number of days to be expected to be lost for the same time period, a time extension, if granted, shall only be the number of calendar days needed to equal the excess number of calendar days lost to such abnormal inclement weather. The Construction Manager shall not be eligible to receive extensions of time for "mud days" claimed due to excessive mud or muck on the Project site which is the result of normally anticipated inclement weather. The Construction Manager's Site Logistics Plans are required to make provisions for the control of surface water and to maintain access to, and appropriate working conditions adjacent to, project structures.

**§ 15.1.5.2.6** Notwithstanding any other provision of the Contract Documents, the Construction Manager agrees that its exclusive remedies for any delay or interference with the Construction Manager's schedule for completion of the Work caused by abnormal inclement weather shall be its right to receive an extension of time for completion of the Work, as described in Subparagraph 15.1.5.2 herein. Construction Manager hereby waives any and all claims for additional compensation or monetary damages arising out of or related to any such delay or interference caused by abnormal inclement weather, including, but not limited to, claims for additional Staffing and Site Office Costs or Fee, claims for extended general conditions costs, claims for delay damages, interference damages, impact damages, acceleration damages, and/or any other form of time-related damages.

**§ 15.1.5.3** The parties may consult with and seek input from the Architect regarding any dispute, Claim, or concern relating to the Project; however, all final decisions regarding the Project shall be made by the Owner.

### **§ 15.1.6 Claims for Consequential Damages**

The Owner and Construction Manager waive their respective rights for Claims against each other for consequential damages arising out of or relating to this Contract. This includes:

- .1** damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2** damages incurred by the Construction Manager for jobsite office expenses including the compensation of personnel if actively assigned thereto, and for loss of profit, except anticipated profit arising directly from the Work.

This is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall preclude the 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 arising under the provisions of 10.3, 10.4, 11.3.3.2, and 11.3.4 herein, shall be referred to the Initial Decision Maker for an initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Paragraph 15.2.1, an initial decision shall be required as a condition precedent to resolution of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree in writing, the Initial Decision Maker will not decide disputes between the Construction Manager and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten (10) 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.

**§ 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.

§ 15.2.6 In the event of a Claim against the Construction Manager, 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 Construction Manager's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

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

### § 15.3 Disputes

§ 15.3.1 The Owner cannot be required to resolve any claim or dispute relating to this Agreement by arbitration or mediation. Any reference to the word "arbitration" or "mediation" in this Agreement or any other Contract Documents is void and of no effect between the Parties.

§ 15.3.2 In the event of a dispute, the parties shall attempt to resolve the dispute using informal means, including, if necessary, a meeting between senior management officials of Construction Manager, the Owner, and the Architect.

§ 15.3.3 If the parties are unable to resolve the dispute using informal means, the parties may agree to mediate or file an action in the Nineteenth Judicial Court in and for the Parish of East Baton Rouge, State of Louisiana.

## END OF GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION