

AUGUST 13, 2020

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SUITE 200  
JACKSON, MISSISSIPPI 39216

ADDENDUM NUMBER TWO (#2)  
DAVIS PLANETARIUM – DEMOLITION  
JACKSON, MISSISSIPPI  
CITY OF JACKSON  
CDFL 19.142

Plan Holders:

The following changes and clarifications are hereby made a part of and take precedence over conflicting sections of the Drawings and Specifications.



Architect

PERTAINING TO SPECIFICATIONS:

- 2.1 Section 00 73 13 – Supplementary Conditions: Replace this Section in its entirety with the attached.

END OF ADDENDUM NUMBER TWO (#2)

## SECTION 00 73 13

### SUPPLEMENTARY CONDITIONS

#### PART 1 GENERAL

##### 1.1 DESCRIPTION

- A. The following Supplementary Conditions modify the "General Conditions of the Contract for Construction," AIA Document A201, 2017. Where a portion of the General Conditions is modified or deleted by the Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect. In the event of a conflict between the General Conditions of the Contract for Construction, Section 00 73 13 shall control even if the conflicting provision in the General Conditions of the Contract for Construction is not expressly revised or deleted by reference in Section 00 73 13.
- B. The General Conditions may also be supplemented or amplified elsewhere in the Contract Documents by provisions located in, but not necessarily limited to, Division 1 of the Specifications.

##### 1.2 SUPPLEMENTS

#### ARTICLE 1 - GENERAL PROVISIONS

##### 1.1 BASIC DEFINITIONS

###### 1.1.1 THE CONTRACT DOCUMENTS:

Delete the last sentence in Article 1.1.1 and insert the following:

The Contract Documents shall include the Instructions to Bidders, the plans, the specifications, including Divisions 1 through 26, all Addenda and modifications to the plans and/or specifications, the Agreement between Owner and Contractor, the performance and payment bonds, the notice to proceed and any executed change orders. Information and documentation pertaining to soil investigation data, laboratory investigations, soil borings and related information included herein are not part of the Contract Documents. In the event of a conflict between the provisions of Division 0 and any other section of the Contract Documents, such other sections(s) shall govern.

###### 1.1.2 THE CONTRACT

Add the following to the end of Article 1.1.2:

Large scale drawings shall govern over small scale drawings where there are differences or conflicts between such drawings. Where the word "similar" appears on the plans, it shall not be interpreted to mean "identical" and shall require the Contractor to coordinate the actual conditions and dimensions of the location where the "similar" conditions are shown to occur.

###### 1.1.9 MISCELLANEOUS DEFINITIONS

Add the following:

The term "products" as used in these Supplementary Conditions includes materials, systems and equipment.

## 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

### 1.2.4 Add the following Article 1.2.4:

It is the intent of the Contract Documents that the Contractor shall properly execute and complete the Work described by the Contract Documents, and unless otherwise provided in the Contract, the Contractor shall provide all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, whether temporary or permanent and whether or not incorporated in the Work, in full accordance with the Contract Documents and reasonably inferable from them as necessary to produce the intended results.

### 1.2.5 Add the following Article 1.2.5:

The Contract Documents shall be interpreted collectively, each part complementing the others and consistent with the intent of the Contract Documents. Unless an item shown or described in the Contract Documents is specifically identified to be furnished or installed by the Owner or others or is identified as "Not In Contract" ("N.I.C."), the Contractor's obligation relative to that item shall be interpreted to include furnishing, assembling, installing, finishing, and/or connecting the item at the Contractor's expense to produce a product or system that is complete, appropriately tested, and in operable condition ready for use or subsequent construction or operation by the Owner or separate contractors. The omission of words or phrases for brevity of the Contract Documents, the inadvertent omission of words or phrases, or obvious typographical or written errors shall not defeat such interpretation as long as it is reasonably inferable from the Contract Documents as a whole.

Words or phrases used in the Contract Documents which have well-known technical or construction industry meanings are to be interpreted consistent with such recognized meanings unless otherwise indicated.

Except as noted otherwise, references to standard specifications or publications of associations, bureaus, or organizations shall mean the latest edition of the referenced standard specification or publication as of the date of the Advertisement of Bids.

In the case of inconsistency between Drawings and Specifications or within either document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation.

Generally, portions of the Contract Documents written in longhand take precedence over typed portions, and typed portions take precedence over printed portions.

Any doubt as to the meaning of the Contract Documents or any obscurity as to the wording of them, shall be promptly submitted in writing to the Architect for written interpretation, explanation, or clarification.

## ARTICLE 2 - OWNER

### 2.2 EVIDENCE OF THE OWNER'S FINANCIAL ARRANGEMENTS

#### 2.2.1 Add the following to the beginning of Article 2.2.1:

If the Project is a private project, not funded by public funds, then . . .

2.2.2 Delete Article 2.2.2 in its entirety.

2.2.3 Delete Article 2.2.3 in its entirety.

2.2.4 Delete Article 2.2.4 in its entirety.

### 2.3 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.3.3 Delete "to whom the Contractor has no reasonable objection and"

2.3.4 Delete Article 2.3.4 in its entirety.

2.3.6 Delete Article 2.3.6 in its entirety and insert the following:

2.3.6 The Contractor will be furnished free of charge ten (10) printed copies of the plans and specifications, including all Addenda. Additional sets will be furnished at the cost of reproduction, postage and handling. In addition, the contractor will be provided one (1) electronic PDF copy of final contract documents for the use of the construction team.

### 2.4 OWNER'S RIGHT TO STOP THE WORK

2.4 Delete Article 2.4 in its entirety and insert the following:

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

The rights and remedies under this Article 2.3 are in addition to and do not in any respect limit any other rights of the Owner, including its termination rights under Article 14.

## ARTICLE 3 - CONTRACTOR

### 3.1 GENERAL

#### 3.1.1 Add the following at the end of Article 3.1.1:

The relationship of Contractor to Owner shall be that of independent contractor, and nothing in the Contract Documents is intended to nor should it be construed as creating any other relationship, expressed or implied, between Owner and Contractor.

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

#### 3.2.5 Add the following Article 3.2.5:

The Owner is entitled to deduct from the Contractor's pay applications for amounts paid to the Architect for evaluating and responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where the requested information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.

### 3.4 LABOR AND MATERIALS

#### 3.4.2 Add the following to the end of Article 3.4.2:

Some Sections of the Specifications may not allow substitution of materials, products or equipment. Where substitution is allowed the request for substitution will only be considered if made in strict accordance with the requirements of Article 3.4.4 below and Section 01 63 00.

#### 3.4.4 Add the following Article 3.4.4:

After the Contract has been executed, the Owner and the Architect may consider a request for the substitution of products in place of those specified only under the conditions set forth in Section 01 63 00 of the specifications.

By making requests for substitutions, the Contractor:

- .1 Represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respect to that specified;
- .2 Represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;
- .3 Certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently becomes apparent; and
- .4 Shall coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects at its costs.

All substitutions shall be submitted within 30 days of the Notice to Proceed, as per Section 01 63 00.

#### 3.4.5 Add the following Article 3.4.5:

Contractor represents that it has independently investigated, considered and understands the labor conditions in the area surrounding the Project and acknowledges

that such conditions may impact the Contractor's cost and/or time of performance of the Contract. Therefore, Contractor further represents that the Contract Price is based upon Contractor's independent investigations into such labor conditions and that the Contract time is reasonable and the date of Substantial Completion is obtainable. As a result, Contractor assumes the risk of increased costs, if any, incurred by it arising out of or related to such labor conditions and acknowledges that Contractor and its surety will reimburse Owner for any additional costs Owner incurs arising out of or related to such labor conditions.

3.4.6. Add the following Article 3.4.6:

E-Verification: Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act (Senate Bill 2988 from the 2008 Regular Legislative Session) and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State. Contractor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Contractor understands and agrees that any breach of these warranties may subject Contractor to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Contractor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit. See E-Verification / Good Faith Compliance attached.

3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

3.7.1 Delete Article 3.7.1 in its entirety and insert the following:

The Contractor shall secure and pay for the building permit and all other permits, fees, licenses, inspections and all other approvals and charges necessary for proper execution and completion of the Work.

3.7.3 Delete the words "knowing it to be" from Article 3.7.3.

3.8.2.3 Add the following to the end of Article 3.8.2.3;

. . . except when installation is specified to be included as part of the allowance in the General Requirements (Division 1 of the Specifications).

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.10.3 Delete Article 3.10.3 in its entirety and insert the following:

Time being of the essence, the Contractor shall perform the Work in accordance with the most recent schedule submitted to and approved by the Owner and Architect.

### 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

#### 3.12.6 Add the following to the end of Article 3.12.6:

In reviewing Shop Drawings, Product Data, Samples and similar submittals the Architect shall be entitled to rely upon the Contractor's representation that such information is correct and accurate.

#### 3.12.8 Add the following to the end of Article 3.12.8:

Unless such written notice has been given, the Architect's approval of a Shop Drawing, Product Data, Sample or similar submittal shall not constitute approval of any changes not requested on the prior submittal.

#### 3.12.9 Add the following to the end of Article 3.12.9:

The Architect's review of the Contractor's submittals will be limited to examination of an initial submittal and one (1) resubmittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional resubmittals.

### 3.18 INDEMNIFICATION

#### 3.18.1 Add the word "defend" before the word "indemnify" in the first line, add the words "or nonperformance" after the word "performance" in the third line and delete the phrase which begins "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)," to the end of the sentence.

## ARTICLE 4 - ARCHITECT

#### 4.1.1 Add the following at the end of Article 4.1.1:

The term "Architect", "Engineer" or "Design Professional" as used in the Contract Documents refers Chris Myers, AIA, Cooke Douglass Farr Lemons Architects + Engineers PA, 3221 Old Canton Road, Suite 200, Jackson, Mississippi 39216; telephone: 601.366.3110 Ext. 216.

### 4.2 ADMINISTRATION OF THE CONTRACT

#### 4.2.10 Delete Article 4.2.10 in its entirety.

## ARTICLE 5 - SUBCONTRACTORS

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

5.2.1 Delete the phrase "Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract" from the first sentence of Article 5.2.1 and insert the following in lieu thereof:

"The Contractor, with its first Application for Payment and as a condition to the Owner's obligation to make payments to Contractor under Article 9 of the General Conditions as supplemented herein,"

5.2.5 Add the following:

The Contractor's unauthorized substitution of any subcontractor, supplier, person or entity previously identified by Contractor in accordance with Article 5.2.1 shall entitle the Owner to reject the work, materials or product furnished and require removal and replacement at no additional cost to the Owner.

## ARTICLE 6 - CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

Delete Articles 6.1.1, 6.1.2, 6.1.3, 6.1.4 in their entirety and insert the following:

6.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces and to award separate contracts either in connection with other portions of the Project or other construction or operation on the site. In such event, the Contractor shall coordinate its activities with those of the Owner and of other contractors so as to facilitate the general progress of all work being performed by all parties. Cooperation will be required in the arrangement for the storage of materials, and in the detailed execution of the Work.

The Contractor, including his subcontractors, shall keep informed of the progress and the detailed work of the Owner or other contractors and shall immediately notify the Architect of lack of progress or delays by other contractors which are affecting Contractor's Work. Failure of Contractor to keep informed of the progress of the work of the Owner or other contractors and/or failure of Contractor to give notice of lack of progress or delays by the Owner or other contractors shall be deemed to be acceptance by Contractor of the status of progress by other contractors for the proper coordination and completion of Contractor's Work. If, through acts or neglect on the part of the Contractor, the Owner or any other contractors or subcontractor shall suffer loss or damage or assert any claims of whatever nature against the Owner, the Contractor shall defend, indemnify and hold harmless the Owner from any such claims or alleged damages, and the Contractor shall resolve such alleged damages or claims directly with the other contractors or subcontractors.

### 6.2 MUTUAL RESPONSIBILITY

6.2.3 Delete Article 6.2.3 in its entirety.

## ARTICLE 7 - CHANGES IN THE WORK

### 7.1 GENERAL

#### 7.1.3 Add the following to the end of Article 7.1.3:

Except as permitted in Article 7.3, a change in the Contract Sum or the Contract Time shall only be accomplished by written change order. Therefore, the Contractor acknowledges that it is not entitled to a change in the Contract Sum or the Contract Time in the absence of a written change order on the basis of the course of conduct or dealings between the parties and/or the Owner's express or implied acceptance of alterations or additions to the Work and/or the Owner has been unjustly enriched by the Contractor's Work or any other basis otherwise allowed by law or the facts and Contractor agrees that any such extra or changed work was performed by it as a volunteer.

### 7.2 CHANGE ORDERS

#### 7.2.2 Add the following Article 7.2.2:

Contractor's execution of a change order constitutes a final settlement to the Contract Sum and construction schedule and the Contract Time for all matters relating to or arising out of the change in the Work that is the subject of the change order including, but not limited to, all direct and indirect costs associated with such change, all extended direct job site and home office overhead expenses and any and all delay and impact cost for the change, whether alone or in combination with other changes, including any impact, ripple or cumulative effect resulting therefrom, if any.

#### 7.2.3 Add the following Article 7.2.3:

Adjustments to the Contract Sum by change order shall be based upon one of the methods set forth in Article 7.3.3.1, 7.3.3.2, 7.3.3.3 or 7.3.3.4, as appropriate.

#### 7.2.4 Add the following Article 7.2.4:

In order to facilitate consideration of change order requests, all such requests, except those involving an amount less than \$500 must be accompanied by a complete itemization of costs, including labor, materials and subcontractor costs which shall likewise be itemized. Changes for more than \$500 will not be approved without such itemization.

### 7.3 CONSTRUCTION CHANGE DIRECTIVES

#### 7.3.8 Delete the first sentence and insert the following:

The amount of credit to be given by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be the actual net cost plus reasonable allowance for overhead on net cost and profit thereon as approved by the Architect and Owner.

## ARTICLE 8 – TIME

### 8.2 PROGRESS AND COMPLETION

#### 8.2.1 Add the following to the end of the second sentence:

...and that the Contractor is fully capable of properly completing the Work within the Contract Time.

### 8.3 DELAYS AND EXTENSIONS OF TIME

#### 8.3.3 Add the following to the end of Article 8.3.3:

No delay, interference, hindrance or disruption, from whatever source or cause, in the progress of the Contractor's Work shall be a basis for an extension of time and/or additional compensation, unless the delay, interference, hindrance or disruption (1) is without the fault and not the responsibility of the Contractor, its subcontractors and/or suppliers and (2) directly affects the overall completion of the Work as reflected on the critical path of the Contractor's updated and accepted construction schedules. The Contractor expressly agrees that the Owner shall have the benefit of any float in the construction schedule and that delays to construction activities, which do not affect the overall completion of the Work, do not entitle the Contractor to any extension in the Contract Time and/or increase in Contract Sum.

#### 8.3.4 Add the following Article 8.3.4:

All claims by the Contractor for an increase in the Contract Time must follow the procedures set forth in Articles 15.1.3 and 15.1.6, including the requirement that the Contractor give written notice of any claim within twenty-one (21) days after occurrence of the event giving rise to such claim or within twenty-one (21) days after the Contractor first recognizes the condition giving rise to the claim, whichever is earlier.

#### 8.3.5 Add the following Article 8.3.5:

If the Contractor submits a schedule indicating or otherwise expressing an intent to complete the Work prior to the date of substantial completion, the Owner shall have no liability to the Contractor for any failure by the Contractor to complete the Work prior to the expiration of the Contract Time.

## ARTICLE 9 - PAYMENTS AND COMPLETION

### 9.3 APPLICATION FOR PAYMENTS

#### 9.3.1 Add the following sentence to the end of Article 9.3.1:

The form of Application for Payment will be the current edition of the AIA Document G702, Application and Certification for Payment, supported with AIA Document G703, Continuation Sheet.

#### 9.3.1.3 Add the following Article 9.3.1.3:

In any contract awarded by the state of Mississippi or any agency, unit or department of the State of Mississippi or by any political subdivision thereof, the amount of retainage that may be withheld is governed by Mississippi law.

9.3.2.1 Add the following Article 9.3.2.1:

Payment for materials stored at some location other than the Project site, may be approved by the Architect and the Owner after the Contractor has submitted the following items:

- .1 An acceptable Lease Agreement between the Contractor or one of its subcontractors or suppliers and the owner of the land, or building, where the materials are stored covering the specific area where the materials are located.
- .2 Consent of Surety or other acceptable bond to cover the materials stored off-site.
- .3 All Perils Insurance coverage for the full value of the materials stored off-site.
- .4 A Bill of Sale from the Manufacturer to the Contractor for the stored materials.
- .5 A complete list and inventory of materials manufactured, stored and delivered to the storage site and of materials removed from the storage site and delivered to the Project.
- .6 A review by the Architect of the materials stored off-site prior to release of payment.
- .7 Proof of payment of stored materials verified by the supplier must be submitted to the Architect within thirty (30) days of the Application for Payment on which payment for said materials was made. If proof of payment is not submitted within thirty (30) days, then payment for said materials will be deducted from the next application for payment and withheld until proof of payment is received.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

9.5.1.7 Delete the word "repeated".

9.5.1.8 Add the following Article 9.5.1.8:

The letter from the Contractor which is required by Article 15.1.6.2 has not been received.

9.6 PROGRESS PAYMENTS

9.6.1 Delete Article 9.6.1 in its entirety and insert the following:

Subject to the conditions of the Contract, the Owner shall make payment to the Contractor in the amount certified within forty-five (45) days after receipt of the Certificate for Payment from the Architect. Payment shall not be considered late until forty-five (45) days after Owner's receipt of the approved Certificate for Payment from the Architect.

9.6.1.1 Add the following Article 9.6.1.1:

Contractor's Applications for Payment shall be submitted on or before the date established by the Owner in conjunction with the project meeting each month. Any application not submitted on or before this date may not be processed or approved until the following month.

9.6.7 Delete the word "Unless" from the first sentence and insert the phrase "Whether or not."

Add the following to the end of Article 9.6.7:

The amount retained by the Contractor from each payment to each Subcontractor and material supplier shall not exceed the percentage retained by the Owner from the Contractor for the Subcontractor's Work.

## 9.7 FAILURE OF PAYMENT

9.7 In the first sentence, delete the words "or awarded by binding dispute resolution". Change the word "seven" to "ten". After the phrase "or if the Owner"; insert " without good reason". Change the second occurrence of the word "seven" to "thirty (30)". Delete the second sentence and substitute the following: "The contract time shall be extended appropriately and interest as provided for in the contract document paid on the outstanding amount."

## 9.8 SUBSTANTIAL COMPLETION

9.8.1 Delete Article 9.8.1 in its entirety and insert the following:

At the Owner's discretion, the facility is complete and usable as per the intent and all building systems are fully functioning and all code requirements are acceptable. Substantial completion for purposes of this Contract occurs upon Contractor's compliance with the following conditions precedent: (a) the Contractor furnishes to the Architect all close-out documents required by the Contract Documents in a form satisfactory to the Architect and the Owner, (b) the Contractor furnishes the manufacturers' certifications and/or warranties required by the Contract Documents; (c) the Contractor furnishes the Guarantee of Work set forth herein below; and (d) the Architect certifies that the Work is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended purpose.

The Guarantee of Work shall be submitted as a separate document signed by Contractor and Contractor's Surety and shall state the following:

Contractor and Contractor's Surety hereby guarantee that all Work performed on the Project is free from defective and/or nonconforming materials and workmanship and that for a period of one year from the date of final completion or such longer period of time as may be called for in the Contract Documents for such portions of the Work, Contractor or its Surety will repair and/or replace any defective and/or nonconforming materials and workmanship in accordance with the requirements of the Contract Documents.

9.8.2.1 Add the following Article 9.8.2.1:

The Contractor shall be responsible for the costs of inspections made by the Architect including any and all other related expenses incurred by the Architect for providing services for the Project required by failure of the Contractor to achieve final acceptance / completion of the Project within 30 days after the first occurrence of the below described events:

1. Specified date of Substantial Completion; or
2. Actual date of Substantial Completion.

The costs of the Architect's additional services shall be deducted by the Owner from the Contractor's final application for payment to pay the Architect for additional services required by the Contractor's failure to achieve final completion of the project within the 30 day period described above.

9.8.4 Delete the last sentence of Article 9.8.4 and insert the following:

Warranties required by the Contract Documents shall commence on the date of final acceptance/ completion unless otherwise provided in the Contract Documents.

9.8.5 Add the following to the end of Article 9.8.5:

Contractor's execution of the Certificate of Substantial Completion constitutes Contractor's representation that the items on the list accompanying the Certificate can and will be completed by Contractor and his subcontractors within thirty (30) days of Contractor's execution of the Certificate. Based upon this representation by Contractor and upon the acknowledgment of the Architect that the listed items remaining can be completed within thirty (30) days, the Owner agrees to execute the Certificate of Substantial Completion. If Contractor fails to complete the items on the list within thirty (30) days of Contractor's execution of the Certificate, then the Owner, at its option and without prejudice to any other rights or remedies it may have under this Contract or otherwise and without notice to Contractor or Surety, may proceed to have same completed and to deduct the reasonable costs thereof from the amounts then due or thereafter to become due to Contractor.

9.8.6 Add the following Article 9.8.6:

The costs of inspections requested by Contractor and made by Architect which are not required by Articles 4, 9.8 or 9.10 or 12 of the General Conditions and any other inspection required by Article 12 other than the year-end inspection itself, will be the responsibility of the Contractor and will be deducted by the Owner from the Application for Payment submitted after the Owner's receipt of the Architect's statement for its costs of additional inspections. These costs are not the result of Contractor's failure to timely complete the Contract within the specified time and, therefore, such costs are in addition to and not a part of any liquidated damages calculation, if any.

9.8.7 Add the following Article 9.8.7:

Upon the Owner's acceptance of the Work as substantially complete and upon Contractor's compliance with all conditions precedent to substantial completion as stated in Section 00 73 13, Article 9.8.1 and upon application by the Contractor, the Owner will pay to the Contractor all retainage held by the Owner less an amount equal to the greater of (a) two percent (2%) of the Contract Sum, or (b) two hundred percent (200%) of the estimated cost of the Work remaining to be performed by the Contractor in accordance with the Architect's determination. Final payment, including all retainage, shall be made at the time and in the manner provided for final payment in accordance with the provisions of Article 9.10 and the additional conditions precedent to final acceptance / payment set forth in Article 9.8.5.

9.9 PARTIAL OCCUPANCY OR USE

9.9.1.2 Add the following Article 9.9.1.2:

The Owner's occupancy or use of any completed or partially completed portions of the Work shall not affect Contractor's obligation to complete incomplete items on the list attached to the Certificate of Substantial Completion within the time fixed in the Certificate and does not waive Owner's right to obtain completion of incomplete items at Contractor's expense upon Contractor's failure to timely complete same.

9.11 Add the following Article 9.11:

LIQUIDATED DAMAGES

Liquidated Damages. Time being of the essence of this Contract and a matter of material consideration thereof, a reasonable estimate in advance is established to cover losses incurred by the Owner if the Project is not substantially complete on the date set forth in the Contract Documents. The Contractor and his Surety will be liable for and will pay the Owner the sums hereinafter stipulated as fixed and agreed as liquidated damages for each calendar day for delay until the Work is substantially complete. The Contractor and his Surety acknowledge that the Owner's losses caused by the Contractor's delay are not readily ascertainable and that the amount estimated per day for liquidated damages is reasonable and is not a penalty.

**The amount established per day for liquidated damages is two hundred fifty dollars (\$250.00).**

ARTICLE 10 - PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

Add the following to the end of Article 10.1:

The Architect shall not administer the Contractor's performance of its duties and responsibilities under Article 10 (including Articles 10.1 through 10.4) because the initiation, maintenance and supervision of safety precautions and programs is the sole responsibility of the Contractor as means, methods, techniques, sequences and procedures of construction and, therefore, is not part of the Contractor's scope of Work which is to be administered by the Architect.

ARTICLE 11 - INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 Delete Article 11.1.1 in its entirety and add the following:

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.
- .9 Liability insurance will include all major divisions of coverage and be on a comprehensive basis including:
  - a. Premises - operations.
  - b. Independent Contractor's Protective.
  - c. Products and completed operations.
  - d. Contractual Liability- including specified provisions for the Contractor's obligations under 3.18.
  - e. Personal Injury Liability
  - f. Owned, non-owned and hired motor vehicles.
  - g. Broad form coverage for property damage.
  - h. Owner and Architect will be listed as additional insured on policy.

11.1.2 Delete Article 11.1.2 in its entirety and insert the following:

The insurance required by Article 11.1.1 will be written for not less than the following, or greater amounts if required by law or if deemed necessary by the Contractor to protect its interests.

- .1 GENERAL LIABILITY:  
 Commercial General Liability  
 (Including XCU)  

General Aggregate	\$ 2,000,000.00	Aggregate
Products & Completed Operations	\$ 2,000,000.00	Aggregate
Personal & Advertising Injury	\$ 1,000,000.00	Per Occurrence
Fire Damage Liability	\$ 500,000.00	Per Occurrence
Medical Expense	\$ 10,000.00	Per Person
- .2 OWNERS & CONTRACTORS PROTECTIVE LIABILITY:  

Bodily Injury & Property Damage	\$ 2,000,000.00	Aggregate
Bodily Injury & Property Damage	\$ 1,000,000.00	Per Occurrence
- .3 AUTOMOBILE LIABILITY:  
 (Owned, non-owned & hired vehicles)  
 Contractor Insurance Option Number 1:  

Bodily Injury & Property Damage (Combined Single Limit)	\$ 1,000,000.00	Per Occurrence
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 Contractor Insurance Option Number 2:  

Bodily Injury	\$ 500,000.00	Per Occurrence
Bodily Injury	\$ 1,000,000.00	Per Accident
Property Damage	\$ 100,000.00	Per Occurrence

.4 EXCESS LIABILITY:			
	(Umbrella on projects over \$500,000)		
	Bodily Injury & Property Damage	\$ 2,000,000.00	Aggregate
	(Combined Single Limit)	\$ 1,000,000.00	Per Occurrence
.5 WORKERS' COMPENSATION:			
	(As required by Statute)		
EMPLOYERS' LIABILITY			
	Accident	\$ 100,000.00	Per Occurrence
	Disease	\$ 500,000.00	Policy Limit
	Disease	\$ 100,000.00	Per Employee
.6 PROPERTY INSURANCE:			
	Builder's Risk	\$	Must be equal to value
	Or Installation Floater		of work

11.1.3 Delete Article 11.1.3 in its entirety and insert the following:

Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. The Owner and Architect will be named as additional insureds on the Contractor's CGL policy and the Contractor's certificate of insurance must state that the Owner and Architect are additional insureds under the referenced CGL policy and that all of Contractor's contractual liabilities, including but not limited to its indemnity obligations, are covered by such CGL policy. Any language contained on the certificate of insurance form or elsewhere to the contrary is deemed stricken.

The certificate of insurance must also state that all of Contractor's contractual liabilities, including but not limited to its indemnity obligations, are covered. Any terms and conditions contained in the certificate of insurance which are contrary to the Contractor's contractual obligations are hereby stricken from the certificate. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

11.1.4 Delete Article 11.1.4 in its entirety and insert the following:

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

11.1.5 Add the following Article 11.1.5:

Furnish one copy of the certificate herein required for each copy of the Agreement, specifically setting forth evidence of all coverage required by Article 11. The form of the certificate will be AIA Document G715 or a similar form acceptable to Owner. Furnish to the Owner and Architect, copies of any endorsements that are subsequently issued amending coverage or limits. If the coverages are provided on a claims-made basis, the policy date or retroactive date shall predate the Contract and the termination

date of the policy, or the applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after final payment.

11.1.6 Add the following Article 11.1.6:

The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder in the amount of at least the contract sum and on forms approved by the Owner.

11.1.7. Add the following Article 11.1.7:

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

11.1.8 Add the following Article 11.1.8:

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

11.2 OWNER'S INSURANCE

11.2 Delete Article 11.2 in its entirety and insert the following:

The Contractor will pay for and maintain such insurance as will protect the Owner and Architect from their contingent liability to others for damages because of bodily injury, including death, which may arise from operations under this Contract and other liability for damages which the Contractor is required to insure under any provision of this Contract. Certificate of this insurance shall be filed with the Owner and Architect and will be the same limits set forth in Article 11.1.2.

11.3 PROPERTY INSURANCE

11.3 Delete Article 11.3 in its entirety and add the following Article 11.3:

11.3 PROPERTY INSURANCE

11.3.1 Delete Article 11.3.1 in its entirety and add the following:

The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no

person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

11.3.1.1 Add the following Article 11.3.1.1:

Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

11.3.1.2 Add the following Article 11.3.1.2:

If the Contractor fails to purchase and maintain such insurance and the Owner is damaged by such failure, then the Contractor shall be liable to the Owner for all such damages incurred by the Owner.

11.3.1.3 Add the following Article 11.3.1.3:

If the property insurance requires minimum deductibles, the Contractor shall pay the deductible and all other costs not covered because of such deductibles. If the Contractor or insurer increases the required minimum deductibles above the amounts so identified or if the Contractor elects to purchase this insurance with voluntary deductible amounts, the Contractor shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles.

11.3.1.4 Add the following Article 11.3.1.4:

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

11.3.1.5 Add the following Article 11.3.1.5:

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

11.3.2 Delete Article 11.3.2 in its entirety and add the following:

The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five (5) business days after occurrence of loss.

11.3.3 Add the following Article 11.3.3:

In addition to the above, the Contractor shall obtain in the Owner's and Architect's names, and maintain during the same time period, Public Protective Liability Insurance and Property Damage Insurance in the amount of not less than \$1,000,000 combined single limit, which policies shall cover the operations of the Contractor, and those of his subcontractors to protect the Owner and Architect from loss. This protection is not to be considered as a separate policy by the Contractor, but shall be a rider to the Contractor's coverage.

11.4 Delete Article 11.4 in its entirety.

11.5 Delete Article 11.5 in its entirety, including specifically Articles 11.5.1 and 11.5.2.

## ARTICLE 12 - UNCOVERING AND CORRECTION OF WORK

12.1.2 Delete the second and third sentences of Article 12.1.2 and add the following:

The costs of uncovering the Work and the cost of any correction needed shall be at the Contractor's expense.

## 12.2 CORRECTION OF WORK

### 12.2.2 AFTER SUBSTANTIAL COMPLETION

12.2.2.1 Add the following to the end of Article 12.2.2.1:

Prior to the end of the one-year period, the Architect may schedule a warranty inspection which shall be attended by the Architect, the Owner, the Contractor and all major subcontractors. During this inspection, the parties shall identify all defective and/or nonconforming items and fix a time within which all defective and/or nonconforming items shall be repaired and/or replaced.

12.2.2.1.1 Add the following Article 12.2.2.1.1:

Within the one-year period provided for in the Guarantee of Work required by Article 9.8.1, if repairs or replacement are requested by Owner in connection with the Work which, in the opinion of the Owner, are rendered necessary as a result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the Contract Documents, the Contractor and/or its Surety shall promptly, upon receipt of notice from and without expense to the Owner, place in satisfactory condition in every particular, all such Work, correct all defects therein and make good all damages to the building, site, equipment or contents thereof; and make good any work or materials or the equipment and contents of said buildings or site disturbed in fulfilling any such guarantee. If, after notice or within the time agreed upon by the parties at the warranty inspection, the Contractor and/or its Surety fail to proceed promptly to comply with the terms of the guarantee, the Owner may have the defects corrected in accordance with Article 2.4 and the Contractor and his Surety shall be liable for all expenses incurred. All special guarantees applicable to definite parts of the Work stipulated in the Contract Documents shall be subject to the terms of this paragraph during the first year of the life of such special guarantee.

12.2.2.1.1 Add the following Article 12.2.2.1.1:

Within the one-year period provided for in the Guarantee of Work required by Article 9.8.1, if repairs or replacement are requested by Owner in connection with the Work which, in the opinion of the Owner, are rendered necessary as a result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the Contract Documents, the Contractor and/or its Surety shall promptly, upon receipt of notice from and without expense to the Owner, place in satisfactory condition in every particular, all such Work, correct all defects therein and make good all damages to the building, site, equipment or contents thereof; and make good any work or materials or the equipment and contents of said buildings or site disturbed in fulfilling any such guarantee. If, after notice or within the time agreed upon by the parties at the warranty inspection, the Contractor and/or its Surety fail to proceed promptly to comply with the terms of the guarantee, the Owner may have the defects corrected in accordance with Article 2.5 and the Contractor and his Surety shall be liable for all expenses incurred. All special guarantees applicable to definite parts of the Work stipulated in the Contract Documents shall be subject to the terms of this paragraph during the first year of the life of such special guarantee.

ARTICLE 13 - MISCELLANEOUS PROVISIONS

13.1 GOVENING LAW

13.1 Delete the second sentence.

13.5 INTEREST

13.5 Delete Article 13.5 in its entirety and insert the following:

Payments due and unpaid under the Contract Documents shall bear interest as provided by applicable Mississippi law.

ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1.3 Add "without good cause" at the end, before ";or".

14.1.1.4 Delete Article 14.1.1.4 in its entirety.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1.1 Delete the word "repeatedly" from Article 14.2.1.1.

14.2.1.3 Delete the word "repeatedly" from Article 14.2.1.3.

14.2.1.5 Add the following Articles 14.2.1.5 and 14.2.1.6:

.5 fails to achieve Substantial Completion of the Project as described in Article 9.8.5, within the time stated therein;

.6 fails to meet any deadline required by the Contract. Contractor acknowledges that time is of the essence of this Contract and that all deadlines required by the Contract are critical to timely completion of the Contract. Therefore, Contractor agrees that its failure to meet any deadline constitutes a substantial and material breach of this Contract, entitling the Owner to terminate the Contract.

14.2.2 Delete the word "certification" in the first sentence and insert the word "advice."

14.2.4 Delete the phrase "Initial Decision Maker" and insert the word "Architect".

14.2.5 Add the following Article 14.2.5:

If the Owner terminates the Contract for cause, and it is determined for any reason that the Contractor was not actually in default under the Contract at the time of termination, the Contractor shall be entitled to recover from the Owner the same amount as the Contractor would be entitled to receive under a termination for convenience as provided by Article 14.4. The foregoing shall constitute the Contractor's sole and exclusive remedy for termination of the Contract. In no event shall the Contractor be entitled to special, consequential, or exemplary damages, nor shall the Contractor be entitled to anticipated profits resulting from termination of this Contract.

#### 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

14.4.3 Delete from the last line of Article 14.4.3 the phrase "including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement" and add after the end of that sentence: "The Contractor shall not be entitled to receive any payment for either overhead or profit on work not performed."

### ARTICLE 15 - CLAIMS AND DISPUTES

#### 15.1.6 CLAIMS FOR ADDITIONAL TIME

15.1.6.2 Add the following to the end of Article 15.1.5.2:

The Contractor must submit each month with his Application for Payment a separate letter stating that he is requesting an extension of time for abnormal adverse weather or that he has no claim for an extension for that period of time. Payment is not due on the Application for Payment until the letter is received. Complete justification, including weather reports, daily reports, correspondence and any other supporting data must be provided for each day for which a request for time extension is made. A letter or statement that the Contractor was delayed is not adequate justification. The receipt of this request and data by the Architect will not be considered as Owner or Architect approval of a time extension in any way.

15.1.6.3 Add the following Article 15.1.5.3:

Claims for increase in the Contract Time shall set forth in detail the facts and circumstances which support such Claim, including but not limited to, the cause of such delay, the date such delay began to affect the critical path, the date such delay ceased to affect the critical path and the number of days of additional time requested. The Contractor shall not be entitled to an increase in the Contract Time for delays which did not affect the critical path or to the extent there were concurrent non-excusable delays. The Contractor may be requested to provide additional documentation to substantiate its Claim, including but not limited to, schedules that indicate all activities affected by such delay.

15.1.7 Delete this section in its entirety.

## 15.2 INITIAL DECISION

15.2.1 Delete the words “mediation of” and insert “litigating”. Delete the words “demand mediation and binding dispute resolution” and insert “proceed to litigation”.

15.2.3 Add at the end of the second sentence add “but granting such request shall be at the Owner’s sole discretion and the denial of such a request shall not, by itself, be the basis for a decision adverse to the Owner.”

15.2.4 Add “within thirty (30) days” to the end of Article 15.2.4.

15.2.5 Delete the phrase beginning “but subject to mediation and if the parties fail” and insert “unless a party files suit on the claim within 90 days following the Initial Decision Makers initial decision.”

END OF SECTION

## **E-VERIFICATION Good Faith Compliance**

SENATE BILL NO. 2988 (As Passed by the Senate) This act shall take effect and be in force from and after July 1, 2008 for Purchased Service Contracts.

AN ACT TO CREATE THE MISSISSIPPI EMPLOYMENT PROTECTION ACT; TO PROVIDE PROCEDURES FOR NEWLY HIRED EMPLOYEES AND THEIR EMPLOYERS; TO ENACT DEFINITIONS; TO REQUIRE EMPLOYEE VERIFICATION; TO PROVIDE EMPLOYER LIABILITY; TO SET UP EMPLOYER-EMPLOYEE PROGRAMS; TO MAKE PROVISIONS FOR THIRD-PARTY EMPLOYERS; TO DEFER TO FEDERAL LAW IN STATE LAW; TO ENACT EXEMPTIONS; TO DESIGNATE ENFORCEMENT DUTIES UNDER THE ACT; TO PROVIDE PENALTIES FOR VIOLATIONS OF THIS ACT; AND FOR RELATED PURPOSES.

E-Verify Home Page: [www.uscis.gov/portal/site/uscis](http://www.uscis.gov/portal/site/uscis)  
Click on E-Verify to Get Started

E-Verify Contact Information:

E-Verify Help Desk: 1-888-464-4218

Bob Fagan - Office of the Attorney General, State Personnel Board: 601-359-2704

### **E-Verification**

Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act (Senate Bill 2988 from the 2008 Regular Legislative Session) and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State. Contractor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Contractor understands and agrees that any breach of these warranties may subject Contractor to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Contractor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

I, the undersigned, certify, as an authorized representative, that my company is in compliance with the Mississippi Employment Protection Act (Senate Bill 2988) and will register and participate in the status verification system.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Company Address

\_\_\_\_\_  
Company Tax Identification Number

\_\_\_\_\_  
Company Phone Number

\_\_\_\_\_  
Authorized Representative