



# AIA<sup>®</sup> Document A105<sup>™</sup> – 2017

## Standard Short Form of Agreement Between Owner and Contractor

**AGREEMENT** made as of the    day of    in the year  
*(In words, indicate day, month and year.)*

**BETWEEN** the Owner:  
*(Name, legal status, address and other information)*

St. Charles Holdings, LLC (Owner)  
1717 St. Charles Ave.  
New Orleans, LA 70130

and the Contractor:  
*(Name, legal status, address and other information)*

Durr Heavy Construction, LLC (Contractor)  
817 Hickory Ave.  
Harahan, LA 70123

for the following Project:  
*(Name, location and detailed description)*

New Parking Lot for St. Charles Holdings, LLC  
1750 Robert S. Blakes Sr. Drive  
New Orleans, LA 70130

The Architect:  
*(Name, legal status, address and other information)*

Steven J. Finegan Architect Ltd (Architect)  
123 S. Pierce Street  
New Orleans, LA 70119

The Owner and Contractor agree as follows.

**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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

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## ARTICLE 1 THE CONTRACT DOCUMENTS

The Contractor shall complete the Work described in the Contract Documents for the Project. The Contract Documents consist of

- .1 this Agreement signed by the Owner and Contractor;
- .2 the drawings and specifications prepared by the Architect, dated 2/14/22, and enumerated as follows:

Drawings:

Number	Title	Date
A1.0 - A4.0	Architectural	2/14/22
E1.0 - E2.0	Electrical	1/6/21
LS-1 – LS-2	Landscaping	1/4/21

Specifications:

Section	Title	Pages
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- .3 addenda prepared by the Architect as follows:

Number	Date	Pages
1	2/25/22	

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2 3/8/22

.4 written orders for changes in the Work, pursuant to Article 10, issued after execution of this Agreement; and

.5 other documents, if any, identified as follows:

Project Manual for the Construction of New Parking Lot for St. Charles Holdings, LLC; Bid/Construction Set – 14 February 2022, prepared by Steven J. Finegan Architects Ltd.

Contractor’s approved schedule of values for the Project, set forth on AIA Document G703 dated 7/25/22 (the "Schedule of Values")

**ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

§ 2.1 The Contract Time is the number of calendar days available to the Contractor to substantially complete the Work.

**§ 2.2 Date of Commencement:**

Unless otherwise set forth below, the date of commencement shall be the date of this Agreement. *(Insert the date of commencement if other than the date of this Agreement.)*

Upon Owner’s issuance of a Notice to Proceed

**§ 2.3 Substantial Completion:**

Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion, as defined in Section 12.5, of the entire Work:

*(Check the appropriate box and complete the necessary information.)*

Not later than one hundred twenty ( 120 ) calendar days from the date of commencement.

By the following date:

**ARTICLE 3 CONTRACT SUM**

§ 3.1 The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work. Subject to additions and deductions in accordance with Article 10, the Contract Sum is:

Nine Hundred Ninety Four Thousand Six Hundred Eighty Nine Dollars and 00/100 ( \$ 994,689.00 )

§ 3.2 For purposes of payment, the Contract Sum includes the following values related to portions of the Work: *(Itemize the Contract Sum among the major portions of the Work.)*

Portion of the Work	Value
See Approved Schedule of Values dated 7/25/22	

§ 3.3 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and hereby accepted by the Owner:

*(Identify the accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)*

N/A

§ 3.4 Allowances, if any, included in the Contract Sum are as follows:  
(Identify each allowance.)

Item	Price
N/A	

§ 3.5 Unit prices, if any, are as follows:  
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
Cost per pile to remove/cut down existing piles to an elevation that is 6 inches down into the prepared subgrade that is below the Geotextile fabric located under the sub-base (see detail 1/A3.0)	Each	\$75.00

#### ARTICLE 4 PAYMENTS

§ 4.1 Based on Contractor's Applications for Payment certified by the Architect, the Owner shall pay the Contractor, in accordance with Article 12, as follows:

(Insert below timing for payments and provisions for withholding retainage, if any.)

Payment applications properly supported in accordance with the Contract Documents shall be submitted on AIA Form G702 and G703, showing the percentage of each Schedule of Values item of Work Contractor has completed within the immediately preceding one-month pay period, with such payment applications being submitted on the first business day of each calendar month during the Project duration, and Owner will remit payment of sums certified by the Architect as due and payable, less 10% retainage, within 15-days after Owner's receipt of the Certificate for Payment, all in accordance with Article 12

(Paragraphs deleted)

#### ARTICLE 5 INSURANCE

§ 5.1 The Contractor shall maintain the following types and limits of insurance until the expiration of the period for correction of Work as set forth in Section 14.2, subject to the terms and conditions set forth in this Section 5.1:

§ 5.1.1 Commercial General Liability insurance for the Project, written on an occurrence form, with policy limits of not less than one million ( \$ 1,000,000 ) each occurrence, two million ( \$ 2,000,000 ) general aggregate, and two million ( \$ 2,000,000 ) aggregate for products-completed operations hazard.

§ 5.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than one million ( \$ 1,000,000 ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

§ 5.1.3 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 5.1.1 and 5.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 5.1.4 Workers' Compensation with limits of \$1,000,000 each accident, \$1,000,000 Disease policy limit, and \$1,000,000 Disease each employee.

§ 5.1.5 Employers' Liability with policy limits not less than two million ( \$ 2,000,000 ) each accident, two million ( \$ 2,000,000 ) each employee, and two million ( \$ 2,000,000 ) policy limit.

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User Notes:

(171556982)

§ 5.1.6 Intentionally blank.

**§ 5.1.7 Other Insurance Provided by the Contractor**

*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*

**Coverage**

**Limits**

§ 5.2 Intentionally left blank.

§ 5.3 The Contractor shall obtain an endorsement to its Commercial General Liability insurance policy to provide coverage for the Contractor's obligations under Section 8.12.

§ 5.4 Prior to commencement of the Work, Contractor shall provide certificates of insurance showing that it has obtained required coverages and listed Owner as an additional insured on all policies (other than workers comp), with waivers of subrogation in Owner's favor.

§ 5.5 Unless specifically precluded by the Owner's property insurance policy, the Owner and Contractor waive all rights against (1) each other and any of their subcontractors, suppliers, agents, and employees, each of the other; and (2) the Architect, Architect's consultants, and any of their agents and employees, for damages caused by fire or other causes of loss to the extent those losses are covered by property insurance or other insurance applicable to the Project, except such rights as they have to the proceeds of such insurance.

**ARTICLE 6 GENERAL PROVISIONS**

**§ 6.1 The Contract**

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification in accordance with Article 10.

**§ 6.2 The Work**

The term "Work" means the construction and services required by the Contract Documents, and includes all other labor, materials, equipment, and services provided, or to be provided, by the Contractor to fulfill the Contractor's obligations.

**§ 6.3 Intent**

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

**§ 6.4 Ownership and Use of Architect's Drawings, Specifications and Other Documents**

Documents prepared by the Architect are instruments of the Architect's service for use solely with respect to this Project. The Architect shall retain all common law, statutory, and other reserved rights, including the copyright. The Contractor, subcontractors, sub-subcontractors, and suppliers are authorized to use and reproduce the instruments of service solely and exclusively for execution of the Work. The instruments of service may not be used for other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Architect.

**§ 6.5 Electronic Notice**

Written notice under this Agreement may be given by one party to the other by email as set forth below.

*(Insert requirements for delivering written notice by email such as name, title, and email address of the recipient, and whether and how the system will be required to generate a read receipt for the transmission.)*

**To the Owner:**

Frank DellaCroce at  
[fjdellacroce@gmail.com](mailto:fjdellacroce@gmail.com)

With copy to

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Carly Turner at  
[carlymcdonaldturner@gmail.com](mailto:carlymcdonaldturner@gmail.com)

and a hard copy to

St. Charles Holdings, LLC  
P.O. Box 52126  
New Orleans, LA 70152

**To Contractor:**

Robert Wooderson at [rwooderson@durrhc.com](mailto:rwooderson@durrhc.com)

With a hard copy to  
Durr Heavy Construction, LLC  
817 Hickory  
Harahan, LA 70123

**To Architect:**

Steve Finegan at [stevefinegan@nocoxmail.com](mailto:stevefinegan@nocoxmail.com)

With a hard copy to  
Steve Finegan  
123 South Pierce St.  
New Orleans, LA 70119

**ARTICLE 7 OWNER**

**§ 7.1 Information and Services Required of the Owner**

**§ 7.1.1** If requested by the Contractor, the Owner shall furnish a legal description of the site.

**§ 7.1.2** Except for permits and fees under Section 8.7.1 that are the responsibility of the Contractor, the Owner shall obtain and pay for other necessary approvals, easements, assessments, and charges.

**§ 7.1.3** Prior to commencement of the Work, at the written request of the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence.

**§ 7.2 Owner's Right to Stop the Work**

If the Contractor fails to correct Work which is not in accordance with the Contract Documents, the Owner may direct the Contractor in writing to stop the Work until the correction is made.

**§ 7.3 Owner's Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, correct such deficiencies. In such case, the Architect may withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the cost of correction, provided the actions of the Owner and amounts charged to the Contractor were approved by the Architect.

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

**§ 7.4.1** 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 in connection with other portions of the Project.

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§ 7.4.2 The Contractor shall coordinate and cooperate with the Owner's own forces and separate contractors employed by the Owner.

## ARTICLE 8 CONTRACTOR

### § 8.1 Review of Contract Documents and Field Conditions by Contractor

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

§ 8.1.2 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies, or omissions to the Architect.

### § 8.2 Contractor's Construction Schedule

The Contractor, promptly after being awarded the Contract, shall prepare and submit to the Owner and Architect a detailed construction schedule (the "Schedule") breaking down the Work into discrete construction activities, none of which shall have a duration of greater than 15-days, and showing completion of the Work within the Contract Time. Contractor shall thereafter be required to adhere to the Schedule during performance of the Work. Failure of Contractor to adhere to the Schedule shall be deemed a material breach of this Contract.

### § 8.3 Supervision and Construction Procedures

§ 8.3.1 The Contractor shall supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work.

§ 8.3.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner, through the Architect, the names of subcontractors or suppliers for each portion of the Work. The Contractor shall not contract with any subcontractor or supplier to whom the Owner or Architect have made a timely and reasonable objection.

### § 8.4 Labor and Materials

§ 8.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

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

### § 8.5 Warranty

The Contractor warrants to the Owner and Architect that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; (3) the Work will conform to the requirements of the Contract Documents; and (4) all material, equipment, labor and Work provided under this Agreement will be delivered and shall remain free and clear of all liens, claims or other encumbrances arising out of any Work performed by or for Contractor. Any material or equipment 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 12.5.

### § 8.6 Taxes

The Contractor shall pay sales, consumer, use, and similar taxes that are legally required when the Contract is executed.

### § 8.7 Permits, Fees and Notices

§ 8.7.1 The Owner, through the Architect, shall obtain and pay for the building permit. The Contractor shall obtain and pay for other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work.

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**§ 8.7.2** The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If the Contractor performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the Architect in writing of any inconsistencies in the Contract Documents with such governmental laws, rules, and regulations.

**§ 8.8 Submittals**

The Contractor shall promptly review, approve in writing, and submit to the Architect shop drawings, product data, samples, and similar submittals required by the Contract Documents. Shop drawings, product data, samples, and similar submittals are not Contract Documents.

**§ 8.9 Use of Site**

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents, and the Owner.

**§ 8.10 Cutting and Patching**

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

**§ 8.11 Cleaning Up**

The Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work. At the completion of the Work, the Contractor shall remove its tools, construction equipment, machinery, and surplus material; and shall properly dispose of waste materials.

**§ 8.12 Indemnification**

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

**ARTICLE 9 ARCHITECT**

**§ 9.1** The Architect will provide administration of the Contract and will have authority to act on behalf of the Owner to the extent provided in the Contract Documents and/or in the AIA B105-2017 Standard Form of Agreement Between Owner and Architect for the Project.

**§ 9.2** The Architect will attend project meetings, communicate with the Contractor, timely perform all tasks and functions required of it as described in the Project Manual or elsewhere in the Contract Documents, receive and take action on Contractor Payment Applications as described herein, and visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work and keep the Owner informed about the status of the Project.

**§ 9.3** The Architect will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents, but the Architect will be responsible for its negligent acts, omissions and/or other fault.

**§ 9.4** Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor.

**§ 9.5** The Architect has authority to reject Work that does not conform to the Contract Documents.



§ 9.6 The Architect will timely review and approve or take appropriate action upon Contractor's submittals so as to not delay performance of the Work, but the Architect's review shall only be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 9.7 On written request from either the Owner or Contractor, the Architect will timely, so as to not delay performance of the Work, interpret and decide matters concerning performance under, and requirements of, the Contract Documents.

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

§ 9.9 The Architect's duties, responsibilities, and limits of authority as described in the Contract Documents and in the AIA B105-2017 Standard Form of Agreement Between Owner and Architect for the Project shall not be changed without written consent of the Owner and Architect. Consent shall not be unreasonably withheld.

#### ARTICLE 10 CHANGES IN THE WORK

§ 10.1 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract, consisting of additions, deletions or other revisions, and the Contract Sum and Contract Time shall be adjusted accordingly, in writing. If the Owner and Contractor cannot agree to a change in the Contract Sum or Contract Time, Contractor shall maintain daily records of all costs and delays it contends it sustained as a result of the change, and the matter shall be resolved in accordance with this Agreement, including Section 17.1.

§ 10.2 The Architect may authorize or order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such authorization or order shall be in writing and shall be binding on the Owner and Contractor. The Contractor shall proceed with such minor changes promptly.

§ 10.3 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment.

§ 10.4 Disagreements between Owner and Contractor regarding possible changes in the Contract Time or Contract Sum shall not be grounds for Contractor to stop or delay performance of the Work, and Contractor shall continue performance of the Work at all times.

#### ARTICLE 11 TIME

§ 11.1 Time limits stated in the Contract Documents are of the essence of the Contract, and Contractor represents that, in agreeing to complete the work within the time period established herein, Contractor has already taken into account normal weather patterns and anticipatable delays at the location of the Project, Covid-19 issues, current supply chain issues, and other current circumstances which could affect timely completion of the Work.

§ 11.2 If the Contractor is delayed at any time in progress of the Work by labor disputes, fire, unusual and unanticipatable delay in deliveries, unavoidable casualties, or other causes not addressed in Section 11.1 and beyond the Contractor's control, the Contract Time shall be subject to equitable adjustment, but each party shall bear all of its own costs and expenses associated with the delay and the extended Contract duration.

§ 11.3 All costs caused by delays not addressed in Sections 11.1 and/or 11.2, including delays caused by improperly timed activities or defective construction, shall be borne by the responsible party.

#### ARTICLE 12 PAYMENTS AND COMPLETION

##### § 12.1 Contract Sum

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

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**§ 12.2 Applications for Payment**

**§ 12.2.1** On the first business day of each calendar month during the Project duration, Contractor shall submit to the Architect an itemized Application for Payment for Work completed during the immediately preceding payment period in accordance with the approved Schedule of Values. The Application shall be supported by such data substantiating the Contractor's right to payment as the Owner or Architect may reasonably require, including conditional lien waivers from Contractor and its subcontractors and suppliers of all levels, and evidence of prior payments made to, and waivers of liens from, subcontractors and suppliers of all levels. Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

**§ 12.2.2** The Contractor warrants that lien-free/unencumbered title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or other encumbrances adverse to the Owner's interests.

**§ 12.3 Certificates for Payment**

The Architect will, within fourteen days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, less 10% retainage, with a copy to the Contractor; (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, less 10% retainage, and notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in part; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole. If certification or notification is not made within such fourteen day period, the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until the Architect has taken action on the Payment Application as described herein and payment of any amount certified as due and owing has been received. The Contract Time and the Contract Sum shall be equitably adjusted due to the delay.

**§ 12.4 Progress Payments**

**§ 12.4.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner provided in the Contract Documents.

**§ 12.4.2** The Contractor shall promptly pay each subcontractor and supplier, upon receipt of payment from the Owner, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders.

**§ 12.4.3** Neither the Owner nor the Architect shall have responsibility for payments to a subcontractor or supplier.

**§ 12.4.4** 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.

**§ 12.5 Substantial Completion**

**§ 12.5.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

**§ 12.5.2** When the Contractor believes that the Work or designated portion thereof is substantially complete, it will notify the Architect and the Architect will make an inspection to determine whether the Work is substantially complete. When the Architect determines that the Work is substantially complete, the Architect shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, establish the responsibilities of the Owner and Contractor, and fix the time within which the Contractor shall finish completion and repair of all items on the list of incomplete/deficient Work to be prepared by the Architect and issued as an accompaniment to the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 12.6 Final Completion and Final Payment**

**§ 12.6.1** Upon receipt of a final Application for Payment, the Architect will inspect the Work. When the Architect finds the Work acceptable, the Contract fully performed, and all conditions precedent satisfied, the Architect will promptly issue a final Certificate for Payment.

**§ 12.6.2** Final payment, consisting of the Contract Sum, less all payments previously remitted, less any liquidated damages accrued under the Contract, shall not become due until the Contractor submits to the Architect releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests, or encumbrances arising out of the Contract.

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

**ARTICLE 13 PROTECTION OF PERSONS AND PROPERTY**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The Contractor shall take reasonable precautions to prevent damage, injury, or loss to employees on the Work and other persons who may be affected thereby, the Work and materials and equipment to be incorporated therein, and other property at the site or adjacent thereto. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

**ARTICLE 14 CORRECTION OF WORK**

**§ 14.1** The Contractor shall promptly correct Work rejected by the Architect as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work, including the costs of uncovering, replacement, and additional testing.

**§ 14.2** In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.

**§ 14.3** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 7.3, or, if the failure occurs after final completion, Owner may correct the non-conforming Work and bring an action against Contractor to recover the costs incurred in correcting the Work and any other damages sustained.

**ARTICLE 15 MISCELLANEOUS PROVISIONS****§ 15.1 Assignment of Contract**

Neither party to the Contract shall assign the Contract without written consent of the other.

**§ 15.2 Tests and Inspections**

**§ 15.2.1** At the appropriate times, the Contractor shall arrange and pay for tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. These tests shall specifically include, but not be limited to, reasonable compaction testing at appropriate times as determined and instructed by the Architect. The reasonable costs paid by Contractor for material testing, including compaction testing, will be reimbursed by Owner upon Contractor's presentation of the invoice(s) Contractor received from the material testing firm(s) for said testing, accompanied by evidence of Contractor's full payment of said invoice(s).

**§ 15.2.2** If the Architect requires additional testing, the Contractor shall perform those tests.

**§ 15.2.3** The Owner shall bear cost of tests, inspections, or approvals that do not become requirements until after the Contract is executed, unless those tests or inspections became necessary because of suspected deficiencies in Contractor's Work which are confirmed by the tests or inspection, in which case Contractor will bear all costs of the tests and/or inspections, as well as all costs incurred in correcting the deficient Work. The Contractor shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

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**§ 15.3 Governing Law**

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

**ARTICLE 16 TERMINATION OF THE CONTRACT****§ 16.1 Termination by the Contractor**

If the Work is stopped under Section 12.3 for a period of 21 days through no fault of the Contractor, the Contractor may, upon seven additional days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed including overhead and profit at the rate of 5% and 5%, respectively, and costs actually incurred and paid by reason of such termination, as supported by paid receipts and/or paid invoices.

**§ 16.2 Termination by the Owner for Cause****§ 16.2.1** The Owner may terminate the Contract if the Contractor

- .1 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 Contractor and the subcontractors;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 allows one or more liens to be filed against the Project and fails to cause its/their cancellation and/or removal within 10-days following demand for removal from the Owner;
- .5 fails to comply with the Schedule submitted to the Owner in accordance with this Contract; or
- .6 is otherwise guilty of substantial breach of a provision of the Contract Documents.

**§ 16.2.2** When any of the above reasons exist, the Owner, after consultation with the Architect, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may

- .1 take possession of the site and of all materials thereon owned by the Contractor, and
- .2 finish the Work by whatever reasonable method the Owner may deem expedient.

**§ 16.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 16.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 16.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

**§ 16.2.5** In the event Owner terminates this Contract for one of the reasons stated in Section 16.2.1 and the Work is finished by a replacement contractor, liquidated damages as agreed upon in the Contract will continue to accrue against Contractor and its surety until the Work is complete in accordance with this Agreement.

**§ 16.3 Termination by the Owner for Convenience**

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and costs actually incurred and paid by reason of such termination as established by paid receipts and/or paid invoices.

**ARTICLE 17 OTHER TERMS AND CONDITIONS**

*(Insert any other terms or conditions below.)*

**17.1 Claims**

**§17.1.1** A claim is a demand by either party seeking a change in the contract time, a change in the contract value, and/or presenting any other dispute arising out of this Contract. Claims arising before final completion of the Work shall be initiated by notice to the other party with a copy sent to the Architect within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later, failing which the Claim shall be waived. Claims arising after final completion of the Work, and any other Claim which was timely initiated and not resolved by the parties, shall be litigated by filing the Claim in a court of proper jurisdiction and venue in accordance with the delays, procedures and other requirements imposed by law.

Init.



§17.1.2 If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 17.1.1 shall be given before performing the portion of the Work that is the subject of the Claim. The Contractor's notice of any Claim shall include an estimate of cost and of probable effect of delay on progress of the Work.

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

§17.1.4 A reservation of rights or similar stipulation shall not be recognized under this Agreement as having any effect. A party must make a Claim as defined herein within the time limits provided.

§17.2 Prior to performing any Work (as defined in the Louisiana Private Works Act, La. R.S. 9:4801, et seq.) under this Contract, Contractor shall record in the mortgage records for the parish in which the Project is located a Notice of Contract in compliance with the Louisiana Private Works Act. To the extent payment and/or performance bonds are required by the Contract, copies of those bonds shall be attached to the Notice of Contract at the time of its recordation, all in compliance with the Louisiana Private Works Act. Immediately after recording the Notice of Contract (and bonds, if applicable), Contractor shall provide Owner filed-stamped copies of same.

§17.3 Provided the Contractor has received payment from the Owner for material or labor which is the subject of a lien filed by a Subcontractor or material supplier of any level, or Owner has otherwise satisfied its payment obligations to Contractor arising out of this Contract, Contractor will indemnify and hold Owner harmless from and against such lien, and will immediately cause the lien to be removed. Should Contractor fail to remove such lien within 14 days, Owner shall have the right to remove the lien at Contractor's cost, including but not limited to attorney's fees. The Contract Sum shall be reduced by the amount of such costs incurred by Owner.

§17.4 Each Application for Payment shall be accompanied by the following, all in the form and substance satisfactory to the Owner and Architect, receipt of which shall be a condition precedent to Owner's obligation to remit any payments to Contractor pursuant to this Agreement:

- .1 A current Contractor's lien waiver duly executed and a sworn statement showing that all Subcontractors and materialmen with whom the Contractor has entered into subcontracts have been paid for the Work performed and/or materials supplied to date;
- .2 Duly executed waivers of mechanics' and materialmen's liens from all subcontractors and suppliers with contracts in excess of \$50,000.00 and, when requested, from lower tier materialmen and subcontractors, establishing payment or satisfaction of all amounts requested by the Contractor on behalf of such entities in any previous Application for Payment; and
- .3 All information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or the Architect.

§17.5 Contractor and Owner hereby agree to waive the provisions of La. R.S. 9:4857, including but not limited to waiver of those provisions requiring placement of retainage into an escrow account, the use of an escrow agent, and the timing and process for retainage payments. To the extent, and only to the extent, that this waiver is found invalid by a final decision of a court of competent and controlling jurisdiction, the following provisions will apply:

- .1 Contractor and Owner agree that a representative of Owner's financial institution for this Project shall serve as escrow agent and that the escrow account shall be established at Owner's financial institution for this Project;
- .2 Owner shall not be obligated to consent to or execute any waiver related to retainage release, unless and until Contractor achieves final completion under the Contract Documents, and all requirements of the Contract Documents associated with final payment and retainage release have been fully satisfied;
- .3 Contractor shall not submit a request for release of retainage, in whole or in part, without first seeking Owner's agreement and consent; any request by Contractor for release of retainage, in whole or in part, without Contractor's first having sought Owner's agreement and consent, shall be null and void; and
- .4 Contractor shall provide to Owner copies of all communications (including but not limited to retainage release requests) with the escrow agent; transmittal of such communications to Owner shall be made at the same time and in the same manner that such communications are transmitted to the escrow agent.

§17.6 Upon substantial completion of the Work, as certified by the Architect, Contractor shall record in the mortgage records for the parish in which the project is located a Notice of Termination of the Contract in compliance with the Louisiana Private Works Act, La. R.S. 9:4801 et seq., and shall immediately provide Owner a file-stamped copy of same.

§17.7 In addition to other requirements set forth elsewhere in these Contract Documents, final payment, as certified by the Architect, shall be remitted to Contractor no earlier than the date on which Contractor has satisfied the following conditions precedent:

.1 The Contractor shall have obtained and furnished to the Architect a certificate, signed and sealed by the Recorder of Mortgages for the Parish in which the Project is located and dated at least sixty-one (61) days after recordation of the Notice of Termination, certifying that no liens or privileges have been recorded in the Mortgage Office against the Project, the property underlying the Project, and/or against the Owner or Contractor arising out of or on account of the execution of the Contract.

.2 The Contractor shall have executed and provided to the Architect a written request, on a form acceptable to the Owner and Architect, dated at least 61 days after recordation of the Notice of Termination, including the Contractor's written acknowledgement of payment of all amounts due it under the Contract, and directing the Recorder of Mortgages to cancel recordation of the Notice of Contract. This signed request provided by the Contractor shall be executed by the Owner and recorded in the Mortgage records after the Owner has paid the Contractor the final amount owed under the Contract.

.3 Contractor has provided Owner written certification that the Work has been constructed and performed in accordance with the Project Plans and Specifications; and

.4 Contractor has provided Owner evidence that all insurance required by this Agreement is in full force and effect.

§17.8 Notwithstanding the foregoing provisions, Owner will still be allowed to withhold sums from payment for any reasons set forth in these Contract Documents.

§17.9 The Mortgage Office and the Recorder of Mortgages mentioned in these Sections are defined to be the Office and Recorder of Mortgages for the Parish in which the Work is performed.

§17.10 The expenses of recording the Notice of Contract, Notice of Termination, and obtaining lien and privilege certificates, shall be borne by the Contractor.

§17.11 The Contractor shall furnish and pay for a Performance Bond and a Payment Bond issued by a company licensed and qualified to do business in Louisiana, complying with La. R.S. 9:4801, et seq., and which is acceptable to and on a form approved by the Owner, with each such bond to be in an amount equal to one hundred percent (100%) of the Contract Sum, as security for the true and faithful performance of the Contract and payment in full of all subcontractors and persons providing labor, services, materials, machinery and fixtures in connection with the Work. The surety shall be bound in solido with the Contractor. The executed bonds, together with the bonding agent's power of attorney, shall be furnished to the Owner along with the executed Contract, and the number of copies reasonably required by it. The reasonable costs paid by Contractor for the Performance Bond and Payment Bond will be reimbursed by Owner upon Contractor's presentation of the invoice(s) Contractor received for same, accompanied by evidence of Contractor's full payment of said invoice(s).

§17.12 The Contractor shall deliver the required bonds to the Owner not later than the date the Agreement is entered into.

§17.13 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

#### §17.14 Recordation Requirements

§17.14.1 The Contractor shall comply with all recordation requirements contained in the Louisiana Private Works Act ("PWA"), La. R.S. 9:4801 et seq. In order to protect Owner, the Contractor shall, prior to performing and/or allowing performance of any Work on the Project site, record all documents required by the PWA, including:



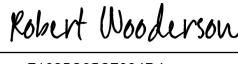
- a. The Notice of Contract in a form meeting all of the requirements set forth in the PWA (including La. R.S. 9:4811 and 4831), and
- b. The Surety bonds (La. R.S. 9:4812).

§17.15 Liquidated Damages

§17.15.1 Contractor agrees to complete the Work within the Contract Time as established in this Agreement. The Owner will suffer financial loss if the Project is not substantially complete within the time set forth in the Contract Documents. Accordingly, Contractor hereby agrees to and acknowledges that it shall be liable for and shall pay to the Owner liquidated damages in the amount of \$500 per calendar day for each and every day (Saturdays, Sundays and holidays included) on which, after the conclusion of the Contract Time, the Project has not reached substantial completion. Contractor further acknowledges and agrees that: (1) any liquidated damages owing by Contractor to Owner under this Agreement may be offset against any progress or other payments which might otherwise be due Contractor hereunder; (2) an accrued liquidated damage balance owing by Contractor to Owner shall be grounds for Architect to deny certification of, or to annul previous certification of, an application for payment, in whole or in part; (3) the bond required of Contractor pursuant to this Agreement shall expressly bind Contractor's surety to liability for liquidated damages owing to Owner under this Agreement; and (4) Owner's collection of liquidated damages as specified herein shall not limit Owner's right to collect any actual damages it sustains as a result of Contractor's delay in completing the Project, to the extent Owner sustains actual damages in excess of the liquidated damages actually paid by Contractor to owner.

This Agreement entered into as of the day and year first written above.  
*(If required by law, insert cancellation period, disclosures or other warning statements above the signatures.)*

DocuSigned by:  
  
 AB3EE161A855495...  
**OWNER (Signature)**  
 Frank J. DellaCroce member  
 \_\_\_\_\_  
*(Printed name and title)*

DocuSigned by:  
  
 71625C65C7894D4...  
**CONTRACTOR (Signature)**  
 Robert wooderson Chief Operating officer  
 \_\_\_\_\_  
*(Printed name and title)*  
 LICENSE NO.: 4674  
 JURISDICTION: Louisiana

# Additions and Deletions Report for AIA<sup>®</sup> Document A105<sup>™</sup> – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 18:37:51 ET on 08/03/2022.

## PAGE 1

St. Charles Holdings, LLC (Owner)  
1717 St. Charles Ave.  
New Orleans, LA 70130

...

Durr Heavy Construction, LLC (Contractor)  
817 Hickory Ave.  
Harahan, LA 70123

...

New Parking Lot for St. Charles Holdings, LLC  
1750 Robert S. Blakes Sr. Drive  
New Orleans, LA 70130

...

Steven J. Finegan Architect Ltd (Architect)  
123 S. Pierce Street  
New Orleans, LA 70119

## PAGE 2

.2 the drawings and specifications prepared by the Architect, dated 2/14/22, and enumerated as follows:

...

<u>A1.0 - A4.0</u>	<u>Architectural</u>	<u>2/14/22</u>
<u>E1.0 - E2.0</u>	<u>Electrical</u>	<u>1/6/21</u>
<u>LS-1 – LS-2</u>	<u>Landscaping</u>	<u>1/4/21</u>

...

<u>1</u>	<u>2/25/22</u>
<u>2</u>	<u>3/8/22</u>

## PAGE 3

Project Manual for the Construction of New Parking Lot for St. Charles Holdings, LLC;  
Bid/Construction Set – 14 February 2022, prepared by Steven J. Finegan Architects Ltd.

Contractor’s approved schedule of values for the Project, set forth on AIA Document G703 dated  
7/25/22 (the "Schedule of Values")



§ 5.1.1 Commercial General Liability insurance for the Project, written on an occurrence form, with policy limits of not less than one million (\$ 1,000,000 ) each occurrence, two million (\$ 2,000,000 ) general aggregate, and two million (\$ 2,000,000 ) aggregate for products-completed operations hazard.

§ 5.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than one million (\$ 1,000,000 ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

...

§ 5.1.4 ~~Workers' Compensation at statutory limits with limits of \$1,000,000 each accident, \$1,000,000 Disease policy limit, and \$1,000,000 Disease each employee.~~

§ 5.1.5 Employers' Liability with policy limits not less than two million (\$ 2,000,000 ) each accident, two million (\$ 2,000,000 ) each employee, and two million (\$ 2,000,000 ) policy limit.

§ 5.1.6 ~~The Contractor shall provide builder's risk insurance to cover the total value of the entire Project on a replacement cost basis. Intentionally blank.~~

**PAGE 5**

§ 5.2 ~~The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance and shall provide property insurance to cover the value of the Owner's property. The Contractor is entitled to receive an increase in the Contract Sum equal to the insurance proceeds related to a loss for damage to the Work covered by the Owner's property insurance. Intentionally left blank.~~

...

§ 5.4 ~~Prior to commencement of the Work, each party Contractor shall provide certificates of insurance showing their respective coverages that it has obtained required coverages and listed Owner as an additional insured on all policies (other than workers comp), with waivers of subrogation in Owner's favor.~~

...

**To the Owner:**

\_\_\_\_\_  
Frank DellaCroce at  
[fjdellacroce@gmail.com](mailto:fjdellacroce@gmail.com)

\_\_\_\_\_  
With copy to

\_\_\_\_\_  
Carly Turner at  
[carlymcdonaldturner@gmail.com](mailto:carlymcdonaldturner@gmail.com)

\_\_\_\_\_  
and a hard copy to

\_\_\_\_\_  
St. Charles Holdings, LLC  
P.O. Box 52126  
New Orleans, LA 70152

**To Contractor:**

\_\_\_\_\_  
Robert Wooderson at [rwooderson@durrhc.com](mailto:rwooderson@durrhc.com)

\_\_\_\_\_  
With a hard copy to  
Durr Heavy Construction, LLC

817 Hickory  
Harahan, LA 70123

**To Architect:**

Steve Finegan at [stevefinegan@nocoxmail.com](mailto:stevefinegan@nocoxmail.com)

With a hard copy to  
Steve Finegan  
123 South Pierce St.  
New Orleans, LA 70119

PAGE 6

§ 7.1.1 If requested by the Contractor, the Owner shall furnish ~~all necessary surveys and~~ a legal description of the site.

PAGE 7

§ 8.1.2 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies, or omissions ~~discovered~~ to the Architect.

...

The Contractor, promptly after being awarded the Contract, shall prepare and submit ~~for the Owner's and Architect's information a Contractor's construction schedule for the Work.~~ to the Owner and Architect a detailed construction schedule (the "Schedule") breaking down the Work into discrete construction activities, none of which shall have a duration of greater than 15-days, and showing completion of the Work within the Contract Time. Contractor shall thereafter be required to adhere to the Schedule during performance of the Work. Failure of Contractor to adhere to the Schedule shall be deemed a material breach of this Contract.

...

The Contractor warrants to the Owner and Architect that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; ~~and~~ (3) the Work will conform to the requirements of the Contract Documents; ~~Documents;~~ and (4) all material, equipment, labor and Work provided under this Agreement will be delivered and shall remain free and clear of all liens, claims or other encumbrances arising out of any Work performed by or for Contractor. Any material or equipment 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 12.5.

...

§ 8.7.1 ~~The Contractor~~ Owner, through the Architect, shall obtain and pay for the building ~~permit and permit.~~ The Contractor shall obtain and pay for other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work.

§ 8.7.2 The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If the Contractor performs Work ~~knowing it to be contrary~~ to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the Architect in writing of any ~~known~~ inconsistencies in the Contract Documents with such governmental laws, rules, and regulations.

PAGE 8

§ 9.1 The Architect will provide administration of the Contract ~~as described in the Contract Documents.~~ The Architect and will have authority to act on behalf of the Owner ~~only~~ to the extent provided in the Contract

~~Documents.~~ Documents and/or in the AIA B105-2017 Standard Form of Agreement Between Owner and Architect for the Project.

§ 9.2 The Architect will attend project meetings, communicate with the Contractor, timely perform all tasks and functions required of it as described in the Project Manual or elsewhere in the Contract Documents, receive and take action on Contractor Payment Applications as described herein, and visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work. ~~Work~~ and keep the Owner informed about the status of the Project.

§ 9.3 The Architect will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract ~~Documents.~~ Documents, but the Architect will be responsible for its negligent acts, omissions and/or other fault.

PAGE 9

§ 9.6 The Architect will ~~promptly~~ timely review and approve or take appropriate action upon Contractor's ~~submittals, but only submittals so as to not delay performance of the Work, but the Architect's review shall only be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.~~

§ 9.7 On written request from either the Owner or Contractor, the Architect will ~~promptly~~ timely, so as to not delay performance of the Work, interpret and decide matters concerning performance under, and requirements of, the Contract Documents.

...

§ 9.9 The Architect's duties, responsibilities, and limits of authority as described in the Contract Documents and in the AIA B105-2017 Standard Form of Agreement Between Owner and Architect for the Project shall not be changed without written consent of the ~~Owner, Contractor,~~ Owner and Architect. Consent shall not be unreasonably withheld.

...

§ 10.1 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract, consisting of additions, deletions or other revisions, and the Contract Sum and Contract Time shall be adjusted accordingly, in writing. If the Owner and Contractor cannot agree to a change in the Contract ~~Sum, the Owner shall pay the Contractor its actual cost plus reasonable overhead and profit.~~ Sum or Contract Time, Contractor shall maintain daily records of all costs and delays it contends it sustained as a result of the change, and the matter shall be resolved in accordance with this Agreement, including Section 17.1.

...

§ 10.4 Disagreements between Owner and Contractor regarding possible changes in the Contract Time or Contract Sum shall not be grounds for Contractor to stop or delay performance of the Work, and Contractor shall continue performance of the Work at all times.

§ 11.1 Time limits stated in the Contract Documents are of the essence of the ~~Contract.~~ Contract, and Contractor represents that, in agreeing to complete the work within the time period established herein, Contractor has already taken into account normal weather patterns and anticipatable delays at the location of the Project, Covid-19 issues, current supply chain issues, and other current circumstances which could affect timely completion of the Work.

§ 11.2 If the Contractor is delayed at any time in progress of the Work by ~~changes ordered in the Work, or by labor disputes, fire, unusual and unanticipatable delay in deliveries, unavoidable casualties, or other causes not addressed in Section 11.1 and beyond the Contractor's control,~~ the Contract Time shall be subject to equitable ~~adjustment.~~ adjustment, but each party shall bear all of its own costs and expenses associated with the delay and the extended Contract duration.



~~§ 11.3 Costs caused by delays or~~ All costs caused by delays not addressed in Sections 11.1 and/or 11.2, including delays caused by improperly timed activities or defective ~~construction~~ construction, shall be borne by the responsible party.

PAGE 10

~~§ 12.2.1 At least ten days before the date established for each progress payment, the~~ On the first business day of each calendar month during the Project duration, Contractor shall submit to the Architect an itemized Application for Payment for Work completed in accordance with the values stated in this Agreement, ~~during the immediately preceding payment period in accordance with the approved Schedule of Values.~~ The Application shall be supported by such data substantiating the Contractor's right to payment as the Owner or Architect may reasonably require, ~~such as evidence of including conditional lien waivers from Contractor and its subcontractors and suppliers of all levels, and evidence of prior payments made to, and waivers of liens from, subcontractors and suppliers.~~ ~~suppliers of all levels.~~ Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 12.2.2 The Contractor warrants that lien-free/unencumbered title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or other encumbrances adverse to the Owner's interests.

...

The Architect will, within ~~seven~~ fourteen days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, less 10% retainage, with a copy to the Contractor; (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, less 10% retainage, and notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in part; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole. If certification or notification is not made within such ~~seven~~ fourteen day period, the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount the Architect has taken action on the Payment Application as described herein and payment of any amount certified as due and owing has been received. The Contract Time and the Contract Sum shall be equitably adjusted due to the delay.

...

§ 12.4.4 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 requirements of the Contract Documents.~~ Work.

...

§ 12.5.2 When the Contractor believes that the Work or designated portion thereof is substantially complete, it will notify the Architect and the Architect will make an inspection to determine whether the Work is substantially complete. When the Architect determines that the Work is substantially complete, the Architect shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, establish the responsibilities of the Owner and Contractor, and fix the time within which the Contractor shall finish ~~all items on the list accompanying completion and repair of all items on the list of incomplete/deficient Work to be prepared by the Architect and issued as an accompaniment to the Certificate.~~ Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

PAGE 11

§ 12.6.1 Upon receipt of a final Application for Payment, the Architect will inspect the Work. When the Architect finds the Work ~~acceptable and~~ acceptable, the Contract fully performed, and all conditions precedent satisfied, the Architect will promptly issue a final Certificate for Payment.

§ 12.6.2 Final ~~payment~~ payment, consisting of the Contract Sum, less all payments previously remitted, less any liquidated damages accrued under the Contract, shall not become due until the Contractor submits to the Architect releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests, or encumbrances arising out of the Contract.

...

§ 14.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section ~~7.3.7.3~~, or, if the failure occurs after final completion, Owner may correct the non-conforming Work and bring an action against Contractor to recover the costs incurred in correcting the Work and any other damages sustained.

...

Neither party to the Contract shall assign the Contract as a whole without written consent of the other.

...

§ 15.2.1 At the appropriate times, the Contractor shall arrange and bear cost of pay for tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. These tests shall specifically include, but not be limited to, reasonable compaction testing at appropriate times as determined and instructed by the Architect. The reasonable costs paid by Contractor for material testing, including compaction testing, will be reimbursed by Owner upon Contractor's presentation of the invoice(s) Contractor received from the material testing firm(s) for said testing, accompanied by evidence of Contractor's full payment of said invoice(s).

...

§ 15.2.3 The Owner shall bear cost of tests, inspections, or approvals that do not become requirements until after the Contract is executed. ~~The Owner executed, unless those tests or inspections became necessary because of suspected deficiencies in Contractor's Work which are confirmed by the tests or inspection, in which case Contractor will bear all costs of the tests and/or inspections, as well as all costs incurred in correcting the deficient Work. The Contractor shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.~~

**PAGE 12**

If the Work is stopped under Section 12.3 for a period of ~~44~~21 days through no fault of the Contractor, the Contractor may, upon seven additional days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed including ~~reasonable overhead and profit, and costs incurred by reason of such termination.~~ overhead and profit at the rate of 5% and 5%, respectively, and costs actually incurred and paid by reason of such termination, as supported by paid receipts and/or paid invoices.

...

.1 ~~repeatedly~~ refuses or fails to supply enough properly skilled workers or proper materials;

...

.3 ~~repeatedly~~ disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;

.4 allows one or more liens to be filed against the Project and fails to cause its/their cancellation and/or removal within 10-days following demand for removal from the Owner;

~~.4~~ .5 fails to comply with the Schedule submitted to the Owner in accordance with this Contract; or

.6 is otherwise guilty of substantial breach of a provision of the Contract Documents.

...

§ 16.2.5 In the event Owner terminates this Contract for one of the reasons stated in Section 16.2.1 and the Work is finished by a replacement contractor, liquidated damages as agreed upon in the Contract will continue to accrue against Contractor and its surety until the Work is complete in accordance with this Agreement.

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed, actually incurred and paid by reason of such termination as established by paid receipts and/or paid invoices.

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### 17.1 Claims

§17.1.1 A claim is a demand by either party seeking a change in the contract time, a change in the contract value, and/or presenting any other dispute arising out of this Contract. Claims arising before final completion of the Work shall be initiated by notice to the other party with a copy sent to the Architect within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later, failing which the Claim shall be waived. Claims arising after final completion of the Work, and any other Claim which was timely initiated and not resolved by the parties, shall be litigated by filing the Claim in a court of proper jurisdiction and venue in accordance with the delays, procedures and other requirements imposed by law.

§17.1.2 If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 17.1.1 shall be given before performing the portion of the Work that is the subject of the Claim. The Contractor's notice of any Claim shall include an estimate of cost and of probable effect of delay on progress of the Work.

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

§17.1.4 A reservation of rights or similar stipulation shall not be recognized under this Agreement as having any effect. A party must make a Claim as defined herein within the time limits provided.

§17.2 Prior to performing any Work (as defined in the Louisiana Private Works Act, La. R.S. 9:4801, et seq.) under this Contract, Contractor shall record in the mortgage records for the parish in which the Project is located a Notice of Contract in compliance with the Louisiana Private Works Act. To the extent payment and/or performance bonds are required by the Contract, copies of those bonds shall be attached to the Notice of Contract at the time of its recordation, all in compliance with the Louisiana Private Works Act. Immediately after recording the Notice of Contract (and bonds, if applicable), Contractor shall provide Owner filed-stamped copies of same.

§17.3 Provided the Contractor has received payment from the Owner for material or labor which is the subject of a lien filed by a Subcontractor or material supplier of any level, or Owner has otherwise satisfied its payment obligations to Contractor arising out of this Contract, Contractor will indemnify and hold Owner harmless from and against such lien, and will immediately cause the lien to be removed. Should Contractor fail to remove such lien within 14 days, Owner shall have the right to remove the lien at Contractor's cost, including but not limited to attorney's fees. The Contract Sum shall be reduced by the amount of such costs incurred by Owner.

§17.4 Each Application for Payment shall be accompanied by the following, all in the form and substance satisfactory to the Owner and Architect, receipt of which shall be a condition precedent to Owner's obligation to remit any payments to Contractor pursuant to this Agreement:

.1 A current Contractor's lien waiver duly executed and a sworn statement showing that all Subcontractors and materialmen with whom the Contractor has entered into subcontracts have been paid for the Work performed and/or materials supplied to date;

.2 Duly executed waivers of mechanics' and materialmen's liens from all subcontractors and suppliers with contracts in excess of \$50,000.00 and, when requested, from lower tier materialmen and subcontractors, establishing payment or satisfaction of all amounts requested by the Contractor on behalf of such entities in any previous Application for Payment; and

.3 All information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or the Architect.

§17.5 Contractor and Owner hereby agree to waive the provisions of La. R.S. 9:4857, including but not limited to waiver of those provisions requiring placement of retainage into an escrow account, the use of an escrow agent, and the timing and process for retainage payments. To the extent, and only to the extent, that this waiver is found invalid by a final decision of a court of competent and controlling jurisdiction, the following provisions will apply:

.1 Contractor and Owner agree that a representative of Owner's financial institution for this Project shall serve as escrow agent and that the escrow account shall be established at Owner's financial institution for this Project;

.2 Owner shall not be obligated to consent to or execute any waiver related to retainage release, unless and until Contractor achieves final completion under the Contract Documents, and all requirements of the Contract Documents associated with final payment and retainage release have been fully satisfied;

.3 Contractor shall not submit a request for release of retainage, in whole or in part, without first seeking Owner's agreement and consent; any request by Contractor for release of retainage, in whole or in part, without Contractor's first having sought Owner's agreement and consent, shall be null and void; and

.4 Contractor shall provide to Owner copies of all communications (including but not limited to retainage release requests) with the escrow agent; transmittal of such communications to Owner shall be made at the same time and in the same manner that such communications are transmitted to the escrow agent.

§17.6 Upon substantial completion of the Work, as certified by the Architect, Contractor shall record in the mortgage records for the parish in which the project is located a Notice of Termination of the Contract in compliance with the Louisiana Private Works Act, La. R.S. 9:4801 et seq., and shall immediately provide Owner a file-stamped copy of same.

§17.7 In addition to other requirements set forth elsewhere in these Contract Documents, final payment, as certified by the Architect, shall be remitted to Contractor no earlier than the date on which Contractor has satisfied the following conditions precedent:

.1 The Contractor shall have obtained and furnished to the Architect a certificate, signed and sealed by the Recorder of Mortgages for the Parish in which the Project is located and dated at least sixty-one (61) days after recordation of the Notice of Termination, certifying that no liens or privileges have been recorded in the Mortgage Office against the Project, the property underlying the Project, and/or against the Owner or Contractor arising out of or on account of the execution of the Contract.

.2 The Contractor shall have executed and provided to the Architect a written request, on a form acceptable to the Owner and Architect, dated at least 61 days after recordation of the Notice of Termination, including the Contractor's written acknowledgement of payment of all amounts due it under the Contract, and directing the Recorder of Mortgages to cancel recordation of the Notice of Contract. This signed request provided by the Contractor shall be executed by the Owner and recorded in the Mortgage records after the Owner has paid the Contractor the final amount owed under the Contract.

.3 Contractor has provided Owner written certification that the Work has been constructed and performed in accordance with the Project Plans and Specifications; and

.4 Contractor has provided Owner evidence that all insurance required by this Agreement is in full force and effect.

§17.8 Notwithstanding the foregoing provisions, Owner will still be allowed to withhold sums from payment for any reasons set forth in these Contract Documents.

§17.9 The Mortgage Office and the Recorder of Mortgages mentioned in these Sections are defined to be the Office and Recorder of Mortgages for the Parish in which the Work is performed.

§17.10 The expenses of recording the Notice of Contract, Notice of Termination, and obtaining lien and privilege certificates, shall be borne by the Contractor.

§17.11 The Contractor shall furnish and pay for a Performance Bond and a Payment Bond issued by a company licensed and qualified to do business in Louisiana, complying with La. R.S. 9:4801, et seq., and which is acceptable to and on a form approved by the Owner, with each such bond to be in an amount equal to one hundred percent (100%) of the Contract Sum, as security for the true and faithful performance of the Contract and payment in full of all

subcontractors and persons providing labor, services, materials, machinery and fixtures in connection with the Work. The surety shall be bound in solido with the Contractor. The executed bonds, together with the bonding agent's power of attorney, shall be furnished to the Owner along with the executed Contract, and the number of copies reasonably required by it. The reasonable costs paid by Contractor for the Performance Bond and Payment Bond will be reimbursed by Owner upon Contractor's presentation of the invoice(s) Contractor received for same, accompanied by evidence of Contractor's full payment of said invoice(s).

§17.12 The Contractor shall deliver the required bonds to the Owner not later than the date the Agreement is entered into.

§17.13 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

#### §17.14 Recordation Requirements

§17.14.1 The Contractor shall comply with all recordation requirements contained in the Louisiana Private Works Act ("PWA"), La. R.S. 9:4801 et seq. In order to protect Owner, the Contractor shall, prior to performing and/or allowing performance of any Work on the Project site, record all documents required by the PWA, including:

a. The Notice of Contract in a form meeting all of the requirements set forth in the PWA (including La. R.S. 9:4811 and 4831), and

b. The Surety bonds (La. R.S. 9:4812).

#### §17.15 Liquidated Damages

§17.15.1 Contractor agrees to complete the Work within the Contract Time as established in this Agreement. The Owner will suffer financial loss if the Project is not substantially complete within the time set forth in the Contract Documents. Accordingly, Contractor hereby agrees to and acknowledges that it shall be liable for and shall pay to the Owner liquidated damages in the amount of \$500 per calendar day for each and every day (Saturdays, Sundays and holidays included) on which, after the conclusion of the Contract Time, the Project has not reached substantial completion. Contractor further acknowledges and agrees that: (1) any liquidated damages owing by Contractor to Owner under this Agreement may be offset against any progress or other payments which might otherwise be due Contractor hereunder; (2) an accrued liquidated damage balance owing by Contractor to Owner shall be grounds for Architect to deny certification of, or to annul previous certification of, an application for payment, in whole or in part; (3) the bond required of Contractor pursuant to this Agreement shall expressly bind Contractor's surety to liability for liquidated damages owing to Owner under this Agreement; and (4) Owner's collection of liquidated damages as specified herein shall not limit Owner's right to collect any actual damages it sustains as a result of Contractor's delay in completing the Project, to the extent Owner sustains actual damages in excess of the liquidated damages actually paid by Contractor to owner.



## **Certification of Document's Authenticity**

### **AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 18:37:51 ET on 08/03/2022 under Order No. 2114328338 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A105™ – 2017, Standard Short Form of Agreement Between Owner and Contractor, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

DocuSigned by:

*Scott Barney*  
(Signed)  
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\_\_\_\_\_  
**Attorney**

\_\_\_\_\_  
*(Title)*

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**8/4/2022**

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*(Dated)*