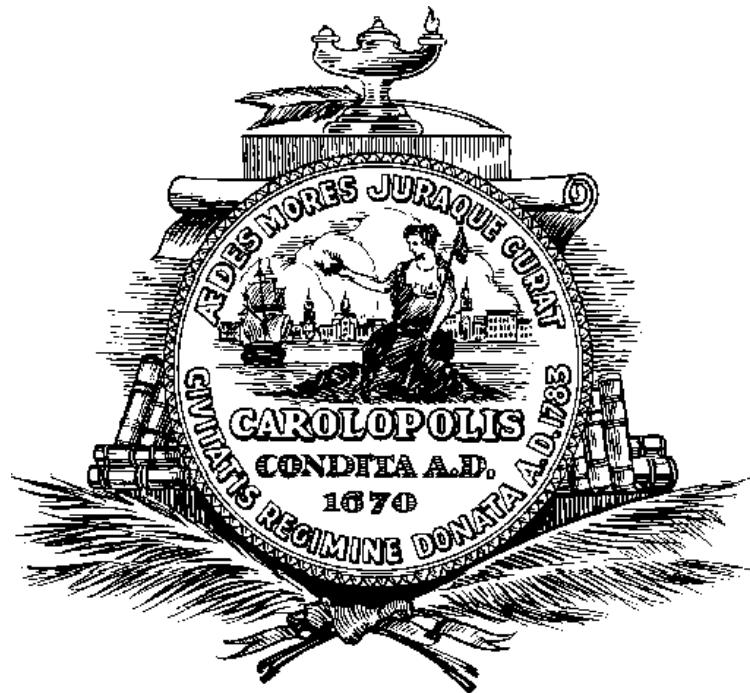


**Request for Qualifications  
Invitation for Design-Builder for  
City of Charleston Office Building at 1660 + 1662 Ingram Road**



City of Charleston  
Special Projects  
80 Broad Street, Charleston, SC 29401

**Deadline for Submittals: Friday, April 4, 2025, 2:00 PM**

CITY OF CHARLESTON  
INGRAM ROAD OFFICE  
BUILDING DESIGN-  
BUILDER INVITATION  
FOR QUALIFICATIONS

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## **SECTION 1**

### **INVITATION FOR DESIGN-BUILDER**

## **Invitation for Design-Builder Services**

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### **Project:**

City of Charleston Office Building at 1660 + 1662 Ingram Road, located in West Ashley.

### **Public Notice of Invitation will be posted at:**

80 Broad Street, City of Charleston BidLine, Charleston Post and Courier and  
South Carolina Business Opportunities (SCBO)

### **Description of Project:**

The City of Charleston (“Owner”) is soliciting Proposals for Design-Builder for a new municipal office building in West Ashley at 1660 + 1662 Ingram Road. This solicitation is for interested Offerors that have a wealth of experience in the design, permitting and construction of office and/or similar type facilities. From the responses received, the Owner intends to select a qualified Offeror to provide turn-key design, permitting and construction services for the construction of one new office building.

The Project includes the design, permitting and construction of one new office building composed of 3 stories with 15,000 SF footprint and demolition of the existing structures at 1660 +1662 Ingram Road, Charleston, SC 29407. The construction of the new office building will need to include the complete demolition of the existing facility in accordance with all environmental regulations and all site work to prepare and complement the building program.

The construction of the office building must include a lobby area, circulation/services areas, building support areas, public meeting rooms, breakrooms/kitchens, conference rooms, and staff offices, as further described herein. Site work will include the building foundation system, connection of water, sewer, power, and other utilities as necessary and other site improvements to support the project. The design will complete construction documents in 2025, with enabling and potential early activities occurring in the same calendar year. (early work strategies to be developed as a collaborative team). Site and building construction is anticipated to finish in Q1 of 2027.

### **Anticipated Construction Cost Range:**

\$TBD

**Description of Scope of Services Anticipated for Project:**

In coordination with the Owner, professional services may include, but not be limited to the following:

- Design services including the disciplines of landscape architecture, civil engineering, environmental engineering, surveying, lighting, signage, and outdoor site furnishing to produce construction documents for permitting and construction of City of Charleston Office Building at 1660 + 1662 Ingram Road, located in West Ashley; and
- Cost/value estimating, scheduling, planning and coordination of the subcontractor/vendor solicitation and pre-qualification, projection of construction cost and cash flows, etc.; and

Interested firms or teams should have advanced knowledge of construction cost estimation and proven experience in pre-construction and construction of municipal/institutional facilities with emphasis on office buildings.

**Resumes:**

Current Federal Standard Form A305-2020 is to be submitted. If sub-contractors are to be used, they must be included in a single Form A305-2020. Supplemental portfolio materials may be submitted and are encouraged. Please use the 2020 version of Form A305.

**Selection Criteria:**

A Selection Committee will evaluate the information submitted and may decide on a suitable candidate. In the event, the committee is unable to make that determination, the committee may select up to three or more finalists for interviews. The following criteria will be used to evaluate each firm:

- Past performance including references and related experience on similar projects;
- Qualifications and experience of the professional personnel \*Please list personnel that will actually be working on project(s) and their current workloads. Specifically, a consistent Project Manager that would run the project(s) Pre-Construction AND Construction activities;
- Location;
- Speed of Execution and Minimizing Disruption – The project will utilize lean construction principles to deliver value in an expeditious manner. Time is of the essence in delivering the project and the goal is to minimize the time during which the City functions will be impacted by construction;
- Costs – The City seeks the best facility for the best value, understanding that this is a long-term facility that must serve the City for years to come, and therefore long-term value, ease of maintenance, and reliability are just as important as initial cost;
- Efficiency & Flexibility – The City seeks to construct a facility that will be functionally efficient, while providing flexibility to respond to changing needs as they may emerge in the future. It is also important to the City that those responding to this solicitation pay attention to the details – the things that make the difference between the facility functioning really well versus acceptably;

- Coordination with the City – The City seeks a high level of cooperation, communication, and coordination with the offeror during the course of the project to assure smooth execution. The City will be providing several prequalified proprietary vendors to install confidential equipment, systems, components, and elements of the work, and will need to know when these things are required to avoid impacting the project schedule. The Offeror will coordinate with the City to allow installation of furniture, fixtures, and equipment during the final stages of the project, so that this can be done without a separate post-construction phase. Coordination will also be required during design and construction to assure that these items are integrated smoothly with the work to be done by the offeror;
- Project Design – The Owner will provide a design architect for the Offeror to work with for the building's materials, style and form. The Design Architect is already under contract with the City. The Offeror will be designer of record for the project. The offeror will also be responsible for obtaining approval of the design by the City, including approval by the Mayor, City Council, approval by the Architectural Review Board, approval of the Site Plan, and all work required to satisfy the requirements of local and state and federal authorities;
- Site Constraints - Construction of this project will be accomplished in a very visible location. Communication with the neighborhood association and immediately neighbors with a requirement. Vehicular and pedestrian safety is a high priority during construction, as is a clean and well-organized site; and
- Project approach including creativity and insight related to the project.

\*Additional Criteria for Consideration: MWBE plan or intent to address MWBE goals. MWBE information is provided for reference.

**Estimated Selection Schedule:**

RFQ Invitation Release	Sunday, March 16, 2025
Questions Deadline	Thursday, March 27, 2025 by 1200noon
Last Addenda	Thursday, March 27, 2025 by 500pm
RFQ Deadline	Friday, April 4, 2025 by 2:00 PM
Selection Committee Review	Wednesday, April 9, 2025
Interview Shortlist Notification	Friday, April 11, 2025 *
Interviews	Wednesday, April 16, 2025 *
Tentative Notification of Highest Ranked Firm	Wednesday, April 16, 2025 *
Contract Negotiation	April 21-25, 2025
City Council Approval Process	May 13, 2025
GMP Pricing after permits obtained	Q3-Q4 2025

\* dates subject to change based on selection committee results, schedules of committee members, and ranked firms

**Number of Copies:**

Each Vendor must submit the following:

- One (1) original un-bound, single-sided Qualification submittal labeled as "ORIGINAL"
- Eight (8) bound, double-sided Qualification submittals
- One (1) electronic copy on a flash drive
- The Vendor must mark on the envelope or box containing the proposal the following information: "RFQ City of Charleston Office Building at 1660 + 1662 Ingram Road, located in West Ashley"
- Note "CONFIDENTIAL" on outside of envelope or box
- All Qualification submittals, including original, copies and the flash drive, shall be submitted together in one envelope or box

**Name of Project Manager:**

Josh Martin

Special Advisor to Mayor William S. Cogswell, Jr.

Executive Department: Special Projects

80 Broad Street

Charleston, SC 29401

E-mail: [martinj@charleston-sc.gov](mailto:martinj@charleston-sc.gov)

## **SECTION 2**

### **REQUEST FOR QUALIFICATIONS AND OVERVIEW**

The City of Charleston is soliciting qualifications from interested contractors/firms for Design-Builder, with expertise in pre-construction and construction of municipal/institutional facilities with emphasis on office buildings. Qualifications will be evaluated by the assigned Selection Committee using the criteria described herein. The requirements identified in the solicitation documents are intended to provide the City of Charleston with the ability to select candidates who most closely meet the needs of the City of Charleston, its citizens, and the project as a whole.

During the Pre-construction Phase, the main object of the Design-Builder is to collaborate with City project staff, and stakeholders. The Design-Builder will offer input and expertise related, but not limited, to the following:

1. Provide design team services including the disciplines of landscape architecture, civil engineering, environmental engineering, surveying, lighting, signage, and outdoor site furnishing to produce construction documents for permitting and construction of the City of Charleston Office Building located at 1660 + 1662 Ingram Road; and
2. Provide Cost/value estimating, scheduling, planning and coordination of the subcontractor/vendor solicitation and pre-qualification, projection of construction cost and cash flows, etc.; Attend meetings with Owner and Design Team as needed to develop cost estimates, critical path schedules, and consult on best-value construction systems and methods to integrate into design.
3. Development of a Master Construction Schedule to include the Critical Path Schedule and critical milestones beginning with mobilization and ending with close-out.
4. Develop budgetary estimates for design, bidding, and Guaranteed Maximum Price ("GMP"). Such work includes providing complete material and equipment estimates, labor costs, hourly labor rates, bids, and updated cost estimates at each milestone. This should also include estimates related to the general conditions, general requirements, cost of work, contingency, and other costs required to ensure a comprehensive and complete estimate/proposal to effectively execute the project. Preliminary GMP is expected at completion of Design Development, and GMP is expected to accompany completion of Construction Documents.
5. Provide Value Engineering Process Management to assist the project team in understanding and identifying Value Engineering ("VE") options and associated estimate credits to help drive value as it relates to optimizing the timeline, reducing costs, and maintaining quality through the process. This includes development of pre-bid value engineering alternatives as well as performing post-bid value engineering as required to meet budget objectives.
6. Provide constructability reviews of design-phase submittals.
7. Contract with professional vendors and subcontractors capable of providing the goods and services necessary to complete the project in accordance with the construction documents and established project goals and objects.

During the Construction Phase, the Design-Builder will act as the General Contractor. The Construction phase will begin when (1) the Design-Builder Contractor and the City of Charleston agree on a GMP for the project, (2) the Design-Builder Contractor and City of Charleston execute a Design-Builder Contract (referenced in document as Modified AIA A141-2014), (3) the City of

Charleston City Council reviews and approves of the budget and Construction Contract, and (4) the City of Charleston issues a written Notice to Proceed letter for the Construction Contract.

Responsibilities during the Construction Phase will include, but are not limited to the following:

- Supervise all work to ensure adherence to specifications and construction documents, quality standards, schedule and cost. This includes coordinate with any and all City of Charleston directed subcontractors and vendors.
- Manage the administration of reports, permits, and inspections as well as providing all documentation of guarantees, warranties, training and operating manuals to the City and other operators.
- Evaluate and document changes to the Scope of Work to include review of detailed pricing and competitive bidding, notation of such changes, including field changes, on plans for inclusion in as-builts, document and communicate to the project team any changes to the critical path resulting from such changes.
- In conjunction with the City of Charleston and relevant stakeholders, create a comprehensive punch list and cause of the resolution for each deficiency within 30 days after Substantial Completion is granted.
- Fully administrate and enforce all obligations in accordance with applicable laws, rules, and regulations including Federal Occupational, Safety and Health Act (OSHA), Americans with Disabilities Act (ADA), CDC, State, and local guidelines.

The words “Contractor”, “Firm”, “Vendor”, “Bidder”, “Offeror”, “Consultant”, “Proposer”, “Respondent”, “Organization” and “Submitter” are used interchangeability through this RFQ to define the company submitting statements of qualifications and replace terms such as person(s), firm(s) or corporation(s).

Responsibilities of the City include, but are not limited to, the following:

1. The City will provide a City Staff Project Manager who will be the official point of contact, and the Mayor’s Special Advisor will be readily available for consultation during the course of design and construction. Regular design development meetings will be required to ensure the building systems and components meet the City’s expectations and for maintenance and compatibility with existing infrastructure.
2. The City has provided its vision and guidance of the facility so that Offerors have an opportunity to understand the City’s preferences. See Section 6.
3. The City will provide Specifications for IT, AV, wiring, security, surveillance, access control system, and other low voltage equipment will be provided to the offeror during design process. The offeror will coordinate with the City on the Proprietary systems that cannot be contracted or installed by the Offer. The offeror will allow time in the schedule for the City to install it and make it operational.
4. The City will provide recommended building mechanical system types that can be maintained by existing City Facility Maintenance Staff or contracted Maintenance vendors. The offeror will coordinate with the City any Proprietary systems that cannot be contracted or installed by the Offer. The offeror will allow time in the schedule for the City to install it and make it operational.

## **SECTION 3**

### **GENERAL INFORMATION**

## **PROCUREMENT PROCESS**

The RFQ (*Request for Qualifications*) is **not a bid**. In the event the City elects to negotiate a contract with the successful Vendor, contract shall contain, at a minimum, the term and conditions (or substantially the same term and conditions) as hereinafter stated. Modified contracts are included for reference. The City reserves the right, in its sole discretion, to reject all submissions, reissue a subsequent RFQ, terminate, restructure, or amend this procurement process at any time. The final selection and contract negotiation rests solely with the City.

## **QUESTIONS**

Every effort has been made to ensure that all information needed by the Offeror is included herein; however, questions are allowed and encouraged to clear up any information as described herein, etc. The City will not accept telephone calls or visits regarding this RFQ. **All questions shall be in writing and addressed to: Josh Martin, City of Charleston, Executive Department, 80 Broad Street, Charleston, South Carolina 29401, or email to [martinj@charleston-sc.gov](mailto:martinj@charleston-sc.gov).** All questions must be received before 12:00 noon on March 27, 2025. Responses to all questions will be issued via addenda no later than 5:00 PM on March 27, 2025. No interpretation shall be binding upon the City unless in writing from the City's Corporate Counsel.

## **ORAL STATEMENTS**

No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. The City of Charleston shall not be legally bound by any amendment or interpretation that is not in writing.

## **NON-ENDORSEMENT**

If a Qualification submittal is accepted, the successful Vendor shall not issue any news releases or other statements pertaining to the award or servicing of the agreement that state or imply the City's endorsement of the successful Offeror's product or services.

## **PROPRIETARY INFORMATION**

If an Offeror does not desire proprietary information in the Submittal to be disclosed, the Offeror shall identify all proprietary information in the Submittal. This identification will be done by individually marking each page with the words "Proprietary Information" or "Confidential" on which such proprietary information is found. If the Offeror fails to identify proprietary information, it agrees that by submission of its Submittal that those sections shall be deemed non-proprietary and made available upon request through the Freedom of Information Act.

## **UNAUTHORIZED COMMUNICATIONS**

Respondents' contact regarding this RFQ with employees or officials of the City of Charleston will result in disqualification from this procurement process. Any oral communications are considered unofficial and non-binding with regard to this RFQ. The only authorized contacts for this procurement are any designated Capital Projects staff.

## **VENDOR SOLELY RESPONSIBLE FOR PERFORMANCE**

Vendor shall be responsible for the performance of the services required by the contract. Vendor is an independent contractor and does not act as the City's agent or employee.

## **DISQUALIFICATION OF OFFERORS**

Offerors may be disqualified for any of the following reasons:

- Reason to believe collusion exists among the Offerors
- The Offeror is involved in any litigation against the City
- Offeror is in arrears on any existing contract or has defaulted on a previous contract with the City
- Lack of financial stability
- Failure to perform under previous or present contracts with the City
- Is currently debarred by the State of South Carolina Procurement Services

## **SUSPENSION AND DEBARMENT**

The Offeror certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal, state, or local agency. Where the Offeror is unable to certify to any of the statements in this certification, such Offeror shall attach an explanation to this proposal.

## **CONTRACT NEGOTIATIONS**

The City will rank, based upon the evaluation criteria, all responsible and responsive Vendors. The City will begin negotiations with the top ranked Vendors and will continue with negotiation down the ranking until a satisfactory contract with the City is finalized, if any. The terms and conditions of the contract will be no less advantageous than the provisions of this RFQ. The City reserves the right to make a partial award or to split the award at its sole discretion.

## **VENDOR'S DUTY TO INSPECT & ADVISE AND DECLARE ALL COSTS**

Each Vendor shall become fully acquainted with the City's requirements and the scope of commodities and/or services to be provided. Vendor shall have a duty to request any information from the City as it deems necessary to prepare the RFQ.

## **RECEIPT OF QUALIFICATIONS**

Qualifications must be submitted to and received by the City no later than the date and time specified within this RFQ.

**Offerors mailing proposals should allow a sufficient mail delivery period to insure timely receipt on or before Friday, April 4, 2025, by 2:00 PM of their proposal by the City.**

**Submittals received after the scheduled due date and time will not be considered.**

**Submittals must be completed and delivered in sufficient time to avoid disqualification for lateness due to difficulties in delivery. The time and date stamp clock in the City's Executive Department is the official clock for determining whether submittals are submitted on time.**

Late Proposal documents will not be accepted under any circumstances.

## **SECTION 4**

### **QUALIFICATION SUBMITTAL REQUIREMENTS AND CRITERIA**

To assure similarity in qualification presentation and allow the Selection Committee to easily compare competing qualifications, Offerors shall include, in the order described, the material indicated below. It is not the intent of the City of Charleston to constrain Offerors with regard to content, but to assure that the specific requirements set forth in this RFQ are addressed in a uniform manner amenable to Evaluation and Selection Committee review. Offerors may include additional information sections or appendices if desired, to present additional pertinent information. Offerors should submit information in a concise and responsive manner for every requirement. Non-responsive or incomplete submittals or inability to meet City requirements set forth may lead to disqualification of the Offeror's submittal.

Only information presented in the Qualifications will be used to evaluate the submittals. Responses shall be completed in accordance with the requirements in the RFQ. Statements made by an Offeror shall be without ambiguity, and with adequate elaboration, where necessary, for clear understanding.

## **QUALIFICATION PREPARATION**

Qualification submittals shall provide a straightforward and concise description of the vendor's capabilities to satisfy the requirements of the RFQ.

All qualifications should be complete and carefully worded and should convey all the information requested by the City of Charleston. If errors or exceptions are found in the response, or if the response fails to conform to the requirements of the RFQ, the City of Charleston will be the sole judge as to whether the variance is significant enough to reject the submitted proposal.

## **SUBMITTAL FORMAT**

Qualification submittals are to be prepared in a manner designed to provide the Selection Committee with a straightforward presentation of the capability to satisfy the requirements of this RFQ. All documentation submitted with the proposal shall be in a single volume.

Documentation must be on 8 1/2 x 11 pages with a maximum of 20 pages. Divider pages and AIA A305-2020 are not included in the page count.

Include the following items:

- RFQ Cover Page listing title of project, date of submittal, and name of company.
- Cover Letter: Three (3) pages maximum. The Cover letter should include a synopsis of the prime contractor firm and sub-contractors or sub-consultants, the team's qualifications, the project manager and primary contact, the project principal representing the contractual authority of the firm.
- List of Project Team and Organization Chart: List and state the qualifications of the individuals who will have responsibility for Proposer's services, including sub-consultants or sub- contractors. Provide the geographical location of all project team members and include an Organizational Chart that indicates how information will be coordinated with the City of Charleston.
- Resumes for all Project Team members including applicable projects.
- List of Qualifications and References: provide at least (3) similar projects involving at least one involving pre-construction and construction of municipal/institutional facilities

with an emphasis on multimodal pathway construction. Project references should exhibit similar size and/or complication of project. The submittal should include the names and references of for past work. References are to include accurate and up-to-date contact information. \*Please use AIA A305-2020 for qualification statement and references of the past.

- Acknowledgement of any issued Addenda.
- Submittals must be signed by an official authorized by the vendor's company to contractually bind the vendor.

## **QUANTITY AND IDENTIFICATION OF QUALIFICATIONS SUBMITTED**

Each Vendor must submit the following:

- One (1) original un-bound, single-sided Qualification submittal labeled as "ORIGINAL"
- Eight (8) bound, double-sided Qualification submittals
- One (1) electronic copy on a flash drive
- The Vendor must mark on the envelope or box containing the proposal the following information: "RFQ City of Charleston Office Building at 1660 + 1662 Ingram Road, located in West Ashley""
- Note "CONFIDENTIAL" on outside of envelope or box
- All Qualification submittals, including original, copies and the flash drive, shall be submitted together in one envelope or box

## **QUALIFICATION EVALUATION PROCESS**

A Selection Committee comprising of City of Charleston staff, City Council members and any other persons designated by the City will be established to evaluate the Qualifications and select a Proposal which represents the best value to the City. The Selection Committee will determine the responsiveness and acceptability of each submittal.

The City's Selection Committee will conduct a comprehensive, fair and impartial evaluation of all Qualifications received in response to this RFQ. Each Qualification received will first be analyzed to determine overall responsiveness and completeness to this RFQ. Each Qualification will then be evaluated based on each of the criteria as outlined in "Qualification Evaluation Criteria", and after which identified as either reasonably qualified or unqualified. A Qualification submittal may be declared as unqualified if it clearly fails to demonstrate, in any of the listed areas, a standard that the City believes is necessary to meet the requirements set forth in this RFQ.

After the Qualifications are evaluated, the Selection Committee will determine whether formal presentations and interviews to shortlisted Contractors/Firms are necessary. If it is deemed necessary, the City will invite shortlisted Contractors/Firms to make a formal presentation and/or sit for a panel interview. The City may choose to not require formal presentations or interviews. The City may contact officials from other jurisdictions regarding the Contractor/Firm, their prior work experience, and their ability to successfully complete the scope of services.

## PROPOSAL EVALUATION CRITERIA FACTORS

- Past performance including references and related experience on similar projects;
- Qualifications and experience of the professional personnel \*Please list personnel that will actually be working on project(s) and their current workloads. Specifically, a consistent Project Manager that would run the project(s) Pre-Construction AND Construction activities;
- Location;
- Speed of Execution and Minimizing Disruption – The project will utilize lean construction principles to deliver value in an expeditious manner. Time is of the essence in delivering the project and the goal is to minimize the time during which the City functions will be impacted by construction;
- Costs – The City seeks the best facility for the best value, understanding that this is a long-term facility that must serve the City for years to come, and therefore long-term value, ease of maintenance, and reliability are just as important as initial cost;
- Efficiency & Flexibility – The City seeks to construct a facility that will be functionally efficient, while providing flexibility to respond to changing needs as they may emerge in the future. It is also important to the City that those responding to this solicitation pay attention to the details – the things that make the difference between the facility functioning really well versus acceptably;
- Coordination with the City – The City seeks a high level of cooperation, communication, and coordination with the offeror during the course of the project to assure smooth execution. The City will be providing several prequalified proprietary vendors to install confidential equipment, systems, components, and elements of the work, and will need to know when these things are required to avoid impacting the project schedule. The Offeror will coordinate with the City to allow installation of furniture, fixtures, and equipment during the final stages of the project, so that this can be done without a separate post-construction phase. Coordination will also be required during design and construction to assure that these items are integrated smoothly with the work to be done by the offeror;
- Project Design – The Owner will provide a design architect for the Offeror to work with for the building's materials, style and form. The Design Architect is already under contract with the City. The Offeror will be designer of record for the project. The offeror will also be responsible for obtaining approval of the design by the City, including approval by the Mayor, City Council, approval by the Architectural Review Board, approval of the Site Plan, and all work required to satisfy the requirements of local and state and federal authorities;
- Site Constraints - Construction of this project will be accomplished in a very visible location. Communication with the neighborhood association and immediately neighbors with a requirement. Vehicular and pedestrian safety is a high priority during construction, as is a clean and well-organized site; and
- Project approach including creativity and insight related to the project.

\*Additional Criteria for Consideration: MWBE plan or intent to address MWBE goals. MWBE information is provided for reference.

It is the Offeror's responsibility to effectively communicate their qualifications, services, and abilities to the City by thoroughly responding to each requirement contained in this RFQ.

## **SECTION 5**

### **INSTRUCTIONS TO OFFERORS**

Number of Submittals required is stated in the General Information section of this Solicitation. Proposals must be mailed or hand delivered. Responses received by fax or other electronic means (email, CD, etc.) will be rejected. Submittals must be submitted in a sealed envelope and must be addressed to the Josh Martin, Executive Department, 80 Broad Street, Charleston, SC 29401. Failure to do so may result in a premature opening of, or failure to open such Proposal. Each sealed envelope containing a Proposal shall be marked on the outside with the Offeror's complete Name, Address, Solicitation Number, Description of Services Requested by Solicitation (i.e., Elevator Maintenance, Road Construction), along with the Due Date and Time. If you do not choose to submit a proposal, please complete and return the enclosed "No Proposal" response form.

A "No Proposal" qualifies as a response; however, it is the responsibility of the Vendor to notify the Procurement Office if you receive solicitations that do not apply. Failure to respond to three (3) solicitations during the calendar year may result in removal from Vendor's List.

All pages that require a Signature shall be included with the proposal. Failure to include these required pages may result in the proposal being deemed Non-Responsive.

Offerors must clearly mark as "Confidential" each part of their proposal which they consider to be proprietary information that could be exempt from disclosure under the South Carolina Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 to – 165 (2007 & Supp. 2015). See paragraph 45 for more details. The City reserves the right to determine whether this information should be exempt from disclosure and no legal action may be brought against the state or its agents for its determination in this regard.

Submittals must be made in the official name of the individual, firm, company, partnership, corporation, joint venture or other legal entity under which the business is conducted (showing official business address) and must be signed in ink by a person duly authorized to legally bind the legal entity submitting the proposal.

Submittals should be typewritten or computer-generated; however, if this is not possible, the handwriting must be legible. A submittal shall include, but is not limited to, addresses of all legal entities which will participate in the proposed services. The type of organization of the Bidder, whether individual, firm, partnership, corporation, joint venture or other legal entity, shall be stated. Any affiliations, parent-subsidiary relationships, and corporate identities including the names of the principals of such legal entity must be fully disclosed and clearly explained.

If an error is made before submitting the qualifications, the error should be crossed out, corrections entered and initialed by the person signing the proposal. Erasures or use of typewriter correction fluid may be cause for rejection. No submittal shall be altered or amended after specified time for opening.

Qualification submittals may be withdrawn by written request received from the Offeror prior to the time set for opening of Proposals, but not thereafter.

Submittals should be prepared simply and economically. All data, materials, and documentation

shall be available in a clear, concise form and reproducible upon request “at cost” for the City’s internal use. The City reserves the right to reproduce proposals for internal use in the evaluation process.

## **GENERAL**

All Submittals shall provide a straightforward, concise description of Offeror's ability to satisfy the requirements of the Solicitation.

All Addendum and Award Notices will be posted on our website on BidLine.

The terms and conditions in this Solicitation are for referenced in the City of Charleston or Modified AIA contracts. The City of Charleston reserves the right to reject, in whole or in part, any proposal or submittal which does not comply with such terms and conditions. The City of Charleston reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the Offeror of the conditions contained in this Solicitation, unless clearly and specifically noted in the proposal submitted and confirmed in any resulting contract between the City of Charleston and the Offeror selected.

No substitutions shall be considered after the contract award except by Amendment.

The City seeks qualified Vendors to be responsible for completion of the work described herein and the City reserves the option to award portions of the project to multiple Offeror if such is to the advantage of the City. Therefore, any one proposal submitted by more than one company shall be deemed to be a proposal for a joint venture between or among the companies so submitting proposals unless the proposal clearly and unequivocally describes that only one firm proposes to act as principal and the other firm(s) contractual position is clearly defined. The companies submitting as a joint venture shall be held jointly and severally responsible for the entire project and shall not be permitted to limit their liability to the City.

All Submittals should be complete and carefully worded and shall convey all the information requested by the City. If errors or exceptions are found in a proposal, or if the proposal fails to conform to the requirements of the Solicitation, the City shall be the sole judge as to whether that variance is significant enough to reject the proposal.

The City reserves the right to request satisfactory evidence of their ability to furnish services in accordance with the terms and conditions listed herein. The City further reserves the right to make the final determination as to the Offeror's ability to provide said services.

The Offeror is solely responsible for all costs and expenses associated with the preparation of the submittal and of any supplementary presentation (including any oral presentation) requested by the City.

## **GRATUITIES AND KICKBACKS**

Gratuities. It shall be unethical for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or

application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore

Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor, or to hire any subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

## **OFFEROR REPRESENTATIONS**

Each Offeror by submitting a Proposal represents that:

- The Offeror has read and understands this Solicitation (including all Specifications and Attachments) and that its Proposal is made in accordance therewith.
- The Offeror has reviewed the Solicitation and has become familiar with the local conditions under which the Scope of Work is to be performed. The failure or omission of an Offeror to acquaint himself with existing conditions shall in no way relieve him of any obligation with respect to this proposal or any resulting contract.
- The Proposal is based on the terms, materials, services and obligations required by this Solicitation, without exception.
- The Offeror is qualified to provide the services and equipment required under this Solicitation and, if awarded the contract, shall do so in a professional, timely manner using successful Offeror's best skills and attention.
- The Offeror is guaranteeing that all goods and services will meet the requirements of the Solicitation during the contract period.

## **COMPETITIVE PROCUREMENT**

It is the intent and purpose of the City of Charleston that this Solicitation permits competition. It shall be each Offeror's responsibility to advise the City if any language, provision, or other requirement, or any combination thereof, inadvertently restricts or limits the satisfaction of the specifications stated in this Solicitation to a single source. Such notification must be submitted in writing and must be received by the City of Charleston Procurement Division no later than the last date for written questions. Any such notification shall be reviewed by the City's Procurement Director.

## **EVALUATION PROCESS**

During the evaluation process the City of Charleston reserves the right, where it may serve the City of Charleston's best interest, to request additional information or clarification from Offerors, or to allow corrections of errors or omissions.

## **AWARD OF CONTRACT**

Award of contract shall be made to the most responsive and responsible Offeror(s) whose Qualifications, conforming to the Solicitation, is most advantageous to the City of Charleston.

The City of Charleston may, when in the best interest of the City, reject any or all Submittals or waive technicalities or informalities in any Proposals received.

The City of Charleston shall be the sole judge of the suitability of the items or services to be provided pursuant to this Solicitation.

The City may choose to award to more than one Vendor if it is in the best interest of the City.

Final approval may rest with members of the City Council for the City of Charleston

### **NOTICE OF AWARD OF CONTRACT**

The successful Offeror shall be notified by a written Notice of Intent to Award of Contract. Successful Offeror(s) shall not undertake any work, and City shall not be responsible for payment for any work whatsoever undertaken by the successful Offeror(s) prior to issuance of the Notice to Proceed.

### **OTHER CONTRACTS**

The City of Charleston may undertake or award other contracts for portions of the work or additional work, and the Contractor(s) shall fully cooperate with such other contractors and City of Charleston employees and carefully fit its own work to such work as may be directed by the City. The Contractor(s) shall not commit or permit any act which shall interfere with the performance of work By any other contractor or by City of Charleston employees.

### **INDEPENDENT CONTRACTOR**

Successful Offeror is an independent contractor and shall not be deemed the agent or employee of the City of Charleston for any purpose whatsoever.

### **OFFEROR'S QUALIFICATIONS**

The City reserves the right to request satisfactory evidence of any Offeror's ability to furnish services in accordance with the terms and conditions listed herein. The City further reserves the right to make the final determination as to the Offeror's ability to provide said services. We reserve the right to investigate the qualifications of any respondent under consideration, require confirmations of information furnished, and require additional evidence of qualifications to perform the work described in this Solicitation, contact references, and request an audited financial statement in order to determine a potential contractor's capabilities.

### **ASSIGNMENT**

The Contractor(s) shall not assign in whole or in part its duties under the contract without the prior written consent of the City of Charleston. The Contractor shall not assign any money due or to become due to it under this contract without the prior written consent of the City of Charleston.

### **PERMITS AND LICENSES**

The Contractor(s) shall, without additional expense to the City of Charleston, be responsible for obtaining all necessary licenses and permits required by the State of South Carolina, or the City of Charleston or any other authority having jurisdiction.

Contractors and subcontractors are responsible at all times for obtaining applicable work permits and licenses of any kind.

## **INCORPORATION BY REFERENCE**

The contents of this Solicitation, including all drawings, attachments, specifications, exhibits, certificates, any addenda, Contractor's Proposal Response Form and Pricing List, and affidavits shall become part of the contract for this Project.

## **SUBMITTING CONFIDENTIAL INFORMATION**

For every document Offeror submits in response to or with regard to this Solicitation that is confidential or protected from disclosure, Offeror must separately mark with the word "CONFIDENTIAL" or "PROTECTED" on every page, or portion thereof. By so designating Offeror contends the information is exempt from public disclosure pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 through 4-165 (2007 & Supp. 2015) or other relevant law. For every document Offeror submits in response to or with regard to this Solicitation, Offeror must separately mark with the words "TRADE SECRET" on every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by the South Carolina Trade Secrets Act, S.C. Code Ann. §39-8-10, et seq. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Offeror shall not mark its entire Proposal (bid, proposal, quote, etc.) as confidential, trade secret, or otherwise protected! If a Proposal or any part thereof, is improperly marked as confidential or trade secret or protected, the City may, in its sole discretion, determine it non-responsive. If only portions of a page are subject to some protection, Offeror shall not be allowed to mark the entire page. By submitting a Proposal to this Solicitation, Offeror (1) agrees to the public disclosure of every page of every document regarding this Solicitation that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED," (2) agrees that any information not marked, as required by these bidding instructions, as a "TRADE SECRET" is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, may be subject to public disclosure. In determining whether to release documents, the City shall detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "CONFIDENTIAL" or "TRADE SECRET" or "PROTECTED." By submitting a Proposal, Offeror agrees to defend, indemnify and hold harmless the City of Charleston, its officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from the City withholding information that Offeror marked as "CONFIDENTIAL" or "TRADE SECRET" or "PROTECTED."

## **RECORDS RETENTION & RIGHT TO AUDIT**

The City shall have the right to audit the books and records of the Contractor as they pertain to this contract. Such books and records shall be maintained for a period of three (3) years from the date of final payment under the contract. The City may conduct, or have conducted, performance audits of the Contractor. The City may conduct, or have conducted, audits of specific requirements of this proposal as determined necessary by the City. Pertaining to all audits, the Contractor shall make available to the City access to its computer files containing the history of

contract performance and all other documents related to the audit. Additionally, any software used by the Contractor shall be made available for auditing purposes at no cost to the City.

### **UNSUCCESSFUL OFFERORS**

Offerors not awarded a contract under this solicitation, may request return of their proposals within thirty (30) days after notification of award is mailed. All cost of returns shall be paid by the Offeror. If Federal Express, UPS, or other shipping number is not received with request, all materials shall be destroyed.

### **NON-DISCRIMINATION**

The Contractor(s) shall not discriminate against any individuals based upon age, sex, race, disability, religion, sexual orientation or gender identity and shall abide by the requirements contained in Federal Executive Order Number 11246, as amended, including specifically the provisions of the equal opportunity clause. The City's Equal Employment Opportunity Plan Utilization Report is available on the city website on the Human Resources and Organization Development page at <http://charleston-sc.gov/index.aspx?nid=246>. To receive a paper copy of the report by mail, please contact Human Resources at (843) 724-7388.

### **REJECTION**

The City reserves the right to reject any proposal or submittal that contains prices for individual items or services that are unreasonable when compared with the same or other proposals if such action is in the best interest of the City.

### **PUBLICITY RELEASES**

Vendor agrees not to refer to any award of a contract in commercial advertising in such a manner as to state or imply that the products or services provided are endorsed or preferred by the user.

### **WITHDRAWALS**

Proposals may be withdrawn by written request received from the Offeror prior to the time set for opening of Proposals, but not thereafter.

### **AFFIRMATIVE ACTION**

The successful Offeror will take affirmative action in complying with all Federal and State requirements concerning fair employment and treatment of all employees, without regard or discrimination by reason of race, color, religion, sex, national origin, or physical handicap.

### **WAIVER**

The City reserves the right to waive any Instruction to Offerors, General or Special Provisions, General or Special Conditions, or specifications deviation if deemed to be in the best interest of the City.

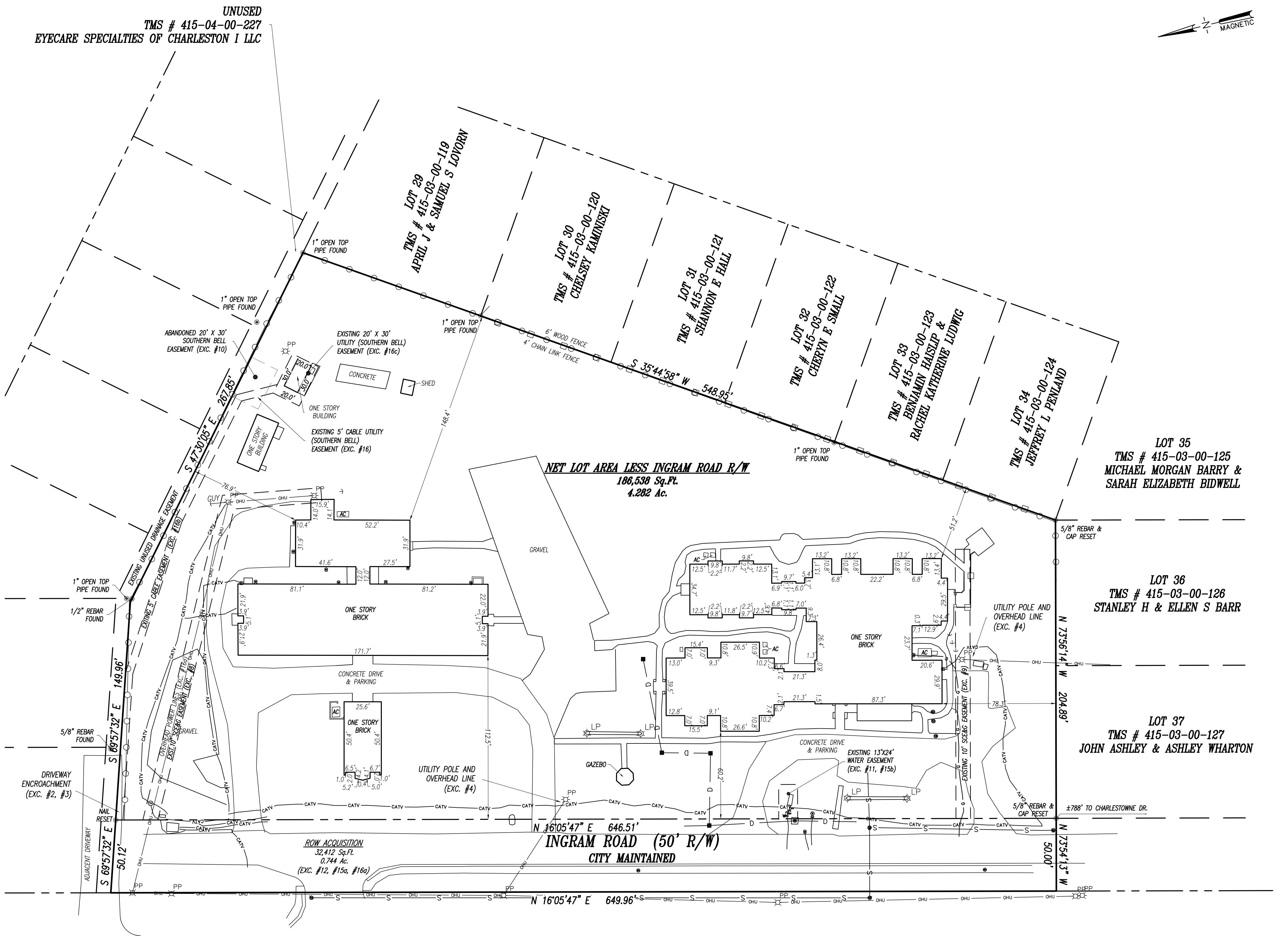
### **RESPONSE PERIOD**

All responses shall be good for a minimum period of ninety (90) calendar days.

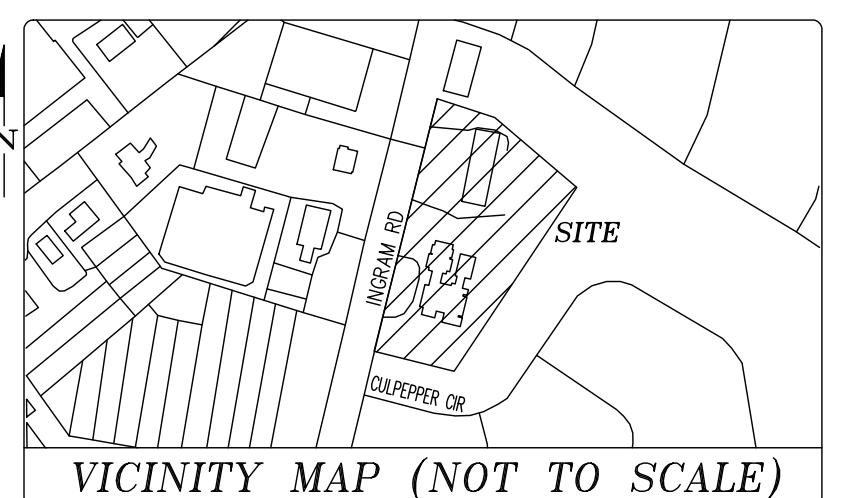
## **SECTION 6**

### **PROJECT EXHIBITS + SUPPLEMENTARY INFORMATION**

# SURVEY OF EXISTING CONDITIONS



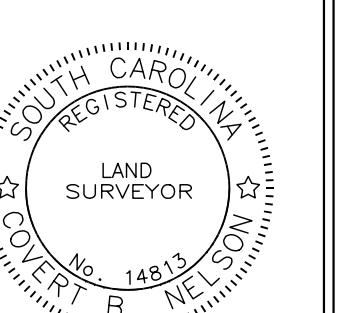
**ALTA / NSPS LAND TITLE SURVEY**  
**SHOWING 1660 & 1662 INGRAM ROAD (4.282 AC.),**  
**TMS # 415-03-00-128, OWNED BY BISHOP OF CHARLESTON,**  
**TO BE CONVEYED TO CITY OF CHARLESTON, AND**  
**SHOWING INGRAM ROAD 50' R/W (0.744 AC.)**  
**LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SC**  
**PREPARED FOR CITY OF CHARLESTON**



To The City of Charleston, Chicago Title Insurance Company:

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes items 1, 2, 4, 7(a), 7(b)(1), 11(g), 13, 17, 18 of Table A thereof. The fieldwork was completed on February 6, 2025. Date of Plat or Map: March 13, 2025.

COVERT NELSON S.C. PLS No 14813



## LEGAL DESCRIPTION

### LEGAL DESCRIPTION PER RECORD

All that tract of land situate, lying, and being in St. Andrews Parish, in the County of Charleston, State of South Carolina containing five acres, more or less, as shown on a plat of Hillard B. Good, R. L. S. dated June 1957 and recorded in the RMC Office for Charleston County in Plat Book L at page 59.

BEGINNING at a point marked "0" on the Northeast side of S.C. Route No. 171 and running S 16°12' W from point A, then running S 73°48' W a distance of 255' to point B; then N 35°54' E, a distance of 549' to point C; then N 47°22' W a distance of 267.74' to point D; then N 69°50' W a distance of 200' to the POINT OF BEGINNING.

Butting and Bounding to the North on property now or formerly of: Alton H. Parks; to the East and South on property of Ford Brothers Construction Co., and to the West on South Carolina Highway No. 171.

### LEGAL DESCRIPTION PER SURVEY

BEGINNING at a point along the Eastern R/W of South Carolina Highway 171 and the Southern border of an existing unused Drainage Easement, being the same point marked "0" on a Plat by Hillard B. Good, recorded in the ROD Office for Charleston County in Plat Book L and at Page 59 running S 69°57'32" E a distance of 50.12' to a Nail set in pavement on the Southern border of the Easement and the Eastern border of the Ingram Road R/W, thence running along the Easement S 69°57'32" for a distance of 149.96' to a 1/2" Rebar; thence continuing along the Easement S 47°30'05" E for a distance of 267.85' to a 1" open top pipe at a Western border of the Charlestowne Estates Subdivision; thence along the Subdivision S 35°44'58" W for a distance of 548.95' to a 5/8" Rebar and Cap at the corner of the Western and a Northern border of the Subdivision; thence running along the Northern border of the Subdivision N 73°56'14" W for a distance of 204.89' to a 5/8" Rebar and Cap set on the Eastern border of the Ingram Road R/W; thence N 73°54'13" W for a distance of 50.00' to a point on the Western border of the Ingram Road R/W and Eastern border of South Carolina Highway 171; thence along the R/W of Highway 171 N 16°05'47" E for a distance of 649.96' back to the Point of Beginning. Containing 5.026 acres more or less.

Saving and Excepting a 50' strip now known as Ingram Road. Beginning at the Point of Beginning running S 69°57'32" E for a distance of 50.12' to a Nail set in pavement; thence S 16°05'47" W for a distance of 646.51' to a Rebar and Cap; thence N 73°54'13" W for a distance of 50.00' to a point on the Eastern border of the Highway 171 R/W; thence along the R/W N 16°05'47" E a distance of 649.96' back to the Point of Beginning. Containing 0.744 acres more or less.

The remaining lot area being 4.282 acres more or less.

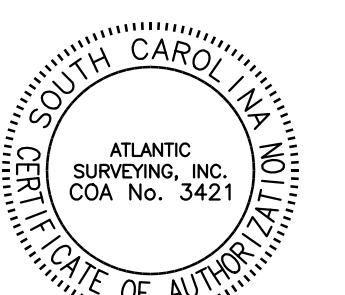
## LEGEND

Symbol	Description
—	PROPERTY LINE
—	ADJACENT PROPERTY LINE
—	EASEMENT
—	RIGHT OF WAY LINE
...	BUILDING SETBACK
○ ○ ○ ○	CHAIN LINK FENCE
□ □ □ □	CHAIN FENCE
— W — W —	WATER LINE
— S — S —	SEWER LINE
— CATV —	CABLE TV LINE
— D — D —	DRAINAGE LINE
— OHU —	OVERHEAD UTILITY
◎	PROPERTY CORNER FOUND
◎	PROPERTY CORNER RESET

## NOTES

1. ZONING AND SETBACKS ARE A LEGAL MATTER AND MUST BE VERIFIED BY THE PROPER CHARLESTON COUNTY OFFICIAL.
2. ONLY THOSE MONUMENTS ON THIS PROPERTY AND ADJOINING PROPERTIES AND RIGHTS-OF-WAY PERTINENT TO THE BOUNDARIES OF THIS TRACT WERE SURVEYED AND SHOWN AS EVIDENCE. THIS PLAT CONSTITUTES A BOUNDARY SURVEY OF ONLY THE SUBJECT PROPERTY, AND IS NOT A SURVEY OF ADJOINING TRACTS.
3. FLOOD ZONES ARE SUBJECT TO ON GOING FLOOD STUDIES AND MUST BE VERIFIED BY THE CHARLESTON COUNTY FLOOD PLAIN MANAGER.
4. CERTIFICATION IS TO THE PARTY/PARTIES FOR WHOM THIS SURVEY WAS PREPARED AND IS NOT TRANSFERABLE TO ANY OTHER INSTITUTIONS OR INDIVIDUALS.

Number	Revision	Date



**Atlantic**  
**Surveying, Inc.**

1723 SAVANNAH HIGHWAY - CHARLESTON, SOUTH CAROLINA  
 29407 (843) 763-6669; (843) 766-7411 FAX  
[www.atlanticsurvey.com](http://www.atlanticsurvey.com)

## SURVEY RELATED ITEMS FROM SCHEDULE B

2. Rights or claims of parties in possession not shown by the Public Records. AS SHOWN
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. AS SHOWN
4. Easements or claims of easements, not shown by the Public Records. AS SHOWN
5. Right of Way Easement from The Catholic Diocese of Charleston (by the Bishop of Charleston) to South Carolina Electric & Gas Company appearing of record in the Office of the Register of Deeds for Charleston County, South Carolina in Book V84, at Page 209, as superseded by the Right of Way Easement from the Roman Catholic Diocese of Charleston (by the Bishop of Charleston) to South Carolina Electric & Gas Company appearing of record in the Office of the Register of Deeds for Charleston County, South Carolina in Book Z66, at Page 171. AS SHOWN
6. Right of Way Easement from The Catholic Diocese of Charleston (by the Bishop of Charleston) to South Carolina Electric & Gas Company appearing of record in the Office of the Register of Deeds for Charleston County, South Carolina in Book V81, at Page 91. AS SHOWN
7. Right of Way Site Easement from Bishop of Charleston's Catholic Church to Southern Bell Telephone and Telegraph Company appearing of record in the Office of the Register of Deeds for Charleston County, South Carolina in Book G210, at Page 292. AS SHOWN
8. Right of Way Easement for Water from Catholic Diocese of Charleston to Commissioners of Public Works appearing of record in the Office of the Register of Deeds for Charleston County, South Carolina in Book C498, at Page 816. AS SHOWN
9. Unrecorded Right of Way Easement from The Most Rev. Francis F. Reh as Bishop of Charleston, a corporation sole to South Carolina Highway Department, dated January 21, 1965. AS SHOWN
10. All matters shown on that certain plat entitled "PLAT SHOWING NEW WATER EASEMENT TMS 415-03-00-128 CARTER MAY HOME CITY OF CHARLESTON CHARLESTON COUNTY, S.C. DATED FEBRUARY 20, 2004, REVISED APRIL 17, 2004, recorded June 10, 2004 in Plat Book EH, at Page 142, including but not limited to:
  - (a) 50' right of way easement Ingram Road AS SHOWN
  - (b) new water easement AS SHOWN
11. All matters shown on that certain plat entitled "PLAT OF A 20' X 30' UTILITY EASEMENT AND A 5' CABLE EASEMENT PREPARED FOR SOUTHERN BELL ON LAND OWNED BY BISHOP OF CHARLESTON CATHOLIC CHURCH LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, S.C." dated September 11, 1992, recorded November 23, 1992 in Plat Book CK, at Page 108, including but limited to:
  - (a) Ingram Road; AS SHOWN
  - (b) Cable easements (new and existing); AS SHOWN
  - (c) New utility easement; AS SHOWN
  - (d) Overhead power lines AS SHOWN

GRAPHIC SCALE  
 40' 0' 20' 40' 80'  
 (IN FEET)  
 1 inch = 40'

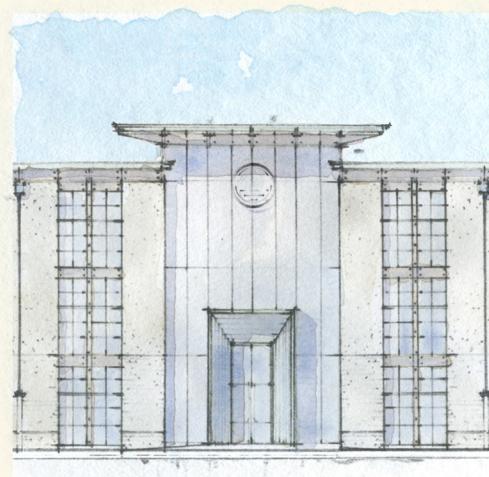
# ARCHITECTURAL + DESIGN GUIDELINES

# ARCHITECTURAL CHARACTER STUDIES

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## *Conceptual Design Analysis*

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### WEST ASHLEY OFFICES Conceptual Design Analysis

CHARLESTON, SOUTH CAROLINA

City of Charleston, South Carolina  
Sottile & Sottile, *Urban Design*

SPRING 2025

# PATTERNS & PRECEDENTS

Building Massing & Facades  
Materials & Details  
Interior Precedents



FACTORY MASSING AND DETAILING



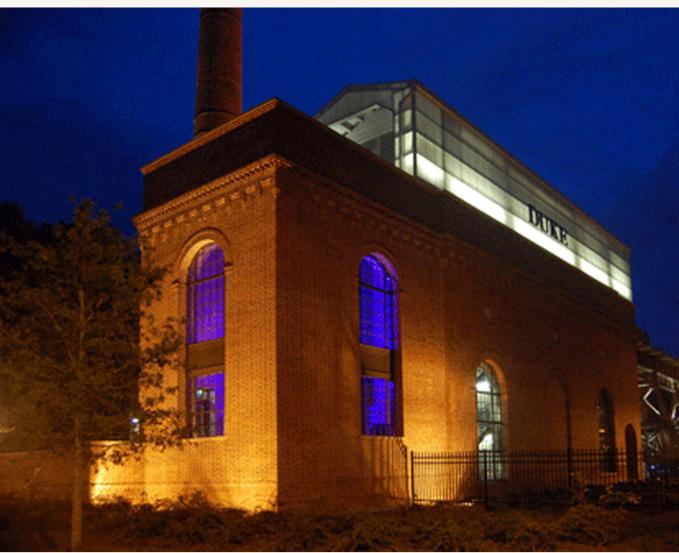
Vertical proportions are used to create an elegant facade.



Layering of materials creates interest and enlivens the long elevation.



Light and dark materials create interest and a change in scale.



Historic structure with contemporary intervention.



Glass walls provides openness, while a cantilevered volume creates a unique design.



Detailing at the pedestrian level articulates the facade and creates a human scale.



Clear proportions and elegant detailing.

## BUILDING MASSING AND FAÇADES

### Architectural Precedents

Information contained herein is conceptual. Information has been compiled from various sources and does not claim complete accuracy nor guarantee zoning or other types of development approvals. It is intended to provide an overview and analysis of urban conditions and strategies for revitalization. Sottile & Sottile, 2025

### WEST ASHLEY OFFICES

#### Conceptual Design Analysis

CHARLESTON, SOUTH CAROLINA  
City of Charleston, South Carolina  
Sottile & Sottile, *Urban Design*



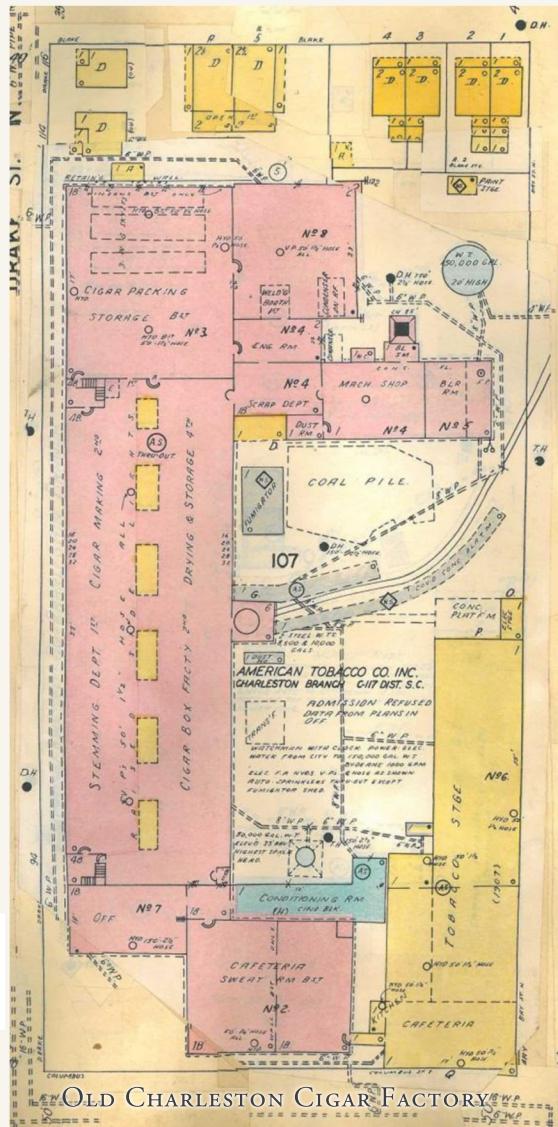
Vertical rhythm of window openings creates an elegant facade design.



Glass facade provides view of interior circulation corridor.



An open space between buildings creates a unique passage.



Offset building masses in an industrial complex.



Addition of new materials within an existing building complex.



A clear solid to void relationship creates an elegant facade.



Strong vertical elements adds depth and interest to the building.



The expression of raw concrete juxtaposed with contrasting natural materials

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## BUILDING MASSING AND FAÇADES

### Architectural Precedents

WEST ASHLEY OFFICES  
Conceptual Design Analysis  
CHARLESTON, SOUTH CAROLINA  
City of Charleston, South Carolina  
Sottile & Sottile, *Urban Design*



Contrast of materials creates a unique, inviting entrance.



Architectural elements add rhythm, detail and scale.



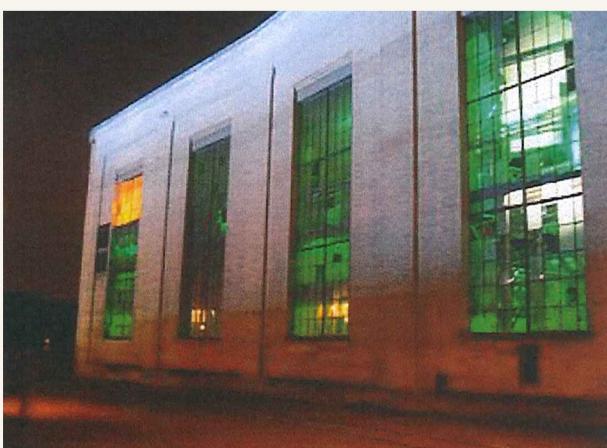
Circulation space between buildings contrasts heavy massing.



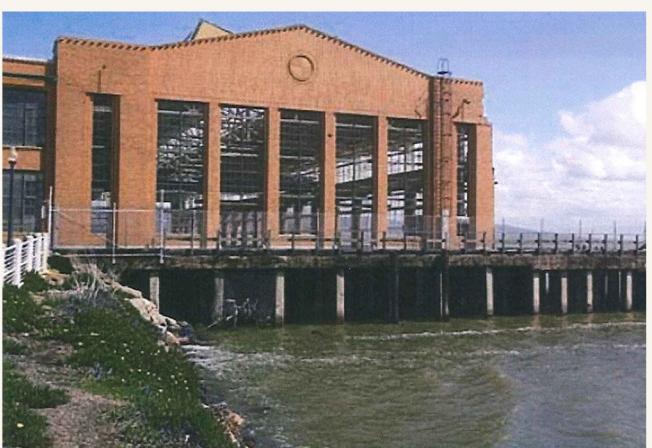
Classic scaffold signage located on roof of building.



An example of a simple, exposed concrete facade in the Charleston Navy Yard that might serve as a primary source of inspiration.



Large open windows reinforces verticality and height of building.



Repetition of solid and void across facade.

## MATERIALS AND DETAILS

### Architectural Precedents

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## WEST ASHLEY OFFICES

### Conceptual Design Analysis

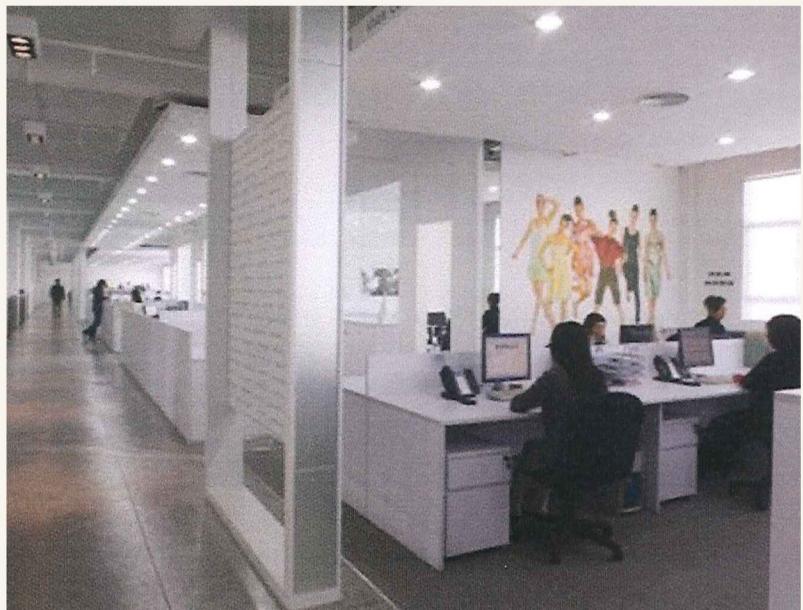
CHARLESTON, SOUTH CAROLINA  
City of Charleston, South Carolina  
Sottile & Sottile, *Urban Design*



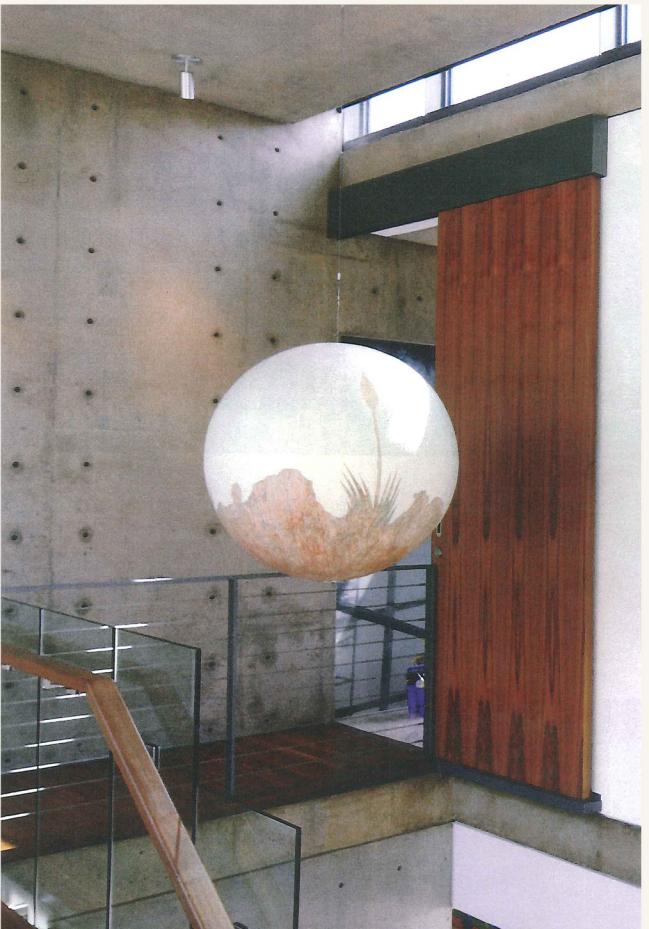
Exposed structural elements enliven the interior.



Juxtaposition of textures creates interest on the interior.



Open space gently divided with the use of ceiling planes, illumination, and clean partitions.



Wood detailing adds warmth to an interior space.



Juxtaposition of wood and concrete creates a tactile interior.



Simple durable materials create enjoyable and functional interior spaces.



Maintaining historic features creates layers of time within a space.

## INTERIOR PRECEDENTS

### Architectural Precedents

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## WEST ASHLEY OFFICES

### Conceptual Design Analysis

CHARLESTON, SOUTH CAROLINA  
City of Charleston, South Carolina  
Sottile & Sottile, *Urban Design*



Vertical elements are enhanced by illumination.



The historic Coca-Cola building in Charleston stands as an example of honest and elegant industrial architecture.



Large open volume with overlooking spaces at two levels.



Elegant solid and void relationship creates a strong facade rhythm.



Structural elements create an identifiable outdoor space.

## MATERIALITY AND DETAILS

### Architectural Precedents

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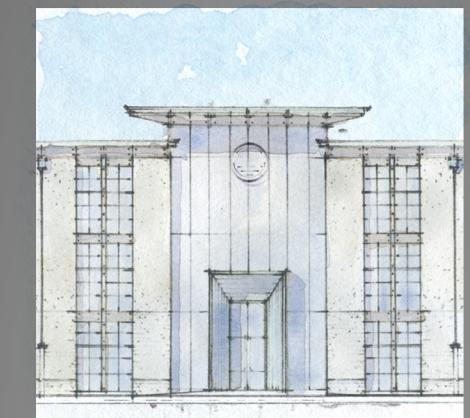
### WEST ASHLEY OFFICES

#### Conceptual Design Analysis

CHARLESTON, SOUTH CAROLINA  
City of Charleston, South Carolina  
Sottile & Sottile, *Urban Design*

# ARCHITECTURAL CONCEPTS

Conceptual Site Plan  
Conceptual Architectural Studies  
Conceptual Elevations



SCHEMATIC STUDIES

## Summary of Development

Building #1.....	48,000 SF
3 Stories	
Building #2.....	48,000 SF
3 Stories	
Bridge Terrace .....	1,200 SF
Parking.....	300 Spaces



## SITE PLAN CONCEPT

The site directly across from the Ashley Landing redevelopment presents an ideal opportunity for new city offices to add to the vibrant mix of uses being created in the area.

Two new office buildings, each containing approximately 48,000 square feet of Class A office space, are connected by an open-air bridge that allows circulation between the buildings, and is of sufficient width to serve as a covered outdoor terrace amenity for users.

Convenience parking is located along Ingram Road, while the balance of the parking is located to the sides and rear of the buildings, screening it from view and allowing the new structures to appropriately define the street edge. Generous landscaping also shields the parking area from the surrounding neighborhood.

## ELEVATION CONCEPT

The two new office buildings and their connecting bridge terrace define the street edge along Old Towne Road. The new buildings feature durable, timeless materials along with generous glazing, and are intended to create a sense of civic quality.



*Front Facade with both Buildings and Passage*

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## CONCEPTUAL ARCHITECTURAL STUDIES

Primary Elevations and Passage



*Front Facade Building One*

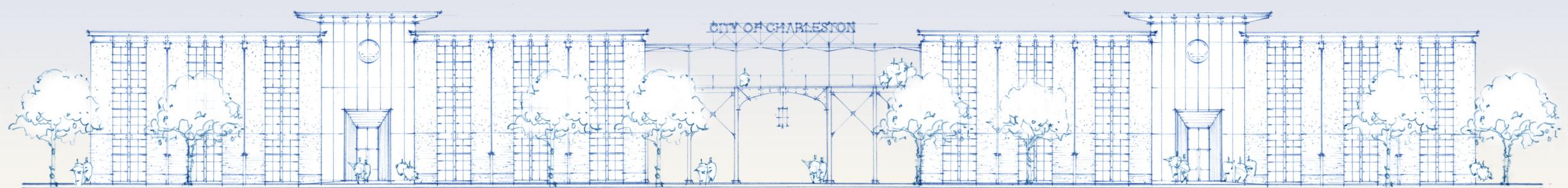
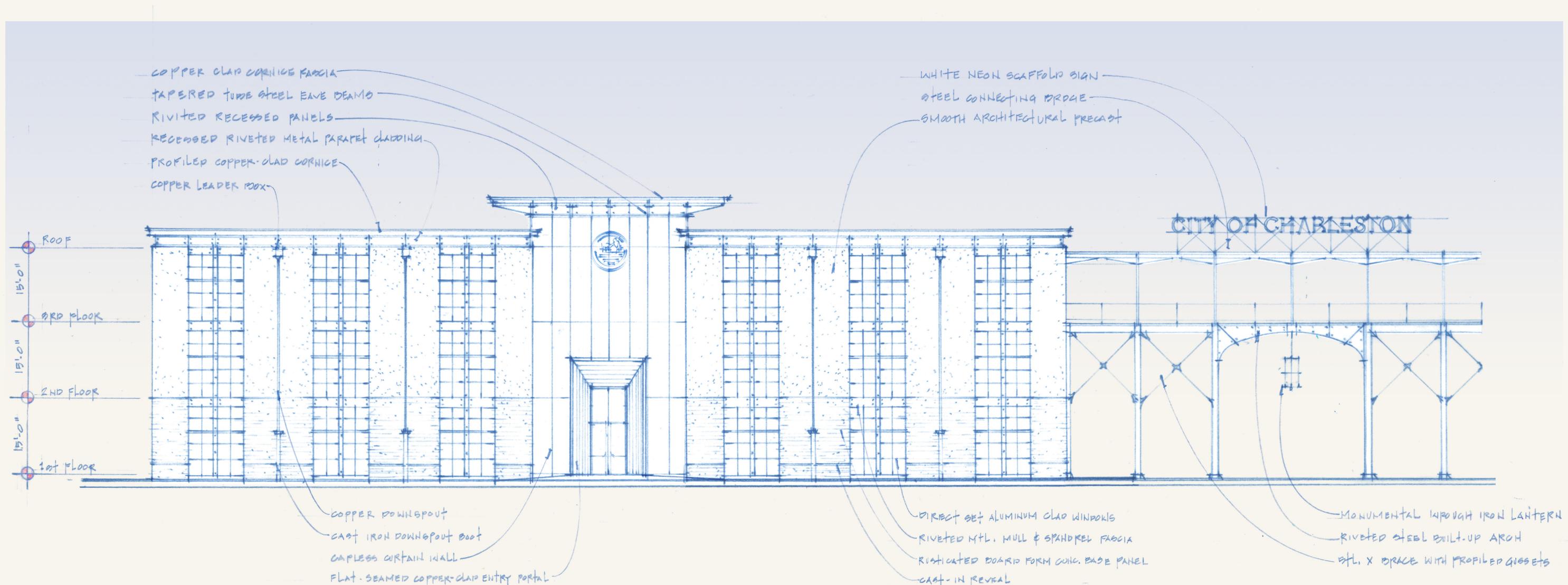
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## BUILDING FACADES

Each building features durable, timeless materials including architectural cast concrete, natural copper, and riveted ironwork. The city seal is etched into the generous curtainwall glazing above the main entrance.

**CONCEPTUAL ARCHITECTURAL STUDIES**  
Primary Elevation Study

**WEST ASHLEY OFFICES**  
**Conceptual Design Analysis**  
CHARLESTON, SOUTH CAROLINA  
City of Charleston, South Carolina  
Sottile & Sottile, *Urban Design*



## CONCEPTUAL ELEVATIONS

Building Elevation Materials & Details

Information contained herein is conceptual. Information has been compiled from various sources and does not claim complete accuracy nor guarantee zoning or other types of development approvals. It is intended to provide an overview and analysis of urban conditions and strategies for revitalization. Sottile & Sottile, 2025

## **1660 + 1662 Ingram Road: Design Considerations**

1. See overall project guidelines above and program requirements herein. Note that there is some flexibility in the programmed space sizes, as long as program requirements are met, and accommodation is made for future growth. The number and size of restrooms may fluctuate depending on layout and code requirements.
2. Building shall be designed to be as efficient as possible thermally, and in terms of water and energy use. Building shall also be designed to provide a high level of indoor air quality.
3. Exterior materials shall be durable, long-lasting materials not requiring coatings or additional cladding. Examples are cast concrete, brick and stone masonry.
4. Designs shall incorporate generous glazing in order to create a healthy, optimal interior working environment with abundant daylighting.
5. Architectural character shall reflect the city's vision of a municipal architectural expression with a distinctive civic character.
6. Surrounding site design shall be pedestrian oriented and incorporate features found in traditional urban environments such as pedestrian scaled streetlamps rather than cobra-head highway lighting, high quality paving, clearly marked crosswalks through parking areas, and high-quality paving materials on pedestrian paths and spaces.
7. For exterior sheet-metal fabrications such as gutters, downspouts, leader boxes, parapet copings and visible flashings, natural metal such as copper is preferred over painted metal whenever feasible.
8. Interior public areas such as lobbies shall be designed with highly durable, low maintenance materials with smooth surfaces on walls and floors such as stone, polished concrete and glazed tile, and should have a timeless quality that will not easily become dated, even with the passage of decades.
9. All interior colors should be neutral and reflect a timeless aesthetic that will not easily become dated.
10. Provide appropriate acoustic isolation from space to space to provide privacy. Design offices, restrooms, meeting rooms, and other gathering spaces with appropriate acoustical isolation from other spaces so that activity in one space will not disturb activity in adjacent spaces.
11. Provide durable, low-maintenance surface flooring. Carpet areas should utilize high quality carpet tile.
12. Generally, level 4 gypsum board (preferred) or 2 x 2 reveal edge acoustical tile ceilings are anticipated for spaces requiring acoustical isolation from adjoining spaces. Tall, open ceilings with painted exposed structure and services are anticipated in common/public areas.
13. Design lighting to minimize glare and at a minimum, to provide dimming capability for meeting room areas.
14. Counters throughout the facility shall be either quartz or solid surface.
15. Designs must comply with City of Charleston requirements, including approval of Design Review Board.

16. Provide design and construction for all necessary site features to receive a site plan approval, including but not limited to demolition, erosion & sedimentation control, grading, parking, paving, hardscape improvements, landscaping, site lighting, power and water service connections from building to existing lines, sanitary service connections from building to existing lines, storm drainage and connections to existing lines including requirements for quality and quantity treatment of stormwater and lead the coordination and accommodations into building for franchise utilities, telecommunications, gas, and power. The available site area is shown on Section 6. Offerors may propose solutions that meet City's overall guidelines and needs for the project.
17. Building characteristics shall include among others:
  - a. Ample file storage
  - b. Adequate power and telecommunications for meeting rooms
  - c. Ample telecommunications in all conference/meeting rooms
  - d. Daylighting/windows, including for staff offices
18. Site characteristics shall include among others:
  - a. Flagpole(s)
  - b. Site lighting
  - c. Outside Space seating area

## **SECTION 7**

### **REFERENCE DOCUMENTS**

**FOR REFERENCE ONLY**

**City of Charleston**  
**Minority/Women-Owned Business Enterprise (MWBE)**  
**Compliance Provisions**

***This document shall be included with the submittal of the bid or offer. If the bidder or offeror fails to submit the form with the bid or offer as required, the procurement officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.***

**APPLICATION:**

Charleston City Council has adopted a policy setting 20% as the guidelines for combined women-owned and minority-owned business enterprise participation for this project.

Definitions:

MBE is defined as a small business owned and controlled by minorities. WBE is defined as a small business owned and controlled by women.

This means that fifty-one percent (51%) of the business must be owned by minorities or women and that they must control the management and daily operations of the business.

The guidelines for participation in City of Charleston's contracts for services, including construction, are hereby made a part of any contract resulting from this solicitation. These requirements shall apply to all contracts and resulting subcontracts issued by contractors. A list of certified minority-owned and women-owned business enterprises can be found on the City of Charleston's web site [www.charleston-sc.gov](http://www.charleston-sc.gov); or by contacting Ruth Jordan, MBE Manager, 2 George St., Ste. 3600 Charleston, SC 29401, (843) 724-7434, [jordanr@charleston-sc.gov](mailto:jordanr@charleston-sc.gov)

**COMPLIANCE REQUIREMENTS:**

1. The Offeror shall provide, **with the submittal**, the following Affidavits properly executed which signify that the Offeror understands and agrees to the incorporated contract provisions:

- Affidavit A - Listing of the Good Faith Effort & Identification of Minority and Women-owned Business Participation*** as certification that efforts were made to use MWBE businesses on this project,  
**AND**
- Affidavit B – Work to be Performed by Minority and/or Women-owned Firms***  
**OR**
- Affidavit C – Intent to Perform Contract with Own Workforce***, in making this certification the Offeror states that the Offeror does not customarily subcontract elements of this type project and will perform all elements of the work with his/her own current work forces.

2. All affidavits supplied by the Offeror shall become a part of the agreement between the Contractor and the City of Charleston for performance of this contract.

Failure to comply with any of these statements, certifications, or intentions stated in the Affidavits, or with the MBE/WBE provisions shall constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of the City of Charleston whether to terminate the contract for breach. In addition, any breach may result in the bidder being prohibited from participation in future construction bids as determined by the City of Charleston.

The Contractor shall provide an itemized statement of payments to each MBE and WBE subcontractor before final payment is processed.

Name of Company: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Attest: \_\_\_\_\_

2018

FOR REFERENCE  
ONLY

**AFFIDAVIT A**  
**Page 1 of 2**

**City of Charleston, South Carolina Listing of the Good Faith Effort**

Affidavit of

---

(Name of Offeror)

**I have made a good faith effort to comply under the following checked areas:**  
*(A minimum of 6 areas must be checked in order to have achieved a "good faith effort")*

- 1. Contacted MBE businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on Federal, State or local government maintained lists, at least 10 business days before the submittal date and notified them of the nature and scope of the work to be performed. ***Complete Affidavit A, Page 2.***
- 2. Followed up with contacted MBE subsequent to the initial contact and at least 72 hours prior to submittal deadline/bid opening either by phone, facsimile or in person.
- 3. Made the construction plans, specifications, and requirements available for review by prospective MBE businesses, or providing these documents to them at least 10 business days before the submittal deadline/bid opening.
- 4. Itemized elements of the work or combined elements of the work into economically feasible units to facilitate minority participation.
- 5. Attended pre-solicitation meetings scheduled by the City.
- 6. Provided MBE with assistance in getting required bonding or insurance requirements or provided alternatives to bonding or insurance for subcontractors.
- 7. Negotiated in good faith with interested MBEs and did not reject them as unqualified without sound reasons based on their capabilities. ***(Any rejection of a minority or woman business based on lack of qualifications shall include reasons for rejection documented in writing.)***
- 8. Provided MBEs with assistance in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted MBEs in obtaining the same unit pricing with the Offeror's suppliers in order to help such businesses in establishing credit.
- 9. Provided training or mentoring to at least two (2) MBEs within 120 days prior to submittal deadline/bid opening. The training or mentoring program should be in conjunction with local trade groups, technical schools or community organizations that provide recruitment, education or skill levels.
- 10. Negotiated joint venture, partnership or other similar arrangements with MBEs in order to increase opportunities for minority business participation.
- 11. Provided quick pay agreements and policies to enable minority contractors and

suppliers to meet cash-flow demands.

The undersigned hereby agrees to enter into a formal agreement with the firms listed in Affidavit B Work to be performed by Minority Firms conditional upon execution of a contract with the Owner. Failure to abide by this provision will constitute a breach of the contract.

The undersigned hereby certifies that he/she has read the terms of the minority business commitment and is authorized to bind the Offeror to the commitment herein set forth.

Date: \_\_\_\_\_ Name \_\_\_\_\_ of \_\_\_\_\_ Authorized \_\_\_\_\_ Officer \_\_\_\_\_ (Print/Type):

Signature:

Title:

2018

**AFFIDAV  
IT A  
Page 2 of 2**

**FOR REFERENCE  
ONLY**

**City of Charleston, South Carolina Minority Business  
Participation Efforts**  
(Use as many sheets as necessary)

I, \_\_\_\_\_, hereby certify that on this project we contacted the following minority business enterprises as subcontractors, vendors, suppliers, or providers of professional services.

<b>1. Minority Firm Name and Contact</b>	<b>Minority Firm Address</b>
<u>Minority Firm Telephone Number</u> <u>Minority Firm Fax Number</u> <u>DBE Certification Number</u>	<b>Minority Group Type</b> <input type="checkbox"/> (African American) <input type="checkbox"/> (Women <input type="checkbox"/> (Asian American) <input type="checkbox"/> ) <input type="checkbox"/> (American Indian) <input type="checkbox"/> (Hispanic  <input type="checkbox"/> Follow up <input type="checkbox"/> Other Verification
<b>2. Minority Firm Name and Contact</b>	<b>Minority Firm Address</b>
<u>Minority Firm Telephone Number</u> <u>Minority Firm Fax Number</u> <u>DBE Certification Number</u>	<b>Minority Group Type</b> <input type="checkbox"/> (African American) <input type="checkbox"/> (Women <input type="checkbox"/> (Asian American) <input type="checkbox"/> ) <input type="checkbox"/> (American Indian) <input type="checkbox"/> (Hispanic  <input type="checkbox"/> Follow up <input type="checkbox"/> Other Verification
<b>3. Minority Firm Name and Contact</b>	<b>Minority Firm Address</b>
<u>Minority Firm Telephone Number</u> <u>Minority Firm Fax Number</u> <u>DBE Certification Number</u>	<b>Minority Group Type</b> <input type="checkbox"/> (African American) <input type="checkbox"/> (Women <input type="checkbox"/> (Asian American) <input type="checkbox"/> ) <input type="checkbox"/> (American Indian) <input type="checkbox"/> (Hispanic  <input type="checkbox"/> Follow up <input type="checkbox"/> Other Verification
<b>4. Minority Firm Name and Contact</b>	<b>Minority Firm Address</b>

<b>Minority Firm Telephone Number</b> _____	<b>Minority Group Type</b>
<b>Minority Firm Fax Number</b> _____	<input type="checkbox"/> (African American) <input type="checkbox"/> (Women <input type="checkbox"/> (Asian American) <input type="checkbox"/> (Hispanic <input type="checkbox"/> (American Indian) <input type="checkbox"/> (Other)
<b>DBE Certification Number</b> _____	<input type="checkbox"/> Follow up Verification

We certify, under penalties of perjury, that we have examined the information in this affidavit, and to the best of our knowledge and belief, this information is true, correct and complete.

Date: \_\_\_\_\_ Name of Authorized Officer (Print/Type):

\_\_\_\_ Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_. Signature

Notary Public for the State of

My Commission Expires: \_\_\_\_\_ Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

### Notary Seal:

Phone Number: \_\_\_\_\_ Address: \_\_\_\_\_

FOR REFERENCE ONLY

**AFFIDAVIT B**

**City of Charleston, South  
Carolina Work to be Performed  
by Minority Businesses**

Affidavit of \_\_\_\_\_ I hereby certify that on the  
(Name of Offeror)

\_\_\_\_\_, Total Project Amount \$  
(Project Name)

I will make a good faith effort to expend a minimum of \_\_\_% of the total dollar amount of the contract with minority business enterprises. Minority businesses will be employed as subcontractors, vendors, suppliers, or providers of professional services. Such work will be subcontracted to the following firms listed below:

(Attach additional sheets if needed)

Name and Phone Number	*Minority Code	Work Description	Dollar Value
			\$
			\$
			\$
			\$
			\$
			\$
			\$

Total MBE Participation: \_\_\_\_\_ %    \$ \_\_\_\_\_

\* Minority categories: African American (B); Hispanic (H); Asian American (A),  
American Indian (I); Woman Owned (W);  
Other (D)

The undersigned will enter into a formal agreement with minority firms for work listed in this schedule conditional upon execution of a contract with the Owner.

The undersigned hereby certifies that he/she has read the terms of this commitment and is authorized to bind the Offeror to the commitment set forth herein. We certify, under penalties of perjury, that we have examined the information in this affidavit, and to the best of our knowledge and belief, this information is true, correct and complete.

Date: \_\_\_\_\_

Name of Authorized Officer (Print/Type):

---

Signature:

---

Title:

---

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_. Notary Public for the State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**Notary Seal:**

Print Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_ Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

FOR REFERENCE  
ONLY

## AFFIDAVIT C

### **City of Charleston, South Carolina Intent to Perform Contract with Own Workforce.**

Affidavit of

---

(Name of Offeror)

I hereby certify that it is our intent to perform 100% of the work required for the

---

---

contract.

(Name of Project)

In making this certification, the Offeror states that the Offeror does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all the elements of the work on this project with his/her own current work forces, and

The Offeror agrees to provide any additional information or documentation requested by the Owner in support of the above statement.

The undersigned hereby certifies that he/she has read this certification and is authorized to bind the Offeror to the commitments contained herein. We certify, under penalties of perjury, that we have examined the information in this affidavit, and to the best of our knowledge and belief, this information is true, correct and complete.

Date: \_\_\_\_\_ Name \_\_\_\_\_ of \_\_\_\_\_ Authorized \_\_\_\_\_ Officer \_\_\_\_\_ (Print/Type): \_\_\_\_\_

Signature:

---

Title:

---

***Standard Form of Agreement Between Owner and Design-Builder***

**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)

**City of Charleston**  
**80 Broad Street**  
**Charleston, South Carolina 29401**  
« »

and the Design-Builder:  
(Name, legal status, address and other information)

« »  
« »  
« »  
« »

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

**City of Charleston Office Building at 1660 + 1662 Ingram Road**  
**Charleston, South Carolina**

The Owner and Design-Builder 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.

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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- 1 GENERAL PROVISIONS
- 2 COMPENSATION AND PROGRESS PAYMENTS
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## TABLE OF EXHIBITS

- A DESIGN-BUILD AMENDMENT
- B INSURANCE AND BONDS
- C SUSTAINABLE PROJECTS

### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)*

**§ 1.1.1** The Owner's program for the Project:

*(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)*

As described in the RFQ.

**§ 1.1.2** The Owner's design requirements for the Project and related documentation:

*(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)*

TBD

**§ 1.1.3** The Project's physical characteristics:

*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)*

« »

**§ 1.1.4** The Owner's anticipated Sustainable Objective for the Project, if any:

*(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)*

NA

**§ 1.1.5** Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

*(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)*

NA

**§ 1.1.6** The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

*(Provide total for Owner's budget, and if known, a line item breakdown of costs.)*

« »

**§ 1.1.7** The Owner's design and construction milestone dates:

.1 Design phase milestone dates:

« TBD »

.2 Submission of Design-Builder Proposal:

« TBD »

.3 Phased completion dates:

« TBD »

.4 Substantial Completion date:

« TBD »

.5 Other milestone dates:

« TBD »

**§ 1.1.8** The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

*(List name, legal status, address and other information.)*

.1 Architect

« »

.2 Consultants

« »

.3 Contractors

« »

**§ 1.1.9** Additional Owner's Criteria upon which the Agreement is based:

*(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)*

« »

**§ 1.1.10** The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

**§ 1.1.10.1** If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

**§ 1.1.11** If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

**§ 1.1.12** If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

**§ 1.2 Project Team**

**§ 1.2.1** The Owner identifies the following representative in accordance with Section 7.1.1:  
*(List name, address and other information.)*

Josh Martin  
Special Advisor to Mayor William S. Cogswell, Jr.  
Executive Department: Special Projects  
80 Broad Street  
Charleston, SC 29401  
E: martinj@charleston-sc.gov

**§ 1.2.2** The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:

*(List name, address and other information.)*

«TBD »

**§ 1.2.3** The Owner will retain the following consultants and separate contractors:  
(List discipline, scope of work, and, if known, identify by name and address.)

« TBD »

**§ 1.2.4** The Design-Builder identifies the following representative in accordance with Section 3.1.2:  
(List name, address and other information.)

« »  
« »  
« »  
« »  
« »  
« »

**§ 1.2.5** Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

### § 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

[  ] Arbitration pursuant to Section 14.4

[  ] Litigation in the Charleston County Court of Common Pleas

[  ] Other: (Specify)

« »

### § 1.4 Definitions

**§ 1.4.1 Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

**§ 1.4.2 The Contract.** The Design-Build Documents form 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 Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

**§ 1.4.3 The Work.** The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

**§ 1.4.4 The Project.** The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

**§ 1.4.5 Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

**§ 1.4.6 Submittal.** A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

**§ 1.4.7 Owner.** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Owner” means the Owner or the Owner’s authorized representative.

**§ 1.4.8 Design-Builder.** The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Design-Builder” means the Design-Builder or the Design-Builder’s authorized representative.

**§ 1.4.9 Consultant.** A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

**§ 1.4.10 Architect.** The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

**§ 1.4.11 Contractor.** A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

**§ 1.4.12 Confidential Information.** Confidential Information is information containing confidential or business proprietary information that is clearly marked as “confidential.”

**§ 1.4.13 Contract Time.** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

**§ 1.4.14 Day.** The term “day” as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

**§ 1.4.15 Contract Sum.** The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

## ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

### § 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

**§ 2.1.1** Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder’s performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

*(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)*

« TBD »

**§ 2.1.2** The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth below.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

« »

Individual or Position	Rate
« »	

**§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment**

**§ 2.1.3.1** Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .9 Other Project-related expenditures, if authorized in advance by the Owner.

**§ 2.1.3.2** For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of «Zero» percent («0»%) of the expenses incurred.

**§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment**

**§ 2.1.4.1** Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid «» (« ») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.

*(Insert rate of monthly or annual interest agreed upon.)*

«Zero percent»0 %

**§ 2.1.4.2** Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

**§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment**

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

**ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT**

**§ 3.1 General**

**§ 3.1.1** The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

**§ 3.1.2** The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

**§ 3.1.3** The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

**§ 3.1.3.1** The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

**§ 3.1.3.2** Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

**§ 3.1.4** The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

**§ 3.1.4.1** The Design-Builder warrants and represents to the Owner that the Design-Builder is currently: (1) financially solvent, (2) able to pay its debts as they mature, (3) possessed of sufficient working capital to complete this Agreement pursuant to its terms and conditions, (4) able to furnish the equipment, materials, supplies, tools and labor necessary to complete the Work pursuant to this Agreement, (5) experienced in and competent to perform the Work necessary to fulfill this Agreement, (6) qualified to perform the duties of the Design-Builder pursuant to the this Agreement, (7) authorized to do business in the State of South Carolina and the City and County of Charleston, and (8) holds the necessary licenses, permits and other special licenses to perform the Work, as and if required by law.

**§ 3.1.5 General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

**§ 3.1.6** When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

**§ 3.1.7** The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

#### **§ 3.1.8 Progress Reports**

**§ 3.1.8.1** The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

**§ 3.1.8.2** In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

### **§ 3.1.9 Design-Builder's Schedules**

**§ 3.1.9.1** The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

**§ 3.1.9.2** The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner. If an unforeseen condition occurs affecting the critical path, the Design-Builder shall report the occurrence within 48 hours and revise the project schedule within 5 calendar days.

**§ 3.1.10 Certifications.** Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

### **§ 3.1.11 Design-Builder's Submittals**

**§ 3.1.11.1** Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

**§ 3.1.11.2** By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

**§ 3.1.11.3** The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

**§ 3.1.11.4** The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

**§ 3.1.11.5** All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

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

**§ 3.1.13 Royalties, Patents and Copyrights**

**§ 3.1.13.1** The Design-Builder shall pay all royalties and license fees.

**§ 3.1.13.2** The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

**§ 3.1.14 Indemnification**

**§ 3.1.14.1** To the fullest extent permitted by law, the Design-Builder shall defend, indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from, in whole or in part, the performance of the Work, or by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14. The Owner shall be entitled to recover attorney fees and costs incurred in enforcing this indemnity obligation. Design-Builder is not obligated to defend, indemnify or hold harmless the Owner, or its agents and employees for claims, damages or losses arising out of the sole negligence of the Owner, or its agents and employees.

**§ 3.1.14.2** The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

**§ 3.1.15 Contingent Assignment of Agreements**

**§ 3.1.15.1** Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights under the agreement.

**§ 3.1.15.2** Upon such assignment, if the Work has been suspended for more than 90 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 3.1.15.3** Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

**§ 3.1.16 Design-Builder's Insurance and Bonds.** The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

## ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

### § 4.1 General

**§ 4.1.1** Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

**§ 4.1.2** The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

### § 4.2 Evaluation of the Owner's Criteria

**§ 4.2.1** The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

**§ 4.2.2** After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:

*(List additional information, if any, to be included in the Design-Builder's written report.)*



**§ 4.2.3** The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

### § 4.3 Preliminary Design

**§ 4.3.1** Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;
- .3 Building plans, sections and elevations;
- .4 Structural system;

- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

**§ 4.3.2** The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

#### **§ 4.4 Design-Builder's Proposal**

**§ 4.4.1** Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

**§ 4.4.2** Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

**§ 4.4.3** If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

### **ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT**

#### **§ 5.1 Construction Documents**

**§ 5.1.1** Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

**§ 5.1.2** The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

#### **§ 5.2 Construction**

**§ 5.2.1 Commencement.** Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

**§ 5.2.2** If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

**§ 5.2.3** The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

**§ 5.2.4** The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### **§ 5.3 Labor and Materials**

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

**§ 5.3.2** When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

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

### **§ 5.4 Taxes**

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

### **§ 5.5 Permits, Fees, Notices and Compliance with Laws**

**§ 5.5.1** Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

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

**§ 5.5.3 Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

**§ 5.5.4** If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

### **§ 5.6 Allowances**

**§ 5.6.1** The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may

direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

**§ 5.6.2** Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

**§ 5.6.3** The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

**§ 5.7 Key Personnel, Contractors and Suppliers**

**§ 5.7.1** The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

**§ 5.7.2** If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.7.3** Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.7.3.1** If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

**§ 5.8 Documents and Submittals at the Site**

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

**§ 5.9 Use of Site**

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

## § 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

## § 5.11 Cleaning Up

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

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

## § 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

## § 5.13 Construction by Owner or by Separate Contractors

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

§ 5.13.1.1 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, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

## § 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

**§ 5.14.3** The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

**§ 5.14.4** The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

**§ 5.14.5** The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

### **§ 5.15 Owner's Right to Clean Up**

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

## **ARTICLE 6 CHANGES IN THE WORK**

### **§ 6.1 General**

**§ 6.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

**§ 6.1.2** A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

**§ 6.1.3** Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

### **§ 6.2 Change Orders**

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

### **§ 6.3 Change Directives**

**§ 6.3.1** A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

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

**§ 6.3.3** If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

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

**§ 6.3.5** Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

**§ 6.3.6** A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**§ 6.3.7** If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

**§ 6.3.8** The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**§ 6.3.9** Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

**§ 6.3.10** When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

## ARTICLE 7 OWNER'S RESPONSIBILITIES

### § 7.1 General

**§ 7.1.1** The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

**§ 7.1.2** The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner.

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

**§ 7.2.1** The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

**§ 7.2.2** The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

**§ 7.2.3** The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

**§ 7.2.4** The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

**§ 7.2.5** The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

**§ 7.2.6** If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

**§ 7.2.7** Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

**§ 7.2.8** Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

**§ 7.2.9** Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

**§ 7.2.10** The Owner shall purchase and maintain insurance as set forth in Exhibit B.

### § 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

### § 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder 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 Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

### § 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build 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 the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies, including the owner's administrative costs and reasonable attorney's fees. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

§ 7.10 If, after achieving Substantial Completion, the Design-Builder then defaults, or neglects to complete or fails to provide resources adequate to complete the Project within the adjusted Contract Time for Final Completion,

Owner may carry out the work seven days after giving the Design Builder written notice of the default or neglect. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design Builder the reasonable cost of correcting such deficiencies, including Owner's expenses, including attorneys' fees, and compensation for the consultant services made necessary by such default, neglect, or failure. If payments then or thereafter due the Design Builder are not sufficient to cover such amounts, the Design Builder or its Surety shall pay the difference to Owner.

## ARTICLE 8 TIME

### § 8.1 Progress and Completion

**§ 8.1.1** Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

**§ 8.1.2** The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

**§ 8.1.3** The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

### § 8.2 Delays and Extensions of Time

**§ 8.2.1** If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

**§ 8.2.2** Claims relating to time shall be made in accordance with applicable provisions of Article 14.

**§ 8.2.3** This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

## ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

### § 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

### § 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

### § 9.3 Applications for Payment

**§ 9.3.1** At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

**§ 9.3.1.1** As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or

entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

**§ 9.3.2** Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

**§ 9.3.3** The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder 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 Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **§ 9.4 Certificates for Payment**

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

#### **§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder may be responsible because of

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work may not be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner, a separate contractor, visitor or any other person or entity on the project limits;
- .6 reasonable evidence that the Work may not be completed within the Contract Time, and that the unpaid balance may not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Design-Build Documents;
- .8 a lien of attachment is filed;
- .9 failure of mechanical trade or electrical trade subcontractors to comply with mandatory requirements for maintaining record drawings. The Contractor shall check record drawings each month. Written confirmation by the Contractor that the record drawings are current will be required by the Architect before approval of the Contractor's monthly payment application; or
- .10 any breach of this agreement that may cause the Owner to incur damages.

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

**§ 9.5.3** If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment

suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered. The Owner's decision on whether to issue joint checks is solely for its benefit and the Owner is under no obligation to issue joint checks. If the Owner decides to issue joint checks, then all costs, including reasonable attorney's fees, incurred by the Owner shall be deducted from the Contract Sum.

### **§ 9.6 Progress Payments**

**§ 9.6.1** After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

**§ 9.6.1.1** Contractor shall properly disburse money received from all payments to laborers, subcontractors or materialmen in accordance with Title 29, Chapters 6 and 7 of the S.C. Code of Laws, as amended.

**§ 9.6.2** The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

**§ 9.6.3** The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

**§ 9.6.4** The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

**§ 9.6.5** Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

**§ 9.6.6** A 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 Design-Build Documents.

**§ 9.6.7** Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

### **§ 9.7 Failure of Payment**

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

## § 9.8 Substantial Completion

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

**§ 9.8.2** When the Design Builder deems the project substantially complete, it shall prepare a comprehensive list of items (punch list) to be completed or corrected prior to final payment. The Design Builder shall provide the punch list to the Owner and request an inspection, which shall take place no earlier than ten (10) days from Owner's receipt of the punch list, unless Owner agrees to an earlier inspection. The Owner shall estimate the cost to perform each punch list item and shall withhold three times the cost to perform the punch list work. If three times the cost to perform this work is less than current retainage, the Owner shall release the difference.

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

**§ 9.8.4** Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

**§ 9.8.5** When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.6** The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon such acceptance of Substantial Completion of the Work and consent of surety, if required, the Owner shall make payment sufficient to increase the total payments, inclusive of retainage, to ninety-five percent (95%) of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work and unsettled claims, costs to complete or correct Uncompleted or Defective Work and the full-amount of Liquidated Damages. Retainage shall continue until Final Completion and Final Payment, subject to Section 9.8.2 of this document.

**§ 9.8.7** Delivery of the following items to the Owner in both hard copy and electronic format are conditions precedent to a finding that the project is substantially complete:

1. Occupancy permits and approvals by authorities having jurisdiction;
2. Acceptance by Owner safety representative and engineering representative;
3. Final "As-Built" drawings in PDF format provided to the Owner;
4. Complete set of specifications including all addendums in PDF format;
5. All final field use shop drawings on material, equipment, etc. in PDF format;
6. Maintenance instructions for all items, name and address for supplier, name, address, and telephone number of persons of contact for service, all compiled and indexed in PDF format;
7. Two (2) copies of final "As-Built" drawings provided to the Owner, size of drawings to be either 24 x 36 or 30 x 42 provided to the Owner;
8. Two (2) copies of all final field use shop drawings on material, equipment, etc.;

9. Two (2) sets of maintenance instructions for all items, name and address of supplier, name, address, and telephone number of persons to contact for service, all compiled in indexed hard cover binders.

### **§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

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

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

### **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

**§ 9.10.3** Final payment including retainages shall not be due until the following has been submitted and approved by the Owner. These requirements are conditions precedent to final payment:

- a. the final punch list has been completed and a copy of the list submitted showing the disposition of each item,
- b. a final inspection has been conducted and all items are completed,
- c. a Certificate of Substantial Completion has been properly approved and filed,

- d. an affidavit has been provided that all payrolls, bills for materials and equipment, and other indebtedness conducted with the work for which the Owner or its property might in any way be responsible, have been paid for otherwise satisfied,
- e. the consent of the Surety, if any, to final payment is provided,
- f. Completion of Owner's audit rights. Owner's audit, if the Owner chooses to conduct one, must be completed within 30 days after all required documentation is received by Owner,

**§ 9.10.5** Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

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

### § 10.2 Safety of Persons and Property

**§ 10.2.1** The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

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

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

**§ 10.2.5** The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

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

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

**§ 10.2.8 Injury or Damage to Person or Property.** If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

### **§ 10.3 Hazardous Materials**

**§ 10.3.1** The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

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

**§ 10.3.3** Contractor, Subcontractors, and their respective agents and employees shall not be liable for any claims, damages, losses and expenses arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, except to the extent that such damage, loss or expense is due to the fault or negligence of Contractor, Subcontractors, or their respective agents or employees.

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

**§ 10.3.5** The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**§ 10.3.6** If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

### **§ 10.4 Emergencies**

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

## **ARTICLE 11 UNCOVERING AND CORRECTION OF WORK**

### **§ 11.1 Uncovering of Work**

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of

uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

## § 11.2 Correction of Work

**§ 11.2.1 Before or After Substantial Completion.** The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

### § 11.2.2 After Substantial Completion

**§ 11.2.2.1** In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

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

**§ 11.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

**§ 11.2.3** The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

**§ 11.2.4** The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

**§ 11.2.5** Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

## § 11.3 Acceptance of Nonconforming Work

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

## ARTICLE 12 COPYRIGHTS AND LICENSES

**§ 12.1** Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

**§ 12.2** The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

**§ 12.3** Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

**§ 12.3.1** The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

**§ 12.3.2** In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

## ARTICLE 13 TERMINATION OR SUSPENSION

### § 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

**§ 13.1.1** If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

**§ 13.1.2** If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

**§ 13.1.3** If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

**§ 13.1.4** Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

**§ 13.1.5** The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

**§ 13.1.6** In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

## **§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment**

### **§ 13.2.1 Termination by the Design-Builder**

**§ 13.2.1.1** The Design-Builder may terminate the Contract if the Work is stopped for a period of 90 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

**§ 13.2.1.2** The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**§ 13.2.1.3** If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

**§ 13.2.1.4** If the Work is stopped for a period of 90 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

### **§ 13.2.2 Termination by the Owner For Cause**

#### **§ 13.2.2.1** The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

**§ 13.2.2.2** When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials delivered or set to be delivered to the Project Site;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 13.2.2.1** The Owner shall not be required to proceed in completing the work at the lowest possible cost.

**§ 13.2.2.2** The cost of finishing the work may include, but not limited to: (1) cost of labor and material, (2) additional Architectural services, (3) costs of advertising or bidding, (4) attorneys' fees, (5) administrative costs, and (6) all other costs or expenses directly or indirectly relating to the termination.

**§ 13.2.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

**§ 13.2.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract. In exercising Owner's right to secure completion of the Work under any of the provisions hereof, the Owner shall have the right to exercise Owner's sole discretion as to the manner, methods and reasonableness of costs of completing the Work. However, the Owner is under a continuing obligation when exercising its rights to secure completion of the work to mitigate its damages, and this provision in no way is intended to alter that obligation.

**§ 13.2.5** The rights of the Owner to suspend or terminate as herein provided shall be cumulative and not exclusive and shall be in addition to any other remedy provided by law.

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

**§ 13.2.3.1** The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

**§ 13.2.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

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

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

**§ 13.2.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

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

**§ 13.2.4.3** In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed.

**§ 13.2.4.4** Termination by the Owner for convenience does not relieve the Contractor from responsibility for liquidated damages that may have accrued prior to the date of termination.

## ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

### § 14.1 Claims

**§ 14.1.1 Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

**§ 14.1.2 Time Limits on Claims.** The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

### § 14.1.3 Notice of Claims

**§ 14.1.3.1 Prior To Final Payment.** Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party 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.

**§ 14.1.3.2 Claims Arising After Final Payment.** After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

**§ 14.1.4 Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

**§ 14.1.5 Claims for Additional Cost.** If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

### § 14.1.6 Claims for Additional Time

**§ 14.1.6.1** If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ 14.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

**§ 14.1.6.3** Damages for time extensions caused by additional work or the Owner's failure to perform its obligations shall be limited to a pro-rata portion of the Design Builder's average Monthly General Conditions Costs. Under no circumstances shall Design-Builder, be entitled to recover delay damages for weather or force majeure events.

**§ 14.1.6.4** For each calendar day substantial completion exceeds the Contract Time, the Design Builder shall be liable for \$ \_\_\_\_\_ per day as liquidated damages. Such liquidated damages are agreed to be a reasonable estimate of the Owner's damages for delayed completion of the work and shall not be considered a penalty. The Owner may deduct liquidated damages from any unpaid amounts due the Design Builder under this Agreement. If there are no unpaid amounts that the Owner may deduct from, Construction Manager shall still be liable to compensate the Owner for the liquidated damages.

#### **§ 14.1.7 Claims for Consequential Damages**

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to termination or delay in completion of this Contract. This mutual waiver includes

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

#### **§ 14.2 Initial Decision**

**§ 14.2.1** An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

#### **§ 14.2.2 Procedure**

**§ 14.2.2.1 Claims Initiated by the Owner.** If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

**§ 14.2.2.2 Claims Initiated by the Design-Builder.** If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

**§ 14.2.3** In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

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

**§ 14.2.5** The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties

but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**§ 14.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

**§ 14.2.6.1** Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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

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

### **§ 14.3 Mediation**

**§ 14.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

**§ 14.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

### **§ 14.4 Arbitration**

**§ 14.4.1** If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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

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

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

#### **§ 14.4.4 Consolidation or Joinder**

**§ 14.4.4.1** Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 14.4.4.2** Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

**§ 14.4.4.3** The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

### **ARTICLE 15 MISCELLANEOUS PROVISIONS**

#### **§ 15.1 Governing Law**

This agreement is executed in the State of South Carolina and shall be construed in accordance with the laws of the State of South Carolina. Both parties submit their persons to the jurisdiction of the Courts for South Carolina. Exclusive venue for any action or other dispute resolution procedure brought in connection with this agreement shall be in the Court of Common Pleas for Charleston County, South Carolina.

#### **§ 15.2 Successors and Assigns**

**§ 15.2.1** The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 15.2.2** The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

**§ 15.2.3** If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

#### **§ 15.3 Written Notice**

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

#### **§ 15.4 Rights and Remedies**

**§ 15.4.1** Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

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

### **§ 15.5 Tests and Inspections**

**§ 15.5.1** Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

**§ 15.5.2** If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

**§ 15.5.3** If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

**§ 15.5.4** Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

**§ 15.5.5** If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

**§ 15.5.6** Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

### **§ 15.6 Confidential Information**

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

**§ 15.6.1** A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

### **§ 15.7 Capitalization**

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

### **§ 15.8 Interpretation**

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

**§ 15.8.2** Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

## ARTICLE 16 INSURANCE AND BONDS

**§ 16.1** Except as may otherwise be set forth in the Agreement or elsewhere in the Design-Build Documents, the Owner and Design-Builder shall purchase and maintain the following types of insurance with limits of liability and deductible amounts and subject to such terms and conditions, as set forth in this Article.

### § 16.2 Insurance and Bonds.

The Design Builder shall purchase from and maintain in a company or companies acceptable to the Owner such insurance as will protect the Design Builder from claims set forth below which may arise out of or result from the Design Builder's operations and completed operations under the Contract and for which the Design Builder may be legally liable, whether such operations be by the Design Builder, design consultants or by a Contractor, Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .a. Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .b. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .c. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Design Builder's employees;
- .d. Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Design Builder, or (2) by any other person;
- .e. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .f. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance, or use of any motor vehicle;
- .g. Claims for bodily injury or property damage arising out of completed operations; and errors and omissions coverage for professional services;
- .h. Claims involving contractual liability insurance applicable to the Design-Builder's indemnity obligations under Section 3.1.14;
- .i. Claims or loss excluded under a prior work endorsement or other similar exclusionary language;
- .j. Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language;
- .k. Claims related to roofing, if the Work involves roofing;
- .l. Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces;
- .m. Claims related to earth subsidence or movement, where the Work involves such hazards; and
- .n. Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

**§ 16.2.1** The insurance required by Subparagraph 16.1.1 shall be written for not less than any limits of liability specified in the Contract Documents, or required by law, whichever is greater.

**§ 16.2.2** Minimum limits of liability for the following types of insurance are:

1.	Workers' Compensation, including:		Limit
	a. Workers' Compensation Insurance-		Statutory
	b. Employers' Liability-Each Accident-		\$100,000
		Disease-	\$500,000
		Disease-Each Employee-	\$100,000
2.	Comprehensive General Liability, including,		Limits
	a. General Aggregate		\$2,000,000

b.	Products-Completed Operations-Aggregate	\$2,000,000
c.	Personal and Advertising Injury	\$2,000,000
d.	Each Occurrence	\$2,000,000
3.	Comprehensive Automobile Liability, including:	
a.	Hired and Non-Owned Coverage:	\$1,000,000
4.	Professional liability errors and omissions coverage	\$2,000,000
5.	Pollution Liability	\$1,000,000

**§ 16.2.3** In addition to Contractual Liability including the indemnification provision, Bodily Injury, and Property Damage coverage under both Comprehensive General and Comprehensive Automobile forms, shall include "occurrence" basis wording, which means an event, or continuous or repeated exposure to condition which unexpectedly causes injury or damage during the policy period. The Owner shall be an additional insured on the Design Builder's comprehensive general liability policy. Additional insured endorsements CG 20 10 07 04 and CG 20 37 07 04 or endorsements providing the same coverage shall be obtained to satisfy the additional insured requirements. The additional insured coverage shall be a Primary and Non-Contributory policy. Design Builder shall maintain all required coverages for at least 8 years after substantial completion of the project.

**§ 16.2.4** Design Builder shall either (a) require each of its Contractors and Subcontractors to procure and maintain during the life of its Subcontract, Contractor and Subcontractor Comprehensive General Liability, Automobile Liability, and Property Damage Liability Insurance of the type and in the same amounts as specified in this Subparagraph, or (b) insure the activities of its Subcontractors in its own policy.

**§ 16.2.5** The insurance required above shall include Contractual Liability Insurance applicable to the Design Builder's indemnity obligations.

**§ 16.2.6** Certificates of insurance or AIA Document G705, latest edition, 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 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. Certificates must be fully completed. Incomplete certificates shall not be accepted and commencement of work shall not start until a fully completed certificate is provided. Any delays due to incomplete certificates shall not warrant an extension of Contract Time. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the time required by this contract. 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.

### § 16.3 PROPERTY INSURANCE

**§ 16.3.1** Owner shall purchase and maintain property insurance upon the entire work at the site to the full insurable value thereof. This insurance shall include the interests of the Owner, the Design Builder, Contractors, and Subcontractors in the work and shall insure against "All Risk" and "Special Perils" including Flood and Earthquake. The deductible for all perils except Flood and Earthquake shall be \$1,000. Coverage for property in transit or stored offsite that is to become part of the project is included. The deductible shall be borne by the Design Builder. This insurance does not cover any tools owned by mechanics, any tools, equipment, scaffolding, staging, towers, and forms owned or rented by the Design Builder which are not intended to become part of the project. The interest of the Owner, the Design Builder, Contractors, and Subcontractors in this insurance shall only be effective during the construction of the project and all rights and interest of the Design Builder, Contractors and Subcontractors in this insurance shall end upon the acceptance of the project by the Owner." The Design Builder, Contractors and Subcontractors shall be named additional insured and the policy shall contain waivers of subrogation for the insureds.

**§ 16.3.2** Any insured loss is to be adjusted with the Owner and made payable to the Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause.

**§ 16.3.4** The Owner and Design Builder waive all rights against each other for damages caused by fire and other perils to the extent covered by insurance except such rights as they may have to the proceeds of such insurance held by the Owner as trustee. The Design Builder shall require similar waivers by Contractors and Subcontractors. This waiver does not apply to any defects due to faulty materials or workmanship by the Design Builder, Contractor or Subcontractor. The Contractor or Subcontractor, and Design Builder shall remedy any defects due to such faulty materials or workmanship and pay for any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the date of acceptance as defined in the General Conditions, and in accordance with the terms of any Special Guarantees provided in their Contract. The Owner shall give notice of an observed defect within ninety (90) days of the time that it was observed or should have been observed.

**§ 16.3.5** If required in writing by any party in interest, the Owner as trustee shall, upon the occurrence of an insured loss, deposit in a separate account any money received for such loss, and he shall distribute it in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made, replacement of damaged work shall be covered by an appropriate Change Order.

**§ 16.3.6** The Owner, as trustee shall have the power to adjust and settle with the insurers.

**§ 16.3.7** If the Owner finds it necessary to occupy or use a portion or portions of the work prior to substantial completion thereof, such occupancy shall not commence prior to a time mutually agreed to by the Owner and Design Builder and to which the insurance company or companies providing the Property Insurance have consented by endorsement to the policy or policies. This insurance shall not be canceled or lapsed on account of such partial occupancy. Consent of the Design Builder and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

**§ 16.3.8** Any wall or steel construction during this period of coverage must be properly braced, regardless of plans or specifications otherwise, to prevent damage from wind.

**§ 16.3.9** The Owner, at his option, may purchase and maintain such insurance as will insure him against loss of use of his property due to fire or other hazards, however caused.

## **§ 16.4 PERFORMANCE BOND AND PAYMENT BOND**

**§ 16.4.1** The Design Builder shall provide Performance and Labor and Material Payment Bonds, each in the amount of 100% of the.

- .a The Surety shall have, at a minimum, a "Best Rating" of "A" as stated in the most current publication of "Best's Key Rating Guide, Property-Casualty". In addition, the Surety shall have a minimum "Best Financial Strength Category" of "Class V" and in no case less than five (5) times the contract amount.
- .b The Performance Bond and the Payment Bond shall name the Owner as Obligee.
- .c The Performance and Labor Material Payment Bonds shall:
  - (1) be issued by a surety company licensed to do business in South Carolina; and,
  - (2) be accompanied by a current power of attorney and certified by the attorney-in-fact who executes the bond on the behalf of the surety company; and,
  - (3) remain in effect for a period of time not less than two (2) years following the date of Substantial Completion; and
  - (4) display the Surety's Bond Number. A rider including the following provisions shall be attached to each Bond stating that:
    - (a) The Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents. Any addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety of its obligations hereunder, and notice to the Surety of such matters is hereby waived.

- (b) The Surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of the Owner.
- (5) Notwithstanding the foregoing, any bonds required by this Contract shall meet the requirements of the SC Code of Laws, as amended.

**§ 11.1.2.1** 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 permit a copy to be made.

**§ 11.1.2.2** The Contractor shall furnish the required bonds to the Owner before prior to commencement of the Work.

**§ 11.1.2.3** The Contractor shall keep the Surety informed of the progress of the Work, and, where necessary, obtain the Surety's consent to, or waiver of:

- .1 notice of changes in the Work;
- .2 request for reduction or release of retention;
- .3 request for final payment; and
- .4 any other item required by the Surety.

The Owner may, in the Owner's sole discretion, inform the Surety of the progress of the Work and obtain consents as necessary to protect the Owner's rights, interest, privileges, and benefits under and pursuant to any bond issued in connection with the Work.

## ARTICLE 17 SCOPE OF THE AGREEMENT

**§ 17.1** This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed

« »

- .6 Other:

« »

This Agreement entered into as of the day and year first written above.

« »  
**OWNER** (*Signature*)

« »« »  
*(Printed name and title)*

« »  
**DESIGN-BUILDER** (*Signature*)

« »« »  
*(Printed name and title)*

**Exhibit A*****Design-Build Amendment***

This Amendment is incorporated into the accompanying AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder dated the «» day of «» in the year «» (the “Agreement”)  
(In words, indicate day, month and year.)

**for the following PROJECT:***(Name and location or address)*

**City of Charleston Office Building at 1660 + 1662 Ingram Road  
Charleston, South Carolina**

**THE OWNER:***(Name, legal status and address)*

**City of Charleston  
80 Broad Street  
Charleston, South Carolina 29401**

**THE DESIGN-BUILDER:***(Name, legal status and address)*

« »  
« »

The Owner and Design-Builder hereby amend the Agreement as follows.

**TABLE OF ARTICLES****A.1 CONTRACT SUM****A.2 CONTRACT TIME****A.3 INFORMATION UPON WHICH AMENDMENT IS BASED****A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS****A.5 COST OF THE WORK****ARTICLE A.1 CONTRACT SUM**

**§ A.1.1** The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:  
(Check the appropriate box.)

[ « » ] Stipulated Sum, in accordance with Section A.1.2 below

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

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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[ « » ] Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below

[ « X » ] Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

#### § A.1.4 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price

§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

#### § A.1.4.2 The Design-Builder's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method for adjustment to the Fee for changes in the Work.)

« »

#### § A.1.4.3 Guaranteed Maximum Price

§ A.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed « » (\$ « »), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

(Insert specific provisions if the Design-Builder is to participate in any savings.)

« »

#### § A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price

Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price.

(Provide information below or reference an attachment.)

« »

§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)

« »

#### § A.1.4.3.4 Unit Prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit (\$0.00)
« »		

§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

« »

## § A.1.5 Payments

### § A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the « » day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the « » day of the « » month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than « » ( « » ) days after the Owner receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

### § A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price

§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

**§ A.1.5.4.2** Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Design-Builder's Fee, less retainage of « » percent ( « » %). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of « » percent ( « » %) from that portion of the Work that the Design-Builder self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

**§ A.1.5.4.3** The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms.

#### **§ A.1.5.5 Final Payment**

**§ A.1.5.5.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

**§ A.1.5.5.2** If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

### **ARTICLE A.2 CONTRACT TIME**

**§ A.2.1** Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

**§ A.2.2** The Design-Builder shall achieve Substantial Completion of the Work not later than « » ( « » ) days from the date of this Amendment, or as follows:

*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)*

« »

**Portion of Work****« »****Substantial Completion Date**

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

*(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)*

**« »****ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED**

**§ A.3.1** The Contract Sum and Contract Time set forth in this Amendment are based on the following:

**§ A.3.1.1** The Supplementary and other Conditions of the Contract:

**Document****« »****Title****Date****Pages**

**§ A.3.1.2** The Specifications:

*(Either list the specifications here or refer to an exhibit attached to this Amendment.)*

**« »****Section****« »****Title****Date****Pages**

**§ A.3.1.3** The Drawings:

*(Either list the drawings here or refer to an exhibit attached to this Amendment.)*

**« »****Number****« »****Title****Date**

**§ A.3.1.4** The Sustainability Plan, if any:

*(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)*

**Title****« »****Date****Pages**

*Other identifying information:*

**« »**

**§ A.3.1.5** Allowances and Contingencies:

*(Identify any agreed upon allowances and contingencies, including a statement of their basis.)*

**.1 Allowances**

**« »**

**.2 Contingencies**

« »

**§ A.3.1.6** Design-Builder's assumptions and clarifications:

« »

**§ A.3.1.7** Deviations from the Owner's Criteria as adjusted by a Modification:

« »

**§ A.3.1.8** To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

« »

**ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS**

**§ A.4.1** The Design-Builder's key personnel are identified below:

*(Identify name, title and contact information.)*

.1 Superintendent

« »

.2 Project Manager

« »

.3 Others

« »

**§ A.4.2** The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:

*(List name, discipline, address and other information.)*

« »

**ARTICLE A.5 COST OF THE WORK**

**§ A.5.1 Cost To Be Reimbursed as Part of the Contract**

**§ A.5.1.1 Labor Costs**

**§ A.5.1.1.1** Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

**§ A.5.1.1.2** With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site.

*(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)
« »	« »	« »	« »

**§ A.5.1.1.3** Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

**§ A.5.1.1.4** Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1.

**§ A.5.1.1.5** Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner's prior approval.

**§ A.5.1.2 Contract Costs.** Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

**§ A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ A.5.1.3.1** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

**§ A.5.1.3.2** Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

**§ A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ A.5.1.4.1** Costs of transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Builder shall mean fair market value.

**§ A.5.1.4.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior written approval.

**§ A.5.1.4.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ A.5.1.4.4** Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.

**§ A.5.1.4.5** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior written approval.

**§ A.5.1.5 Miscellaneous Costs**

**§ A.5.1.5.1** Premiums for all bonds which the Construction Manager is required by the Contract Documents to purchase and maintain will be billed to the Project at the actual cost. General Liability Insurance purchased and maintained by the Construction Manager will be billed to the Project at the prorated actual cost. With the Owner's prior written approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

**§ A.5.1.5.2** Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.

**§ A.5.1.5.3** Fees and assessments for the building permit and for other permits, licenses, including a City of Charleston business license for Design-Builder and any of its Contractors, and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

**§ A.5.1.5.4** Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.

**§ A.5.1.5.5** Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

**§ A.5.1.5.6** With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.

**§ A.5.1.5.7** Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.

**§ A.5.1.5.8** With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.

**§ A.5.1.5.9** With the Owner's prior approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder's personnel required for the Work.

**§ A.5.1.5.10** That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

#### **§ A.5.1.6 Other Costs and Emergencies**

**§ A.5.1.6.1** Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

**§ A.5.1.6.2** Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

**§ A.5.1.6.3** Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.

#### **§ A.5.1.7 Related Party Transactions**

**§ A.5.1.7.1** For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

**§ A.5.1.7.2** If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the

transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

#### **§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract**

The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;
- .2 Expenses of the Design-Builder's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Section A.5.1;
- .4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- .5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Section A.5.1; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .8 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .9 Late Payment charges, interest charges, or penalties of any kind; and
- .10 Any cost not supported by invoices or other evidence demonstrating payment.

#### **§ A.5.3 Discounts, Rebates, and Refunds**

**§ A.5.3.1** Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.

**§ A.5.3.2** Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

#### **§ A.5.4 Other Agreements**

**§ A.5.4.1** When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

**§ A.5.4.2** Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design-Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.

**§ A.5.4.3** The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

#### **§ A.5.5 Accounting Records**

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs

incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

#### § A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. In addition to the foregoing, the Design-Builder warrants and represents to the Owner that the Design-Builder is currently: (1) financially solvent, (2) able to pay its debts as they mature, (3) possessed of sufficient working capital to complete this Agreement pursuant to its terms and conditions, (4) able to furnish the equipment, materials, supplies, tools and labor necessary to complete the Work pursuant to this Agreement, (5) experienced in and competent to perform the Work necessary to fulfill this Agreement, (6) qualified to perform the duties of the Design-Builder pursuant to the this Agreement, (7) authorized to do business in the State of South Carolina and the City and County of Charleston, and (8) holds the necessary licenses, permits and other special licenses to perform the Work, as and if required by law.

This Amendment to the Agreement entered into as of the day and year first written above.

« »  
**OWNER** (Signature)

« »« »  
(Printed name and title)

« »  
**DESIGN-BUILDER** (Signature)

« »« »  
(Printed name and title)

Sworn to before me this \_\_\_\_ day of \_\_\_\_, 20\_\_.

**Notary Seal:**

Notary Public for the State of \_\_\_\_\_ My Commission Expires: \_\_\_\_\_ Print  
Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_ Address: \_\_\_\_\_