

MEDIUM FORM CONTRACT AGREEMENT



THE DISTRICT: Horry County Schools 335 Four Mile Road, P.O. Box 260005 Conway, South Carolina 29528-6005 Phone: 843-488-	CONTRACTOR: Phone:	CONTRACT DATE: PROJECT NUMBER: PROJECT NAME: CONTRACT VALUE:
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The following terms and conditions are applicable to this *Contract Agreement* between the parties listed above for the Scope of Work (Exhibit A) established:

1. **Contract Validity:** This *Contract Agreement* along with all referenced contract documents, including exhibits, forms and other referenced documents, represents the full and complete agreement between the District and the Contractor. Failure by the District to enforce any provision of the contract documents shall not be construed as a waiver of any such provision and shall not affect the validity of the *Contract Agreement*, or any part thereof, or the right of the District to enforce any provision at any time. All difficulties inherent in construction activities cannot be foreseen during design and solicitation of a project; therefore, the District reserves the right to make changes in the work without invalidating the *Contract Agreement*. (Requirements for any *Change Order* are provided in Exhibit E.) Forms contained in the contract documents are the official forms intended for use in preparation and administration of the contract.
2. **District Representatives' Authority:** The District's assigned Contract Manager and project representative(s) identified in the *Scope of Work (Exhibit A)* shall provide administration of the contract documents and, along with the Architect/Engineer, shall act on behalf of the District only to the extent of a) the terms and conditions of the contract documents; b) their respective duties; and c) the authority granted to them in accordance with their respective positions with the District or through a contractual agreement. Neither the Architect/Engineer nor the District's representatives have any independent authority, either expressed or implied, to amend the contract documents, either orally or in writing. To be official and binding, amendments shall only be made by *Change Order* based upon the requirements in Exhibit E.
3. **Contractor Status; Acts, Errors, Omissions:** The Contractor shall be legally considered an independent contractor and neither the Contractor nor any subcontractor or supplier shall, under any circumstances, be considered employees, representatives, or agents of the District or the Architect/Engineer. The Contractor shall be responsible to the District for acts, errors and omissions of the Contractor, subcontractors and suppliers who perform any portion of the work or supply any materials, equipment or processes to be incorporated into the work. The Architect/Engineer and the District shall at no time be legally responsible for any negligence or other acts by the Contractor, any subcontractor, any supplier, or anyone enjoined to them. Errors, omissions, and inconsistencies discovered in the contract documents shall be reported to the District, in writing, within twenty-four (24) hours of discovery for appropriate resolution. If the Contractor performs any work involving a recognizable error, omission, or inconsistency without first notifying the District for a determination, the Contractor shall assume responsibility for such performance and bear appropriate costs for correction.
4. **Ownership of Documents:** Under separate contract with the Architect/Engineer, the District has ownership of all specifications and drawings in relation to the project. Neither the Contractor nor any other entity shall claim ownership or copyright of any drawings, specifications or other contract documents prepared by the District or the Architect/Engineer. This requirement survives completion/termination of the *Contract Agreement*.
5. **Maintenance and Auditing of Contractor's Records:** The Contractor shall prepare and maintain project records as required by the District, acceptable accounting standards, and applicable laws for a period of three (3) consecutive years following completion of the project as evidenced by the date of final payment to the Contractor. The District or any agent of the District has the right to audit the Contractor's project records at any time. The Contractor shall ensure all project records are available for inspection at the location specified by the District within seventy-two (72) hours of notice at no additional cost to the District. This requirement shall survive termination/completion of the contract.
6. **Required Meetings:** At the request of the District, a pre-construction conference may be scheduled prior to work commencement with the Architect/Engineer and representatives of the Contractor, including the worksite superintendent, and subcontractors. In addition, construction meetings during the progress of the work shall be held as often as required in the *Scope of Work (Exhibit A)* with the Contractor's worksite superintendent and subcontractor representatives, at which the Contractor shall provide a) a progress report as it relates to the approved construction schedule, b) any scheduling changes, c) performance issues, problems or delays encountered and resolutions, d) District scheduled activities or other needs at the worksite, and e) any other aspects of the work deemed to have a potential impact on the date of substantial completion. Other meetings may be required with regulatory authorities or the District's Board of Education. All such meeting requirements shall be adhered to by the Contractor at no additional cost to the District.
7. **Building Permit and Other Permits and Fees:** No general building permit is required in accordance with § 6-9-110 of the South Carolina Code of Laws; however, the Contractor shall be required to provide any mechanical, electrical, plumbing or other permits required for purposes of inspection at no additional cost to the District. Except for permits and fees which are the responsibility of the Contractor in the contract documents, the District shall secure and pay for necessary approvals, easements, assessments, utility impact fees, and other fees/charges required for the successful completion of the work.
8. **Verification of Worksite Measurements and Conditions; Surveys:** The Contractor shall take worksite measurements and verify worksite conditions and shall carefully compare such measurements, conditions and other information known to the Contractor with all contract documents before commencing with the work. The Contractor shall establish all working lines, grades, and bench marks, appropriate to the work being performed, and shall be responsible for accuracy of same. The District shall furnish any necessary land surveys describing physical characteristics, legal limitations and utility locations for the worksite, if necessary to the performance of the work. From the information provided by the District, the Contractor shall develop and make all detailed surveys, as needed, for the performance of the work. The Contractor shall carefully preserve benchmarks, reference points and stakes and shall be responsible for mistakes which may be caused by the unnecessary loss or disturbance.
9. **Conformance to Applicable Laws:** The Contractor shall comply with and give notices as required by all applicable laws bearing on construction of school facilities including the a) most current international building, plumbing, mechanical, gases, and fire prevention codes (i.e., International Building Code effective in year 2003); b) National Electrical Code; c) South Carolina Energy Conservation and Efficiency Act of 1992; d) Underground Utilities Damage Prevention Act, South Carolina Statute 58-35-10; e) OSHA Standards, as applicable; f) SC Department of Transportation Access and Roadside Management Standards, as any of these standards may be amended. Where such requirements are inadequate, the Contractor shall use the most current NFPA Standards, American National Standards Institute or other recognized national standards. If the Contractor performs work knowing it to be contrary to any applicable laws without first notifying the District, in writing, for a determination, the Contractor shall assume full responsibility for such work and shall bear the costs of correction, fines or other fees.
10. **Project Time and Work Commencement:** By executing the *Contract Agreement*, the Contractor confirms the time limits established in the *Project Schedule (Exhibit D)* are reasonable for performing all work required. The Contractor shall proceed expeditiously with adequate forces to achieve the established completion date. The Contractor shall not commence operations prior to the a) commencement date established in Exhibit D, b) effective date of insurance required and evidenced by a valid *Certificate Of Insurance (Exhibit G)* provided to the District, or c) securing of SLED background checks on all Contractor and subcontractor worksite personnel, whichever is later. The date established for completion of the project shall not change should the effective date of any insurance or the acquiring of SLED background checks delay the commencement of the work.
11. **Construction Schedule:** The Contractor shall prepare and submit to the District an itemized construction schedule. The construction schedule shall a) incorporate the entire work to be performed; b) indicate the dates for start and completion of various elements of the work conforming to the time frames in *Project Schedule (Exhibit D)*; and c) not exceed the time limit established by the District for substantial completion of the project stated in the *Project Schedule (Exhibit D)*. Any revisions to the construction schedule must be approved by the District to be binding and shall be adhered to by the Contractor and used in monitoring the progress of the work. When the progress of the work, at the District's sole determination, does not conform to the last approved construction schedule, the District shall have the right to withhold payment from the Contractor until the work is compliant with the approved construction schedule and the District is certain there is no further potential for slippage in the construction schedule impacting the completion date.
12. **Submittals:** The Contractor shall conform to any requirements for submittals stated in the contract documents and shall prepare a submittal schedule, which shall be coordinated with the construction schedule to allow adequate time for the Architect/Engineer and District to review and respond to the submittals. The Contractor shall review and approve and submit to the Architect/Engineer all shop drawings, product data, samples and similar submittals at least thirty (30) days prior to use to avoid delay in the work, and such submission warrants the Contractor has determined and verified materials, field

measurements and field construction criteria related thereto, and has checked and coordinated the information contained within such submittals with the requirements of the contract documents. Work performed shall conform to the accepted submittals. The Contractor shall not be relieved of responsibility for errors or omissions in submittals by the acceptance of the Architect/Engineer or District.

13. Shop Drawings Requirements: Shop drawings shall be accurate to a scale sufficiently large enough to show all pertinent aspects of the equipment and its connections. Shop drawings shall be submitted for review in the number of copies and on medium required by the Architect/Engineer at least thirty (30) days prior to intended use. The review and acceptance of shop drawings shall not constitute approval of safety precautions, of any construction means, methods, techniques, sequences or procedures or deviations from the contract documents.

14. Maintenance of Record Drawings: The Contractor shall maintain at the worksite a copy of submittals accepted by the District and one (1) record copy of the contract documents, including approved changes, marked currently to record changes and selections made during performance of the work. Such record copy of drawings with all recorded changes shall be provided to the District at final completion of all work.

15. Award of Multiple Contracts: The District reserves the right to bid and award separate contracts for portions of the work, perform work with its own forces, or perform construction or operations in conjunction with the work of the Contractor. The District shall coordinate the activities of the District's own forces and of each separate contractor with the work of any other contractors. The Contractor shall participate with other contractors, the Architect/Engineer, and the District shall promptly report to the District apparent discrepancies or defects in the construction work of the District or other contractors which would render it unsuitable for the Contractor's work. Failure of the Contractor to report such defects shall constitute an acknowledgment the District's or separate contractors' completed or partially completed construction is fit and proper to receive the Contractor's portion of the work, except as regards latent defects. If any dispute arises between the Contractor and the District's own forces or other contractors, the District shall mediate such disputes and equitably charge any costs to the responsible parties.

16. Cutting and Patching: The Contractor and separate contractors shall a) be responsible for cutting, fitting or patching required to complete the work or to make its parts fit together properly with other construction or with existing structures; b) not damage or endanger a portion of the work or any portion of present or completed construction of another entity by cutting, patching or otherwise altering such construction or structures or by excavation; and c) not cut or otherwise alter such construction or structures of the another entity without consent, and such consent shall not be unreasonably withheld.

17. Supervision and Labor; Alien Workers: The Contractor shall provide and pay for all labor necessary for proper execution and completion of the work. The day-to-day supervision and control of the Contractor's employees is the sole responsibility of the Contractor. The Contractor shall not employ or contract with illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986, as may be amended or any State of South Carolina immigration and alien work requirements, including any requirements for reporting illegal aliens. A minimum of two (2) employees and the worksite superintendent shall be fluent in spoken and written English.

18. Work Scheduling: The Contractor shall maintain a full crew of competent employees and subcontractors on the project full time. At a worksite with an occupied building under repair or renovation or other facilities used on a regular or intermittent basis, normal working hours may vary. The District reserves the right to adjust work hours when such work in progress interferes with the educational process, athletic events, District operations or traffic patterns; therefore, work scheduling shall be flexible to include weekends and evening hours when necessary without additional cost to the District. The Contractor shall ensure this requirement is a part of any subcontract agreements.

19. Davis-Bacon Act: If any federal funds are used for the project, the Contractor shall abide by all federal requirements of the Davis-Bacon Act, as may be amended.

20. Drug-Free Workplace: The Contractor shall be responsible for initiating, maintaining and supervising all drug-free programs conforming to Title 44, Chapter 107, § 44-107-10 through § 44-107-90 of the South Carolina Code of Laws, as may be amended.

21. Conflict of Interest: The Contractor shall not employ any owner, director, representative, agent or employee of the Architect/Engineer or the District to perform any work, directly or indirectly, full-time or part-time without approval of the District.

22. Compliance with Employment Laws: By entering into a *Contract Agreement*, the Contractor agrees to abide by all applicable laws pertaining to employment and shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap, or national origin except when such condition is a bona fide occupational qualification reasonably necessary for normal operations of the Contractor. The Contractor, in all solicitations or advertisements for employees, shall state the Contractor is an "Equal Opportunity Employer." The Contractor agrees to post in conspicuous places, visible to employees and applicants for employment, notices of this

nondiscrimination clause and shall include the provision of this paragraph in every subcontract or purchase agreement of more than \$10,000.

23. Employment Taxes and Benefits: The District shall not withhold from the contract payments any Federal or State income taxes, or any employment-related taxes normally withheld on the District's employees. Further, the District shall not provide any employment related insurances or other benefits such as worker's compensation for the benefit of any Contractor, subcontractor or supplier employees.

24. Project Key Staff – Project Manager: If required by the District, the Contractor shall assign a skilled, experienced project manager to the project. The project manager shall secure the materials of proper quality and quantity to meet the contract documents and manage the appropriate timing of all materials, sub-contracted work, and Contractor provided labor to ensure the continual progress of the work to meet the substantial completion date. The Contractor shall not change the project manager identified in the *Scope of Work (Exhibit A)* during the course of the project without approval of the District.

25. Project Key Staff -- Worksite Superintendent: The Contractor shall employ a competent worksite superintendent, who shall be in attendance at the worksite at all times during performance of any work and during delivery of any materials. The worksite superintendent may perform other minimal duties such as the duties of OSHA Compliance Officer, if approved by the District; however, such duties shall not be at the expense of the duties required of a worksite superintendent. The Contractor shall not change the worksite superintendent identified in the *Scope of Work (Exhibit A)* or the duties or status of same without District approval. The worksite superintendent shall enforce strict discipline and good order among the Contractor's representatives, agents, employees, subcontractors and suppliers and shall conduct frequent inspections to ensure work performed is in accordance with the contract documents at all times and in all respects. The worksite superintendent shall perform random testing of work completed to ensure a) the quality and quantity of work completed; b) subcontractor requests for payment do not exceed the actual percentage of work completed; and, c) the appearance of work completed is a true representation of actual work completed.

26. Worksite Communications: The project manager and worksite superintendent are representatives of the Contractor and communications given to them, either orally or in writing, shall be as binding as if given to the Principal of the Contractor.

27. Subcontractor & Supplier Relationship to the District: Nothing in the contract documents shall infer any contractual relationship between the District and any subcontractor, supplier or other entity under agreement to the Contractor except as it relates to warranties or specifically provided for elsewhere.

28. Subcontractor Administration and Contractual Requirements: The Contractor shall provide to the District a list of all subcontractors along with addresses, contact information, trade or portion of work responsible for, and minority status. Any change in subcontractors during the term of the contract shall be in accordance with the District's Procurement Code and requires approval of the District. The Contractor shall warrant to the District, by execution of the *Contract Agreement*, each subcontract shall a) preserve and protect the rights of the District, b) assume all the obligations and responsibilities the Contractor assumes, and c) assume all rights, remedies and redresses against the Contractor which the Contractor has against the District. The Contractor shall make available to each subcontractor, prior to execution of a subcontract, a copy of this *Contract Agreement*.

29. Contractor Legal Requirements Pertaining to Subcontractors: The Contractor shall abide by all applicable laws pertaining to the treatment and timely payment of subcontractors even when payment to the Contractor may be withheld. The District shall have the right to furnish any subcontractor a copy of the Contractor's payment bond and information regarding percentage of work completed and paid to the Contractor relative to the work done by the subcontractor. Regardless of rights expressed herein, the District shall not be obligated to pay any subcontractor except as required by applicable laws.

30. Provision of Materials, Equipment and Other Facilities: The Contractor shall provide and pay for a) all tools, materials, equipment, scaffolding, fencing, signage, rented or owned construction equipment and machinery or other such equipment necessary for proper execution of the work; b) potable (drinking) water as well as temporary water for the project separate from any existing building's water source; c) temporary lighting and power including temporary power panels, wiring, lamps, outlets for power equipment, or other such needs for electrical power; d) telephones or other communication equipment; e) sanitation facilities and access to food and drink vending, as appropriate to the duration of the project; f) transportation; g) sales tax, shipping and handling; and h) any other materials, equipment, facilities and services necessary for the proper execution and completion of the work, whether temporary or permanent. Approval of any use of District facilities shall be identified in the *Scope of Work (Exhibit A)*.

31. Materials Conformance: By execution of the *Contract Agreement*, the Contractor warrants to the District that the materials and equipment to be incorporated into the work shall a) be of good quality, undamaged, and new (not used or remanufactured unless otherwise required or permitted by the contract documents); b) be free from defects

(excluding latent defects); and c) conform to the contract documents. Materials and equipment not conforming to the contract documents, including substitutions not properly pre-approved and authorized by the District, shall be considered defective. Such substitutions shall be replaced by the Contractor at no additional cost to the District and no extension of contract time. The worksite superintendent shall inspect and perform random testing of all materials and equipment to ensure quality and conformance with the contract documents. The Contractor shall also **not allow use of:** a) asbestos containing products, temporary or permanent, even if they are non-friable, contain only minimal amounts of asbestos, and can be legally installed; and b) lead materials in paints or public water applications. "Lead-free" solder, flux, and pipe containing less than two-tenths of one percent (0.2%) lead and valves, pipes and appurtenances containing less than eight percent (8.0%) lead shall be used in all public drinking water applications as outlined in the 1986 amendments to the Safe Drinking Water Act.

32. Stored Materials: Stored materials and equipment refers only to those purchased for incorporation into, and becoming an integral part of, the completed work. Such materials and equipment shall be suitably stored to ensure the preservation of their quality and fitness for the work, and the Architect/Engineer and District shall have full access to all stored materials for verification of quality and quantity. The District reserves the right to designate "lay down" locations at the worksite where materials and equipment shall be stored, and such lay down areas shall be completely fenced and secured at all times. **The Contractor shall not store materials in a concentrated area on the roof of any building.** Tarps may be used to prevent damage by weather conditions; however, **polyethylene shall not be used in lieu of tarps.** Materials and equipment maintained off-site shall be suitably stored in a bonded, insured warehouse, at no additional cost to the District, and proof of warehouse bonding, insurance, quality, quantity and value shall be provided to the District upon request.

33. Certification of Authorized Installer; Professional Certifications: All manufactured or fabricated materials and equipment shall be applied, installed, connected, erected, cleaned, conditioned and handled in strict accordance with the requirements of the manufacturer, fabricator or supplier so as not to nullify any warranties provided. Upon request of the District, the Contractor shall supply a letter from the manufacturer, fabricator or supplier stating the Contractor or subcontractor is an approved and authorized installer of the materials or equipment. When professional certification of performance criteria for materials, systems, or equipment is required by the contract documents, the District shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

34. Title to Materials, Equipment and Processes: Any property acquired or constructed under this *Contract Agreement* is considered public property and is, therefore, not subject to any mechanics liens or other such claims. The Contractor warrants, at the time each *Payment Request (Exhibit F)* is submitted for payment, title to materials and equipment suitably stored and incorporated into the work shall pass to the District. This provision shall not be construed as relieving the Contractor of the sole responsibility for the a) care, protection and proper storage of the materials/equipment upon which payment has been requested or made; b) correction of any deficiencies; and c) restoration or replacement of any damaged or improperly installed materials or equipment.

35. Worksite Access: The Contractor shall confine operations at the worksite to areas designated by the District, and shall not encumber the worksite with materials or equipment which hamper ingress to or egress from the worksite or its buildings and facilities. Access of the Contractor, subcontractors and suppliers shall be limited to designated areas where the work is in progress. Access to other occupied areas of buildings and facilities shall only be for the purposes of spotting, clean-up, damage inspection, or communication with the Principal in the event of an emergency. **No other communication with any occupants of an existing building or facility shall occur. All site communications shall be made with the Architect/Engineer or District project representatives only.**

36. Worksite Clean-Up: The worksite premises shall be maintained in a neat and orderly condition and kept free of accumulations of refuse materials and debris during the entire performance of the work. The worksite superintendent shall ensure all refuse and debris are deposited in commercial refuse containers and removed from the premises at regularly at no additional cost to the District. At completion of the project, portable sanitary or other temporary facilities, construction refuse containers, debris, and all Contractor/subcontractor tools, equipment, machinery, surplus materials, or other such items shall be removed from the worksite. If the Contractor fails to clean up the worksite as the District or Architect/Engineer feels appropriate for safety or other reasons or at the completion of the work, the District may provide for cleanup and disposal, and deduct such costs from the Contractor's payment.

37. Existing Building Safeguards: When renovations or repairs are required to an existing building, the Contractor shall be solely responsible for protecting the existing building and its contents from damage. **The worksite superintendent shall inspect the existing premises daily to ensure there is no damage in progress.** Immediate corrective action shall be taken upon observation of any damage in progress, and the Contractor shall notify the District's project representative immediately. The Contractor shall also be responsible for safeguarding any other out buildings, athletic or other facilities at the worksite from damage, either directly or indirectly, as a result of the work being performed,

the delivery or storage of materials and equipment, the use of construction equipment, or other Contractor, subcontractor and supplier activities.

38. Damages Remedy: The Contractor shall remedy all damages to any buildings or facilities, including building contents, due to the failure of the Contractor, any subcontractor or supplier to take sufficient precautions, either directly or indirectly, to safeguard against inclement weather conditions, water infiltration, the work being performed, or other causes of damage. The Contractor shall be responsible for all costs associated with restoring the building, its contents, or other facilities to no less than the condition prior to damage and the satisfaction of the District, including insurance deductibles or other costs not recoverable from the insurance carrier(s).

39. Responsibility for Work in Progress: The Contractor shall be solely responsible for coordinating all portions of the work and shall have control over construction means, methods, techniques, sequences and procedures implemented to accomplish the work unless the contract documents give specific instructions concerning these matters. The Contractor shall supervise and direct all aspects of the work to be performed using the Contractor's best skill and attention, whether the services are performed by the Contractor or any subcontractor. The Architect/Engineer, the District or any regulatory authority shall, at any time, have the right to inspect the progress of the work for quality of workmanship and conformance to the contract documents and applicable laws.

40. Demolition and Salvage of Materials and Equipment: The Contractor shall notify DHEC of all demolition activities even if asbestos is not suspected. The District reserves the right, before demolition, to salvage useable materials, equipment and processes from any building, or portion thereof, when such salvaging does not interfere with demolition activities or the progress of the work. After salvage by the District, the Contractor shall have the right to remove or sell any remaining materials, equipment or processes provided it does not delay the demolition or the work. The Contractor shall be responsible for removal from the worksite and disposal of all demolition debris.

41. Utilities Shutdowns: Prior to any shutdown of any electrical, mechanical, security, fire or other such systems, the Contractor shall notify the District's project representative not less than three (3) days prior to the scheduled shutdown. No shutdown shall occur without notification to, coordination with, and approval of the District, and the District's project representative shall be notified immediately of any accidental termination of such systems. The Contractor shall take immediate remedial action to bring such systems to full functionality. **Shutdown of fire alarm and security systems shall not intentionally occur while the building is occupied, and fire alarm and security systems shall have repair priority.**

42. Tests, Inspections and Approvals: Tests, inspections and approvals required by the contract documents or any applicable laws shall be made in a timely matter to avoid delay in the construction schedule or progress of the work. The Contractor shall give the District and Architect/Engineer timely notice of when and where tests and inspections are to be made so they may observe such procedures. Any required certificate of testing, inspection or approval shall be provided promptly to the District. The Contractor shall also be responsible for tests and inspections of portions of the work already performed to determine such portions are in proper condition to receive subsequent work and conform to the contract documents. The District shall have the right to require additional inspection or testing of the work, whether or not such work is fabricated, installed or completed, if the Architect/Engineer or the District considers it necessary or advisable for implementation of the intent of the contract documents. The Contractor shall cooperate with any additional inspection or testing of the work without any change in contract price or contract time.

43. Costs of Tests, Inspections and Approvals: The Contractor shall bear all related costs for tests, inspections and approvals, except for IBS inspections or those tests, inspections or approvals required of others in the contract documents and for which the District is responsible for payment. If tests or inspections reveal failure of the work to comply with requirements, the Contractor shall bear all costs necessary for correction, including repeated testing and inspection as well as for the additional costs to the Architect/Engineer, the District, and any regulatory authorities required as a result of the Contractor's failure. The Contractor shall reimburse the District one hundred and fifty dollars (\$150) per hour per person for the Architect/Engineer's assistance and seventy-five dollars (\$75) per hour per person for District assistance including travel time.

44. Architect/Engineer, District and Contractor Inspections: The Architect/Engineer and the District shall have the right to a) access, observe and inspect the work, materials, equipment, and workmanship for quality and conformance with the contract documents; b) access, observe and inspect off-site stored materials and equipment for quantity and quality; c) access the Contractor's records related to the work including, but not limited to, quality control reports, OSHA reports, payrolls, personnel records, SLED criminal background checks, materials and equipment invoices, receiving documents or other project relevant data, documents, or records; and d) require additional inspection or testing of the work if the District considers it necessary or advisable for implementation of the intent of the contract documents. No amount of review or inspection shall relieve the Contractor of the responsibility for conformance to the contract documents or shall constitute approval of any defective materials, equipment, process, or work.

45. Sub-Surface Conditions: If conditions are encountered at the worksite which are a) sub-surface or latent physical conditions differing materially from those indicated in the contract documents; or b) unknown physical conditions of an unusual nature or differing materially from those ordinarily encountered and generally recognized as inherent in the work to be performed, then the Contractor shall notify the Architect/Engineer of such conditions before they are disturbed. The Architect/Engineer shall investigate and, if the condition requires a change in contract price or time, a *Change Order* will be processed.

46. Contractor Responsibility for Defective Work: Neither a) final payment, nor b) any decision, approval or acceptance by the Architect/Engineer or the District, nor c) any other provision in the contract documents shall relieve the Contractor of responsibility for rectifying faulty materials, equipment, workmanship or omission of a portion of the work to be performed. The Contractor shall remedy any defects or supply any omissions and pay for any damage to other work resulting from such remedy. This responsibility shall survive completion or termination of the *Contract Agreement*.

47. Right of Rejection and to Stop Work: Rejection of any non-conforming work by the District or Architect/Engineer shall be corrected by the Contractor within ten (10) days at the expense of the Contractor or subcontractor, whichever is at fault, and without any contract time adjustment. If the work performed by the Contractor or any subcontractor is considered by the District or the Architect/Engineer not to conform to the contract documents or creates a condition that threatens the health, safety, or welfare of anyone, the District has the right to stop the work until the Contractor corrects the non-conforming work or condition creating the threat to safety. Any additional costs incurred as a result of the District's stoppage of work for any reason shall be the responsibility of the Contractor when the stoppage is precipitated by, but not limited to, action, non-action, omission, error, illegal conduct of the Contractor or any subcontractor or supplier or anyone enjoined to or under agreement to them, or any non-conforming work or unsafe condition. The Project Schedule will not be adjusted to account for correction of non-conforming work.

48. Uncovering Work: If a portion of the work is covered contrary to the requirements or request of the contract documents, applicable laws, or the District or Architect/Engineer to facilitate inspection, that portion of the work shall be uncovered for inspection and be replaced at the Contractor's own expense and time. If applicable laws, the District, the Architect/Engineer, or the contract documents do not request or require observation prior to that portion of the work being covered or for which no testing or inspections are required, it shall be uncovered by the Contractor, and costs of uncovering and replacement shall be paid by the District unless omitted, defective or non-conforming work of the Contractor or any subcontractor is revealed.

49. Contractor Removal and Correction of Work: The Contractor shall, within ten (10) days, supply omitted work or remove from the site portions of work not in conformance with the contract documents and correct, remedy, replace or re-execute work rejected by the District or the Architect/Engineer for failing to conform to the contract documents or to pass tests or inspections, whether or not fabricated, installed, completed or performed by the Contractor or any subcontractor. The Contractor shall bear all costs to correct, remedy, replace or re-execute the work, including costs of rectifying damage to the work of separate contractors, costs of additional tests or inspections, and any additional costs of regulatory authorities, the District or the Architect/Engineer made necessary as a result. The Project Schedule will not be adjusted to account for correction of non-conforming work.

50. District-Supplied Correction of Omitted or Deficient Work: In the event the Contractor fails, after notice, to supply omitted work or remove and correct deficient work within ten (10) days, the District shall have the right to supply omitted work, remove defective work and store any salvageable materials or equipment at the Contractors expense, order the correction of the defective work by separate contract or with its own resources at the expense of the Contractor, including any compensation for the additional services of the District, the Architect/Engineer or any regulatory authorities, and additional tests and inspections made necessary by such default or failure.

51. Excusable Delays: If the Contractor is delayed in the progress of the work by an excusable event such as: a) government acts in a sovereign or contractual capacity; b) fire; c) epidemics or quarantine restrictions; d) freight embargoes; e) acts of a public enemy; or f) other causes which the District determines, then the contract time may be extended, but in no event shall the extension of time be more than one (1) full day for each full day of excusable delay and not to exceed five (5) full days per calendar week. An excusable delay does not automatically entitle the Contractor to an equivalent extension of time unless the District determines the delay directly impacted the worksite location such that no work could reasonably be in progress during the event and was a) unforeseeable, b) beyond the control and not the fault of the Contractor or any subcontractor.

52. Weather Delays: A total of five (5) days per calendar month (non-cumulative) shall be anticipated by the Contractor as "adverse weather." If adverse weather days beyond the anticipated five (5) days are substantiated, the Contractor may ask for an extension of the contract time up to a maximum of one (1) full day of extended time for each full working day of unanticipated adverse weather conditions which prevented a forty-hour work week within a seven (7) day calendar week. Such request shall be documented by data substantiating the weather conditions a) were abnormal for a period of time which could not have been reasonably anticipated; b) had an adverse effect on the work scheduled, and alternate work

unaffected by the weather could not have been done; and c) had an adverse effect on the construction schedule such that the loss of work time will adversely impact the established completion date. The Contractor must make every effort to mitigate the potential effect of the weather on the construction schedule including, but not limited to, rescheduling of subcontractors, pumping water from work areas, rescheduling work hours to alternate work days within the work week, or other such actions. Such time extension request shall be in writing and submitted to the District for approval within ten (10) days from the end of the event causing the impact on the construction schedule or it shall not be considered. A request for adverse weather extension shall not be allowed after the date established for substantial completion.

53. Remedy for Delays: Claims for delays shall be remedied only by an extension of contract time. Claims for extended or indirect overhead or lost profits as a result of the delay shall not be allowed. No extension of time shall be considered when a delay is caused by a) conditions existing at the time bids were received and of which the Contractor might be reasonably expected to have full knowledge of at the time of bidding; b) failure on the part of the Contractor to anticipate properly the requirements of the work contracted for, as to materials, labor and equipment; c) failure on the part of the Contractor to properly schedule materials and subcontractors; or d) other such failures of the Contractor to properly administer the contract or mitigate conditions resulting in delays.

54. Liquidated Damages: The Contractor acknowledges and agrees the District is a public entity performing an essential public function and failure of the Contractor to comply with the *Contract Agreement* may cause general, special or consequential damages to the District, to those who shall occupy the completed work, and to the public at large. Should the Contractor fail to complete the project within the contract time, as may be extended by any *Change Order (Exhibit E)*, the District shall have the right to assess liquidated damages as a measure of damages reasonably expected by the District to be incurred and shall not be considered a penalty or retainage. The District shall not be responsible for any additional costs incurred by the Contractor to bring the progress of the work in conformance with the last approved construction schedule. Liquidated damages shall be assessed at the rate specified in the *Scope of Work (Exhibit A)* or actual costs attributable to such failure or delay, whichever is greater.

55. Schedule of Values: The detailed *Schedule of Values* is shown in Exhibit C allocating the entire contract sum to various portions of the work in a CIS cost breakdown.

56. Payment Requests: The Contractor shall forward two (2) original copies of the *Payment Request (Exhibit F)*, including supporting documentation, to the District for approval and processing no later than the 25th day of the month of the dated *Payment Request*. The itemized *Payment Request (Exhibit F)* submitted shall contain: a) Contractor's original signature with appropriate notarization; b) the updated/highlighted schedule of values; c) the last approved construction schedule with any requested changes highlighted; d) any invoices for which payment is being requested under an allowance, e) proof of insurance and bonding for any off-site warehouse containing stored materials for which payment is being requested, f) each subcontractor's invoice to substantiate the payment requested by the Contractor for those portions of work; and g) any other supporting documentation required by the *Contract Agreement* or the District to substantiate the request, which may include, but is not limited to, invoices or delivery tickets from suppliers, proof of payment to subcontractors and suppliers to date, receipts for rental equipment, labor sheets to support additional labor or additional hours of work, or other documentation.

57. Retainage: The District requires a retainage of three and one-half percent (3.5%) of the total contract price, as may be amended by any approved *Change Order (Exhibit E)*, to be withheld from the Contractor's payments throughout the term of the *Contract Agreement* and payable at the time of final payment after a) full completion of all work to be performed and all requirements established in the *Contract Agreement* and acceptance by the District, b) submittal of all closeout documents, and c) submittal of an affidavit of payment of debts/claims, and if requested by the District, for every subcontractor who performed work on the project evidencing they have received final payment of undisputed work and retainage withheld. As a condition of the contract, no more than three and one-half percent (3.5%) shall be retained from the progress payments of any subcontractor by the Contractor until final completion of that portion of the work. **The Contractor shall, at final completion, ensure no amount of the Contractor's retained funds is allocable to the completed and accepted work of any subcontractor nor to materials or equipment purchased from any supplier unless such amounts are in dispute and the Contractor has not requested payment for such disputed amounts to date. Such amounts in dispute shall be identified on the Contractor's affidavit of payment of debts/claims submitted with final documents.**

58. Substantial Completion: Punch List: At the time of substantial completion, a punch list shall be submitted to the Architect/Engineer along with the substantial completion *Payment Request (Exhibit F)* for the remainder of the contract price excluding retainage, amounts in dispute that have not been resolved, and amounts owed to the District. Punch list items are expected to be relatively inconsequential items that can be completed easily and quickly prior to the final completion date established. The Architect/Engineer and District shall schedule and conduct a review to ensure the project has reached substantial completion and shall verify the punch list is accurate or make appropriate revisions. Failure of the Architect/Engineer or District to include an item on the punch list does not alter the

responsibility of the Contractor to complete all work in accordance with the *Contract Agreement*. Should the Architect/Engineer or the District determine that all requirements for substantial completion have not been met to allow for regulatory authority inspection or the punch list represents more work than can be accomplished within the final completion period and, therefore, does not accurately represent substantial completion, the District shall have the right to a) notify the Contractor's Surety; b) assess liquidated damages, c) withholding payment, and d) any other remedies available to the District.

59. Substantial Completion Inspection: Once the actual substantial completion date has been established, the Architect/Engineer shall coordinate with representatives of the District and regulatory authorities a mutually acceptable date for project inspection. The Contractor **shall not** notify the Architect/Engineer and District the project is ready for inspection until, at a minimum, all life safety requirements (i.e., fire alarm and devices, exit/emergency power system and devices, kitchen facilities approved by DHEC, ADA handicap requirements, etc.) have been completed properly, if included in the work to be performed, or damaged during the progress of the work, and are fully installed and operational according to applicable laws. In addition, the Contractor shall have all mechanical, electrical and plumbing installed and operational and all finishes complete, if included in the work to be performed.

60. Final Completion: The number of calendar days the Contractor has from the date of substantial completion to complete all final project requirements is stated in the *Project Schedule (Exhibit D)*. **The Contractor shall proceed promptly to complete and correct items on the final punch list and shall cooperate fully with the Architect/Engineer and the District to facilitate closeout of the project.** A final inspection shall be completed by the Architect/Engineer and District of the work. When all work is determined complete, the Contractor shall submit a final *Payment Request (Exhibit F)*, with all final documents to the District. The final *Payment Request* shall not be processed until all final documents/items are accepted by the District. **Neither final inspection nor certification of the final payment shall constitute acceptance of any work not complying with the requirements of the contract documents.** Failure to achieve final completion in the time period established shall result in reduction of the final payment for additional services required of the Architect/Engineer at the rate of one hundred and fifty dollars (\$150) per person per hour and the District at the rate of seventy-five dollars (\$75.00) per person per hour including travel time.

61. Final Payment and Release of Claims: Upon receipt and acceptance of all final documents by the District, the final payment shall be authorized less a) any amounts owed to the District including, but not limited to, liquidated damages; b) amounts owed to the District by the Contractor's or any subcontractor's failure to meet the conditions of the *Contract Agreement*; c) additional expenses incurred by the District and/or the Architect/Engineer from failure of the Contractor to meet required inspections or the need for subsequent inspections; and/or d) amounts owed to third parties reasonably expected to be paid as a result of the Contractor's or any subcontractors' failure to meet the requirements of the *Contract Agreement*. Final payment shall not constitute a waiver of any claim by the District for faulty workmanship identified after the final payment, a release of any obligations of the Contractor, any subcontractor, or any supplier under any warranty agreements, or a waiver of any other requirements of the *Contract Agreement* including those obligations of the Contractor's Surety, which may survive termination or completion of the project. Acceptance of the final payment by the Contractor **shall be** a release to the District of all claims and liability of the Contractor for all materials, equipment and work performed and every act, omission and neglect of the District, the Architect/Engineer, and others related to or arising out of the work except as may be provided for elsewhere in the *Contract Agreement* or granted by applicable laws.

62. Contractor Warranty: The Contractor shall warrant to the District any and all work performed conforms to the requirements of the contract documents or any amendment thereto, and such obligation shall survive termination or completion of the work and acceptance and final payment by the District. If any of the work is found not to be in accordance with any of the contract documents or defective during the warranty period, the Contractor shall correct such work within ten (10) days from receipt of written notice from the District. If the Contractor fails to correct such non-conforming work within ten (10) days from receipt of the District's written notification, the District shall have the right to seek other means to correct such non-conforming work at the expense of the Contractor.

63. Contractor Warranty Terms: The Contractor shall warranty the entire project beginning the day after the date of substantial completion as evidenced by a document prepared by the Contractor and approved by the District, for the period of time stated in the *Scope of Work (Exhibit A)*. In the event of phased work required by the District for early occupancy, the Contractor's warranty shall begin upon substantial completion of each phase of construction. The beginning date of any required phased warranty period shall be documented in a *Change Order* for that phase of work. The warranty shall permit direct enforcement by the District against any subcontractor, or supplier whose guaranty or warranty is called for and the Contractor shall a) be severally liable with such subcontractors or suppliers for purposes of performance under the *Contract Agreement*; b) be furnished by the District with a written notice of any breach of warranty, which shall be sufficient to invoke the terms of the warranty; and c) so bind any subcontractor or supplier to the terms of said warranty. The remedies under warranty are in addition to the remedies otherwise available to the District. The *Contractor's Warranty*

shall exclude remedy for damage or defect caused by a) abuse or vandalism; b) modifications to materials, equipment or systems after acceptance of the work by the District; c) proof of improper or insufficient maintenance; d) proof of improper operation of equipment or systems; or e) normal wear and tear under normal usage.

64. Safety Programs and Protection: The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs including all OSHA construction safety standards and requirements. The Contractor shall take reasonable precautions for safety of and shall provide reasonable protection to prevent damage, injury or loss to a) the District, the Architect/Engineer, or their property while at the worksite; b) other contractors, subcontractors, students, parents, visitors, and other third parties or their property while at the worksite; c) the work, materials, and equipment under the care, custody, or control of the Contractor or anyone enjoined by or under agreement to the Contractor while located at the worksite either stored or incorporated into the work to be performed; d) any other District or neighboring property located at the worksite or adjacent thereto to include, by way of illustration and not limitation, trees, shrubs, lawns, walks, pavements, roadways, parking lots, portable classrooms, sheds, canopies, walkway coverings, structures, utilities or other such items not designated for demolition, removal, relocation or replacement in the course of the work being performed.

65. Safety Precautions: The Contractor shall furnish, install, erect and maintain, as required by existing conditions and performance of the *Contract Agreement*, reasonable safeguards meeting all applicable laws, including by way of illustration and not limitation, a) posting directional signs necessary for ingress and egress roads, danger signs and other warnings against hazards, and erecting barricades, fencing, scaffolding, steps, ramps, bridges, platforms, as necessary, and directional and warning signs and protective barricades around cranes, hoists, or other such mechanical equipment; b) erecting entrance/exit or other overhead protection to prevent debris or materials falling on employees, students or others, which shall be completely removed from the site upon completion of construction, and all holes and damage made as a result of such devices shall be refilled and repaired to the same condition as prior to commencement of the work; c) avoiding material or equipment loading on any roof endangering the occupants of any building or facility such that any placement of heavy equipment or materials on the roof of any existing building shall be done prior to or after building occupancy or the Contractor shall make arrangements with the District to vacate classrooms directly affected by such activity; d) promulgating safety regulations and notifying the District and any users of adjacent facilities of safety hazards. If, at any time during the contract term, the work performed by the Contractor or any subcontractor is considered by the District to create a condition which threatens the health, safety, or welfare of any persons or property, the Contractor shall immediately, correct such condition.

66. Mandatory Safety and Conduct Requirements: The safety and security of District staff, students and the general public are of utmost priority to the District. To that end, the Contractor shall be responsible for ensuring the Contractor, any subcontractor or any supplier comply with the following on District premises:

- A. **No drugs, alcohol, knives, firearms or other weapons.**
- B. **No fraternizing with, threats to, or use of abusive or profane language in the presence of students, parents, visitors, Architect/Engineer or District.**
- C. **No improper attire or actions while on any District Premises.**
- D. **No tobacco products or alternative nicotine products on District premises.**
- E. **No direct communication with building occupants at the worksite, including the Principal, unless an emergency occurs.**
- F. Separate work activities from the occupied portion of any building and secure all work areas and equipment with **safety fencing and appropriate signage.**
- G. Ensure **minimal loss of utilities and facilities and minimal disruption of the educational process** as required by the District.
- H. Secure **SLED (State Law Enforcement Division) criminal background checks** on all Contractor and subcontractor employees, agents, and representatives at the worksite. The Contractor shall ensure no person having committed violent crimes, crimes against children, or crimes of moral turpitude are allowed access to the worksite.
- I. Ensure the Contractor's and subcontractor's employees, whether full-time, part-time, or occasionally employed, **wear identification tags** specifically identifying them as part of the Contractor's or subcontractor's workforce.

Failure to meet the requirements of conduct stated in this paragraph may result in arrest and/or removal of the offending individual from the worksite, stoppage of the work until corrective action is taken, or any other action deemed expedient by the District with no increase in contract price or change in contract time.

67. Traffic Control On-Site and Off-Site: The Contractor shall conduct its operations in a manner to not interrupt pedestrian or vehicle traffic except as approved by the District and the South Carolina Department of Transportation. The worksite shall be confined to the smallest area possible allowing maximum use of streets, sidewalks, parking areas or other pedestrian areas and reduce to a minimum any hazard to traffic or pedestrians. The Contractor shall use worker and traffic control signs and devices necessary to comply with Section VI of U.S. Department of Labor, Federal Highway Administration, Manual on Uniform Traffic Control Devices for Streets and Highways (Washington, DC: GPO) as may be amended, to facilitate traffic control when work performed obstructs public traffic. When such traffic areas are obstructed by work in progress, workers equipped with flags shall

direct vehicle and pedestrian traffic and shall not be assigned any other duties while engaged in directing traffic.

68. Safety Designee: Fireguard: The Contractor shall designate a competent individual at the worksite whose duty shall be the prevention of accidents and the implementation and monitoring of all OSHA construction safety standards and requirements. The competent individual shall serve as spotter where there is exposure of pedestrians, students, parents, or visitors to falling debris and, in addition, shall ensure on a daily basis that all fencing or other safety barriers are in an upright position to prevent ingress and egress to "lay down" areas or work areas by unauthorized individuals. Special precautions shall be taken regarding fire protection and use of open flames from welders or other such equipment. Appropriate fire extinguishers shall be provided around open flames at all times. A fireguard shall be stationed at and beneath the points where open flames are being used. The fireguard shall be equipped with a water hose no smaller than one-half inch (1/2") in diameter with constant availability of water. The fireguard shall continue the fire watch for a minimum of one (1) hour after use of open flames, welders or other such equipment has ceased and shall remove cleaning agents, gasoline, or other such flammable liquids from the work at the end of each working day and store such items in a safe, secure area inaccessible to unauthorized personnel.

69. Hazardous Materials: When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the work, the Contractor shall exercise utmost care and such activities shall be under the supervision of properly qualified personnel. If reasonable precautions are inadequate to prevent bodily injury or death to individuals resulting from a material or substance encountered, the Contractor shall, upon recognizing the condition, immediately stop work in the affected area and report the condition to the District for resolution. The District is responsible for obtaining the services of a licensed laboratory to verify the presence or absence of the material or substance and to verify that it has been rendered harmless or the District shall furnish a qualified entity to perform the task of removal or safe containment of such material or substance, if necessary. The District shall have the right to stop work, evaluate the premises, conduct abatement activities, and take other measures to render the worksite harmless so work can continue, and shall adjust the construction schedule and established completion date through an approved *Change Order (Exhibit E)* for the delay.

70. MSDS Sheets: The Contractor shall maintain on the worksite all MSDS sheets for any materials with a chemical compound base used during execution of the work required. Safety precautions used in conjunction with any such materials or safety procedures used in the event of an accident shall be in accordance with MSDS instructions and OSHA requirements.

71. Emergencies: The Contractor shall provide the Architect/Engineer and the District with telephone numbers or other direct means of communication with the Contractor and the worksite superintendent in the event of an emergency. The Architect/Engineer or the District shall have the determination as to what constitutes an emergency that must be responded to by the Contractor or the worksite superintendent or others. In an emergency affecting the safety of individuals or property, the Contractor shall take immediate action to prevent and mitigate damage, injury or loss. Notice of any emergency shall be given to the District's project representative as soon as practicable but in no event more than eight (8) hours after the Contractor is first aware of such emergency conditions.

72. Hold Harmless Agreement: The Contractor shall indemnify and hold harmless the District and the Architect/Engineer from and against all claims, damages, losses and expenses, including attorney fees, arising out of or resulting from the performance of the work, provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease, or death, or the injury to or destruction of tangible property, including the loss of use resulting there from, and is caused in whole or in part by any negligent, omission, or act of the Contractor, any subcontractor or supplier. The obligation of the Contractor shall not extend to the liability of the District or the Architect/Engineer arising out of the preparation of maps, opinions, reports, surveys, project changes, designs, or specifications except as may be stated elsewhere in the *Contract Agreement*. The Contractor shall indemnify and hold harmless the District and the Architect/Engineer from and against all claims arising out of lawful demands of subcontractors, laborers, workmen, mechanics, material men, suppliers, fabricators, and furnishers of machinery and laborers, equipment, tools and supplies, incurred in the furtherance of the performance of the work. If the Contractor fails to do so, the District may, after having notified the Contractor, withhold from the Contractor's unpaid contract price a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payment to the Contractor shall be resumed, but in no event shall the provisions of this paragraph be construed to impose any obligations upon the District to either the Contractor, the Contractor's Surety, subcontractors, suppliers, or any third party.

73. Insurances: Adequate insurance coverage is deemed critical to the award of a *Contract Agreement*. The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in South Carolina such insurance to protect the Contractor from claims which may arise out of or result from the Contractor's operations and for which the Contractor may be legally liable. If a Contractor cannot obtain adequate insurance coverage as required herein, a contract shall not be awarded. Maintenance of

insurance coverage, without lapse, is required throughout the term of the *Contract Agreement* and as may be required after the completion of the work and final payment. Should the Contractor or any subcontractor be found by the District to be in non-conformance with the insurance requirements, the District shall have all rights of redress available under the *Contract Agreement* and the laws of the State of South Carolina including stoppage of the work or cancellation of the contract for default.

74. Minimum Insurance Requirements: The insurance requirements stated herein are minimum requirements and the Contractor's coverage shall be written for not less than the limits stated herein:

- A. **Commercial General Liability:** \$1,000,000 limit for bodily injury and property damage (each occurrence); premises operation and independent contractor's protection of \$1,000,000; products and completed operations of \$1,000,000 to be maintained for one (1) year following established completion of the project; commercial broad form property damage of \$1,000,000 including owned/non-owned and hired motor vehicles with combined minimum single limit of \$600,000; personal and advertising injury of \$1,000,000; contractual each occurrence of \$1,000,000; fire damage (any single fire) of \$100,000; medical expense (any single individual) of \$5,000.
- B. **Commercial Umbrella Liability:** \$1,000,000 (per occurrence) in excess of other coverage.
- C. **Automobile Liability:** \$1,000,000 for bodily injury and property damage (per occurrence) including all owned, hired, and non-owned vehicles
 - 1) **Worker's Compensation:** Employer's liability (per single accident) of \$500,000; disease (per single individual) of \$100,000; disease (policy limit) of \$500,000; or amounts required by the State of South Carolina.

Any out-of-state Contractor shall ensure coverage is provided for those employees in South Carolina working on this project, whether residents of South Carolina or of another state, which conforms to the requirements in this *Contract Agreement*. The District and the Architect shall be named as additional insured.

75. Builder's Risk Insurance: Where necessary, the District shall provide builder's risk coverage on the work in progress and materials and equipment to be incorporated into the work and located at the worksite as well as any other appropriate insurance coverage for the existing facilities at the worksite. Provision by the District of builder's risk or other insurance coverage to protect the work in progress or existing facilities at the worksite does not prejudice any rights of the District to remedies by the Contractor for losses or damages incurred due to criminal intent, negligence, action or failure to act of the Contractor, any subcontractor or any supplier.

76. Insurance Carrier Requirements: Each of the insurances required shall be issued by a company licensed in the State of South Carolina for the applicable line of insurance and shall be an insurer with a "Best Policyholder's Rating" of "A-" or better and with a "financial size rating of Class V or greater". Any aggregate limits of insurance shall apply, in total, to this *Contract Agreement* only and shall be so indicated on the *Certificate of Insurance (Exhibit G)*. The District and the Architect/Engineer shall be named as an additional insured with a cross liability clause on the comprehensive general liability and automobile liability policies. An original *Certificate of Insurance (Exhibit G)* shall be provided to the District by the insurance carrier(s) prior to commencement of the work.

77. Losses: The Contractor shall report all losses related to Contractor-provided insurances within twenty-four (24) hours to the Contractor's insurance agent or carrier as may be appropriate to facilitate adjustment of the claim. The Contractor shall also notify the District's project representative within the same period of time the nature and estimated value of the loss or liability exposure incurred. The Contractor shall comply with the following regarding any loss or damage to the work in progress or to the District's buildings or other facilities:

- A. Secure a police report.
- B. Prepare or assist in preparation of any claim forms, affidavits, statements of loss, or other documents required to facilitate claim processing and present immediately any proofs of loss or damage incurred to facilitate prompt settlement of the claim.
- C. Immediately safeguard or temporarily repair the work, facilities and premises from further loss or damage until the adjuster(s) has made necessary observations of the damage. The Contractor shall notify the District of action taken to safeguard the work, facilities, and premises or temporary repairs performed until such time as clean-up, permanent repair, replacement or other such activities are authorized. In the event safeguarding the work in progress or temporary repairs would negate or cover up the damage from observance by the adjuster(s), the Contractor shall take photographs of the damage prior to performing temporary repairs.
- D. Prepare for approval by the District, detailed costs required to facilitate clean-up, repair, replacement of all damaged or destroyed materials, equipment or processes and, upon approval of the *Change Order (Exhibit E)* take immediate action to perform such activities related to correction of the loss.
- E. Accept any insurance proceeds as full restitution for all work of the Contractor and all subcontractors, and repair or replacement of all materials, equipment and processes damaged or destroyed by the loss to be re-incorporated into the work in progress or to correct damage or loss to the existing facilities.
- F. Perform any additional work or changes to the work deemed by the District to be appropriate as a direct or in-direct result of the damage or loss incurred. Such changes or additions to the work along with any approved change in contract price or contract time shall be incorporated into a *Change Order (Exhibit E)*.

G Pay all deductibles required by the Contractor's insurance or the District's builder's risk insurance and provide promptly to any subcontractors or suppliers their just shares of any insurance proceeds received by the Contractor upon performance of the work resulting from the loss.

78. Performance and Payment Bonds: The Contractor shall furnish bonds covering faithful performance of the *Contract Agreement* and payment of obligations arising there under. Nothing in the *Contract Agreement* shall preclude the District from requiring any other bonds in conjunction with the work or any claim or other activity connected thereto. The Contractor shall provide and pay the cost of performance and payment bonds. Each shall be in the full amount of the contract price including any accepted alternates, issued by a Surety licensed in South Carolina, with an "A-" minimum rating of performance as stated in the most current publication of "Best's Key Rating Guide, Property Liability" and a financial strength rating of at least five (5) times the contract price. Each bond shall be accompanied by a power of attorney authorizing the attorney-in-fact to bind the Surety and certified to include the date of the bond. Upon request, the Contractor or the District shall promptly furnish a copy of the payment bond to anyone appearing to be a potential beneficiary without establishing the legitimacy of such claim.

79. Complaints / Claims Process: Any formal complaint or contract controversy arising out of the interpretation of the *Contract Agreement* between the Contractor and the District shall not be subject to arbitration or mediation but shall be subject to the District's Procurement Code and subsequently, after exhausting the processes therein, the judgments of the Court of Common Pleas of Horry County, South Carolina. The Contractor shall have the right to make an informal request for redress by the District's Contract Manager, in writing, regarding interpretation of any condition of the contract documents or a decision regarding other condition(s) existing which may impede progress of the work. Such requests shall be made within ten (10) days of the occurrence, the Contractor's first knowledge of the need for an interpretation or decision, or the event precipitating the need for redress. The Contract Manager shall, within ten (10) days, provide a written interpretation or decision to the Contractor. The Contract Manager's decisions on matters relating to aesthetic effect shall be final if consistent with the intent of the *Contract Agreement*. For all other decisions not resolved by the District's Contract Manager, the Contractor shall have the right to submit a formal claim in accordance with the requirements of the District's Procurement Code. Any costs to the District for litigation in the Court of Common Pleas of Horry County, South Carolina shall be borne by the claimant including all attorney fees, courts costs or other such costs related to the litigation if the judgment of the court is made in favor of the District.

80. Recovery of Sums Owed: Whenever any sum of money is recoverable from or payable by the Contractor to the District (whether for the benefit of the District, the Architect/Engineer, any regulatory authority or another contractor), the same amount may be deducted from any payment due to the Contractor under the *Contract Agreement* or under any other *Contract Agreement* between the Contractor and the District at that time. Should the amount owed by the Contractor be greater than the amounts yet payable to the Contractor under any *Contract Agreement*, the Contractor shall reimburse the District for all remaining amounts. **The District shall have the right to declare any business entity operated by the Contractor as non-responsible from receiving another bid award until all amounts due to the District are paid in full.** These rights of the District are in addition and without prejudice to any other rights the District may have to claim the amount of any loss or damage suffered by the District as a result of acts or omissions of the Contractor from the Contractor's Surety.

81. Contract Governance: This contract shall be governed by the District's Procurement Code and any applicable laws of the State of South Carolina. Duties and obligations imposed by the *Contract Agreement* and rights and remedies available there under shall be in addition to, and not a limitation of, duties, obligations, rights and remedies otherwise imposed or available under the District's Procurement Code or applicable laws. The Office of School Facilities (OSF) shall determine the enforcement and interpretation of all applicable codes and referenced standards on school buildings.

82. Written Notices: Written notice is deemed to have been duly served if delivered in person to the officer, director, owner, or other employee of the entity for which it was intended and from whom signature is secured, or if sent by registered or certified mail to the last business address known to the party giving written notice.

83. Taxes: The Contractor shall pay sales, consumer, use and similar taxes, which are legally enacted when bids are received or negotiations concluded, for the work or portions thereof and all materials and equipment provided by the Contractor, whether or not such tax requirements are yet effective or merely scheduled to be effective during the contract term and whether or not the Contractor is aware of the requirements at the time the bid is submitted or negotiations completed.

84. Non-Resident Withholdings: The Contractor's attention is directed to Title 12, Chapter 9, South Carolina Code of Laws, "Withholding Agents and Withholdings" dealing with South Carolina Tax Commission withholdings for nonresidents. The Contractor shall ensure the Contractor and any subcontractors performing work under the *Contract Agreement* conform to all requirements pertaining thereto, including by way of illustration

and not limitation, securing a non-resident exemption or posting the required non-resident bond for two percent (2%) of the contract price with the South Carolina Tax Commission.

85. Statutory Limitation Periods: As to acts or failures to act occurring prior to the date of substantial completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the established date of substantial completion. As to acts or failures to act occurring subsequent to the date of substantial completion and prior to issuance of the final payment any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of the Contractor's final *Payment Request (Exhibit F)* submitted. As to acts or failures to act occurring after the relevant date of the final *Payment Request (Exhibit F)* any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to the warranty provided, the date of any correction of the work or failure to correct the work by the Contractor, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or District, whichever occurs last.

86. Royalties and Patents: If the Contractor uses any design, device, or materials covered by patent or copyright, it is mutually agreed and understood, without exception, the contract price includes all royalties or costs arising from the use of such design, device, or materials in the work to be performed. The Contractor shall defend suits or claims for infringement of patents or copyright rights or unpatented invention, process, or article manufactured or used in the performance of the contract and shall hold the District, its representatives, agents, employees or others harmless against all claims, loss, damage, injury, fines, penalties and costs, including court costs and attorney's fees, charges, liability, and exposure, however caused on account thereof, including the use by the District. The Contractor shall not be responsible for such defense or loss when a particular design, process or product of a particular supplier is required by the contract documents without substitution. However, if the Contractor has reason to believe the required design, process or product or use thereof is an infringement of a patent, the Contractor shall notify the Architect/Engineer of such information in writing within twenty-four (24) hours of first discovering the potential infringement.

87. Contract Termination By Contractor: The Contractor may terminate the contract if the work is stopped for a period of ninety (90) days or more, through no act or fault of the Contractor, any subcontractor or supplier, for a) issuance of an order of a court or other public authority having jurisdiction; b) an act of government, such as a declaration of national emergency; or c) if repeated suspensions, delays or interruptions by the District constitute in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion, or one hundred twenty (120) days in any one (1) year period, whichever is less. If one of the above reasons exists, the Contractor may, upon fifteen (15) days written notice to the District, terminate the *Contract Agreement* and recover from the District payment for work executed in accordance with the *Contract Agreement* to date, and for substantiated direct loss in materials, equipment, and processes to be incorporated into the work, including overhead provided for elsewhere in the *Contract Agreement* and damages less any amounts recoverable from the Contractor.

88. District Termination: The District may terminate the contract or pursue any other rights and remedies afforded in the *Contract Agreement* or under applicable laws if the Contractor fails to perform or otherwise materially breaches any requirement of the *Contract Agreement*. The District may, without prejudice to any other rights or remedies of the District and after giving the Contractor and the Contractor's Surety ten (10) days written notice, terminate the contract with the Contractor and may, subject to any prior rights of the Surety, a) take possession of the site and of all materials, equipment, tools, and construction equipment and machinery located thereon owned by the Contractor; b) require and accept assignment of sub-contracts; and/or c) finish the work by whatever reasonable method the District may deem expedient. Further the District may terminate the contract, without cause, should funds become unavailable.

89. Payment at Termination: When termination is predicated upon cause, the Contractor shall not be entitled to further payment until all other obligations related to completion of the work by the Surety or the District are fulfilled and it is determined by the District the Contractor is entitled to such unpaid balance for performance of work in accordance with the *Contract Agreement* prior to termination. If costs to finish the work exceed the unpaid balance, the Contractor or the Surety shall pay the difference to the District. The amount to be paid to or by the Contractor, the District or the Surety, as the case may be, shall survive termination. In all other cases of termination, the Contractor shall be entitled to payment of the portion of the contract price for the percentage of work completed to the time of termination, as determined by the District for work in accordance with the *Contract Agreement*, excluding any anticipatory profits.

90. Cessation of Work: After receipt of a notice of termination, except as otherwise directed, the Contractor shall a) stop work on the date specified in the notice of termination, b) place no further orders or subcontracts for materials, equipment, labor or other services except as necessary for completion of such portion of the work not terminated, c) terminate all supplier orders and assign all existing subcontracts to the District or the Surety in

accordance with the *Contract Agreement* unless otherwise directed by the District, and d) settle all outstanding liabilities and claims.

91. Right to Extend Remedy Period: The District shall have the right to extend any period of time given to the Contractor by the *Contract Agreement* to remedy any correction of work, default or other circumstance, if it is deemed in the best interests of the District to do so. The right of the District to extend such time shall not give rise to a duty on the part of the District to exercise this right.

92. Assignment: The District and the Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto in respect to covenants, agreements and obligations contained herein. Neither party shall assign the *Contract Agreement*, in whole or in part, without written consent of the other party. If either party attempts assignment without consent, that party shall nevertheless remain legally responsible for all obligations under the *Contract Agreement*.

93. Definitions: Following are definitions of terms used in the contract documents:

- A. **Allowance:** An amount specified by the District for a specified product purchase or work to be performed by the Contractor. An allowance is a reimbursement, dollar for dollar, of actual costs incurred.
- B. **Applicable Laws:** Any local, federal or South Carolina laws, statutes, ordinances, rules, regulations, administrative guidelines, codes, or other lawful orders that may apply to or regulate the work or the performance of the work, whether or not reference is specifically made to such laws, statutes, ordinances, rules, regulations, administrative guidelines, or other lawful orders in the contract documents.
- C. **Architect/Engineer:** Any individual or entity legally qualified to practice architecture or engineering in South Carolina with whom the District has a contractual agreement to provide services pertaining to construction that members of this profession or those in their employ may justifiably perform. The Architect/Engineer serves as the District's authorized representative to the extent of the contractual agreement between the Architect/Engineer and the District. Any reference to Architect/Engineer also includes any representatives, agents or employees of the Architect/Engineer.
- D. **Claim:** A demand or assertion by one of the parties to the *Contract Agreement* or by a third party seeking, as a matter of right, an adjustment or interpretation of contract terms, payment of money, extension of time or other relief with respect to the terms of the contract documents, the work being performed, or actual damages sustained. Any claim shall conform to requirements of the District's Procurement Code.
- E. **Contractor:** The properly licensed individual or entity with whom the District has executed a *Contract Agreement* for the work to be performed. Any reference to Contractor also includes any representatives, agents or employees of the Contractor or any other entity enjoined to the Contractor.
- F. **Complaint:** A verbal or written request to the District's Contract Manager seeking a) redress of any condition existing that may impede progress of the work, b) relief from an untenable situation arising during the performance of the work through no fault of the complainant, c) interpretation of any condition of the contract documents, d) removal of restrictions or requirements not in accordance with the contract documents, or e) additional compensation for changes in the work.
- G. **Day:** Shall mean a calendar day unless otherwise specifically designated as business or work day. In computing any period of time, the day of the event from which the designated period of time begins to run is not included. If the final day of the designated

period falls on a Saturday, Sunday or a legal holiday for the District, then the period shall run to the end of the next calendar day.

- H. **Drawings:** Graphic and pictorial portions of the contract documents showing the design, location and dimensions of the work to be performed. Such drawings constitute an integral portion of the contract documents.
- I. **Emergency:** A sudden, unexpected occurrence or set of circumstances demanding immediate action to ensure the health and safety of building occupants or to prevent further damage which may include, but not be limited to, fire, security risk, impending structural collapse, fire alarm or security alarm malfunction, loss of utilities. Action taken by the Contractor shall be limited to such action necessary to ensure the safety of the building's occupants and to mitigate, contain and/or prevent further damage to the work in process, the District's property or the property of others or bodily injury.
- J. **Latent Defect:** A defect in materials, equipment or processes not reasonably detected through careful observation or inspection.
- K. **May:** The word "may" or other such words or phrases indicate a recommendation that is adhered to by the Contractor, Architect/Engineer or District at his/her choice.
- L. **Minority Status:** Means the qualification of a small business concern that is at least fifty-one percent (51%) unconditionally owned by one or more individuals who are both socially and economically disadvantaged or are women or a publicly owned business having at least fifty-one percent (51%) of its stock unconditionally owned by one or more socially and economically disadvantaged individuals or by women, which may or may not be State of South Carolina certification.
- M. **Project:** The total scope of work to be performed whether performed by one or more contractors, subcontractors or the District itself. (Also referred to as the "work," the "work to be performed," the "work in process," or other such terms.)
- N. **Regulatory Authority:** Any agency of the federal government or the State of South Carolina which has jurisdiction over the District, its procurement of design and construction services, or the work being performed under contract.
- O. **Shall:** The word "shall" or "must" or other such words or phrases indicate a mandate that must be adhered to by the Contractor, Architect/Engineer or District.
- P. **Subcontractor:** An individual or entity, who is properly licensed to do business in the State of South Carolina, having a direct contract with the Contractor to perform a portion of the work described in the contract documents. Any reference to subcontractor also includes any representatives, agents, or employees of the subcontractor or any other entity enjoined to the subcontractor to perform any work.
- Q. **Supplier:** Any individual, business, manufacturer, fabricator, vendor or other entity that supplies materials, equipment, or items fabricated to a special design needed for the work to be performed but who does not perform any direct labor. Any reference to supplier also includes any representatives, agents or employees of the supplier or any other entity enjoined to the supplier.

94. Licenses and Permits: During the term of the contract, the Contractor shall be responsible for obtaining and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each, or any such licenses, permits, and/or inspections required by state, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract.

95. Ownership of Data & Materials: All data, material and documentation prepared for HCS pursuant to this contract shall belong exclusively to HCS.

IN WITNESS THEREOF:

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

<p>CONTRACTOR</p> <p>Name & Title of Authorized Signatory:</p> <p>Date:</p> <p>Signature:</p>	<p>THE DISTRICT</p> <p>Name & Title of Authorized Signatory: Robin Strickland, Procurement Officer; John K. Gardner, Chief Financial Officer, Fiscal Services</p> <p>Date:</p> <p>Signature:</p>
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- Attachments:
- Exhibit A: Scope of Work
 - Exhibit B: Contract Documents List
 - Exhibit C: Schedule of Values
 - Exhibit D: Project Schedule
 - Exhibit E: Change Order Procedures
 - Exhibit F: Payment Procedures
 - Exhibit G: Certificate of Insurance