

# ARCHITECTURAL AGREEMENT



The Architect and the District, both as identified below, do hereby agree to be bound by the terms and conditions of this Agreement as identified herein:

**Architect:**

**District ("The District"):** **Horry County Schools**  
**335 Four Mile Road (29526)**  
**P.O. Box 260005**  
**Conway, South Carolina 29528-6005**

## SECTION 1

### EXECUTION, CORRELATION AND INTENT

#### Contract Validity & Intent

**1.1** This Agreement shall be signed by both the District and the Architect and shall represent the entire and integrated Agreement between the District and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral.

**1.2** No member of the District's Construction Management Office nor any other District employee, representative or agent has any independent authority, either expressed or implied, to amend this Agreement, either orally or in writing. To be binding, amendments to this Agreement shall only be done in writing in the form of a Change Order (Attachment E) and signed by both parties.

**1.3** Any phrase or sentence contained in this Agreement that is found by the courts not to be in conformance with the laws of the State of South Carolina shall not nullify the entire Agreement but only that portion found to be in conflict.

**1.4** This agreement shall remain in full force and effect until the completion of all projects incorporated under this Agreement by way of Attachments A through E and final payment for all accepted services or until the Agreement is terminated in accordance with the terms herein except for those conditions which survive completion or termination of the Agreement.

#### Agreement Interpretation

**1.5** Unless otherwise stated in this Agreement, words not otherwise defined herein or in the Construction Documents current as of the date of last revision by the District shall be defined by well-known technical or construction industry meanings.

**1.6** Headings to any sections, parts or paragraphs in this Agreement shall not interpret or alter the meaning or intent of any provision but are intended only as markers for ease in location of various terms and conditions of this Agreement.

**1.7** Cross references and citations of sections, parts or paragraphs in this Agreement are for the convenience of the Architect and District and are not intended to be plenary or exhaustive nor are they to be considered solely in the interpretation of any section, part or paragraph of this Agreement.

## SECTION 2

### INSTRUMENTS OF SERVICE

#### Ownership

**2.1** The District shall have ownership of all sketches, drawings, designs, specifications, notes and other work developed in the performance of this Agreement, including those in electronic format, prepared by the Architect and the Architect's Design Consultants. This right of ownership shall include the nonexclusive license to reproduce the documents for purposes of constructing, using and maintaining the Project described in Project Criteria (Attachment A), using the same on any of the District's other projects, and permitting other similarly credentialed design professionals to reproduce, make corrections, additions or alterations for any of the District's other Projects, without additional cost to the District. With respect thereto, the Architect and the Architect's Design Consultants agree to and do hereby grant to the District a royalty-free license to all such data which may normally be covered by copyright and to all designs to which rights of ownership may normally be asserted to establish any claim under the design patent or copyright laws.

**2.2** In the case of future reuse of the drawings, designs, specifications, notes and other work developed in the performance of this Agreement, including those in electronic format, the District reserves the right to negotiate with the Architect for compensation for the acceptance of any professional liability. In the event the District does not exercise the option to negotiate and/or is unsuccessful in negotiating with the Architect for the Architect's acceptance of any professional liability, it is understood that the Architect is no longer liable in the reuse of the Architect's documents. The District reserves the right to contract with another similarly credentialed design professional in accordance with prototype policies of the Architectural and Engineering Registration Laws, South Carolina Code of Laws 1976 and ensuing regulations, as may be amended.

#### Copies of Project Plans

**2.3** As specified in the Construction Documents, all copies made of the Architect's drawings and specifications and distributed for the purposes of the Project are made under a limited license and shall bear the statutory copyright notice, if any, shown on the original set. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as

revocation of the Architect's copyright or the Architect's or District's other reserved rights as expressed in this Agreement.

**SECTION 3**  
**DISTRICT'S DUTIES, RIGHTS AND**  
**RESPONSIBILITIES**

**3.1** The duties, rights and responsibilities in this section are in addition to other duties, rights and responsibilities of the District that may be identified elsewhere in this Agreement.

Right to Stop Work

**3.2** The right of the District to stop work on the design or construction of the Project or to adjust the Project Schedule (Attachment D) shall not give rise to a duty on the part of the District to exercise this right for the benefit of the Architect or any other individual or entity, except as may be necessary for coordination of work or as may be required by a regulatory authority.

**3.3** The District shall have the further right to stop or delay the work of the Architect up to ninety (90) days a) for the purposes of ensuring that all regulatory requirements have been met or will be met prior to or during construction; b) to ensure District or Board of Education approval of the Schematic, Design Development or Construction Documents, as may be required; c) to determine corrective action for any design errors or omissions prior to or during the course of construction; d) for Architect refusal to meet the requirements of this Agreement or the laws, statutes, administrative requirements of the State of South Carolina; e) or for other such reason the District may require a reasonable delay.

Right to Audit Project

**3.4** The District shall have the right to audit the books and records of the Architect to the extent that the books and records relate to the performance of this Agreement and shall include all pricing and Change Order (Attachment E) data. Such books and records related to the work covered under this Agreement shall be maintained by the Architect for a period of not less than three (3) years from the date of final payment to the Architect under this Agreement. This requirement shall also apply to any Design Consultants performing services under the Architect's direction.

**3.5** The Office of General Services of the State of South Carolina, or any auditor under contract with the District has the right to audit the Architect's records related to any Project incorporated under this Agreement during the time frame stated in the previous paragraph. The Architect shall ensure that all records pertaining to any Project are available for inspection at the location specified by the District within seventy-two (72) hours of notification at no additional cost to the District. This requirement shall survive termination or completion of the Agreement.

District Representatives

**3.6** The District shall designate a representative authorized to act on the District's behalf to a) secure necessary District and Board approvals; b) serve as liaison between District staff and the Architect; c) render decisions in a timely manner; d) monitor the schedule and Architect's services for conformance with this Agreement; e) manage

overall Project construction, and e) perform other duties and responsibilities on behalf of the District. The District's representative shall have the right to designate other District staff to monitor bidding compliance, Project construction or other administrative activities.

Failure to Enforce

**3.7** Failure by the District at any time to enforce any provision of this Agreement shall not be construed as a waiver of any such provision. Such failure to enforce shall not affect the validity of this Agreement or any part thereof or the right of the District to enforce any provision at any time in accordance with these terms and conditions.

**SECTION 4**  
**ARCHITECT'S DUTIES, RIGHTS**  
**AND RESPONSIBILITIES**

**4.1** The duties, rights and responsibilities in this section are in addition to other duties, rights and responsibilities of the Architect as may be identified elsewhere in this Agreement.

Performance

**4.2** The terms and conditions of this Agreement shall be governed by the District's Procurement Code and the laws of the State of South Carolina, which shall include, but not be limited to, the Architect being licensed to do business in the State of South Carolina.

**4.3** The Office of School Facilities (OSF) shall determine the enforcement and interpretation of all the applicable codes and referenced standards on state buildings, including the District's school facilities.

**4.4** The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project(s) identified in the attachments to this Agreement.

Conduct of the Architect's Principal,  
Employees, Agents and Representatives

**4.5** The safety and security of District staff, students and the general public are of utmost priority to the District. To that end, the Architect shall be responsible for ensuring compliance by the Architect and any employees, agents or representatives of the Architect, including all Design Consultants, to the following:

- A. **No drugs, alcohol, knives, firearms or other weapons on District property**, whether or not there is an existing occupied building.
- B. **No fraternizing with, threats to, or use of abusive or profane language in the presence of students, parents, visitors, or District representatives, agents, or employees.**
- C. **No improper attire, actions or gestures while on any District property.**
- D. **No smoking on District property** in conformance to Horry County Board of Education policy. Violations of such policy shall result in a civil penalty of up to \$1,000 per occurrence to the individual responsible and/or the Architect for whom the individual is a Principal, employee, agent, or representative.

- E. Take all necessary precautions at any District location with an existing, occupied building to separate worksite activities from the occupied portion of the building and take any necessary precautions to ensure **minimal loss of utilities and facilities** required by the occupants of an existing building and **minimal disruption of the educational process** during design, bidding and construction of the Project.
- F. Secure **SLED (State Law Enforcement Division) criminal background checks** on all the Architect's Principals, employees, agents, and representatives performing work on District property and contractually require the same of all Design Consultants, their employees, agents, and representatives. No employees, agents or representatives of the Architect and Design Consultants having committed violent crimes, crimes against children, or crimes of moral turpitude are allowed access to the District's premises. Such SLED criminal background checks shall be maintained on file in the offices of the respective Architect and Design Consultant and made available to appropriate District personnel or the District's legal counsel immediately upon request.

**4.6 Failure to meet the requirements of conduct in the previous paragraph may result in arrest and/or removal of the offending individual(s) from District property, stoppage of the work until corrective action is taken, or any other action deemed necessary by the District at no additional cost to the District or change in the agreed upon Project Schedule (Attachment D).**

Representation

**4.7** The Principal of the Architect with whom the District contracted shall 1) remain the Principal Architect and contact for all aspects of this Agreement; b) assume full responsibility for the quality and timeliness of the services rendered under this Agreement by the Architect's employees, agents and representative(s) including all Design Consultants; and, c) shall serve as the primary contact for issues or concerns related to the quality or timeliness of all delivered services.

**4.8** All representatives of the Principal providing services for the Architect shall be identified at the time the Project Criteria (Attachment A) are identified, described and agreed upon for each Project under this Agreement. The Architect shall not change the agreed upon representative(s) without the District's consent for good cause shown. At the District's sole discretion, it shall have the right to request replacement of any representative at the time the Project Criteria (Attachment A) are agreed upon or at any time during the rendering of services at no additional cost to the District, and such request shall not reasonably be refused.

**4.9** Such Architect representative shall be selected, employed and directed by the Architect and the duties, responsibilities and limitations of authority of the representative shall be at the discretion of the Architect and in conformance with the Architect's duties, responsibilities and limitations of authority under this Agreement. The representative shall endeavor to provide further protection for the District against defects and deficiencies in the work without modifying the rights, responsibilities or obligations of the Architect as stated elsewhere in this Agreement.

Design Consultants

**4.10** The Architect's Basic Services shall include all Design Consultants for all disciplines necessary for the entire Project. Those Design Consultants established in the Architect's proposal submission, including all architectural, structural, civil, mechanical, electrical, landscaping architecture and interior design consultants, shall be included as Design Consultants and identified in the Project Criteria (Attachment A).

**4.11** In addition to those consultants established in the Architect's proposal, the Architect shall establish those specific consultants necessary to complete the entire Project and to protect the District's interests or to meet statutory or regulatory requirements by governmental entities with jurisdiction over the Project. The Architect shall establish those specific consultants in the Project Cost Estimate (Attachment B) and in the Schedule of Values (Attachment C). Those specific consultants shall henceforth in this Agreement be included with the Design Consultants established in Attachment A and may include, but are not limited to, the following disciplines:

- A. Kitchen design and equipment;
- B. Roofing;
- C. Lighting/sound;
- D. LEED Certification;
- E. Environmental/geotechnical engineering;
- F. Asbestos or other hazardous materials;
- G. Wetlands delineation;
- H. Fire protection;
- I. Surveying, on-site and off-site;
- J. Soils testing;
- K. Constructability review;
- L. And other Project-specific consultants required for complete design and construction services and not provided by the District under separate contract(s).

**4.12** No Design Consultant identified in Attachment C shall be changed during the course of the Project without the District's consent for good cause shown. The District shall have the right to request a substitution of any Design Consultant at the time Attachment C is executed or if services are not adequately or timely provided at no additional cost to the District, and such request shall not reasonably be refused.

**4.13** If the District acquires any consultants under a separate contract with the District, the Architect is required to use those consultants for the Project, if necessary for the project scope. Those District-acquired consultants shall not be listed in the Architect's Schedule of Values (Attachment C).

**4.14** Any additional Design Consultants needed and unforeseen at the time this Agreement or the Attachments for the specific Project(s) are executed shall be submitted to the District for approval in the form of a Change Order (Attachment E) and added to the Architect's Application and Certificate for Payment (AIA Forms G702 & G703) as a numbered change order.

Design Consultant Qualifications

**4.15** The Architect is responsible for selecting only those Design Consultants with adequate credentials and insurance and known to provide services that the Architect and the District can reasonably be entitled to rely upon the accuracy and completeness thereof. The Architect shall be the prime contractor and is responsible for coordination of the work of all Design Consultants as well as the Architect's own forces in a

timely manner to prevent delays in the Project Schedule (Attachment D) as may be amended by Change Order (Attachment E).

Minority Vendors

**4.16** The Architect shall maintain records and shall report to the District’s Procurement Director within thirty days from the end of the District’s fiscal year (June 30<sup>th</sup>) all payments made during that fiscal year to women-owned and minority-owned businesses working as Design Consultants under all projects. Such businesses shall be at least fifty-one percent owned by individuals classified as women or minorities. The Architect shall designate those that are certified by the State of South Carolina.

Acts, Errors, Omissions, Inconsistencies

**4.17** The Architect shall be responsible to the District for design errors, omissions, deficiencies and inconsistencies of the Architect and the Design Consultants. The Architect shall contractually require all Design Consultants to take responsibility for their design errors, omissions, deficiencies, and inconsistencies. The review and/or approval of the Design Development and Construction Documents by the District or the Office of School Facilities of the South Carolina Department of Education or other regulatory authority shall not relieve the Architect or Design Consultants of responsibility for non-compliance with applicable statutes, regulations and codes, nor for design errors, omissions, deficiencies, and inconsistencies.

**4.18** The Architect shall be responsible for the Architect’s negligent acts and acts of commission or omission for the Principal and all other employees, representatives and agents of the Architect. The Architect shall contractually require all Design Consultants to take responsibility for their negligent acts and acts of commission or omission. The Architect shall not have control over or charge of and shall not be responsible for the negligent acts or acts of commission or omission of the Contractor, subcontractors, or their employees, agents or representatives or any other entities, including the District, performing portions of the work other than Design Consultants.

**4.19** If, due to the Architect’s or Design Consultant’s error, any required item, component and/or system is omitted from the Construction Documents, the Architect shall not be responsible for paying the costs to add such item, component and/or system to the Construction Documents to the extent such item, component and/or system would have otherwise been necessary to the Project and/or otherwise adds value or betterment to the Project the same as if originally incorporated in the Construction Documents at the time of bidding. The Architect shall be responsible for direct costs incurred by the District, as determined by the District and at the District’s discretion, as a result of a construction change order to incorporate the omitted item, component and/or system, including Contractor “mark-ups” compliant with the contract, which are in excess of those the District would have incurred if the required item, component and/or system had been included in the Construction Documents at the time of bidding.

**4.20** The District shall provide prompt written notice to the Architect if the District becomes aware of any error, omission, deficiency or inconsistency in the Architect’s instruments of service, Project design or performance/acts of omission or commission of the Architect or any Design Consultant. For

time-sensitive issues, the District may notify the Architect by telephone followed by written confirmation.

Insurance Requirements

**4.21** The Architect shall maintain throughout the term of this Agreement the standard form of professional liability and errors and omissions insurance with an insurance company licensed by the State of South Carolina with an “A” minimum rating of performance or otherwise satisfactory to the District in the minimum amount of \$2,000,000. The Architect shall submit to the District’s Office of Procurement Services proof of such insurance at execution of the Agreement, at a change in carrier, or at policy renewal. The insurance policy shall incorporate a provision requiring written notice be given to the District at least thirty (30) days prior to any cancellation, non-renewal or modification (i.e., coverage reductions, changes in covered losses, etc.) of the policy. The maintenance in full, current, force and effect of such form and amount of insurance shall be a condition precedent to the Architect’s exercise and enforcement of any rights under this Agreement.

**4.22** The Architect shall ensure that all Design Consultants maintain similar professional or general liability insurance with reasonably prudent limits and coverage in light of the services to be rendered by such consultants with an “A” minimum rated insurer.

Promotional Materials

**4.23** The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect’s promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. The District shall provide professional credit for the Architect in the District’s promotional materials for the Project. The Architect shall not make any representations in promotional and professional materials other than the identification of the District without the District’s approval of the written copy prior to submission, printing and distribution. This condition shall survive termination or completion of this Agreement.

Meetings

**4.24** The Architect shall anticipate periodic presentations and meetings with District staff, the District’s Board of Education, and concerned citizens or public authorities as may be required during the course of the Agreement, which shall be part of Basic Services at no additional cost to the District.

**SECTION 5**  
**DESIGN SERVICES TO BE PERFORMED**

Basic Services

**5.1** The Architect’s basic services as outlined in this section, and which may also be addressed in other sections of this Agreement, shall include normal structural, mechanical, civil, and electrical engineering, landscape architecture, interior design and furniture selection of school facilities, which may include new structures, additions and renovations, athletic or other facilities, site work, drainage and off-site road improvements and consultations as may be appropriate to the Project.

**5.2** In addition, the Architect shall adhere to the requirements of the following documents, included in this Agreement by reference, as part of Basic Services:

- A. The most current edition of the District's Procurement Code, as may be amended or updated during the term of this Agreement.
- B. The most current edition of the District's Design Guidelines, as may be amended or updated during the term of this Agreement.
- C. The most current edition of the District's construction documents and forms for major construction, most particularly the General Contract Conditions, as incorporated into the Construction Documents and provided to the Contractor at time of bidding the Project.
- D. The most current edition of the South Carolina School Facilities Planning and Construction Guide as distributed by the South Carolina Department of Education, Office of School Facilities (OSF), as may be amended or updated during the term of this Agreement.
- E. The most current local zoning and community appearance board requirements
- F. Any pertinent statutes of the South Carolina Code of Laws, 1976, and ensuing regulations as may be amended or updated during the term of this Agreement.

**5.3** The District shall provide full information known to the District in a timely manner regarding the District's facilities program and requirements for and limitations on the Project, including a written Project Criteria (Attachment A) which shall set forth the District's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems, interior design, colors, and site requirements.

**5.4** The Architect and all Design Consultants **shall verify** the accuracy of all information provided by the District of existing facilities, including drawings, reports, records, etc. prior to use or reliance upon such information in preparing any Conceptual, Schematic, Design Development or Construction Documents. Review by the District of such instruments of service shall not relieve the Architect or the Design Consultants of the responsibility for inaccuracies that result in their work from reliance on such District-provided documents.

Conceptual Design Phase  
(Design Services 10% Complete)

**5.5** The Architect and the District shall meet to ascertain the objectives of the Project in relation to the District's facility plans, educational requirements, design guidelines, available funding, site restrictions, and other factors. The Architect shall review with the District alternative approaches to design and construction to meet the needs and constraints of the District. The mutual understanding of the Project requirements shall be further described or amended in Attachment A (Project Criteria) and signed by both parties to become an integral part of this Agreement.

**5.6** The Architect shall further finalize the understanding with completion of a Conceptual Design of the Project. The Conceptual Design Documents shall include, at a minimum, the following:

- A. Conceptual plan/rendering, site sections, elevations.
- B. Site survey showing existing site elevations, trees, wetlands, existing easements, drainage plan, and other significant features.

- C. Civil rendering of general building locations, both existing and new design
- D. Anticipated grading, parking areas, roads/driveways.
- E. Recreation and site amenities, such as walkways, bridges, patios, canopies, etc.
- F. Location plan for remaining site borings.
- G. Landscape rendering of site landscape theme; tree saving plan, if any.
- H. Site lighting plan.
- I. Building floor plan.

**5.7** The Architect shall provide a preliminary Project Cost Estimate (Attachment B) in view of the Project Criteria identified in Attachment A to assist the District in preparation of a project budget and become an integral part of this Agreement for services and a basis for computation of Architectural fees. This preliminary Project Cost Estimate (Attachment B) shall include, at a minimum, an estimate based upon current area, volume, or similar conceptual estimating techniques of:

- A. Site work, including hazardous materials removal, demolition, storm water / drainage, offsite road improvements and landscaping;
- B. Building costs, including furniture, fixtures and equipment and a reasonable contingency;
- C. Other breakdown of pricing as required by the District.

**5.8** The preliminary Project Cost Estimate (Attachment B) shall be the basis for the Architect and Design Consultant total fees, the Architect shall develop a Schedule of Values (Attachment C), which shall be agreed to and signed by both parties and shall become an integral part of this Agreement and serve as the basis for subsequent pay requests using the Application and Certification for Payment (AIA forms G702 and G703).

**5.9** The Schedule of Values (Attachment C) shall represent maximum design fees, construction monitoring fees, and estimated maximum reimbursables and Design Consultant, fees to be paid to the Architect during the course of the Project. These agreed upon fees shall not be changed throughout the term of the Project except for a) additional or unforeseen permit or reimbursable bidding costs, b) additional or unforeseen consultants required for the project, c) Additional Services requested by the District, or d) delays in construction that meet the requirements for additional fees for the Architect/Design Consultants. Any changes to the fees must be requested through a properly executed Change Order (Attachment E).

**5.10** The District, with assistance of the Architect shall develop a Project Schedule (Attachment D) with agreed upon milestones and time frames for the Project. The Project Schedule shall include reasonable periods of time for the following minimum milestones:

- A. Schematic Design Phase, including approvals of the District;
- B. Design Development Phase, including approvals of the District and any regulatory authorities;
- C. Construction Documents Phase, including approvals of the district and all regulatory authorities;
- D. Permitting, zoning and Section 540 reviews and approvals by governmental authorities;
- E. Procurement and bidding requirements;
- F. Project construction including final completion;
- G. Project and Architect close outs; and

H. Any other anticipated milestones having a bearing on the Project time-line.

**5.11** Completion dates established in the Project Schedule (Attachment D) and agreed upon by the Architect and District shall not be exceeded except for a) good cause shown beyond the control or anticipation of the Architect, b) requirement of the District's Board of Education, c) unanticipated delays by regulatory authorities, or d) approved Architect or Contractor change orders allowing for additional time.

**5.12** Upon establishment of the Project Criteria (Attachment A), the Project Cost Estimate (Attachment B), the Schedule of Values (Attachment C), and the Project Schedule (Attachment D) the Architect shall provide final Conceptual Design Documents incorporating any changes required by the District and Attachments A-D for final review and approval by the District and used for any bond issue requirements and meetings with the Horry County Board of Education, community groups, or other interested parties for input into the design.

**5.13** When required by the Project and not provided by the District, the Architect shall secure a survey to describe physical characteristics, legal limitations and utility locations for the site of the Project and a written legal description of the site. The surveys and legal information shall include, as applicable, a) grades and lines of streets, roads, alleys, driveways, pavements as well as adjoining property and structures; b) existing or adjoining drainage; c) rights-of-way, easements, encroachments, zoning, deed or other restrictions, boundaries and contours of the site; d) dimensions, locations, and any other necessary data concerning existing buildings, other improvements and vegetation; and e) information regarding inverts and depths. At a minimum, two complete copies of the survey shall be provided to the District.

**5.14** The Architect shall submit to the District three (3) complete hard copies of the Conceptual Design Documents and any renderings for approval and changes.

Schematic Design Phase  
(Design Services 30% Complete)

**5.15** The Architect shall prepare for Board of Education approval final Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

**5.16** Schematic Design shall include, at a minimum, the following:

- A. Any updates of information provided in the Conceptual Design Phase renderings for all disciplines.
- B. Any decisions resulting from meetings held with District staff, District's Board of Education and any planning, permitting, and jurisdictional input acquired to date.
- C. Square footage calculations.  
Civil
- D. Utility plan with location stops for incoming utilities.
- E. Plan for off-site road improvements, sidewalks, drainage and utility improvements, etc  
Landscape Architecture
- F. Tree removal plan and plant lists.  
Architecture
- G. Block utility loads defined.

H. Structural, mechanical, electrical, plumbing systems defined.

I. Code search documentation showing building type required, limitations/requirements of applicable building and local codes (Architecture, MEP, Structural, Life Safety, and Loss Prevention).

J. Floor plan including square footage and room layouts, cabinet/built-in locations, location of all toilets and fixtures, kitchen layout with all appliances, anticipated furniture layout, etc.

K. Building elevations, existing and anticipated new construction, in sufficient detail to determine nature and extent of proposed exterior building materials, size of fenestration.

L. Floor plans, including all square footage calculations and efficiencies, for all buildings showing room layouts, hallways, service areas, elevators, exit stairs, operations buildings, storage and any other buildings, etc.

M. Roof plan, indicating materials, sky lighting, solar panels, or other appurtenances.

N. Preliminary wall sections including materials; ceiling plan and materials.

O. Fire separations and fire-rated assemblies identified.

P. Fire-safety design drawings; emergency generator location.

Q. Elevator analysis with major vertical shafts and chases located, if any.

R. Description and details of special construction such as atriums, skylights, solar panels, special glazing systems, wood laminate structures, etc.

S. Schematic building sections.

T. External signs, graphic design.

Structural

U. Proposed structural system defined; all alternate systems which have been studied and rejected submitted for review.

Mechanical, Electrical, Plumbing

V. Preliminary block mechanical heating/cooling loads with preliminary equipment sizing and weights.

W. Block locations on site plans

X. Subsurface pipe and conduit; identification and location of major horizontal pipe, duct, and race way runs; stand pipe connectors.

Y. Preliminary systems riser and flow diagrams.

Z. Emergency lighting; exit signs and fire alarm stations.

AA. Location of incoming utilities.

Interior Design

BB. Developing theming statement/narrative after meeting with the District, including color scheme.

CC. Standard unit design with furniture.

DD. Preliminary loose fabric presentation (minimum two (2) schemes).

EE. Draft of room finish schedule and materials legend.

**5.17** The Architect shall submit to the District three (3) complete hard copies of the Schematic Design Phase documents and any renderings for approval and for any preliminary permitting that may be required. Any changes required by any permitting jurisdictions or by the District or the District's Board of Education shall be incorporated into the Design Development Phase documents.

Design Development Phase  
(Design Services 60% Complete)

**5.18** Based on the approved Schematic Design Documents, including any changes requested by the District, the Architect shall further refine the nature of the Project and

prepare, for review and approval by the District, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical, civil, and electrical systems, materials, landscape architecture, interior design and such other elements as may be appropriate and necessary.

**5.19** Design Development Documents shall include, at a minimum, the following:

- A. Any updates/changes of information provided in the Schematic Design Phase for all disciplines.
- B. Staging plan and any phasing plan.
- C. North arrow with all drawings oriented in the same direction.
- D. Sheet numbers and scales indicated on all sheets.
- E. Outline specifications shall be submitted.

Civil

- F. Demolition plans indicated on separate drawing. (1"=30')
- G. Establish finish floor elevations.
- H. Locate building on site by setback dimensions.
- I. Cut and fill; tree removal; site grading, indicating proposed and existing contours. (1"=30')
- J. Parking layout, roads, walkways; headwalls, culverts, trenches, retaining wall, ponds and other drainage.
- K. Erosion and sediment control and storm water management documents in accordance with statutory or regulatory requirements.
- L. Utility runs, manholes, sewer.
- M. Property lines clearly defined with bearings and dimensions; identified easements and ROWs.
- N. Off-site improvements and maintenance of traffic plans.

Landscape Architecture

- O. Location of all major elements; typical details.
- P. Plant lists, including sizes; staking details.
- Q. Tree preservation, if any.

Architecture

- R. Major floor plan dimensions (overall, rooms, columns, etc.); expansion joints indicated; room names and numbers.
- S. Doors and windows plan detail; wall section (designation and wall types symbols) – indicated, not filled in.
- T. Column grid (both directions); control joints and expansion joints; top of parapet elevations; grades (at corners at a minimum); complete exterior wall finishes (generic).
- U. Large scale plans blocked out (stairs, elevators, etc.)
- V. Roof plan with roof drains; column grid at corners; roof slope; crickets; tops of joist bearing steel elevations; gutters and downspouts.
- W. Ceiling grid layout stated; light locations; coffers; skylights; soffits; bulkheads; box beams, etc.
- X. Walls to deck plan; egress plan; occupant load (usually at 1/16" = 1').
- Y. Generic finish schedule (generic terms only).
- Z. Start plan; column details (3/4"=1' minimum); start block out major wall sections (3/4"=1' minimum).
- AA. Complete door schedule except hardware; partition types with head and jamb; threshold details (all in same drawing); drawing frame types not necessary.
- BB. External signage.

Structural

- CC. Building foundation plan with grid (both directions); typical floor and roof framing; preliminary beams, joists, columns (with approximate sizes); foundation details; slab recesses and penetrations. (Architect to provide

structural engineer with size, weight, and location of HVAC units, both suspended, if any, and roof top.)

Mechanical, Electrical, Plumbing

- DD. Location of HVAC units, standpipes and risers; preliminary load calculations; floor drains and troughs; roof drains; ductwork; register, diffusers preliminary sizes.
- EE. All plumbing fixtures shown.
- FF. Ceiling lighting indicated.
- GG. Smoke evacuation plan started.
- HH. Partial riser diagrams and schedules.
- II. MATV one-line drawing.
- JJ. Partial MCC schedule shown.
- KK. Fire alarm and life safety systems one-line drawing.
- LL. Any District specialized systems/Projects indicated.

Interior Design

- MM. Prepare tabletop review/presentation; theming drawings/renderings; refine design/unit layout with furniture.
- NN. Prepare color boards for approval.
- OO. Preliminary lighting layouts (1/4" plans) and begin preparation for common areas design.

**5.20** The Architect shall be responsible for filing documents required for the approval of governmental authorities having jurisdiction over the Project. At the conclusion of the Design Development Phase, the Architect is responsible for notifying and coordinating with all governmental authorities and utilities the planned bid schedule and ensuring that all documents are filed timely such that approvals and/or permitting by those governmental authorities will not delay Project bidding or construction.

**5.21** Along with the Design Development Documents, the Architect shall submit, an updated and detailed list of all required permitting for the Project with timeline for approvals by the governmental entities requiring the permitting and conforming to the overall permitting time-frame in the Project Schedule (Attachment D). An updated estimate of construction costs based upon the Design Development Documents and any changing market conditions shall also be submitted as a revised Project Cost Estimate (Attachment B). **Design Development Documents shall not be approved without the permitting timeline and revised Project Cost Estimate (Attachment B).**

**5.22** Segmenting phases of construction with corresponding documents, developing multiple alternates with corresponding documents, preparing documents for separate or sequential bidding, such as separate site preparation or hazardous materials removal, shall all be included in Basic Services provided such requirements are included as part of the Project Criteria (Attachment A) or communicated by the District in the form of a Change Order (Attachment E) prior the completion of the Design Development Documents.

**5.23** Should the District require significant changes to the Design Development Documents after completion of the Design Development Phase as a result of review of the documents by the District and the District's Board of Education, the resulting work of the Architect shall be considered Additional Services, and the Architect shall immediately prepare a Change Order (Attachment E) with detail of the hours required of staff, Principal and fees for Design Consultants to effect the changes. The Architect shall proceed with the changes upon approval of the Change Order (Attachment E) by the District.

**5.24** The Architect shall submit to the District three (3) complete hard copies of the Design Development Documents for review and approval included any changes required as a result of Additional Services.

Construction Documents Phase  
(Design Services 90% Complete)

**5.25** Based on the approval of the Design Development Documents by the District, the Architect shall prepare, for review and approval by the District and any other regulatory agencies, Construction Documents that fully illustrate all aspects of the Project. The Architect shall provide drawings and specifications setting forth in detail the requirements for the construction of the Project in electronic format for bidding by the District's Office of Procurement Services. The Architect shall ensure that instructions and requirements of the drawings and specifications shall not conflict with instructions and requirements stipulated in the bidding, contract documents and forms used by the District for bidding and construction management purposes and incorporated into the Construction Documents at the time of bidding.

**5.26** The following items, at a minimum, shall be one hundred percent (100%) complete, awaiting final comments from the District and all regulatory authorities required by law, and a complete set of Construction Documents submitted to the District in electronic format for review purposes:

- A. All standard plan details for all disciplines. All notes, legends, symbols completed for all disciplines.
- B. Final specifications.

Civil

- C. Building control plans (walks, drives, parking, etc.).
- D. Topographic and all grading (all grades).
- E. Sanitary and storm water drainage, utilities, manholes with sizes and invert elevation.
- F. Site lighting (buildings, parking, recreation facilities, etc.)
- G. Parking striping (sizes).
- H. Radius on all curves.
- I. Underground sleeves for piping, electrical.

Landscape Architecture

- J. Planting plans, plant materials and sizes.
- K. Tree pits located and dimensioned.

Architecture

- L. Floor plans with all floor depressions; roof plan; exterior and interior elevations.
- M. Door, finish, window schedules; any stair and elevator plans; millwork details.
- N. Toilet plans and elevations.
- O. Wall sections; walls to deck/egress plan; ceiling plans.
- P. Miscellaneous details for expansion joints (floor/wall); drywall; suspended ceiling; roof scuttles; ladders; fire extinguishers; soffit; vent screened, etc.
- Q. Building cross-section; large scale blow-up details of rooms and spaces.
- R. Finish materials list.

Structural

- S. Foundation plan and details; floor and roof framing; framing details; column schedule; miscellaneous structural details.

Mechanical, Fire Protection, Plumbing

- T. Plumbing plans; equipment schedules; roof plans.
- U. Floor plans with ductwork, risers, and plumbing indicated; riser diagrams.
- V. Sprinkler floor plans.
- W. Large scale room layouts.

Electrical

- X. Electrical site plans; floor plans; riser diagrams and schedule.
- Y. Ceiling detail; site lighting; large scale room layouts.  
Interior Design
- Z. Finish plans; ceiling plan; interior elevations.
- AA. Red-lined electrical and communication documents.
- BB. Millwork sketches and detail drawings.
- CC. Revision of furniture, fixtures and equipment specifications and lists.

**5.27** When the Construction Documents are ninety percent (90%) complete, each Design Consultant listed in Attachment A shall conduct a quality assurance review of drawings and specifications for purposes of finding errors, omissions, and inconsistencies between all design documents. The Architect shall acquire the services of a plan review consultant at no additional cost to the District.

**5.28** After review by the plan review consultant, the Architect shall conduct a comprehensive construction documents review for purposes of finding and correcting, with assistance of the Design Consultants, errors, omissions, deficiencies and inconsistencies in the Construction Documents between all disciplines. The Architect shall further coordinate the drawings and specifications with the District's bidding, contract documents and forms to ensure any contradictions and inconsistencies are eliminated from the drawings and specifications.

**5.29** Following the ninety percent (90%) quality assurance review, the Architect shall submit to the District three (3) complete hard copies and an electronic copy of the Construction Documents for review and comment.

Construction Documents Phase  
(Design Services 100% Complete)

**5.30** The final Construction Documents submitted to the District for final review, approval, and bidding purposes shall incorporate all changes from the 90% review including all comments from the District and all regulatory authorities required by law. By submitting the 100% complete Construction Documents to the District, the Architect is certifying that all quality assurance reviews have been conducted as stated in the previous paragraphs and changes incorporated. The Architect shall submit to the District three (3) complete and final hard copies and an electronic copy of the Construction Documents for final approval and bidding.

Bidding or Negotiation Phase

**5.31** Providing services in connection with evaluating substitutions proposed by bidders and developing addenda with supporting documentation and specifications during the bid process shall be part of Basic Services.

**5.32** The Architect shall assist the District in completing the bidding forms pertinent to the Project as required. **Only bid and alternate pricing shall be revealed during the bid opening.** The District is responsible for determination of bidder responsiveness to the bid requirements after the bid opening.

**5.33** Following the bid opening, the Architect shall review with the District the lowest bids and bidders and assist in any verification of bidder responsibility as may be requested by the District's Office of Procurement Services.



**5.34** The Architect shall assist the District by providing necessary information to prepare the construction contract documents and for scheduling a pre-construction meeting after Board approval of the award.

## **SECTION 6** **CONSTRUCTION SERVICES** **TO BE PERFORMED**

**6.1** The Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with attendance at the pre-construction conference with the Contractor or the issuance of the notice to proceed to the Contractor, whichever comes first, and terminates at the issuance to the District of the Contractor's final request for payment along with all final close-out documents required by the District.

**6.2** Upon request of the District, the Architect shall also provide inspections and reviews of work performed and equipment supplied by separate contractors, a construction manager, the District, and/or separate consultants acquired by the District adjacent to or pertaining to the Project, and shall endeavor to ensure that such work or equipment shall not negatively impact the performance, quality, work, equipment, timeliness of the Contractor for the Project under this Agreement. This requirement shall be part of Basic Services and at no additional cost to the District.

### Duties, Responsibilities & Authority

**6.3** Duties, responsibilities and limitations of authority of the Architect during the construction phase as stated in this Agreement and the General Contract Conditions of the Construction Documents shall not be restricted, modified or extended without written agreement of the District and the Architect.

**6.4** The Architect shall have no control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Project work, since these are solely the Contractor's rights and responsibilities under the Construction Documents.

**6.5** The Architect shall advise and consult with the District during the administration of the Construction Documents based on site observations and other requirements of this Agreement.

**6.6** The Architect shall report to the District in writing known technical deviations from the Construction Documents approved by the District. The Architect is not, however, responsible for any failure of the Contractor to perform the work in accordance with the requirements of the Construction Documents.

### Site Visits

**6.7** Periodic site visits by the Architect or the Architect's representative during construction may vary with the progress of the work and other conditions, but shall average not less than the number of visits stated in this Agreement, including any adjustments stated in Attachment A. Additional site visits may be necessary if the Project does not conform to the approved construction schedule. Such site visits by the Architect shall be in addition to any site visits performed by

the Architect's Design Consultant and shall be included in the Architect's Basic Services at no additional cost to the District except when site visits become excessive and require continual on-site representation as stated elsewhere in this Agreement.

**6.8** At a minimum, the Architect and the Architect's Design Consultants shall provide the site visits listed below to a) become generally familiar with and to keep the District informed about the progress and quality of the portion of the work completed, b) endeavor to guard the District against defects and deficiencies in the work, and c) determine if the work is being performed in a manner indicating that the work, when fully completed, will be in accordance with the Construction Documents:

Architectural -- Two (2) visits per month to inspect the work in place for quality and conformance to the Contract Documents and two (2) visits per month to conduct site meetings. The site visits for observations and meetings may occur on the same days.

Structural – One (1) visit at foundation pouring; one (1) visit at the suspended floor slab, if any; one (1) visit at top out.

Mechanical/Plumbing – Three (3) visits per building with two (2) additional visits during construction and one (1) additional visit at close-up.

Electrical -- Three (3) visits per building with two (2) additional visits during construction and one (1) additional visit at close-up.

Any additional site visit requirements or amendment to the above minimum requirements shall be listed as part of the Project Criteria (Attachment A).

**6.9** The Architect and the Design Consultants shall submit to the District a comprehensive and detailed written report of each site visit by the next business day including, but not limited to, observations, site meeting minutes, work completed, status of the work in progress, subcontractor attendance, site conditions, weather conditions, compliance of the work to the Construction Documents, communications with the Contractor and any subcontractors, and other findings and conditions that could potentially adversely affect the finished Project.

### Rejection of Work

**6.10** The Architect shall have authority to reject work that does not conform to the Construction Documents. The Architect shall notify the District by the end of the work day of any rejected work. Whenever the Architect considers it necessary or advisable, the Architect, in consultation with the District, shall have authority to require inspection or testing of the work in accordance with the provisions of the Construction Documents, whether or not the work is fabricated, installed, or completed. Neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, subcontractors, material and equipment suppliers, their employees, agents or representatives or other entities performing portions of the work.

### Submittals

**6.11** The Architect shall review and approve or take other appropriate action upon the Contractor's submittals but only for the limited purpose of checking for conformance with

information given and the design concepts expressed in the Construction Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the work or in the activities of the District, Contractor, separate contractors or subcontractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. If time frames are specifically stated in the Construction Documents or in the Project Schedule (Attachment D), the Architect shall comply with those stated time frames.

**6.12** Review of submittals is not conducted for the purpose of determining the accuracy and completeness of the details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Construction Documents. The Architect's review shall not constitute approval of safety precautions or any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

#### Changes during Construction

**6.13** Preparing drawings, specifications and other documentation and supporting data, evaluating cost data and providing other services in conjunction with change orders shall be part of Basic Services at no additional cost to the District. See Section 7.2 for items that are considered "Additional Services".

#### Written Approvals

**6.14** If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Construction Documents, the Architect shall specify appropriate performance and design criteria that such services must satisfy. Shop drawings and other submittals related to the work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

#### Project Substantial Completion

**6.15** The Architect shall conduct inspections to determine the date of substantial completion or dates for phased construction of the Project based upon criteria stipulated in the Construction Documents and other knowledge and observations of the Architect. The Architect shall receive from the Contractor, review for completeness, and forward to the District, for the District's review and records written substantial completion documents as required in the Construction Documents and in preparation for OSF inspection.

#### Project Final Completion

**6.16** The Architect shall conduct inspections to determine the date of final completion of the Project based upon criteria stipulated in the Construction Documents and other knowledge and observations of the Architect. The Architect shall receive from the Contractor, review for completeness, and forward to the District for the District's review and records

written close-out documents as required in the Construction Documents along with the Contractor's final request for payment. The Architect shall approve the final request for payment based upon a final inspection by the Architect indicating the work complies with the requirements of the Construction Documents and that all final documents required by the District and the Contract Documents have been submitted by the Contractor. Upon receipt of final documents from the Contractor, the Architect shall review such documents for completeness and submit them to the District within ten (10) calendar days.

#### Services Close-Out

**6.17** Upon final completion of construction as stated in the previous paragraph, the Architect shall prepare and provide to the District a set of durable reproducible record drawings showing all significant changes to the work made during construction based on change orders, marked-up prints, drawings, and other data furnished to or prepared by the Architect as part of Basic Services at no additional cost to the District. Drawings shall be stamped as "Record Drawings."

**6.18** The Architect shall also prepare and provide to the District an electronic version of the record drawings in both .pdf and .dwg format and such electronic record drawings shall not be in "read only" or "write protected" format. Such electronic format shall be part of Basic Services at no additional cost to the District and shall be submitted to the District along with record drawings and final Architect Application and Certification for Payment (AIA forms G702 and G703) no later than ten (10) working days following the receipt by the District of final Contractor close-out documents and the final Contractor request for payment. Final payment to the Architect for Project close-out shall not be made until record drawings and electronic format are received as specified.

#### Required Meetings

**6.19** The Architect shall attend all scheduled meetings required by the District or any regulatory authority including the Horry County Board of Education and the Board's Building Committee as may be necessary throughout the term of this Agreement at no additional cost to the District except as may be addressed elsewhere in this Agreement. The Architect shall be available to attend any protest, contract controversy or other legal actions directly related to the Project or this Agreement that may extend beyond the completion or termination of this Agreement.

#### Workflow Software

**6.20** The Architect shall utilize such workflow software prescribed by the District for ease in communications between the Architect, District and Contractor as part of Basic Services at no additional cost to the District. The Architect acknowledges that activities performed by the Architect and the Contractor using the workflow software shall become the sole property of the District for use, dissemination, modification, and retention as the District deems appropriate and/or desirable.

**6.21** The Architect shall, at a minimum, enter the following data or perform the following tasks using the workflow software:

- A. Generate comprehensive and detailed site visit and site meeting reports by the end of the following business day in accordance with *Paragraph 6.9*.
- B. Generate transmittals and respond to such communications in a timely manner that will not delay the progress of the Project.
- C. Assist in the change order process, providing electronic copies of specifications and drawings related to those changes.
- D. Review and respond to RFI's in a timely manner as not to delay progress of the Project.
- E. Issue ASI's or revisions in a timely manner as not to delay progress of the Project.
- F. Record minutes of meetings and telephone conversations with the Contractor relevant to the progress of the project.
- G. Review submittals from the Contractor and keep submittal up-to-date.
- H. Other such items as may be required by the District.

**6.22** The Architect shall enter data or perform the tasks related to Project management as required by the District and consistent with this Agreement when using the required workflow software. Training in the use of the software shall be provided by the District to the Architect's designated personnel who shall be performing these duties.

**6.23** The Architect shall be provided access to only such Project data as the District determines is necessary, desired, or required. Upon final completion of the Project, Architect access to the workflow software system shall be terminated and the Architect shall have no access to such data after that date. It is recommended by the District that the Architect print any data entered in a hard copy format for the Architect's files in the event of any subsequent dispute, claim, server failure, loss of data, Project archiving, or other such event that may restrict Architect access to the workflow software system.

**6.24** The District reserves the right to do any of the following activities, by way of illustration and not limitation:

- A. Discontinue use of the workflow software.
- B. Further restrict or completely restrict access to data.
- C. Require equipment upgrades that may be necessary for optimal use of the application.
- D. Require additional training of Architect's personnel or provide additional training at Architect's request to ensure appropriate use of the workflow software system.
- E. Perform data storage and back up as the District deems appropriate for the District's needs.

**6.25** The Architect shall agree to indemnify, hold harmless or reimburse the District, its representatives, agents, and employees, from and against any and all liability, claims, damages, losses, expenses, causes of action, lawsuits, judgments, or otherwise which may be directly or indirectly related to the District's loss, dissemination, modification or retention of the data for whatever reason entered by the Architect, or District, its representatives, agents, and employees related to the Architect's activities or the imposing of limited, restricted or non-access to Project data as the District deems appropriate, necessary or legally advisable.

## **SECTION 7**

### **ADDITIONAL SERVICES**

**7.1** Additional Services are those services provided by the Architect that are not considered part of Basic Services

enumerated in *Section 5* and *Section 6* or elsewhere in this Agreement. Additional Services as described in this section shall only be provided after acquiring a written approved Change Order (Attachment E) signed by the Architect and the District. The corresponding additional compensation for those services shall be at the rates provided in the Schedule of Values (Attachment C) as agreed to between the Architect and District. The District shall not compensate the Architect for Additional Services rendered at the Architect's own discretion without first securing an authorized Change Order (Attachment E). In an emergency, pre-approval may be given by e-mail with a maximum number of hours, but shall be followed up by an itemized Change Order (Attachment E).

**7.2** Additional Services may include, but shall not be limited to, the following:

- A. Significant changes in the Project scope requested by the District, including but not limited to, size, quality, complexity or due to budgetary constraints or increases previously unknown or subsequently imposed or provided for by the Board of Education after completion of Design Development Documents.
- B. Providing consultation concerning replacement work damaged by fire or other disaster during construction and services required in connection with replacement of such work.
- C. Providing services or excessive site visits made necessary by the default of the Contractor or by failure of performance of either the District or the Contractor under the Construction Documents provided such Contractor default, defective or deficient work or performance failure is not attributable in part to errors, omissions, acts, failures to act, default, or lack of due care by the Architect.
- D. Segmenting phases of construction, developing multiple alternates, preparing documents for separate or sequential bids, such as separate site preparation or hazardous materials removal, shall all be considered additional services when such requirements are not included in the agreed upon Project Criteria (Attachment A) and are communicated by the District after completion of the Design Development Documents.
- E. Providing financial feasibility or other special studies.
- F. Providing planning surveys, site evaluations or comparative studies of prospective sites.
- G. Providing services related to future facilities, systems, equipment; providing services for planning tenant or rental spaces.
- H. Providing detailed quantity surveys or inventories of material, equipment and labor; making investigations, inventories of materials or equipment; conducting valuations and detailed appraisals of existing facilities.
- I. Providing analyses of owning and operating costs.
- J. Providing assistance in the utilization of equipment or systems such as testing, adjusting, balancing, preparation of operations and maintenance manuals, training personnel in operations and maintenance, and consultation during operation, which are the responsibility of the Contractor.
- K. Providing services more than forty-five (45) days after the date of substantial completion of the Project or completion of all basic services and submission of final pay request by the Architect, whichever is later, provided that delay in the final completion of the project is not the result of the Architect's acts or failures to act in conformance with this Agreement or the Construction Documents.

- L. Providing any other services not otherwise included in this Agreement or the Construction documents or not customarily furnished in accordance with generally accepted architectural practice.

**7.3** Any Additional Services to be performed by the Architect or any Design Consultant shall be submitted to the District for approval in the form of a Change Order (Attachment E). Approval of the Change Order is required before performance of Additional Services.

## **SECTION 8**

### **PROJECT COST ESTIMATE**

**8.1** Construction costs shall be the estimated costs to the District of all elements of the Project designed or specified by the Architect.

**8.2** Construction costs identified in the Project Cost Estimate (Attachment B) shall include the costs at current market rates of labor and materials furnished and equipment designed, specified, selected or specially provided for by the Architect, including the costs of management or supervision of construction or installation provided by the Contractor, plus a reasonable allowance for overhead and profit. In addition, a reasonable allowance for furniture, fixtures and equipment and contingency shall be included for market conditions at the time of bidding. Site costs shall be stated separately in the Project Cost Estimate (Attachment B).

**8.3** Construction costs do not include the compensation of the Architect and the Architect's Design Consultants, costs of land, rights-of-way and financing or other costs, and equipment and technology, which are separately determined by the District.

**8.4** Preliminary and periodic detailed estimates of site and construction costs prepared by the Architect represent the Architect's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the District has control over a) the costs of labor, materials, processes or equipment, b) Contractor's methods of determining bid prices, c) competitive bidding, d) market conditions or factors, nor e) negotiating conditions. Accordingly, the Architect does not and cannot warrant or represent that bids or negotiated prices will not vary from the Project Cost Estimate (Attachment B) prepared and agreed to by the Architect and District. The Project Cost Estimate (Attachment B) shall be updated at the end of the Design Development Phase incorporating all changes during the first three (3) design phases and shall be updated at other times deemed appropriate by the District.

**8.5** If the District requires a fixed cost estimate and the updated Project Cost Estimate (Attachment B) at the end of the Design Development Phase and agreed to by the District and the Architect is exceeded by more than 2% by the lowest bona fide bid, negotiated proposal, or solicitation of trades, the Architect shall, without additional compensation, modify the Construction Documents as necessary to comply with the fixed cost estimate, if required by the District. The modification of the Contract Documents at no additional compensation shall be the limit of the Architect's responsibility arising out of the establishment of a fixed sum.

## **SECTION 9**

### **BASIS OF COMPENSATION AND ARCHITECT PAYMENTS**

#### Basic Services

**9.1** Compensation for Basic Services shall be computed using the Project Cost Estimate (Attachment B). The Basic Services compensation as computed includes fees for the Architect's Design Consultants stated in the Project Criteria (Attachment A).

**9.2** Progress payments for Basic Services shall be requested at the end of each design phase and shall not exceed the percentage completed stated for each design phase in the Schedule of Values (Attachment C).

**9.3** Services of other Design Consultants (not listed in Attachment A but enumerated in Attachment B) shall be requested on the Schedule of Values (Attachment C) and reimbursed at actual costs except for the following:

- A. Consultants performing site evaluation (such as soils testing, surveying, environmental, wetlands and geotechnical) shall be reimbursed at actual costs.
- B. Consultants performing asbestos or other hazardous materials determinations shall be reimbursed at actual costs.

Submission of pay requests must include copies of invoices submitted to the Architect attached to the Application and Certification for Payment (AIA forms G702 and G703).

**9.4** Construction Services payments shall be made upon submission of an Application and Certification for Payment (AIA forms G702 and G703) and commensurate with the percentage of Project construction completion. Example: For a project duration of twelve (12) months (including the 30 days for final completion), the Architect shall not request more than 1/12<sup>th</sup> of the total Construction Services fees for each month of construction completed. The Architect may request payment on a monthly or quarterly basis or at the completion of all Construction Services. No retention shall be withheld from the Construction Phase payments.

**9.5** Payment of close-out of all services shall be made only after all construction close out documents required of the Contractor, electronic drawings in the formats requested, durable record drawings and other such requirements are provided to the District by the Architect along with a final Application and Certification for Payment (AIA forms G702 and G703).

#### Additional Services

**9.6** For Additional Services of the Architect as stated elsewhere in this Agreement, compensation shall be based upon the hourly rates stated in the approved Schedule of Values (Attachment C) and detailed in a Change Order (Attachment E). All clerical services, consumables, transportation, etc. are included in those stated fees. Additional Services for any Design Consultants shall be detailed in a Change Order (Attachment E) and shall be reimbursed to the Architect at actual costs except as may be stated elsewhere.

**9.7** For Projects that exceed the time established for final completion, as may be amended through approved change orders, by more than forty-five (45) calendar days, the Architect may submit to the District a detailed analysis of reasonable costs associated with additional time spent by the Architect, and the Architect's Design Consultants in efforts made toward bringing the Project to closure. Such reasonable costs shall be considered by the District in assessment of liquidated damages to the Contractor or deductions to the final payment of a Contractor not in compliance with final completion as stipulated in the Construction Documents. The District shall endeavor to fairly determine whether costs are reasonable and whether the Architect, the Architect's personnel or the Architect's Design Consultants contributed to the delay through a failure to take due care or meet the requirements of this Agreement and the Construction Documents.

**9.8** Any additional costs incurred by the Architect as a result of the District's stoppage of work shall be the responsibility of the Contractor when precipitated by, but not limited to, action, non-action, omission, error, illegal conduct, or non-conforming work on the part of the Contractor, any subcontractors, suppliers or other entities enjoined by or under agreement to the Contractor, or for any other justifiable reason as determined by the District. Such reasonable costs shall be detailed in a Change Order (Attachment E) for recoupment from the Contractor and payment to the Architect upon presentation of an Application and Certification for Payment (AIA forms G702 and G703).

**9.9** Payment for Additional Services shall be rendered upon acceptable completion of such services unless partial payment of completed phases of such Additional Services is agreed to by the District when approving the Change Order (Attachment E).

**9.10** The Architect shall be entitled to compensation in accordance with this Agreement for all services rendered and all reimbursable expenses up to the Construction Phase, whether or not the Construction Phase is commenced.

Reimbursable Expenses

**9.11** Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect directly related to the Project. Payment of Reimbursable Expenses shall be after bidding is completed and upon presentation to the District of an Application and Certification for Payment (AIA forms G702 and G703) along with copies of invoices or other substantiating documentation acceptable to the District showing actual costs incurred. Mark-up is not allowed on reimbursable expenses.

**9.12** Expenses of reproduction of bidding documents for plan holders including, advertising, printing, postage or delivery by a common carrier such as United Parcel Service (UPS) or Federal Express (FedEx) to plan holders are reimbursable. Reproduction, including associated delivery, of documents for use by the Architect or submitted to the District or authorities having jurisdiction over the Project during the Conceptual, Schematic Design, Design Development, and Construction Documents Phases shall be included in Basic Services.

**9.13** The Architect shall be responsible for obtaining all design-related permits, filing of documents and securing

approvals required by governmental authorities having jurisdiction over the Project. Fees paid directly for securing approval of or paying for permits from such authorities are reimbursable.

**9.14** The following expenses are considered part of Basic Services and are not reimbursable to the Architect:

- A. Transportation in connection with the Project including transportation to meetings, site visits, out-of-town travel and subsistence, electronic communications, in-house copying or printing or consumable supplies.
- B. Expenses of overtime work required exceeding the regular rates established in this Agreement.
- C. Any expenses related to insurance dedicated to the Project or required by the District in excess of that normally carried by the Architect and the Architect's Design Consultants.
- D. Conceptual and Schematic Design Phase renderings requested by the District.
- E. Other similar expenses whether directly attributable to the Project or not.

Payments

**9.15** Payments are due and payable to the Architect thirty (30) days from the date the completed Application and Certification for Payment (AIA forms G702 and G703) is received by the District, provided payments requested conform to this Agreement and include required pre-approvals, substantiating invoices, receipts or other documents as required by this Agreement or the District. Interest shall accrue at the rate established by the District's Procurement Code when payment is not in dispute due to the fault of the Architect. The District will endeavor to pay invoices with appropriate documentation within fifteen (15) days of the receipt and approval of the Application and Certification for Payment (AIA forms G702 and G703). The District shall accept no responsibility for payment of invoices for Additional Services or Reimbursable Expenses if the Architect has not followed the prescribed pre-approval and Change Order (Attachment E) process.

Payments Withheld

**9.16** No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to the Contractor or on account of the cost of changes in the work other than those for which the Architect has been adjudged to be liable by the District.

**SECTION 10  
MISCELLANEOUS PROVISIONS**

**10.1** Any references in this Agreement or the Construction Documents to submission of documents to the District including, but not limited to, construction schedules, change order requests, shop drawings, written determinations, operational manuals or other such documents related to Project construction, or requests to procure additional Design Consultant services or requests for payments shall mean submission to the District's Construction Manager. Any documents submitted related to insurance, bonding, written interpretations, claims, disputes, or other legal or contractual matters shall mean submission to the District's Director of Procurement Services.

**10.2** The complete official bid and contract file for any Project shall be maintained by the District's Office of Procurement Services and shall include all pertinent data available for audit by the Office of General Services, Budget and Control Board of the State of South Carolina or by the District's contracted auditors. The Architect shall ensure that one set of any official documents containing original signatures, official stamps or other such notations of authenticity to include, but not be limited to, plans, specifications, contract documents, change orders or change directives, approval letters or documents by regulatory authorities, warranties, proof of bid advertising, contract change orders, documents required at substantial and final completion, and the OSF approval to occupy shall be forwarded to the District's Office of Procurement Services for the official files. Any documents determined to be missing from the file shall be supplied by the Architect within five (5) calendar days of request by the District.

**10.3** Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of substantial completion for acts or failures to act occurring prior to substantial completion or the date of the final certificate of payment for acts or failures to act occurring after substantial completion.

**10.4** The District and the Architect respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Agreement. Neither party shall assign this Agreement as a whole or in part without written consent of the other party except that the District may assign this Agreement to an institutional lender providing financing for the Project. The Architect shall execute all consents reasonably required to facilitate such assignment. If either party attempts to make such other assignment without consent of the other party, that party shall nevertheless remain legally responsible for all obligations under this Agreement.

**10.5** Written notice shall be deemed to have been duly served if delivered in person to the Principal, District, 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.

**10.6** No action or failure to act by the District shall constitute a waiver of a right or duty afforded the District under the contract, nor shall such action or failure to act constitute approval of or acquiescence to a breach thereunder, except as may be specifically agreed in writing.

**10.7** The Architect shall be legally considered an independent contractor and neither the Architect nor the Architect's representatives, agents, or employees shall, under any circumstances, be considered employees or agents of the District except as specifically provided for in this Agreement. The Architect and the District shall at no time be legally responsible for any negligence or other wrongdoing by the Contractor or any subcontractor or supplier, their representatives, agents or employees or anyone enjoined to them.

**10.8** The District shall not withhold from the Architect's compensation any employment related taxes such as, by way of illustration and not limitation, federal or state income taxes, social security tax, or any other amounts for benefits due to the Architect, any representatives, agents or employees. Further, the District shall not provide any employment related insurance coverages or other benefits such as, by way of illustration and not limitation, health or dental coverage, worker's compensation, or other such benefits.

**10.9** To the extent damages are covered by property insurance during construction, the District and Architect waive all rights against each other and against the Contractor, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance or set forth in the Construction Documents.

**10.10** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the District or the Architect.

**10.11** Except for procurement of a Design Consultant and assistance in the procurement of a Contractor for hazardous waste removal, the Architect and the Architect's Design Consultants shall have no responsibility for the discovery, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

**10.12** If the District requests the Architect to execute the Contractor's requests for payment as provided for in the Construction Documents, the Architect shall not be required to execute such requests beyond the scope of this Agreement.

Drug-Free Workplace

**10.13** The Architect and the Architect's Design Consultants shall be responsible for initiating, maintaining and supervising all drug-free programs in connection with the performance of this Agreement. The drug-free programs shall conform to Title 44, Chapter 107, § 44-107-10 through § 44-107-90 of the South Carolina Code of Laws as may be amended.

**SECTION 11**  
**DISPUTE RESOLUTION**

**11.1** By acceptance of this Agreement, the Architect agrees that any complaint or claim arising out of the interpretation of this Agreement, the requirements of the Construction Documents, or the performance of the work between the Architect and the District shall not be subject to arbitration or mediation but shall be subject to the jurisdiction and processes of the District's Procurement Code and the Court of Common Pleas of Horry County, South Carolina as to all matters and disputes arising or to arise under this Agreement and the performance thereof.

**11.2** All formal appeals, claims, disputes between the District and the Architect or the Architect's Design Consultants shall be filed and resolved in accordance with the District's Procurement Code, as may be amended or updated. Except in the instance where the appeal, claim, or dispute is between the District and the Architect, the Architect shall provide any interpretations or assistance required by the District's Director of Procurement Services, any legal consultant or attorney of

the District, or any other appeals authority in rendering a decision within the time frames stipulated in the District's Procurement Code.

**11.3** After exhausting the administrative process under the District's Procurement Code, the Architect agrees that the judicial venue for any suit, action or proceeding arising out of or relating to this Agreement shall be proper only in the Court of Common Pleas for Horry County, State of South Carolina. The Architect and the District hereby waive and disclaim any and all right to a jury trial on any controversy arising from this Agreement. The Architect agrees that any act by the District regarding this Agreement is not a waiver of the District's sovereign immunity.

**11.4** The Architect and District waive Listed Damages for claims, disputes or other matters in question arising out of or relating to this Agreement. The Listed Damages are damages incurred for principal office expenses and overhead (including, but not limited to, the compensation of personnel stationed there, rent, utilities, and office equipment), for losses of financing, business and reputation, for loss of profit other than anticipated profits arising directly from the Work and for attorney's fees, insurance, and interest (excluding post-judgment).

**SECTION 12**  
**TERMINATION OR SUSPENSION**

**12.1** The terms of this section shall apply only when the District's failure to make payment and the resulting suspension of services by the Architect are not the result of the Architect's negligence or failure to perform the services under the terms of this Agreement commensurate with sound Architectural industry practices. Likewise, the resumption of services and the District's payment of all sums due prior to suspension shall not apply if those sums are in dispute due to

the Architect's default, negligence or failure to perform the services under the terms of this Agreement commensurate with sound Architectural industry practices.

**12.2** If the District fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial non-performance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, prior to such suspension, the Architect shall give seven (7) days written notice to the District. In the event of a suspension, the Architect shall have no liability to the District for delays or damages caused the District because of such suspension and any expenses incurred by the District for interruption and resumption of the Project.

**12.3** If the Project is suspended or the Architect's services are suspended for more than ninety (90) consecutive days, the Architect may terminate this Agreement by giving not less than seven (7) days written notice.

**12.4** This Agreement may be terminated by either party upon not less than seven (7) days written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

**12.5** This Agreement may be terminated by the District upon not less than seven (7) days written notice to the Architect for the District's convenience and without cause.

**12.6** In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with any Reimbursable Expenses then due.

This Agreement, including those documents referenced therein, shall be the full agreement between Architect and District and is executed in good faith this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_.

\_\_\_\_\_  
(Principal's/Architect's Signature)  
  
Printed Name/Title: \_\_\_\_\_  
  
Name of Architect (Firm): \_\_\_\_\_  
  
Date: \_\_\_\_\_

\_\_\_\_\_  
(District's Signature)  
  
Robin Strickland, Procurement Officer, John K. Gardner, Chief  
Financial Officer, Fiscal Services  
  
Horry County Schools  
  
Date: \_\_\_\_\_