

**South Carolina Division of Procurement
Services, Office of State Engineer Version of
 AIA[®] Document B133[™] – 2019**

***Standard Form of Agreement Between Owner and
Architect, Construction Manager as Constructor Edition***

This version of AIA Document B133[™]-2019 is modified by the South Carolina Division of Procurement Services, Office of State Engineer (“SCOSE”). Publication of this version of AIA Document B133-2019 does not imply the American Institute of Architects’ endorsement of any modification by SCOSE. A comparative version of AIA Document B133-2019 showing additions and deletions by SCOSE is available for review on the SCOSE Web site.

Cite this document as “AIA Document B133-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition — SCOSE Version,” or “AIA Document B133-2019 — SCOSE Version.”

South Carolina Division of Procurement Services, Office of the State Engineer Version of AIA® Document B133™ – 2019

Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition

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

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

The Owner is a Governmental Body of the State of South Carolina as defined by
Title 11, Chapter 35 of the South Carolina Code of Laws, as amended.

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

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

The Construction Manager (if known):
(Name, legal status, address and other information)

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

The Owner and Architect agree as follows.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.

§ 1.1.1 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

§ 1.1.2 The Owner's other anticipated scheduling information, if any, not provided in Section 1.1.4:

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

- .1 Design phase milestone dates, if any:
- .2 Construction commencement date:
- .3 Substantial Completion date or dates:
- .4 Other milestone dates:

§ 1.1.5 The Owner intends to retain a Construction Manager pursuant to the following agreement:

AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, SCOSE Version.

§ 1.1.6 The Owner’s requirements for accelerated or fast-track design and construction, or phased construction, if any, are set forth below:

(List number and type of bid/procurement packages.)

§ 1.1.7 The Owner’s anticipated Sustainable Objective for the Project:

(Identify and describe the Owner’s Sustainable Objective for the Project, if any.)

§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner’s Sustainable Objective. If E234–2019 is incorporated into this Agreement, the Owner and Architect shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7.2 Major Facility Projects as defined in the SC Code of Laws must be designed to comply with Chapter 5 of the OSE Manual.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:

Name:

Title:

Address:

Telephone:

Email:

§ 1.1.9 The persons or entities, in addition to the Owner’s representative, who are required to review the Architect’s submittals to the Owner are as follows:

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

§ 1.1.10 The Owner shall retain the following consultants and contractors:

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

and such other consultants as may be designated by Owner from time to time.

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4:

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

Name:

Title:

Address:

Telephone:

Email:

§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, legal status, address, and other contact information.)

§ 1.1.12.1 Consultants retained under Basic Services:

§ 1.1.12.2 Consultants retained under Supplemental Services:

§ 1.1.13 Other Initial Information on which the Agreement is based:

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect may appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner may adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties may use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without written agreement to protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that the A/E and its' consultants are properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar region under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.2.1 The Architect shall notify the Owner in a prompt and timely manner of any discovered discrepancies, inconsistencies or missing information necessary to provide reasonably accurate and complete documents. Any designs, drawings or specifications prepared or furnished by the Architect that contain errors, conflicts or omissions will be promptly corrected by the Architect at no additional cost to the Owner. The Owner's approval, acceptance, use of or payment for all or any part of the Architect's services shall in no way alter the Architect's obligations or the Owner's rights hereunder.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in the agreement identified in Section 1.1.5. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect's representative identified in Section 1.1.11 shall be authorized to act on behalf of the Architect with respect to the Project. The Architect shall not change the designated representative without the Owner's written consent, which consent the Owner shall not unreasonably withhold.

§ 2.4.1 The Architect shall not change its consultants identified in Section 1.1.12 without the Owner's written consent, which consent the Owner shall not unreasonably withhold.

§ 2.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.6 Insurance Coverages

The Architect shall procure and maintain in effect during the term of this Agreement the insurance coverages described below, which insurance shall be placed with insurance companies authorized to do business in the State of South Carolina and rated A minus VII or better by the current edition of Best's Key Rating Guide or otherwise approved by the Owner.

§ 2.6.1 Commercial General Liability Insurance (CGL): Insurance Services Offices (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury, and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to the project or the general aggregate limit shall be twice the required occurrence limit. This contract shall be considered to be an "insured contract" as defined in the policy.

§ 2.6.2 Automobile Liability Insurance: Insurance Services Offices (ISO) Form CA 00 01 covering Code 1 (any auto), or if the Architect has no owned automobiles, Code 8 (hired) and Code 9 (non-owned), with limits not less than \$1,000,000 per accident for bodily injury and property damage.

§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.6.1 and 2.6.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.6.4 Workers' Compensation Insurance as required by the State of South Carolina with statutory limits.

§ 2.6.5 Employers' Liability Insurance with limit of no less than \$1,000,000 per accident.

§ 2.6.6 Professional Liability Insurance covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than _____ (\$ _____) per claim and _____ (\$ _____) in the aggregate. If these limits exceed the greater of (i) \$1,000,000 per claim and in the aggregate or (ii) the limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.6.6.1 If the Professional Liability policy provides coverage on a claims-made and reported basis:

1. The Retroactive Date must be shown and must be before the date of this agreement or the beginning of the Architect's work, whichever is earlier.
2. The insurance must be maintained, and evidence of insurance must be provided to the Owner, for at least five (5) years after completion of the Architect's work under this agreement.
3. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date before the date of this agreement or the beginning of the Architect's work, whichever is earlier, the Architect must purchase "extended reporting" coverage for a minimum of five (5) years after the completion of the Architect's work under this agreement.
4. The Architect shall give prompt written notice to the Owner of all claims made against this policy during the period in which this policy is required to be maintained.

§ 2.6.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner, its officers, officials, employees, and volunteers, as additional insureds for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.6.7.1 Prior to performing services, and thereafter upon replacement of each required policy of insurance, the Architect shall provide to the Owner a written endorsement to the Architect's General Liability Insurance policy that (i)

names the Owner, its officers, officials, employees, and volunteers, as additional insureds, and (ii) states that coverage shall not be cancelled, except with notice to the Owner.

§ 2.6.7.2 Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Architect with reasonable promptness.

§ 2.6.8 Insurance Requirements for Consultants

The Architect agrees to require the consultants to comply with the insurance provisions required of the Architect pursuant to this Agreement unless the Architect and the Owner mutually agree to modify these requirements for the consultants whose work is of relatively small scope. The Architect agrees that it will contractually obligate its consultants to advise the Architect promptly of any changes or lapses of the requisite insurance coverages and the Architect agrees to promptly advise the Owner of any such notices the Architect receives from its consultants. The Architect agrees that it will contractually obligate its consultants to indemnify and hold harmless the Owner to the same extent that the Architect is required to do so as provided in this Agreement.

§ 2.6.9 Additional Requirements

The Architect shall not make changes in or allow the required insurance coverages to lapse without the Owner's prior written approval thereto. Should a notice of cancellation be issued for non-payment of premiums or any part thereof, or should the Architect fail to provide and maintain certificates as set forth herein, the Owner shall have the right, but not the obligation, to pay such premium to the insurance company or to obtain such coverage and to deduct such payment from any sums that may be due or become due to the Architect, or to seek reimbursement for said payments from the Architect. Any sums paid by the Owner shall be due and payable immediately by the Architect upon notice from the Owner. Receipt and review by the Owner of any copies of insurance policies or insurance certificates shall not relieve the Architect of his obligation to comply with the insurance provisions of this Agreement. The insurance provisions of this Agreement shall not be construed as a limitation on the Architect's responsibilities and liabilities pursuant to the terms and conditions of this Agreement.

§ 2.6.10 Certificates Of Insurance

§ 2.6.10.1 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.6.

§ 2.6.10.2 Prior to performing services, and thereafter upon renewal or replacement of each required policy of insurance, the Architect shall provide to the Owner a signed, original certificate of liability insurance (ACORD 25). The certificate shall identify the types of insurance, state the limits of liability for each type of coverage, include a provision for written notice prior to cancellation as set forth in Section 2.6.7.1(ii), name the Owner as a Certificate Holder, provide that the general aggregate limit applies per project, and provide that coverage is written on an occurrence basis. Both the certificates and the endorsements must be received directly from either the Architect's insurance agent or the insurance company.

§ 2.6.11 Third Party Indemnification

Without limitation and notwithstanding any provision in this agreement, the Architect shall indemnify and hold harmless the Indemnitees for and against claims, damages, losses and expenses (including attorneys' fees) asserted by a third party against an Indemnitee arising out of or resulting from negligent acts or omissions of the Architect, a consultant, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself). The Architect shall not be required to indemnify an Indemnitee to the extent Indemnitee's damages result from Indemnitee's own negligence. Such obligation shall not be construed to negate, abridge, or reduce any other rights, including any other obligations of indemnity, which would otherwise exist as to a party or person described in this Section 2.6.11. As used in this paragraph, "Indemnitees" means the State (including its instrumentalities, agencies, departments, boards, and political subdivisions), the Construction Manager, the subcontractors at all tiers, and the officers, agents and employees of all the forgoing.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include those services identified elsewhere in this Agreement as Basic Services. The Architect's Basic Services usual and customary civil, structural, mechanical, fire protection, and electrical engineering services. Services not set forth in this Article 3 or identified elsewhere in this Agreement as Basic Services are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner. Architect shall be fully responsible for coordinating all Architect's Basic, Supplemental, and Additional Services required under this Agreement regardless of whether performed by its own employees or by consultants hired by Architect to perform a portion of its services. The purpose of such coordination is to ensure that the services required are performed in a reasonably efficient, timely and economical manner. Architect shall be responsible to Owner for the services furnished to Architect by any consultant to the same extent as if Architect had furnished the service itself. Architect also agrees to coordinate and resolve any inconsistencies in its work and the work of its consultants. All of Architect's contracts with consultants shall be in writing, signed by both parties, and shall include the following provision: "The Owner is intended to be a third-party beneficiary of this agreement."

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, but not later than fifteen (15) days after execution of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the Construction Manager's review, for the performance of the Construction Manager's Preconstruction Phase services, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

§ 3.1.5 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming work, made or given without the Architect's written approval.

§ 3.1.6 The Architect shall, in coordination with the Construction Manager, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities. Architect shall provide a design which when constructed in accordance with the Contract Documents will comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, orders or other legal requirements, including but not limited to all zoning, restrictions or requirements of record, building codes, occupancy, environmental, disabled persons accessibility and land use laws, requirements, regulations and ordinances relating to the construction, use and occupancy of the Project (collectively "Governmental Requirements") existing on the date of this Agreement and which may be enacted prior to Owner's approval of completed Construction Documents.

§ 3.1.7 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project. The Architect's assistance shall include the identification and preparation of all necessary applications and submittals.

§ 3.1.7.1 The Architect shall prepare, on behalf of the Owner, applications and supporting documentation for all design-related and land-use permits, variances and approvals required by state and local governmental authorities having jurisdiction over the Project (e.g., grading, utilities, zoning and encroachment). The Architect shall revise applications and supporting documentation as required to resolve comments received from such governmental authorities. However, the Architect's appearance as an expert, as well as the preparation of special drawings, visual aids and other materials and design work prepared solely for an appearance before local zoning boards or planning commissions shall be considered an Additional Service.

§ 3.1.8 In the performance of its duties under this agreement, the Architect shall comply with the requirements of Chapter 5 of the Manual for Planning and Execution of State Permanent Improvement Projects (the "Manual"). Should

substantive changes to the provisions of the Manual occur during the term of this agreement that result in an increase or decrease in the level of services to be provided by the Architect, the fee of the Architect shall be equitably adjusted by negotiation between the parties to reflect such increase or decrease.

§ 3.1.8.1 The Architect shall comply with the State Flood Plain Development requirements in accordance with State Law and Chapter 5 of the Manual.

§ 3.1.8.2 The Architect shall comply with the State's requirements for telephone, data and communications equipment rooms as required by the Division of Technology Operations.

§ 3.1.8.3 The Architect shall provide a preliminary seismic evaluation of the existing structures in accordance with Chapter 5 of the Manual.

§ 3.1.9 The Architect shall review and evaluate the information provided by the Owner and advise the Owner of any additional information required by the Architect for completion of the Project.

§ 3.1.10 The Architect shall prepare and distribute conference memoranda, meeting minutes, summaries of telephone conversations, documentation of site visits and inspection reports as required by the Owner to maintain a comprehensive record of the Project. The State's Project Number and Name shall be shown on all documents.

§ 3.1.11 Services Provided in Two Phase/Contract Depends on Continued Funding

(Owner Check Box if Applicable)

§ 3.1.11.1 The services to be provided by the Architect under this Agreement shall be divided into two phases. Phase 1 Services shall include all Basic Services through completion of Schematic Design Phase Services. Phase 2 Services shall include all services from the start of the Design Development Phase through the completion of all services to be provided under this Agreement.

§ 3.1.11.2 Of the total contract price, only funding for performance of this contract through completion of Phase 1 Services has been approved under Title 2, Chapter 47 of the South Carolina Code of Laws.

§ 3.1.11.3 The parties contemplate that upon completion of Phase 1 Services, the Joint Bond Review Committee and State Fiscal Accountability Authority will approve additional funds for Phase 2 Services. Notwithstanding any other provision of this Agreement, the Owner's total obligation to pay or reimburse the Architect is limited to the amount allotted to this Agreement under Section 3.1.11.2 unless and until such time as expenditure of additional funds is approved pursuant to Title 2, Chapter 47 of the South Carolina Code of Laws and any other applicable laws and the Owner provides the Architect with written notice to proceed with Phase 2 Services.

§ 3.1.11.4 The Architect acknowledges and agrees that upon completion of Phase 1 Services, further work will be suspended for a reasonable amount of time, as determined by the meeting schedules of the Joint Bond Review Committee and State Fiscal Accountability Authority, as needed for the Owner to prepare and submit a revised Project scope and budget to the Joint Bond Review Committee and State Fiscal Accountability Authority for their approval. In the event that the Joint Bond Review Committee and State Fiscal Accountability Authority do not approve additional funding for the Project, the Owner intends to terminate this contract pursuant to the "Termination for Convenience" clause of this contract subject to limits on agency's obligation to pay under Section 3.1.11.3 and provided the Architect shall not be entitled to recover as damages or otherwise, anticipated profits on work not performed. The Owner shall provide the Architect notice of the lack of funding for Phase 2 Services within a reasonable time of the Owner's receiving that notice.

§ 3.1.12 Decisions By The Architect

Any reference in the Contract Documents to the Architect taking action or rendering a decision with a "reasonable time" or "reasonable promptness" is understood to mean no more than ten (10) days, unless otherwise specified in the Contract Documents or otherwise agreed to by the parties.

§ 3.1.13 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, or the Owner's approval of the Construction Manager's Control Estimate, as applicable, the Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the

Architect. The Architect and Construction Manager shall include the Owner in communications related to substitution requests, clarifications, and interpretations.

§ 3.2 Review of the Construction Manager's Guaranteed Maximum Price Proposal or Control Estimate

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum Price proposal or Control Estimate. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager.

§ 3.2.2 Upon authorization by the Owner, and subject to Section 4.2.1.14, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 3.2.3 If the Guaranteed Maximum Price/Bid exceeds the Owner's budget for the Cost of the Work, the Architect shall endeavor to, in consultation with the Construction Manager and without additional charge to the Owner, reduce the price of the Cost of the Work to an amount within the Owner's budget. Failure to reduce the GMP to within the Owner's budget may result in cancellation of the CM-R process.

§ 3.3 Schematic Design Phase Services

§ 3.3.1 The Architect shall review the program, and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.3.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.3.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.3.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.3.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for Construction Manager's review and the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing. The Schematic Design Documents shall conform to the requirements of Chapter 5 of the Manual.

§ 3.3.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. In performing these duties, the Architect shall, to the extent applicable to the Project, implement the State of South Carolina's Environmentally Preferred Purchasing Policy, Procurement Policy Statement No. 2009-1, issued October 15, 2009. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.

§ 3.3.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.5.3 Hazardous Materials Excluded. The Architect shall not design, specify or incorporate in the Drawings or Specifications for the Project any Hazardous Materials, in such manner as would violate the requirements of all existing

laws, ordinances, codes, rules and regulations, orders and decisions of all government authorities having jurisdiction over the Site, the Work or any part of either, or would cause substantial damage or a risk of substantial damage to the environment, or in such a manner as to leave any residue which could be hazardous to persons or property or cause liability to the Owner. For purposes of this Agreement the term "Hazardous Materials" shall include, but shall not be limited to, substances currently defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended 42 U.S.C. Sec. 9061 et seq, Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1802, the Resource Conservation Act and Recovery Act, 42 U.S.C. Sec. 6910 et seq., and all other environmental laws, rules and regulations as all of the above may be amended from time to time.

§ 3.3.6 The Architect shall submit the Schematic Design Documents in the number requested by the Owner, along with the Form SE-471, Design/Construction Documents Transmittal Form, to the Owner, the Office of State Engineer (OSE), and the Construction Manager. The Architect and the Architects consultants shall arrange for and participate in a table-top review of the Schematic Design Documents with the Owner, OSE, and the Construction Manager. The Architect is responsible to document the comments and decisions made at the table-top review and distribute the documentation to all attendees for review and approval.

§ 3.3.6.1 The Architect, Architects consultants, and Construction Manager may participate in additional meetings for a review of the Schematic Design prior to the Construction Manager performing a cost estimate of the Work.

§ 3.3.7 Upon receipt of the Construction Manager's cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. The Architect shall provide the Owner, OSE, and Construction Manager with a summary of the approved revisions to be made to the Design Documents in accordance with the review comments and cost estimate. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.3.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

§ 3.4 Design Development Phase Services

§ 3.4.1 Based on the Owner's approval of the Schematic Design Documents, OSE comments, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.4.1.1 The Design Development Documents shall incorporate the accepted resolution of all Owner and OSE comments on the Schematic Design Document submittal.

§ 3.4.1.2 The Architect shall submit the Design Development Documents in the number requested by the Owner, along with the Form SE-471 to the Owner, the OSE (if requested), and the Construction Manager for review and comment.

§ 3.4.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Construction Manager for the development of a cost estimate and review. The Architect and Architects consultants shall meet with the Construction Manager to review the Design Development Documents prior to the Construction Manager performing a cost estimate of the Work.

§ 3.4.3 Upon receipt of the Construction Manager's estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Section 6.5 and request the Owner's approval of the Design Development Documents. The Architect shall provide the Owner, OSE, and Construction Manager with a summary of the approved revisions to be made to the Design Documents in accordance with the review comments and cost estimate. If revisions

to the Design Development Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase, the Architect shall incorporate the required revisions in the Construction Documents Phase.

§ 3.5 Construction Documents Phase Services

§ 3.5.1 Based on the Owner's approval of the Design Development Documents, OSE comments (if any), and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Construction Manager's review, OSE's review, and the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Construction Manager will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.5.2 The Architect shall incorporate the design requirements of OSE and other governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.5.2.1 The Architect shall submit properly completed Construction Documents in the number and form requested along with the Form SE-471.

§ 3.5.2.2 The Architect shall meet with the local Fire Official to review proposed fire protection systems, provide the local Fire Official and the regional Deputy State Fire Marshal a set of Construction Documents. The Architect shall notify the local Fire Official and the regional Deputy State Fire Marshal of the time and place the fire protection and detection system(s) are to be tested.

§ 3.5.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist and coordinate with the Owner and Construction Manager in the development and preparation of construction documents for Construction Manager subcontractor procurement.

§ 3.5.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents, make adjustments, coordinate, and review costs.

§ 3.5.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.5, and request the OSE and Owner's approval of the Construction Documents.

§ 3.5.6 OSE and the Owner's review and approval of the Construction Documents and all documents or other matters required herein shall not relieve the Architect of his professional duty of care in the preparation of the Instruments of Service for compliance with the requirements of applicable statutes, regulations, codes, the Manual, or for design deficiencies, omission, or errors.

§ 3.5.7 Maximum Practicable Competition

§ 3.5.7.1 The purpose of a specification is to serve as a basis for obtaining a supply, service, information technology, or construction item adequate and suitable for the State's needs in a cost-effective manner, taking into account to the extent practicable, the cost of ownership and operation as well as initial acquisition costs. It is the policy of the State that specifications permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the particular design, functional, or performance characteristics to meet the State's requirements. All specifications shall be written in a non-restrictive manner as to describe the requirements to be met, per SC Code Ann. Reg. 19-445.2140(B). The Specifications shall be drafted to assure cost-effective procurement of the Owner's actual needs and shall not be unduly restrictive, per S.C. Code Ann. § 11-35-2730

§ 3.5.7.2 The Architect shall name multiple approved manufacturers with model numbers for any brand name or equal specification which specifies a product by manufacturer name and model number. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction, SCOSE Version, unless otherwise provided in this Agreement. The Architect shall perform all duties and obligations that are assigned to the Architect in the General Conditions unless such duties or obligations on the part of the Architect are expressly waived in this Agreement. If the Owner and Construction Manager modify AIA Document A201–2017, SCOSE Version, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement. The term “Contractor” as used in A201-2017 shall mean the Construction Manager.

§ 3.6.1.2 Subject to Section 4.2, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Amendment indicating the Owner’s acceptance of the Construction Manager’s Guaranteed Maximum Price proposal. Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect’s responsibility to provide Construction Phase Services terminates twenty-one (21) days after the Architect issues the final Certificate for Payment.

§ 3.6.1.3 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager or of any other persons or entities performing portions of the Work.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, (1) to become generally familiar with the progress and quality of the portion of the Work completed, (2) to keep the Owner informed and endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine, in general, if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits at intervals appropriate to the stage of construction, the Architect shall, at least once a month, submit a written report to the Owner to keep the Owner informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) deviations from the Contract Documents, (2) deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies in the Work.

§ 3.6.2.1.1 Site visits shall be made by representatives of the Architect and its consultants who are knowledgeable of the Project requirements and competent in each discipline having work in current progress. The representatives shall visit the site to assure conformance with the design shown in the Contract Documents and to observe, as experienced and qualified design professionals, the progress and quality of the various aspects of the Construction Manager's Work.

§ 3.6.2.1.2 The Architect and its consultants propose to conduct an appropriate number of site visits during the construction of the project as listed in Section 4.2.3.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents, unless the Owner decides otherwise. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, 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 Construction Manager, subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager. The Architect’s response to such requests shall be made in writing with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager, and shall not show partiality to either. Except in the case of interpretations resulting in omissions, defects, or errors in the Instruments of Service or perpetuating omissions, defects, or errors in the Instruments of Service, the Architect shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 The Architect shall render, with reasonable promptness, initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Construction Manager

§ 3.6.3.1 The Architect shall review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Construction Manager is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed to the Owner in writing by the Architect prior to issuance of a Certificate for Payment.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Construction Manager's right to payment, or (4) ascertained how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Construction Manager's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager's responsibility. The Architect's review shall not constitute approval of safety precautions or 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.

§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Construction Manager's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such

requests shall be made in writing with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Contract Documents.

§ 3.6.4.6 The Architect's fire protection engineer shall review all fire protection systems shop drawings and associated hydraulic calculations for compliance with the plans and specifications in the bid documents, the National Fire Protection Association Codes, and other codes or standards indicated on the Fire Sprinkler System Specification Sheet. After reviewing and approving the fire protection systems shop drawings, the fire protection engineer shall submit to both the State Fire Marshal and OSE, using the State Fire Marshal's form "Request for Fire Sprinkler System Shop Drawing Review For State Construction Projects", a copy of the shop drawings along with the engineer's certification that he has reviewed and approved the shop drawings and hydraulic calculations and finds them in compliance with the plans and specifications in the Bid Documents, the National Fire Protection Association Codes, and other codes or standards indicated on the Fire Sprinkler System Specification Sheet.

§ 3.6.4.7 The Architect's fire protection engineer of record shall attend the testing of the fire protection and detection system(s) and provide the Owner and OSE the following:

- .1 The installer's Certificate of Compliance with code requirements for installation and testing.
- .2 The Fire Marshal's Inspection Report
- .3 The Record of Training of users for Systems Operation.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect shall prepare Change Orders and Construction Change Directives, with supporting technical data and cost documentation supplied by the Construction Manager, for the Owner's approval and execution in accordance with the Contract Documents. Prior to preparing any Modification, the Architect shall (1) request from the Construction Manager any substantiating data required by Article 7 of the AIA Document A201-2017, SCOSE Version, including cost or pricing data referenced in Section 7.5.1, as applicable, and (2) assist the Owner in a thorough review of the information provided.

§ 3.6.5.1.1 For Construction Change Directives only, when the Construction Manager does not provide properly itemized cost information in accordance with Article 7 of the AIA Document A201-2017, SCOSE Version, the Architect shall, for the Owner's information and as an initial basis for establishing the upper limit of compensation to the Construction Manager, provide the itemization and shall use the labor, material and equipment unit costs as listed in the most current issue of the "Means Construction Cost Data" series of cost guides, adjusted for local cost conditions. The Architect's effort required to prepare the cost itemization shall be considered as an Additional Service.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Construction Manager; and
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

The Architect and the Architect's consultants shall conduct one Substantial Completion inspection and one Final Completion inspection as a part of Basic Services. Where projects have been designed for phased completion, the Architect and the Architect's consultants shall conduct one Substantial Completion inspection and one Final Completion inspection for each phase of the Project. If additional inspections are required, payment to the Architect shall be adjusted in accordance with Section 4.2.

§ 3.6.6.2 The Architect’s inspections shall be conducted with the Owner to (1) check conformance of the Work with the requirements of the Contract Documents and (2) verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager under the Contract Documents.

§ 3.6.6.5 During the tenth month after the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to inspect the Project and review the facility operations and performance. The Architect shall prepare a report indicating outstanding work or deficiencies in the Work to be corrected by the Construction Manager. The Architect shall provide the report to the Owner and OSE and, at the Owner’s direction, to the Construction Manager. Upon the Owner’s request and as an Additional Service, the Architect shall assist the Owner in taking necessary action to see that the deficiencies are corrected.

§ 3.6.6.6 The Architect shall prepare and provide to the Owner a set of reproducible As-Constructed Record Plans showing all significant changes in the work made during construction. The Record Plans shall be based on marked-up prints, plans and other data furnished by the Construction Manager to the Architect. Plans shall be stamped as "Record Plans". This set of reproducible documents shall be in addition to computer media plans required in Article 14, if any.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 Unless otherwise provided in this Agreement, the services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project. *(Designate the Architect’s Supplemental Services and the Owner’s Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)*

| Supplemental Services | Responsibility <i>(Architect, Owner, or not provided)</i> |
|--|---|
| § 4.1.1.1 Assistance with Selection of Construction Manager | |
| § 4.1.1.2 Programming | |
| § 4.1.1.3 Multiple Preliminary Designs | |
| § 4.1.1.4 Measured drawings | |
| § 4.1.1.5 Existing facilities surveys | |
| § 4.1.1.6 Site evaluation and planning | |
| § 4.1.1.7 Building Information Model management responsibilities | |
| § 4.1.1.8 Development of Building Information Models for post construction use | |
| § 4.1.1.9 Civil engineering | Included in Basic Services |
| § 4.1.1.10 Landscape design | |
| § 4.1.1.11 Architectural interior design | |
| § 4.1.1.12 Value analysis | |
| § 4.1.1.13 Cost estimating | |
| § 4.1.1.14 On-site project representation | |
| § 4.1.1.15 Conformed documents for construction | |

| Supplemental Services | Responsibility <i>(Architect, Owner, or not provided)</i> |
|---|---|
| § 4.1.1.16 As-designed record drawings | |
| § 4.1.1.17 As-constructed record drawings | Included in Basic Services |
| § 4.1.1.18 Post-occupancy evaluation | |
| § 4.1.1.19 Facility support services | |
| § 4.1.1.20 Tenant-related services | |
| § 4.1.1.21 Architect's coordination of the Owner's consultants | |
| § 4.1.1.22 Telecommunications/data design | |
| § 4.1.1.23 Security evaluation and planning | |
| § 4.1.1.24 Commissioning | |
| § 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3 | |
| § 4.1.1.26 Historic preservation | |
| § 4.1.1.27 Furniture, furnishings, and equipment design | |
| § 4.1.1.28 Other services provided by specialty Consultants | |
| § 4.1.1.29 Other Supplemental Services | |

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or bid packages in addition to those listed in Section 1.1.6;
- .2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work, Guaranteed Maximum Price proposal, or Control Estimate exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes, or equipment;

- .3 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .4 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .10 Services necessitated by replacement of the Construction Manager or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery method;
- .11 Services necessitated by the Owner's delay in engaging the Construction Manager;
- .12 Making revisions to the Drawings, Specifications, and other documents resulting from agreed-upon assumptions and clarifications included in the Guaranteed Maximum Price Amendment or Control Estimate; and
- .13 Making revisions to the Drawings, Specifications, and other documents resulting from substitutions included in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice:

- .1 Reviewing a Construction Manager's submittal out of sequence from the submittal schedule approved by the Architect where such review causes significant disruption to the Architects normal operations;
- .2 Responding to the Construction Manager's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Construction Manager-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Owner requested Change Orders, and Construction Change Directives that require evaluation of the Construction Manager's proposals and supporting data, or the preparation or revision of Instruments of Service; or,
- .4 Evaluating substitutions proposed by the Owner or Construction Manager and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 _____ (___) visits to the site by the Architect and its consultants during construction
- .2 _____ (___) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .3 _____ (___) inspections for any portion of the Work to determine final completion

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 Reserved

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5.

§ 5.3 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and Construction Manager of such change and of any corresponding changes in the Project's scope and quality.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Construction Manager to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.3.2 The Owner shall review the Architect's documents and the Construction Manager's estimate of the Cost of the Work for each phase (Schematic, Design Development, and Construction Documents) and shall submit its written approval to the Architect, Construction Manager, and OSE.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.5 The Owner shall furnish surveys 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, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.6 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.7 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.8 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 5.9 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance on the same basis as required of the Architect.

§ 5.10 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.11 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.12 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.13 The Owner shall include the Architect in all communications with the Construction Manager that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.14 The Owner shall coordinate the Architect's duties and responsibilities set forth in the Agreement between the Owner and the Construction Manager with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction.

§ 5.15 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.16 Reserved

§ 5.17 Decisions by the Owner

Any reference in the Contract Documents to the Owner taking action or rendering a decision "within a reasonable time" or "with reasonable promptness" is understood to mean no more than ten (10) days, unless otherwise specified in the Contract Documents or otherwise agreed to by the parties.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Construction Manager's general conditions costs, overhead, and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the compensation of the Construction Manager for Preconstruction Phase services; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in the Initial Information, and shall be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Architect and Construction Manager shall be permitted to include appropriate contingencies for design, subcontractor bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work in order to (1) determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; and, (2) in consultation with and subject to approval by the Owner, make reasonable adjustments in the program and scope of the Project as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's and Construction Manager's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services beyond the Construction Managers cost services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.3.1 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work together to reconcile the cost estimates.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget and previously approved estimates, the Construction Manager shall notify and make recommendations to the Owner and Architect. The Architect, in consultation with the Construction Manager, shall

prepare revisions to the Drawings, Specifications or other documents required due to the inaccuracies or incompleteness in the cost estimate. The Architect is to review the Construction Manager estimates make appropriate recommendations to the Owner to adjust the Project's size or quality, and the Owner shall, for the Architect's guidance in completion of its services, receive guidance from the Construction Manager as to materials selection, and coordination of design. The Architect shall report to the Owner any material inaccuracies and inconsistencies noted during the review to the Construction Manager and Owner.

§ 6.5 If at any time the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall, in consultation with the Construction Manager, make appropriate recommendations to the Owner to adjust the Project's size or quality for the Cost of the Work and the Owner shall cooperate with the Architect in making such adjustments. However, the Architect shall not be required to perform such services at no cost to the Owner if the unfavorable estimate is the result of conditions beyond the Architect's reasonable control.

§ 6.6 Reserved

§ 6.7 Reserved

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect warrants that in transmitting Instruments of Service, or any other information, the Architect is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a perpetual, irrevocable, nonexclusive license to use, and authorize others to use at any time and in any manner, the Architect's Instruments of Service for purposes including, but not limited to, constructing, using, maintaining, altering and adding to the structures which are the subject of the Instruments of Service at the general location of the site of Project, and for any other use required by law. The Architect shall obtain and provide to the Owner licenses from the Architect's consultants that have terms identical to those that obligate the Architect to the Owner as expressed above in this Section.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to waive any claims against the Architect and its consultants for all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Architect shall not use or allow to be used the Drawings, Specifications and reports or the unique design aspects of this Project for any other project, without the prior written approval of Owner. Architect may re-use standard specification texts and details. Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

§ 7.6 Upon the filing by the Architect of a petition in bankruptcy or upon any other proceeding or action by or against the Architect under the relevant law on bankruptcy, this Agreement shall be governed by Section 365(n) of the U.S. Bankruptcy Code, if applicable. If any person seeks to reject this Agreement pursuant to bankruptcy law, Owner shall

have the option of using the Instruments of Service for either the original term of this Agreement or a period of five years after rejection is requested.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Architect agrees that any act by the State regarding the Agreement is not a waiver of either the State's sovereign immunity or the State's immunity under the Eleventh Amendment of the United States Constitution. As used herein, the phrase "the State" includes the Owner, any governmental entity transacting business with the Architect pursuant to the Agreement, and the State Fiscal Accountability Authority. Architect consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Architect by certified mail (return receipt requested) addressed to Architect at the address provided in the AIA B133 2019, SCOSE Version or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.

§ 8.1.2 Waiver of Claims

To the extent damages are covered and paid for by property insurance provided by the Construction Manager, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction, SCOSE Version. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 Reserved

§ 8.1.4 The Architect and Owner waive claims against each other for listed damages arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all listed damages due to either party's termination of this Agreement.

§ 8.1.4.1 For the Owner, listed damages are (i) lost revenue and profit, (ii) losses resulting from injury to business or reputation, (iii) additional or escalated overhead and administration expenses, (iv) additional financing costs, (v) costs suffered by a third party unable to commence work, (vi) attorney's fees, (vii) any interest, except to the extent allowed by Section 11.10.2, (viii) losses resulting from lost use of the property, (ix) costs resulting from lost productivity or efficiency.

§ 8.1.4.2 For the Architect, listed damages are (i) lost revenue and profit, (ii) losses resulting from injury to business or reputation, (iii) additional or escalated overhead and administration expenses, (iv) additional financing costs, (v) attorney's fees, (vi) any interest, except to the extent allowed by Section 11.10.2, (vii) unamortized equipment costs; and (viii) losses incurred by the Architect's consultants for the types of damages the Architect has waived as against the Owner.

§ 8.1.5 Waiver of Architect Claims Against the Construction Manager

The Architect waives all claims against the Construction Manager and any of the Construction Manager's subcontractors (at any tier) for listed damages arising out of or relating to this Contract. The listed damages are (i) lost revenue and profit, (ii) losses resulting from injury to business or reputation, (iii) additional or escalated overhead and administration expenses, (iv) additional financing costs, (v) attorney's fees, (vi) interest, (vii) unamortized equipment costs; and (viii) losses incurred by the Architect's consultants for the types of damages the Architect has waived as against the Construction Manager. This mutual waiver is not applicable to amounts due or obligations under Section 2.6.11 (Third Party Indemnification).

§ 8.2 Mediation

§ 8.2.1 Reserved

§ 8.2.2 If either party files a request for resolution of a contract controversy with the Chief Procurement Officer for Construction (CPOC) pursuant to Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, as amended, the Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation using a mediation process and mediator mutually agreeable to both. The Owner and Architect shall act in good faith in selecting and agreeing on mediation procedures and a mediator. If the Owner and Architect cannot in good faith agree on mediation procedures and/or a mediator, they shall use procedures and/or a mediator appointed by the CPOC. Mediation shall proceed in advance of Administrative Review by the CPOC.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be approved by the CPOC.

§ 8.2.4 If the parties cannot resolve a dispute through mediation pursuant to this Section 8.2, the parties shall so notify the CPOC and proceed in accordance with the procedures set forth in Article 17 of the South Carolina Code of Laws, as amended.

§ 8.3 Reserved

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

§ 8.5 Continuing Contract Performance

Pending resolution of a claim or dispute, including but not limited to, whether any services Owner expects Architect to perform are within the scope of contracted services or whether Architect is entitled to additional compensation for any services requested, the Architect shall proceed diligently with the performance of its services under this Agreement, and Owner shall continue to make payments in accordance with this Agreement for all services rendered by Architect which are not the subject of the claim or dispute.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance 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, the Architect shall give written notice to the Owner. Unless the Architect receives payment in full for undisputed amounts within twenty-one (21) days of the Owner's receipt of the Architect's notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all undisputed sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. If the suspension exceeded ninety (90) days, the Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than fourteen (14) days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than twenty-one (21) 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.

§ 9.5 The Owner may terminate this Agreement upon not less than twenty-one (21) days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for reasonable profit on the value of the services performed at the Owner's request as a result of the termination.

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 In the event of suspension or termination for convenience, upon request of Owner and payment of all fees pursuant to this Article, Architect shall promptly provide Owner with reproducible drawings and computer tapes or disks of all documents completed or in progress on the date of termination. The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 Governing Law

§ 10.1.1 The Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules.

§ 10.1.2 This Contract is formed pursuant to and governed by the South Carolina Consolidated Procurement Code and is deemed to incorporate all applicable provisions thereof and the ensuing regulations

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction SCOSE Version, except as modified in this Agreement. The term "Contractor" as used in A201–2017 shall mean the Construction Manager. Any reference in this document to the Agreement between the Owner and Construction Manager as Constructor, AIA Document A133, or some abbreviated reference thereof, shall mean the AIA A133-2019, Agreement Between Owner and Construction Manager as Constructor, SCOSE Version. Any reference in this document to the General Conditions of the Contract for Construction, AIA Document A201, or some abbreviated reference thereof, shall mean the AIA A201- 2017, General Conditions for Construction, SCOSE Version.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment. S.C. Code Ann. Reg. 19-445.2180 provides as follows: "No State contract is transferable, or otherwise assignable, without the written consent of the Chief Procurement Officer, the head of a purchasing agency, or the designee of either; provided, however, that a contractor may assign monies receivable under a contract after due notice from the contractor to the State."

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 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 Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 Publicity

§ 10.7.1 Subject to the Owner's written approval, which shall not be unreasonably withheld, 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. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.7.2 Architect shall not publish any comments or quotes by State employees or include the State in either news releases or a published list of customers, without the prior written approval of the Owner.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall, to the extent permitted by law, keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

§ 10.10 Economic Conflict of Interest

An Architect shall not have or exercise any official responsibility regarding a public contract in which the Architect, or a business with which it is associated, has an economic interest. A person working for the Architect shall not have or exercise any official responsibility regarding a public contract in which the person, an individual with whom it is associated, or its family members have an economic interest. If the Architect is asked by any person to violate, or does violate, either of these restrictions, the Architect shall immediately communicate such information to the Procurement Officer. The State may rescind, and recover any amount expended as a result of, any action taken or contract entered in violation of this provision. The terms "business with which it is associated," "economic interest," "family member," "immediate family," "individual with whom it is associated," "official responsibility" and "person" have the meanings provided in S.C. Code Ann. § 8-13-100.

§ 10.11 Drug-Free Workplace

The Architect must comply with the Drug-Free Workplace Act, S.C. Code Ann. §§ 44-107-10, et seq. The Architect certifies to the Owner that Architect will provide a Drug-Free Workplace, as defined by S.C. Code Ann. §§ 44-107-20(1).

§ 10.12 False Claims

According to the S.C. Code Ann. § 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime.

§ 10.13 Non-Indemnification

Any term or condition is void to the extent it requires the State to indemnify, defend, or pay attorney's fees to anyone for any reason.

§ 10.14 Architect's Records

Upon request, the Architect shall provide the Owner with copies of all documents, in their original form, in the Architect's possession that regard the Project. Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

§ 10.15 Right to Audit Records

§ 10.15.1 Audit of Cost or Pricing Data

The Owner shall be entitled, at reasonable times and places, to audit the books and records of the Architect and the Architect's consultants who have submitted cost or pricing data pursuant to either this Contract or to SC Code of Laws § 11-35-1830 to the extent that such books and records relate to such cost or pricing data. If any cost or pricing data is required for this Contract, the Architect and the Architect's consultants shall maintain such books and records that relate to such cost or pricing data for three (3) years from the date of final payment under the Contract, unless a shorter period is otherwise authorized in writing by the Chief Procurement Officer; provided, however, that such records shall be retained for additional periods of time beyond this three-year period upon request of the Chief Procurement Officer.

§ 10.15.2 Contract Audit

If this Contract or any Modification (other than a firm fixed price contract) is negotiated, the Owner shall be entitled to audit the books and records of the Architect and the Architect's consultants to the extent that such books and records relate to the performance of the Contract or any Modification. Such books and records shall be maintained by the Architect for a period of three years from the date of final payment under the Contract and by any consultants for a period of three years from the date of final payment under the Architect's contract with the consultant, unless a shorter period is otherwise authorized in writing by the Chief Procurement Officer. As used in this paragraph, the phrase "Chief Procurement Officer" shall have the definition given that phrase in SC Code of Laws §11-35-310.

§ 10.16 Force Majeure

In the event Architect is hindered, delayed or prevented from performing its obligations under this Agreement as a result of any fire, flood, landslide, tornado or other act of God, malicious mischief, theft, strike, lockout, other labor problems, shortages of material or labor, or any other cause beyond the reasonable control of Architect, the time for completion of Architect's work shall be extended by the period of resulting delay.

§ 10.17 No Waiver

No action or failure to act by the Owner, Architect, or Construction Manager shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 10.18 Open Trade Representation

By signing this Agreement, Architect represents that Architect is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in S.C. Code Ann. § 11-35-5300. During the Contract term, including any renewals or extensions, Architect will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in S.C. Code Ann. § 11-35-5300

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

Phase 1 Services (through completion of the Schematic Design Phase): \$ _____

Phase 2 Services (Design Development Phase thru completion of all Work of the Agreement): \$ _____

.1 Stipulated Sum
(Insert amount)

.2 Percentage Basis
(Insert percentage value)

_____ (____) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

§ 11.4 Reserved

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

| | | | | |
|------------------------------|-------------|-----------|-----|----|
| Schematic Design Phase | « » | percent (| « » | %) |
| Design Development Phase | « » | percent (| « » | %) |
| Construction Documents Phase | « » | percent (| « » | %) |
| Construction Phase | « » | percent (| « » | %) |
| <hr/> | | | | |
| Total Basic Compensation | one hundred | percent (| 100 | %) |

The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or Construction Manager as constructor project delivery method, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category

Rate (\$0.00)

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence subject to Section 11.8.3;
- .2 Long distance services, project dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .7 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .8 All taxes levied on professional services and on reimbursable expenses; and,
- .9 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the actual costs incurred by the Architect and the Architect's consultants up to the amount of the Reimbursable Expense Allowance. The Architect and the Architect's consultants shall be allowed a reasonable markup not to exceed 10% for administrative cost related to Reimbursable Expenses.

§ 11.8.3 Unless authorized in writing by the Owner prior to incurring the expense, no expense for transportation, travel, or subsistence will be reimbursable to the extent the expense exceeds the amount for which a state employee would be reimbursed under the Travel Regulations. Travel Regulations means the State Fiscal Accountability Authority's Regulations for Reimbursement for Travel and Subsistence Expenses, Disbursement Regulations pdf found at [<https://cg.sc.gov/guidance-and-forms-state-agencies/cgs-accounting-policies-and-procedures>]. There shall be no charge for time spent in travel.

§ 11.9 **Architect's Insurance** If the limits of coverage required in Section 2.6.6 exceed the greater of (i) \$1,000,000 per claim and in the aggregate or (ii) the limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.6, and the amounts for which additional coverage the Owner shall reimburse the Architect.)

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of zero dollars (\$0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Payments due to the Architect and unpaid under this Agreement shall bear interest only if and to the extent allowed by S.C. Code Ann. §§ 29-6-10 through 29-6-60. Amounts due to the Owner shall bear interest at the rate of one percent a month or a pro rata fraction thereof on the unpaid balance as may be due.

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty.

§ 11.10.2.3 In addition to the sections of Article 10, records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B133™–2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition, SCOSE Version
- .2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below, if completed, or the following:
(Insert the date of the E203-2013 if incorporated into this agreement.)
- .3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)
 - AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition dated as indicated below.
(Insert the date of the E234-2019 incorporated into this agreement.)
 - Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)
- .4 Other documents:
(List other documents, if any, forming part of the Agreement.)

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

OWNER *(Signature)*

ARCHITECT *(Signature)*

(Printed name and title)

(Printed name, title, and license number, if required)