SE-734

GENERAL CONDITIONS OF THE CONTRACT BETWEEN AGENCY AND DESIGN-BUILDER

AGENCY:

PROJECT NAME:

PROJECT NUMBER:

DESIGN-BUILDER:

#### ARTICLE 1 - GENERAL PROVISIONS

* 1. Defined Terms

1. Agency: The state agency with which Design-Builder has contracted regarding the Work, and which has agreed to pay Design-Builder for the performance of the Work, pursuant to the terms of the Contract. The Agency 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.
2. Agency’s Consultant: An individual or entity with which the Agency has contracted to furnish services (typically including planning, preparation of Programming Documents, and advisory services) to the Agency with respect to the Project.
3. Agency’s Representative: A representative of Agency at the Site, as indicated in Article 6 of the Agreement.
4. Agreement: The written contract executed by Agency and Design-Builder that sets forth the Contract Price and Contract Times, identifies the parties, and designates the specific items that are Contract Documents. Any reference in this document to the Agreement between the Agency and Design-Builder, SE-733, or some abbreviated reference thereof, shall mean the SE-733 Agreement between Agency and Design-Builder. Any reference in this document to the General Conditions of the Contract Between Agency and Design-Builder, SE-734, or some abbreviated reference thereof, shall mean the SE-734 General Conditions of the Contract Between Agency and Design-Builder.
5. Application for Payment: The form which is to be used by Design-Builder during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
6. Change Directive: A written order prepared by the Agency, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both.
7. Change Order: A document (SE-780 Change Order to DBx Contract) which is signed by Design-Builder and Agency and authorizes an addition, deletion, or revision in the Work, or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Date of Commencement. If the Change Order has an item of work exceeding the Agency’s construction certification, OSE must authorize the Change Order.
8. Claim: A demand or assertion by Agency or Design-Builder seeking an adjustment of Contract Price or Contract Time, or both, or other relief with respect to the terms of the Contract. A request or proposal for a Change Order is not a Claim. The responsibility to substantiate Claims shall rest with the party making the Claim.
9. Construction: The part of the Work that consists generally of making physical improvements at the Site and is the result of performing or furnishing of labor, the furnishing and incorporating of materials and equipment into the Work (including any correction of defective Construction), and the furnishing of services (other than Design Professional Services) and documents, all as required by the Contract Documents and Construction Drawings and Construction Specifications, as duly modified.
10. Construction Drawings: Documents prepared by or for Design-Builder consistent with the Design Requirements and approved by Agency for purposes of allowing Design-Builder to proceed with the Construction or specific portions of the Construction. Documents may consist of drawings, diagrams, illustrations, schedules, and other data that graphically show the scope, extent, and character of the Construction (or specific portions of the Construction) to be performed by Design-Builder. Construction Drawings are not Contract Documents.
11. Construction Specifications: Documents prepared by or for Design-Builder and approved by Agency for purposes of allowing Design-Builder to proceed with the Construction or a specific portion of the Construction, and consisting of written requirements for materials, equipment, systems, standards, workmanship, and administrative procedures as applied to the Construction (or a specific portion of the Construction).
12. Construction Subcontract: A written agreement between Design-Builder and a Subcontractor for provision of all or a portion of the Construction, and any delegated Design Professional Services.
13. Contract: The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Agency and a Design-Builder Subcontractor or a Sub-Subcontractor, (2) between any persons or entities other than the Agency and the Design-Builder.
14. Contract Documents: Those items so designated in the Agreement, and which together comprise the Contract. Contract Documents are enumerated in the Agreement between the Agency and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract.
15. Contract Price: The money that Agency has agreed to pay Design-Builder for completion of the Work in accordance with the Contract Documents.
16. Contract Time: The number of calendar days stated in the Agreement, including adjustments, to (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
17. Date of Commencement of the Work: The date indicated in the Notice to Proceed (SE-790) on which the Contract becomes effective and the Design-Builder may begin the Work.
18. Day: The term “day” as used in the Contract Documents shall mean a calendar day unless otherwise specifically defined.
19. Design Agreement: A written agreement between Design-Builder and a design firm or entity for provision of Design Professional Services.
20. Design-Builder: The individual or entity with which Agency has contracted for performance of the Work, as designated in the Agreement.
21. Design-Builder’s Representative: A representative of the Design-Builder at the Site, as indicated in Article 6 of the Agreement.
22. Design Documents: Documents that pursuant to Laws and Regulations or this Contract must be prepared by or under the supervision of a registered architect, licensed engineer or other licensed design professional, including drawings, specifications, Construction Drawings, Construction Specifications, and revisions to such documents (but not including Record Documents).
23. Design Professional: Architectural and Engineering services provided by or for the Design-Builder. The function of the Design Professional is to furnish Design Professional Services to the Design-Builder. The Design Professional shall perform its duties consistent with the professional skill and care ordinarily provided by practicing design professionals in the same region under the same circumstances.
24. Design Professional Services: That portion of the Work comprised of furnishing of engineering, surveying, architecture, and other design services, and including but not limited to providing research, analysis, and conclusions regarding engineering and related matters; exercising professional judgment with respect to technical issues; the preparation of plans, reports, calculations, models, schematics, drawings, specifications, submittals, the Construction Drawings, Construction Specifications, and other instruments of service; other services included in the Contract Documents and required to be performed by or under the responsible charge of licensed design professionals; and the review of shop drawings, observation of construction, response to requests for information or interpretation, analysis of the technical aspects of Change Orders, and other engineering and related professional services provided by or for licensed design professionals during Construction.
25. Design Requirements: The documents prepared by or for the Agency to describe the Work to be performed, issued to Offerors during the Design-Build selection process, and expressly identified in the Agreement.
26. Independent Peer Reviewer: Architectural and Engineering services provided by or for the Agency. The function of the Independent Peer Reviewer services is to confirm that the key elements of the engineering and architectural design provided by the Design-Builder are consistent with the professional skill and care ordinarily provided by practicing design professionals in the same region under the same circumstances.
27. Instruments of Service: Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder and Design Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.
28. Laws or Regulations: Any and all applicable laws, statutes, rules, regulations, ordinances, binding resolutions, codes, decrees, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
29. Milestone: A principal event in the performance of the Work that the Contract requires Design-Builder to achieve by an intermediate completion date or by a time prior to Substantial Completion of Construction.
30. Notice of Intent to Award: The written notice (SE-770) by the Agency stating that the Agency will enter into the design-build Contract with the Offeror.
31. Notice to Proceed: The document (SE-790) issued by the Agency to the Design-Builder, directing the Design-Builder to begin execution of the Work in accordance with the requirements of the Contract Documents. The Notice to Proceed shall fix the date on which the Contract Time will commence.
32. Offeror: An entity that submits a Statement of Qualifications or Proposal to Agency.
33. Product Data: Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Work.
34. Proposal: The documents submitted by Design-Builder in response to the Agency’s Request for Proposals, setting forth technical concepts, proposed prices, and other conditions for the Work to be performed, and stating any proposed revisions, modifications, clarifications, exceptions, or supplements to the proposed Contract Documents.
35. Proposal Amendment: A document that is prepared after submittal of Design-Builder’s Proposal; identifies mutually agreed revisions, modifications, exceptions, supplements, and clarifications to the Proposal or proposed Contract Documents; and is executed by Agency and Design-Builder.
36. Record Documents: The record copy of all Construction Drawings, Construction Specifications, Addenda, Change Orders, Work Change Directives, and approved Submittals maintained by Design-Builder at the Site, including any annotations to such documents made by Design-Builder during Construction.
37. Record Drawings and Record Specifications: Documents depicting the completed Project, or a specific portion of the completed Project, based on or comprised of the Record Documents delivered to Agency by Design-Builder at the completion of the Construction.
38. Request for Proposals: The document prepared by or for Agency specifying and describing Agency’s objectives, the procedures to be followed in preparing and submitting a Proposal, and the process for evaluating Proposals and awarding a contract.
39. Request for Qualifications: The document prepared by or for Agency requesting that Offerors submit a Statement of Qualifications with respect to their abilities for consideration during the selection process.
40. Samples: Physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
41. Separate Contractor: The term “Separate Contractor(s)” shall mean other Contractors retained by the Agency under separate agreements.
42. Schedule of Values: A schedule, prepared and maintained by Design-Builder, allocating portions of the Contract Price to various portions of the Work, and used as the basis for reviewing Design-Builder’s Applications for Payment.
43. Shop Drawings: Drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Builder or a Subcontractor, Sub-Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
44. State Engineer: State Engineer means the person holding the position as head of the State Engineer’s Office. The State Engineer is also the Chief Procurement Officer for Construction, sometimes referred to in the Contract Documents as “CPOC”.
45. Subcontractor: An individual or entity (other than a Supplier) having a direct contract with Design-Builder or with any other Subcontractor for the performance of a part of the Construction.
46. Submittal: A written or graphic document, prepared by or for Design-Builder, which the Contract Documents require the Design-Builder to submit to the Agency. Submittals may include reports, preliminary drawings and specifications, cost estimates, proposed Design-Build Drawings and Design-Build Specifications, progress schedules, cash flow projections, Schedules of Values, shop drawings, product data, samples, delegated designs, certifications, proposed modifications to the Design-Build Drawings and Design-Build Specifications, results of tests and evaluations, results of source quality control testing and inspections, results of field or Site quality control testing and evaluations, sustainable design information, information on special procedures, operations and maintenance data, sustainable design closeout information, record documents, records of spare parts and extra stock materials, and other such documents required by the Contract Documents. Submittals, whether approved or accepted by Agency or not, are not Contract Documents. Claims, notices, Change Orders, Applications for Payment, and requests for information/interpretation are not Submittals.
47. Substantial Completion: The date on which the Construction (or a specified part thereof) has progressed to the point where it is sufficiently complete in accordance with the Contract Documents, so that the Agency can occupy or utilize the Work for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Construction refer to Substantial Completion thereof.
48. Supplementary Conditions: The part of the Contract Documents which amends or supplements these General Conditions.
49. Supplier: A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Design-Builder or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Design-Builder or a Subcontractor, and any lessor of rental equipment used by Design-Builder or a Subcontractor during Construction at the site.
50. Underground Facilities: All underground lines, pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems, including but not limited to those that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, fire or police signal systems, or traffic or other control systems; and any encasements containing such facilities or systems.
51. Work: The entire design and construction or the various separately identifiable parts thereof required to be performed or furnished by Design-Builder under the Contract Documents. Work includes and is the result of performing or furnishing Design Professional Services and Construction required by the Contract Documents and all labor, services, and documentation necessary to produce such Design Professional Services and Construction; furnishing, installing, and incorporating all materials and equipment into such Construction; and related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
    1. Notice
52. Except as otherwise provided in Section 1.2.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission.
53. Notice of Claims as provided in Section 14.2 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.
54. Notice to Design-Builder shall be to the address provided in Section 6.2 of the Agreement. Notice to Agency shall be to the address provided in Section 6.1 of the Agreement. Either party may designate a different address for notice by giving notice in accordance with Section 1.2.1.
    1. Bonds and Insurance
55. When Design-Builder delivers the executed Agreements to Agency, Design-Builder shall also deliver to Agency such Bonds as Design-Builder may be required to furnish in accordance with Article 10.
56. Before any Work is started, Design-Builder shall deliver to the Agency those certificates of insurance that Design-Builder is required to purchase and maintain in accordance with Article 10.
57. Design Requirements
58. The Agency and the Design-Builder acknowledge that the Design Requirements, if any, furnished by the Agency are preliminary in nature and are furnished as a representation of the facility the Agency desires to be constructed.
59. By the Design-Builders signature on the Agreement, it acknowledges that it has reviewed and verified the contents of the Design Requirements and has notified the Agency by report of any conflict, error, ambiguity, or discrepancy. By the Agency’s signature on the Agreement, it acknowledges that it has provided to the Design-Builder a written interpretation, clarification, or correction to the Design-Builder’s written report.
60. Subject to the review and reporting obligations, the Design-Builder may use the Design Requirements as a basis for performing Design Professional Services for the preparation of Design Documents.

ARTICLE 2 - AGENCY’S RESPONSIBILITIES

1. The Agency is the state agency identified as such in the Agreement and is referred to throughout the documents as if singular in number.
2. The Agency’s Representative designated in Article 6 of the Agreement shall have the authority to bind the Agency with respect to all matters regarding the Contract and requiring the Agency’s approval or authorization.
3. Agency will furnish a Representative to observe the performance of Construction. The Agency’s Representative will have the authority to transmit instructions, receive information, interpret and define Agency’s policies, make decisions with respect to performance of the Work, and shall provide such other services as may be agreed upon;
4. Any reference in the Contract Documents to the Agency 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.
5. Agency Consultants
   1. Agency Consultants, if any, are identified in the Agreement.
   2. Agency shall advise Design-Builder of the identity and scope of services of any consultants retained by Agency to perform or furnish services regarding the Project, including, but not limited to, cost estimating, project peer review, value engineering, constructability review, program management, project management, or contract administration.
6. Neither the Agency, Agency’s Representative, nor any consultant retained by Agency, has any duties, responsibilities, or authorities with respect to Design-Builder, unless expressly provided in this Contract. Agency Consultants shall not supervise, direct, or have control or authority over, nor be responsible for Design-Builder’s means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto, or for any failure of Design-Builder to comply with Laws or Regulations applicable to the furnishing or performance of the Work; and will not be responsible for Design-Builder’s failure to perform the Work in accordance with the Contract Documents.
7. The Agency shall furnish, with reasonable promptness, information requested by the Design-Builder that is necessary for the performance of the Contract Services and under the Agency’s control. Any information or documentation provided by the Agency to the Design-Builder relating to the Project or site is provided only for the convenience of the Design-Builder. The Agency makes no representation or warranty to as to the sufficiency, completeness, or accuracy of such information.
8. The Agency shall furnish to the Design-Builder within fifteen (15) days after receipt of a written request, information necessary and relevant for the Design-Builder to post Notice of Project Commencement pursuant to Title 29, Chapter 5, Section 23 of the South Carolina Code of Laws, as amended.
9. The Agency shall perform the following in a timely manner so as not to delay the services of the Design-Builder:
10. Make payments to Design-Builder promptly when they are due, as provided in Article 8.
11. Furnish the site, arrange for safe access to and make all provisions for Design-Builder to enter upon public property as may reasonably be required for Design-Builder to perform Work under the Contract.
12. Furnish to Design-Builder, as required for performance of the Work, the following, all of which Design-Builder may use and rely upon in performing services under this Agreement:
13. Environmental assessment and impact statements
14. Property, boundary, easement, right-of-way, and other special engineering surveys or data
15. Property descriptions
16. Utility and topographic mapping and surveys
17. Explorations and tests of subsurface conditions at or adjacent to the site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the site; any information or data known to Agency concerning Underground Facilities at the site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data
18. Any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site
19. Engineering surveys to establish reference points which in Agency’s judgment are necessary to enable Design-Builder to proceed with the Work
20. Assistance to Design-Builder in filing documents required to obtain necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Project; and
21. Permits, licenses, and approvals of government authorities that the Contract Documents expressly require Agency to obtain.
22. Provide information known to Agency relating to the presence of materials and substances at the Site that could create a hazardous environmental condition.
23. The Agency shall review the Design Documents and the Design-Builder’s estimate of the Cost of the Work for each phase (Schematic, Design Development, and/or Construction Documents as contracted) in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Design-Builder’s services and shall submit its written approval to the Design-Builder and OSE.
24. Notwithstanding anything to the contrary contained in this Agreement, the Agency's review and approval of any and all documents or other matters required herein shall not be construed to be for the purpose of determining the Design-Builder has met his professional duty of care in the preparation of the Instruments of Service.
25. Agency’s responsibility with respect to undisclosed hazardous environmental conditions uncovered or revealed at the Site is set forth in Section 9.4.
26. Agency shall inform Design-Builder of any specific requirements of safety or security programs that are applicable to Design-Builder while at the Site.
27. Information and Services Required of The Agency
28. Except for permits and fees that are the responsibility of the Design-Builder under the Contract Documents, including those required under Section 3.7, the Agency shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
29. The Agency shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. Subject to the Design-Builder’s obligations, including those in Section 3.3, the Design-Builder shall be entitled to rely on the accuracy of information furnished by the Agency pursuant to this Section but shall exercise proper precautions relating to the safe performance of the Work.
30. The Agency shall furnish information or services required of the Agency by the Contract Documents with reasonable promptness. The Agency shall also furnish any other information or services under the Agency’s control and relevant to the Design-Builder’s performance of the Work with reasonable promptness after receiving the Design-Builder’s written request for such information or services. However, the Agency does not warrant the accuracy of any such information requested by the Design-Builder that is not otherwise required of the Agency by the Contract Documents. Neither the Agency nor its Consultants shall be required to conduct investigations or to furnish the Design-Builder with any information concerning subsurface characteristics or other conditions of the area where the Work is to be performed.
31. Unless otherwise provided in the Contract Documents, the Agency shall furnish to the Design-Builder one electronic copy (.pdf format) of the Design Requirements.
32. The Agency assumes no responsibility for any conclusions or interpretation made by the Design-Builder based on information made available by the Agency.
33. The Agency shall obtain, at its own cost, general building and specialty inspection services as required by the Contract Documents. The Design-Builder shall be responsible for payment of any charges imposed for re-inspections.
34. Agency’s Right to Stop the Work: If the Design-Builder fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 11.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Agency may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Agency to stop the Work shall not give rise to a duty on the part of the Agency to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.1.3.
35. Agency’s Right to Carry Out the Work: If the Design-Builder defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Agency to commence and continue correction of such default or neglect, including but not limited to providing necessary resources, with diligence and promptness, the Agency may, without prejudice to other remedies the Agency may have, correct such deficiencies. In such case an appropriate Change Directive shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies, including Agency’s expenses and compensation for the Agency’s Consultant services made necessary by such default, neglect or failure. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Agency.

ARTICLE 3 - DESIGN-BUILDER’S RESPONSIBILITIES

1. The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number.
2. The Design-Builder shall be lawfully licensed, if required in the jurisdiction where the Project is located.
3. The Design-Builder’s Representative designated in Article 6 of the Agreement shall have the authority to bind the Design-Builder with respect to all matters regarding the Contract and requiring the Design-Builder’s approval or authorization.
4. Any reference in the Contract Documents to the Design-Builder 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.
5. Supervision and Performance of the Work:
6. The Design-Builder shall supervise, perform, and direct the Work, using the professional skill, care, and attention reasonably required for similar projects. The Design-Builder shall be solely responsible for and have control over means, methods, techniques, sequences, and procedures and for coordinating the Work.
7. The Design-Builder shall perform the Work in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall assume responsibility for such work and shall bear the costs attributable for correction.
8. The Design-Builder agrees to faithfully and fully perform the terms of this Contract and shall complete the Work in accordance with the approved Construction Drawings and Specifications and deliver the Work to the Agency free and clear of all liens and claims.
9. The Design-Builder shall, at all times during the progress the Work, employ enough skilled workers and have on hand and maintain an adequate supply of materials and equipment to complete the Work in accordance with the construction schedule.
10. The Design-Builder shall be responsible to the Agency for acts and omissions of the Design-Builder’s employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Design-Builder or any of its Subcontractors.
11. The Design-Builder shall not be relieved of its obligation to perform the Work in accordance with the Construction Drawings and Specifications either by activities or duties of the Agency in the Agency’s administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Design-Builder.
12. The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.
13. Construction Documents and Field Conditions
14. The Design-Builder acknowledges that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance.
15. The Design-Builder acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Agency, as well as from the drawings and specifications made a part of this contract.
16. Any failure of the Design-Builder to take the actions described and acknowledged in this paragraph will not relieve the Design-Builder from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Agency.
17. The Design-Builder shall, before starting each portion of the Work, carefully study and compare the various drawings and specifications relative to that portion of the Work, as well as the information furnished by the Agency pursuant to Section 2.6.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it.
18. Labor & Materials
19. Unless otherwise provided in the Contract Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
20. The Design-Builder shall enforce strict discipline and good order among the Design-Builder’s employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.
21. Design-Builder Warranty
22. The Design-Builder warrants to the Agency that materials and equipment furnished under the Contract will be of good quality and new unless otherwise permitted by the Contract Documents, that the Work will be free from faults and defects not inherent in the quality required or permitted, that the materials, equipment and Work will conform with the requirements of the Contract Documents, and that the Work will be free from any encumbrances, liens, security interests, or other defects in title upon conveyance of title to the Agency. The Design-Builder’s warranty excludes remedy for damage or defect to the extent caused by (i) abuse by anyone other than the Design-Builder or those for whose acts the Design-Builder is responsible, (ii) modifications not approved or executed by the Design-Builder or Subcontractors, (iii) improper or insufficient maintenance or operation not the fault of the Design-Builder or those for whose acts the Design-Builder is responsible, or (iv) normal wear and tear under normal usage. If required by the Agency, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment and the recommended maintenance thereto.
23. All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Agency, or shall be transferable to the Agency, and shall commence in accordance with Section 8.9.4.
24. Taxes: The Design-Builder shall pay sales, consumer, use and similar taxes for the Work provided by the Design-Builder that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The Design-Builder shall comply with the requirements of Title 12, Chapter 8 of the South Carolina Code of Laws, as amended, regarding withholding tax for nonresidents, employees, Design-Builders and Subcontractors.
25. Permits, Fees, Notices and Compliance with Laws
26. Pursuant to S.C. Code Ann. § 10-1-180, no local general or specialty building permits are required for state buildings.
27. Unless otherwise provided in the Construction Drawings and Specifications, the Design-Builder shall secure and pay for all permits, fees, and licenses by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.
28. The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.
29. If the Design-Builder performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction
30. Concealed or Unknown Conditions
31. If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Construction Drawings and Specifications or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Construction Drawings and Specifications, the Design-Builder shall promptly provide notice to the Agency before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Agency will promptly investigate such conditions and, if the Agency determines that they differ materially and cause an increase or decrease in the Design-Builder’s cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both.
32. If the Agency determines that the conditions at the site are not materially different from those indicated in the Construction Drawings and Specifications and that no change in the terms of the Contract is justified, the Agency shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Agency’s determination or recommendation, that party may proceed as provided in Article 14.
33. If, in the course of the Work, the Design-Builder encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Construction Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Agency. Upon receipt of such notice, the Agency shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Agency but shall continue with all other operations that do not affect those remains or features. Adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 6.3.3.
34. Allowances
35. The Design-Builder shall include in the Contract Sum all allowances stated in the Construction Drawings and Specifications. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Agency may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.
36. Unless otherwise provided in the Construction Drawings and Specifications,
37. allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
38. the Design-Builder’s costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
39. whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual costs, as documented by invoices, and the allowances under Section 3.9.2.1.
40. Materials and equipment under an allowance shall be selected by the Agency with reasonable promptness.
41. Superintendent
42. The Design-Builder shall employ a competent superintendent, acceptable to the Agency, and necessary assistants who shall be in attendance at the project site during performance of the Work. The superintendent shall represent the Design-Builder, and communications given to the superintendent shall be as binding as if given to the Design-Builder.
43. The Design-Builder, as soon as practicable after award of the Contract, shall notify the Agency of the name and qualifications of a proposed superintendent. Within fourteen (14) days of receipt of the information, the Agency may notify the Design-Builder, stating whether the Agency has reasonable objection to the proposed superintendent. Failure of the Agency to provide notice within the 14-day period shall constitute notice of no reasonable objection.
44. The Design-Builder shall not employ a proposed superintendent to whom the Agency has made reasonable and timely objection. The Design-Builder shall notify the Agency, in writing, of any proposed change in the superintendent, including the reason therefore, prior to making such change. The Design-Builder shall not change the superintendent without the Agency’s consent, which shall not unreasonably be withheld or delayed.
45. Design-Builder Construction Schedules
46. The Design-Builder, promptly after being awarded the Contract, shall prepare and submit for the Agency’s information a Design-Builder’s design and construction schedule for the Work. Subject to any additional requirements in the Contract Documents, the schedule shall contain detail appropriate for the Project, including at a minimum (1) allowances for periods of time for (i) the Agency’s review, (ii) the Design-Builder’s review, (iii) the performance of the Agency’s consultants, and (iv) for approval of submissions by authorities having jurisdiction over the Project, (2) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (3) an apportionment of the Work by construction activity; and (4) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.
47. The Design-Builder, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Agency’s approval. The Agency’s approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Design-Builder’s design and construction schedule, and (2) allow the Agency reasonable time to review submittals. If the Design-Builder fails to submit a submittal schedule or fails to provide submittals in accordance with the approved submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.
48. The Design-Builder shall perform the Work in accordance with the most recent schedule submitted to the Agency.
49. Subcontractors
50. The Design-Builder, within fourteen (14) days after posting of the Notice of Intent to Award of the Contract (SE-770), shall notify the Agency, in writing, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Agency may notify the Design-Builder whether the Agency has reasonable objection to any such proposed person or entity. Failure of the Agency to provide notice within the 14-day period shall constitute notice of no reasonable objection.
51. The Design-Builder shall not contract with a proposed person or entity to whom the Agency has made reasonable and timely objection. The Agency shall not direct the Design-Builder to contract with any specific individual or entity for supplies or services unless such supplies and services are necessary for completion of the Work and the specified individual or entity is the only source of such supply or service.
52. If the Agency has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Agency has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor’s Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.
53. The Design-Builder shall not substitute a Subcontractor, person, or entity for one previously selected if the Agency makes reasonable objection to such substitution. The Design-Builder’s request for substitution must be made to the Agency in writing, accompanied by supporting information.
54. Contracts between the Design-Builder and Subcontractors shall require each Subcontractor, to the extent of the Contract Services to be performed by the Subcontractor, to be bound to the Design-Builder by the terms of the Contract Documents, and to assume toward the Design-Builder all the obligations and responsibilities which the Design-Builder, by the Contract Documents, assumes toward the Agency.
55. By appropriate written agreement, the Design-Builder shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Design-Builder by terms of the Contract Documents, and to assume toward the Design-Builder all the obligations and responsibilities, including the responsibility for safety of the Subcontractor’s Work that the Design-Builder, by these Contract Documents, assumes toward the Agency. Each subcontract agreement shall preserve and protect the rights of the Agency under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise herein, or in the subcontract agreement, the benefit of all rights, remedies, and redress against the Design-Builder that the Design-Builder, by the Contract Documents, has against the Agency. Where appropriate, the Design-Builder shall require each Subcontractor to enter into similar agreements with Sub-Subcontractors. The Design-Builder shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-Subcontractors.
56. Documents and Samples at the Site
57. The Design-Builder shall maintain at the site for the Agency one copy of the Drawings, Specifications, Change Orders, Change Directives, and other modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be in electronic form or paper copy, available to the Agency, and delivered to the Agency upon completion of the Work as a record of the Work as constructed.
58. Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Design-Builder proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Agency is subject to the limitations of Section 4.12.3. Informational submittals upon which the Agency is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Agency without action.
59. The Design-Builder shall review for compliance with the Contract Documents, approve and submit to the Agency, Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Agency with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Agency or of separate Design-Builders.
60. The fire sprinkler shop drawings shall be prepared by a licensed fire sprinkler sub-contractor and shall accurately reflect actual conditions affecting the required layout of the fire sprinkler system. The fire sprinkler sub-contractor shall certify the accuracy of his shop drawings prior to submitting them for review and approval by the Design-Builder’s engineer of record (EOR).
61. The fire sprinkler shop drawings shall be reviewed and approved by the Design-Builder’s engineer of record prior to submitting to the State Fire Marshal. The EOR will complete the Office of State Fire Marshal (OSFM) form “Request for Fire Sprinkler System Shop Review for State Construction Projects” and submit it to OSE for signature.
62. OSE will sign the form and return it to the Design-Builder’s EOR. The EOR will submit a copy of the signed form with the approved shop drawings to OSFM for review and approval; and, forward a copy of each to OSE.
63. Upon receipt of the OSFM approval letter, the EOR will forward a copy of the letter to the Agency, Design-Builder, and OSE.
64. Unless authorized in writing by OSE, neither the Design-Builder nor Subcontractor at any tier shall submit the fire sprinkler shop drawings directly to OSFM.
65. By submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents to the Agency that the Design-Builder has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
66. The Design-Builder shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved. The Work shall be in accordance with approved submittals.
67. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Design-Builder, the Design-Builder shall cause such services or certifications to be provided by an appropriately licensed design professional, who shall comply with requirements regarding qualifications and insurance and whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. The Agency shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.
68. Use of the Site
69. The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.
70. Protection of construction materials and equipment stored at the Project site from weather, theft, vandalism, damage, and all other adversity is solely the responsibility of the Design-Builder. The Design-Builder shall perform the work in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.
71. The Design-Builder and any entity for which the Design-Builder is responsible shall not erect any sign on the Project site without the prior written consent of the Agency.
72. Cutting and Patching
73. The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.
74. The Design-Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the Agency or separate Design-Builders by cutting, patching or otherwise altering such construction, or by excavation. The Design-Builder shall not cut or otherwise alter such construction by the Agency or a separate Design-Builder except with written consent of the Agency and of such separate Design-Builder; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Agency or a separate Design-Builder the Design-Builder’s consent to cutting or otherwise altering the Work.
75. Clean Up
76. The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder’s tools, construction equipment, machinery and surplus materials from and about the Project.
77. If the Design-Builder fails to clean up as provided in the Contract Documents, the Agency may do so and Agency shall be entitled to reimbursement from the Design-Builder.
78. Access to Work: The Design-Builder shall provide the Agency access to the Work in preparation and progress wherever located.
79. Royalties, Patents and Copyrights: The Design-Builder shall pay all royalties and license fees. The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Agency harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Agency. However, if the Design-Builder has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Agency.
80. Indemnification
81. To the fullest extent permitted by law the Design-Builder shall indemnify and hold harmless the Agency, Agency’s consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused by the negligent acts or omissions of the Design-Builder, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.19.
82. In claims against any person or entity indemnified under this Section 3.19 by an employee of the Design-Builder, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.19.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design-Builder or a Subcontractor under workers’ compensation acts, disability benefit acts or other employee benefit acts.
83. Publicity: Design-Builder shall not publish any comments or quotes by State employees or include the State in either news releases or a published list of agencies, without the prior written approval of the Agency.

ARTICLE 4 - DESIGN-BUILDER’S DESIGN RESPONSIBILITIES

1. The Design-Builder shall provide the Design Professional Services necessary as set forth in this Agreement. The Design-Builder represents that its design team is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement.
2. The Design-Builder shall notify the Agency in a prompt and timely manner of any discrepancies, inconsistencies or missing information discovered by the Design Professional that are necessary to provide reasonably accurate and complete documents. Any designs, drawings or specifications prepared or furnished by the Design Professional that contain errors, conflicts or omissions will be promptly corrected by the Design Professional at no additional cost to the Agency. The Agency's approval, acceptance, use of or payment for all or any part of the Design Professional Services shall in no way alter the Design-Builder’s obligations or the Agency's rights hereunder.
3. The Design-Builder shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Design-Builder shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.
4. The Design-Builder shall assist the Agency in connection with the Agency’s responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project. The Design-Builder’s assistance shall include preparation of all necessary applications and submittals.
5. In the performance of its duties under this agreement, the Design-Builder’s design shall comply with the requirements of Chapter 5 of the South Carolina Manual for Planning and Execution of State Permanent Improvement Projects (the “Manual”). Should substantive changes to these 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 Design-Builder, the fee of the Design-Builder shall be equitably adjusted by negotiation between the parties to reflect such increase or decrease.
6. Basic Design Services
7. Consistent with Section 2.12, the Design-Builder shall review and evaluate the information provided by the Agency and advise the Agency of any additional information required by its Design Professional for completion of the Project.
8. The Design-Builder shall provide a preliminary seismic evaluation of the existing structures in accordance with Chapter 5 of the Manual.
9. The Design-Builder shall provide the Agency with Record Plans, showing any significant changes in the work made during construction based on marked-up prints, plans and other data.
10. Prior to, or concurrently with, the submission of the Final invoice, the Design-Builder will provide the Agency the various drawings and documents in computer aided drafting (CAD) format and/or Microsoft Word or Excel format as appropriate.
11. The Design-Builder shall prepare and provide to the Agency a set of reproducible Record Plans showing all significant changes in the work made during construction, as required by the Manual. Plans shall be stamped as ''Record Plans''.
12. The above drawings are the minimum to be submitted in CAD format. The Design-Builder shall verify with the Agency’s representative during the Design Development Phase that all the proposed CAD systems, add-on components, and layering conventions of all disciplines related to the project are compatible with those of the Agency.
13. CAD material will be developed using the AutoCAD design package by Autodesk, Inc. No add-on or enhancement software shall be used in conjunction with AutoCAD without written consent of the Agency’s Representative.
14. Word Processing material will be developed using software by Microsoft Word or Excel.
15. Both CAD and Word Processing material required shall be submitted on CD, zip drive or an approved medium for accessing construction documents that will operate on a computer system compatible with that of the Agency.
16. Alternate CAD and Word Processing software may be substituted for the software identified only with the expressed written authorization of the Agency’s representative.
17. The reproducible drawings required, shall be of such quality as to allow for electronic scanning.
18. Record Documents shall include REVIT building information models that describe the project in two and three dimensions. The level of development shall be appropriate to the nature of the project and shall be agreeable to both the Design-Builder and the Agency.
19. Record Drawings
20. The following Record Drawings shall be submitted to the Agency in computer aided drafting (CAD) format that is fully compatible with AUTODESK, Inc., compatible with the Agency’s version of AutoCAD:
21. All site plans,
22. All floor plans for all disciplines,
23. All schedule sheets for all disciplines,
24. All riser or single line diagrams for all disciplines, and
25. Other Documents
26. The following documents shall be submitted to the Agency in a word processing format using Microsoft Word and/or Excel or later releases.
27. All specifications, including front end sections,
28. All addenda, and
29. All correspondence which alters the construction documents and “as-built” conditions.
30. The Design-Builder shall prepare, on behalf of the Agency, 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).
31. The Design-Builder shall revise applications and supporting documentation as required to resolve comments received from such governmental authorities. However, its 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.
32. Specialized permits, such as, but not limited to, permits required by Federal agencies are not included within the scope of Basic Services unless such permits are listed in in this agreement.
33. The Design-Builder shall comply with the State Flood Plain Development requirements in accordance with State Law and the Manual.
34. The Design-Builder shall comply with the State’s requirements for telephone, data and communications equipment rooms as required by the Division of Technology Operations.
35. The Design-Builder 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 with a set of Construction Documents. The Design-Builder 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.
36. Design-Builder shall be fully responsible for coordinating all of the Design Professional Services required under this Agreement. The purpose of such coordination is to ensure that the services required are performed in a reasonably efficient, timely and economical manner. Design-Builder shall be responsible to the Agency for the services furnished by the Design Professional and any design Professional’s subconsultant to the same extent as if Design-Builder had furnished the service itself. All of Design-Builder's contracts for Design Services shall be in writing, signed by both parties, and shall include the following provision: "The Agency is intended to be a third-party beneficiary of this agreement."
37. Design-Builder 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, 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 Agency's approval of completed Construction Documents.
38. Schematic Design Phase Services
39. The Design-Builder shall review the program and other information furnished by the Agency, and shall review laws, codes, and regulations applicable to the Design Professional Services.
40. The Design-Builder shall evaluate the Agency’s program, schedule, budget for the Cost of the Work, Project site, and other information, each in terms of the other, to ascertain the requirements of the Project.
41. The Design-Builder shall discuss with the Agency alternative approaches to the Project, including the feasibility of incorporating sustainable design approaches, and consideration of the implementation of the Agency’s sustainable objective, if any. The discussion shall address implementation of the State of South Carolina's Environmentally Preferred Purchasing Policy, Procurement Policy Statement No. 2009-1, issued October 15, 2009.
42. 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.
43. To the extent consistent with the Agency’s directions, program, schedule and budget for the Cost of the Work, the Design-Builder shall use environmentally responsible design practices, such as material choices, building systems selection, and building orientation, together with other considerations based on program and aesthetics, in developing a design.
44. Hazardous Materials Excluded. The Design-Builder shall not design, specify or incorporate in the Construction Drawings or Specifications 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 Agency. 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.
45. The Design-Builder shall submit the Schematic Design Documents in the number requested by the Agency and OSE Project Manager, along with the Design Documents Transmittal Form (SE-771), to the Agency and to the South Carolina Office of State Engineer (OSE). The Design-Builder and its design consultants shall arrange for and participate in a table-top review of the Schematic Design Documents with the Agency and OSE. The Design-Builder is responsible to document the comments and decisions made at the tabletop review and distribute the documentation to all attendees for review and approval.
46. Design Document Phase Services
47. Based on the Agency’s approval of the Schematic Design Documents, OSE's comments, and on the Agency’s authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Design-Builder shall prepare Design Development Documents. The Design Development Documents 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 the 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. The Design Development Documents shall incorporate the accepted resolution of all Agency and OSE comments on the Schematic Design Document submittal.
48. The Design-Builder shall update the estimate of the Cost of the Work.
49. The Design-Builder shall submit the Design Development Documents to the Agency (and OSE if requested), advise the Agency of any adjustments to the estimate of the Cost of the Work, and request the Agency’s review approval.
50. Construction Documents Phase Services
51. Based on the Agency’s approval of the Design Development Documents, and on the Agency's authorization of any adjustments in the Project requirements, the Design-Builder shall prepare Construction Documents for the review and approval by the Agency and OSE. 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 of materials and systems and other requirements for the construction of the Work. The Agency acknowledges that in order to construct the Work the Design-Builder will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals.
52. Submission of the Construction Documents and Construction Cost estimate to the Agency and OSE shall not relieve the Design-Builder of any responsibility for design deficiencies, construction budget requirements, omissions or errors.
53. The Design-Builder shall incorporate into the Construction Documents the requirements of OSE and other governmental authorities having jurisdiction over the Project.
54. The OSE and Agency’s review and approval of the Construction Documents shall not relieve the Design-Builder of its responsibility for compliance with the requirements of applicable statutes, regulations, codes and the Manual, or for design deficiencies, omission, or errors.
55. Evaluation of the Work
56. The Design-Builder shall cause the Design Professional to visit the site at intervals appropriate to the stage of construction, (1) to become generally familiar with and to keep the Agency informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Agency 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. On the basis of the site visits, the Design Professional shall, at least once a month, submit a written report to the Agency to keep the Agency reasonably informed about the progress and quality of the portion of the Work completed, and report to the Agency (1) deviations from the Contract Documents, (2) deviations from the most recent construction schedule, and (3) defects and deficiencies in the Work.
57. Site visits shall be made by the appropriate representatives of the Design Professional and its consultants who are knowledgeable of the project requirements and competent in each discipline having work in current progress. These representatives shall visit the site at intervals 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 Design-Builder’s Work.
58. The Design Professional will review and approve, or take other appropriate action upon, submittals such as Shop Drawings, Product Data, and Samples, for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.
59. The fire protection engineer of record shall attend the testing of the fire protection and detection system(s) and provide the Agency and OSE the following:
60. The installer's Certificate of Compliance with code requirements for installation and testing,
61. The Fire Marshal's Inspection Report, and
62. The Record of Training of users for Systems Operation.
63. Changes in the Work
64. The Design Professional may order minor changes in the Work of the Design-Builder 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.
65. Change Orders, with supporting technical data and cost documentation, for the Agency’s approval and execution in accordance with the Contract Documents shall be provided by the Design-Builder. Prior to preparing any Modification, the Agency shall request from the Design-Builder any substantiating data required by Article 6, including cost or pricing data.
66. For Construction Change Directives, when the Design-Builder does not provide properly itemized cost information in accordance with Article 6, the Agency shall establish an upper limit of compensation to the Design-Builder.
67. Project Completion
68. The Design-Builder, in conjunction with its Design Professional, shall:
69. conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
70. provide Certificates of Substantial Completion to the Agency; and,
71. provide to the Agency written warranties and related documents required by the Contract Documents.
72. The Design-Builder’s inspections shall be conducted with the Agency to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Design-Builder of Work to be completed or corrected.
73. The Design-Builder shall forward to the Agency the following information: (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 Agency against liens; and (3) any other documentation required of the Design-Builder under the Contract Documents.

ARTICLE 5 - CONSTRUCTION BY AGENCY OR AGENCY SEPARATE CONTRACTORS

1. Agency’s Right to Perform Construction and to Award Separate Contracts
2. The Agency reserves the right to perform construction or operations related to the Project with the Agency’s own forces, and with separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.
3. When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term “Contractor” in the Contract Documents in each case shall mean the Contractor who executes each separate Agency-Contractor Agreement.
4. The Agency shall provide for coordination of the activities of the Agency’s own forces and of each separate Contractor with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with any separate Contractor and the Agency in reviewing their construction schedules. The Design-Builder shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate Contractors, and the Agency until subsequently revised.
5. Mutual Responsibility
6. The Design-Builder shall afford the Agency and separate Contractor(s) reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor’s construction and operations with theirs as required by the Contract Documents.
7. If part of the Design-Builder’s Work depends for proper execution or results upon construction or operations by the Agency or a separate Contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, promptly notify the Agency of apparent discrepancies or defects in the construction or operations by the Agency or separate Contractor that would render it unsuitable for proper execution and results of the Design-Builder’s Work. Failure of the Design-Builder to notify the Agency of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Agency’s or separate Contractor’s completed or partially completed construction is fit and proper to receive the Design-Builder’s Work. The Design-Builder shall not be responsible for discrepancies or defects in the construction or operations by the Agency or separate Contractor that are not apparent.
8. The Design-Builder shall reimburse the Agency for costs the Agency incurs that are payable to a separate Contractor because of the Design-Builder’s delays, improperly timed activities or defective construction. The Agency shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate Contractor’s delays, improperly timed activities, damage to the Work or defective construction.
9. The Design-Builder shall promptly remedy damage that the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Agency or separate Contractor as provided in Section 9.2.5.
10. The Agency and each separate Contractor shall have the same responsibilities for cutting and patching as are described for the Design-Builder in Section 3.15.
11. Agency’s Right to Clean Up

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

ARTICLE 6 - CHANGES IN THE WORK

1. General
2. Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 6 and elsewhere in the Contract Documents.
3. Change Order shall be based upon agreement among the Agency and Design-Builder. A Construction Change Directive by the Agency may or may not be agreed to by the Design-Builder. An order for a minor change in the Work may be issued by the Agency alone.
4. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for minor change in the Work.
5. If a change in the Work provides for an adjustment to the Contract Sum, the amount of such adjustment must be computed and documented in writing. In order to facilitate evaluation of proposals or claims for increases and decreases to the Contract Sum, all proposals or claims, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and subcontracts. Labor and materials shall be itemized. Where major cost items are subcontracts, they shall be itemized also. The amount of the adjustment must approximate the actual cost to the Design-Builder and all costs incurred by the Design-Builder must be justifiably compared with prevailing industry standards. Except as provided in Section 6.1.5, all adjustments to the Contract Price shall be limited to job specific costs and shall not include indirect costs, home office overhead or profit.
6. The combined overhead and profit included in the total cost to the Agency for a change in the Work shall be based on the following schedule:
7. For the Design-Builder, for Work performed by the Design-Builder’s own forces, seventeen (17%) percent of the Design-Builder’s actual costs.
8. For the Design-Builder, for Work performed by the Design-Builder’s Subcontractors, ten (10%) percent of each Subcontractor’s actual costs (not including the Subcontractor’s overhead and profit).
9. For each Subcontractor involved, for Work performed by that Subcontractor’s own forces, seventeen (17%) percent of the Subcontractor’s actual costs.
10. For the Subcontractor, for Work performed by the Subcontractor’s Sub-subcontractors, ten (10%) percent of each Sub-subcontractor’s actual costs (not including the Sub-subcontractor’s overhead and profit).
11. Cost to which overhead and profit is to be applied shall be determined in accordance with Section 6.3.4.

The percentages cited above shall be considered to include all indirect costs including, but not limited to field and office managers, supervisors and assistants, incidental job burdens, small tools, and general overhead allocations.

1. The procedures described in Sections 6.1.4 and 6.1.5 shall be used to calculate any adjustment in the Contract Sum, including without limitation an adjustment permitted under Articles 6, 8, 13, or 14.
2. If a change in the Work requires an adjustment to the Contract Sum that exceeds the limits of the Agency’s Construction Change Order Certification, then the Agency’s agreement is not effective, and Work may not proceed until approved in writing by the OSE.
3. Design-Builder shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents, as duly amended, except in the case of an emergency as provided in Section 9.5.
4. Any change in the Work initiated after the declaration of Substantial Completion must be approved in writing by the OSE regardless of the amount of the change or the Agency’s Construction Change Order Certification.
5. Change Orders
6. A Change Order is a written instrument, Change Order to Design-Build Contract (SE-380), prepared by the Agency and signed by the Agency and Design-Builder stating their agreement upon all of the following.
7. The change in the Work
8. The amount of the adjustment, if any, in the Contract Sum; and
9. The extent of the adjustment, if any, in the Contract Time.

Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, any adjustments to the Contract Sum or the Contract Time.

1. At the Agency’s request, the Design-Builder shall prepare a proposal to perform the work of a proposed Change Order setting forth the amount of the proposed adjustment, if any, in the Contract Sum; and the extent of the proposed adjustment, if any, in the Contract Time. Any proposed adjustment in the Contract Sum shall be prepared in accordance with Section 6.1.4 and 6.1.5. The Agency’s request shall include any revisions to the Drawings or Specifications necessary to define any changes in the Work. Within fourteen (14) days of receiving the request, the Design-Builder shall submit the proposal to the Agency along with all documentation required by Section 6.5.
2. Either Agency or Design-Builder may propose or request a Change Order. With respect to certain events, this Contract may indicate specific times in which such requests or proposals must be submitted to the other party. With respect to all other events, the request or proposal shall be submitted to the other party within 30 days of the event giving rise to the request or proposal.
3. If the Design-Builder requests a Change Order, the request shall set forth the proposed change in the Work and shall be prepared in accordance with Section 6.2.2.
4. Change Directives
5. Without invalidating the Contract, the Agency may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, by Change Directive. The Contract Sum and Contract Time shall be adjusted accordingly.
6. A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.
7. If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:
8. Mutual acceptance of a lump sum if properly itemized substantiating data is not available to permit evaluation
9. Unit prices specified in the Contract Documents or subsequently agreed upon, subject to adjustment if any, as provided in Section 8.1.2
10. Cost and an allowable markup, calculated as described in Sections 6.1.4 and 6.1.5
11. In another manner as the parties may agree; or
12. As provided in Section 6.3.4.
13. If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Agency shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in Section 6.1.5. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Agency may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 6.3.4 shall be limited to the following:
14. Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers’ compensation insurance, and other employee costs approved by the Agency
15. Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed
16. Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others; and
17. Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the change.

If the Design-Builder disagrees with the adjustment in the Contract Time, the Design-Builder may make a Claim in accordance with applicable provisions of Article 14.

1. Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Agency of the Design Builder’s agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.
2. A Construction Change Directive signed by the Design-Builder indicates the Design-Builder’s agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.
3. The amount of credit to be allowed by the Design-Builder to the Agency for a deletion or change that results in a net decrease in the Contract Sum shall be actual cost including overhead and profit as confirmed by the Agency from the Schedule of Values.
4. Pending final determination of the total cost of a Change Directive to the Agency, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Agency will make an interim determination for purposes of monthly certification for payment for those costs and payment to be reasonably justified.
5. When the Agency and Design-Builder agree with a determination made concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Design-Builder will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.
6. Minor Changes in the Work

The Agency 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 Agency’s order for minor changes shall be in writing. If the Design-Builder believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Design-Builder shall notify the Agency and shall not proceed to implement the change in the Work. If the Design-Builder performs the Work set forth in the Agency’s order for a minor change without prior notice to the Agency that such change will affect the Contract Sum or Contract Time, the Design-Builder waives any adjustment to the Contract Sum or extension of the Contract Time.

1. Pricing Data and Audit
2. Cost or Pricing Data

Upon request of the Agency, Design-Builder shall submit cost or pricing data prior to execution of a Modification which exceeds $500,000 [Reference S.C. Code Ann. §§ 11-35-1830 and 11-35-2220, and SC Code Ann. Reg 19-445.2120]. Design-Builder shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of a mutually determined specified date prior to the date of pricing the Modification. Design-Builder’s price, including profit, shall be adjusted to exclude any significant sums by which such price was increased because Design-Builder furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date specified by the parties. Notwithstanding Section 8.11.4, such adjustments may be made after final payment to the Design-Builder.

1. Cost or pricing data means all facts that, as of the date specified by the parties, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental; and are verifiable. While they do not indicate the accuracy of the prospective Design-Builder's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred.
2. Records Retention

As used in Section 6.5, the term "records" means any books or records that relate to cost or pricing data of a Change Order that Design-Builder is required to submit pursuant to Section 6.5.1. Design-Builder shall maintain records for three years from the date of final payment, or longer if requested by the Chief Procurement Officer. The Agency may audit Design-Builder’s records at reasonable times and places.

ARTICLE 7 - TIME

1. Progress and Completion
2. Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.
3. The Design-Builder shall not knowingly commence then Work, operations on the site, or elsewhere prior to the effective date of surety bonds and insurance furnished by the Design-Builder and Agency.
4. The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.
5. Delays and Extensions of Time
6. If the Design-Builder is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Agency, or of an employee, or of a separate Design-Builder employed by the Agency; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 14.5.2.2, or other causes beyond the control of the Design-Builder and any Subcontractor at any tier; (4) by delay authorized by the Agency pending dispute resolution; (5) by other causes that the Design-Builder asserts, and the Agency determines justify delay, then to the extent such delay will prevent the Design-Builder from achieving Substantial Completion within the Contract Time, the Contract Time shall be extended, provided the delay:
   1. is not caused by the fault or negligence of the Design-Builder or a Subcontractor at any tier, and
   2. is not due to unusual delay in the delivery of supplies, machinery, equipment, or services when such supplies, machinery, equipment, or services were obtainable from other sources in sufficient time for the Design-Builder to meet the required delivery.
7. Claims relating to time shall be made in accordance with applicable provisions of Article 14.
8. This Section 7.2 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 8 - PAYMENTS AND COMPLETION

1. Contract Sum
2. The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Agency to the Design-Builder for performance of the Work under the Contract Documents.
3. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Agency or Dersign-Builder, the applicable unit prices shall be equitably adjusted.
4. The Design-Builder accepts assignment of all purchase orders and other agreements for procurement of materials and equipment by the Agency that are identified as part of the Contract Documents. The Design-Builder shall, upon delivery, be responsible for the storage, protection, proper installation, and preservation of such Agency purchased items, if any, as if the Design-Builder were the original purchaser. The Contract Price includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. Unless the Contract Documents specifically provide otherwise, all Design-Builder warranty of workmanship and correction of the Work obligations under the Contract Documents shall apply to the Design-Builder’s installation of and modifications to any Agency purchased items.
5. Schedule of Values
6. The Design-Builder shall submit a schedule of values to the Agency within ten (10) days of full execution of the Agreement, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Agency. This schedule, unless objected to by the Agency, shall be used as a basis for reviewing the Design-Builder’s Applications for Payment. Any changes to the schedule of values shall be submitted to the Agency and supported by such data to substantiate its accuracy as the Agency may require, and unless objected to by the Agency, shall be used as a basis for reviewing the Design-Builder’s subsequent Applications for Payment.
7. As requested by the Agency, the Design-Builder and each Subcontractor shall prepare a trade payment breakdown for the Work for which each is responsible. The breakdown, being submitted on a uniform standardized format approved by the Agency, shall be divided in detail, using convenient units, sufficient to accurately determine the value of completed Work during the course of the Project. The Design-Builder shall update the schedule of values as required by either the Agency as necessary to reflect:
8. the description of Work (listing labor and material separately);
9. the total value of the Work;
10. the percent and value of the Work completed to date;
11. the percent and value of previous amounts billed; and
12. the current percent completed, and amount billed.
13. Any schedule of values or trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the Work shall be rejected. If a schedule of values or trade breakdown is used as the basis for payment and later determined to be inaccurate, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work
14. Application for Payment:
    1. Monthly, the Design-Builder shall submit to the Agency an itemized Application for Payment prepared in accordance with the Schedule of Values, if required under Section 8.3, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Design-Builder’s right to payment as the Agency may require (such as copies of requisitions from Subcontractor and material suppliers) and shall reflect retainage as provided for in the Contract Documents.
15. Such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Agency, but not yet included in Change Orders.
16. Applications for Payment shall not include request for payment for portions of the Work for which the Design-Builder does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Design-Builder intends to pay.
    1. Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Agency, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing, provided such materials or equipment will be subsequently incorporated in the Work.
    2. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Agency to establish the Agency’s title to such materials and equipment or otherwise protect the Agency’s interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. The Design-Builder shall 1) protect such materials from diversion, vandalism, theft, destruction, and damage, 2) mark such materials specifically for use on the Project, and 3) segregate such materials from other materials at the storage facility. The Agency shall have the right to make inspections of the storage areas at any time.
    3. The Design-Builder warrants that title to all Work covered by an Application for Payment will pass to the Agency no later than the time of payment. The Design-Builder further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Agency shall, to the best of the Design-Builder’s knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.
17. Certificates for Payment
18. The Agency will, upon receipt of the Design-Builder’s Application for Payment, review the Application to determine amounts properly due, and notify the Design-Builder and Agency’s reasons for withholding certification in part, or withhold certification of the entire Application for Payment, and notify the Design-Builder of the Agency’s reason for withholding certification in whole as provided in Section 9.5.1.
19. The issuance of a Certificate for Payment will constitute a representation by the Agency, based on the Agency’s evaluation of the Work and the data in the Application for Payment, that, to the best of the Agency’s knowledge, information, and belief, the Work has progressed to the point indicated in both the Application for Payment and, if required to be submitted, the accompanying current construction schedule, the quality of the Work is in accordance with the Contract Documents, and that the Design-Builder is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Agency. However, the issuance of a Certificate for Payment will not be a representation that the Agency 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; or (3) made examination to ascertain how or for what purpose the Design-Builder has used money previously paid on account of the Contract Sum.
20. Decisions to Withhold Certification
21. The Agency shall withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Agency, if in the Agency’s opinion the representations required by Section 8.5.2 cannot be made. The Agency shall withhold a Certificate of Payment if the Application for Payment is not accompanied by the current construction schedule required by Section 11.2. If the Agency is unable to certify payment in the amount of the Application, the Agency will notify the Design-Builder as provided in Section 8.5.1. If the Design-Builder and Agency cannot agree on a revised amount, the Agency will promptly issue a Certificate for Payment for the amount for which the Agency can determine. The Agency may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary to protect the Agency from loss for which the Design-Builder is responsible, including loss resulting from acts and omissions described in Section 3.2.5, because of:
22. defective Work not remedied
23. third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Agency is provided by the Design-Builder
24. failure of the Design-Builder to make payments properly to Subcontractors or suppliers for labor, materials or equipment
25. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum
26. damage to the Agency or a Separate Design-Builder
27. reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
28. repeated failure to carry out the Work in accordance with the Contract Documents.
29. If the Design-Builder disputes the Agency’s decision regarding a Certificate for Payment under Section 8.6.1, in whole or in part, that party may submit a Claim in accordance with Article 14.
30. When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.
31. If the Agency withholds certification for payment under Section 8.6.1.3, the Agency may, at its sole option, issue joint checks to the Design-Builder and to any Subcontractor or supplier to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered. If the Agency makes payments by joint check, the Design-Builder shall reflect such payment on its next Application for Payment.
32. Progress Payments:
33. The Agency shall make payment in the manner and within the time provided in the Contract Documents.
34. Pursuant to S.C. Ann. §§ 29-6-10 through 29-6-60, the Design-Builder shall pay each Subcontractor no later than seven days after receipt of payment from the Agency the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the Subcontractor’s portion of the Work. The Design-Builder shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-Subcontractors in a similar manner.
35. The Agency will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Agency on account of portions of the Work done by such Subcontractor.
36. The Agency has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid Subcontractors and material and equipment suppliers amounts paid by the Agency to the Design-Builder for subcontracted Work. If the Design-Builder fails to furnish such evidence within seven days, the Agency shall have the right to contact Subcontractors to ascertain whether they have been properly paid. The Agency shall not have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.
37. The Design-Builder’s payments to suppliers shall be treated in a manner similar to that provided in Sections 8.7.2, 8.7.3 and 8.7.4.
38. A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Agency shall not constitute acceptance of any Work not in accordance with the Contract Documents.
39. Unless the Design-Builder provides the Agency with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by Subcontractors or provided by suppliers shall be held by the Design-Builder for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Design-Builder for which payment was made by the Agency. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust, or entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.
40. Provided the Agency has fulfilled its payment obligations under the Contract Documents, the Design-Builder shall defend and indemnify the Agency from all loss, liability, damage or expense, including reasonable attorney’s fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Agency shall notify the Design-Builder. If approved by the applicable court, when required, the Design-Builder may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.
41. Failure of Payment

If after review of the Certificate for Payment within the time established by the Contract Documents, through no fault of the Design-Builder, the Agency does not pay the Design-Builder within seven days after the time established, the amount certified by the Agency by final dispute resolution order, then the Design-Builder may, upon seven additional days’ notice to the Agency, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the Design-Builder’s reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

1. Substantial Completion
2. Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Agency can occupy or utilize the Work for its intended use and when all required occupancy permits, if any, have been issued and copies have been delivered to the Agency.
3. When the Design-Builder considers that the Work, or a portion thereof which the Agency agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Agency a comprehensive written list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Contract Documents.
4. Upon receipt of the Design-Builder’s list, the Agency, and any other party the Agency may choose, will make an inspection on a date and at a time mutually agreeable to determine whether the Work or designated portion thereof is substantially complete. The Design-Builder shall furnish access for the inspection and testing as provided in this Contract. The inspection shall include a demonstration by the Design-Builder that all equipment, systems and operable components of the Work function properly and in accordance with the Contract Documents.
5. If the Agency’s inspection discloses any item, whether or not included on the Design-Builder’s list, which is not sufficiently complete in accordance with the Contract Documents so that the Agency can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Agency. In such case, the Design-Builder shall then submit a request for another inspection by the Agency to determine Substantial Completion.
6. If more than one Substantial Completion inspection is required, the Design-Builder shall reimburse the Agency for all costs of re-inspections or, at the Agency’s option, the costs may be deducted from payments due to the Design-Builder.
7. Representatives of the State Fire Marshal’s Office and other authorities having jurisdiction may be present at the Substantial Completion Inspection or otherwise inspect the completed Work and advise the Agency whether the Work meets their respective requirements for the Project.
8. When the Work or designated portion thereof is substantially complete, the Agency will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Agency and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.
9. The Certificate of Substantial Completion shall be submitted to the Agency and Design-Builder for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, the Agency shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.
10. If the Agency concurs in the Design-Builder assessment that the Work or a portion of the Work is safe to occupy, the Agency and Design-Builder may arrange for a Certificate of Occupancy Inspection by OSE. The Agency and Design-Builder shall be present at OSE’s inspection. Upon verifying that the Work or a portion of the Work is substantially complete and safe to occupy, OSE will issue, as appropriate, a Full or Partial Certificate of Occupancy.
11. The Agency may not occupy the Work until all required occupancy permits, if any, have been issued and delivered to the Agency.
12. Partial Use or Occupancy
13. The Agency may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Agency and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Agency as provided under Section 8.9.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Agency and Design-Builder or, if no agreement is reached, by decision of the Agency.
14. Immediately prior to such partial occupancy or use, the Agency, Design-Builder, and Agency shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.
15. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.
16. Final Inspection, Final Completion & Final Payment
    1. Unless the parties agree otherwise in the Certificate of Substantial Completion, the Design-Builder shall achieve final completion within thirty days after Substantial Completion. Upon receipt of the Design-Builder’s notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Agency, and any other party the Agency choose will inspect on a date and at a time mutually agreeable. When the Agency finds the Work acceptable under the Contract Documents and the Contract fully performed, the Agency will promptly issue a final Certificate for Payment stating that to the best of the Agency’s knowledge, information and belief, and on the basis of the Agency’s on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Design-Builder and noted in the final Certificate is due and payable. The Agency’s final Certificate for Payment will constitute a further representation that conditions listed in Section 8.11.2 as precedent to the Design-Builder’s being entitled to final payment have been fulfilled.
17. If more than one final completion inspection is required, the Design-Builder shall reimburse the Agency for all costs of re-inspections or, at the Agency’s option, the costs may be deducted from payments due to the Design-Builder.
18. If the Design-Builder does not achieve final completion within thirty days after Substantial Completion or the timeframe agreed to by the parties in the Certificate of Substantial Completion, whichever is greater, the Design-Builder shall be responsible for any additional Agency Consultant fees resulting from the delay.
19. If OSE has not previously issued a Certificate of Occupancy for the entire Project, the Parties shall arrange for a representative of OSE to participate in the Final Completion Inspection.
    1. Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Agency:
20. an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Agency or the Agency’s property might be responsible or encumbered (less amounts withheld by Agency) have been paid or otherwise satisfied,
21. a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect,
22. a written statement that the Design-Builder knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents,
23. consent of surety, if any, to final payment,
24. documentation of any special warranties, such as manufacturers’ warranties or specific Subcontractor warranties,
25. if required by the Agency, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Agency,
26. required training manuals,
27. equipment operations and maintenance manuals,
28. any certificates of testing, inspection or approval required by the Contract Documents and not previously provided, and
29. one copy of the Documents required by Section 3.13.
    1. If, after Substantial Completion of the Work, final completion thereof is delayed 60 days through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, and the Agency so confirms, the Agency shall, upon application by the Design-Builder and certification by the Agency and without terminating the Design-Builder, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Agency prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.
    2. The making of final payment shall constitute a waiver of Claims by the Agency except those arising from
30. liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
31. failure of the Work to comply with the requirements of the Contract Documents;
32. terms of special warranties required by the Contract Documents; or
33. audits performed by the Agency, if permitted by the Contract Documents, after final payment.
34. Acceptance of final payment by the Design-Builder, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those specific claims in stated amounts that have been previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 9 - PROTECTION OF PERSONS AND PROPERTY

1. The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.
2. Safety of Persons and Property
3. The Design-Builder shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to
4. employees on the Work and other persons who may be affected thereby;
5. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Design-Builder’s Subcontractors or Sub-Subcontractors; and
6. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
7. The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
8. The Design-Builder shall implement, erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.
9. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Design-Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.
10. The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 9.2.1.2 and 9.2.1.3 caused in whole or in part by the Design-Builder, a Subcontractor, a Sub-Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 9.2.1.2 and 9.2.1.3, except damage or loss attributable to acts or omissions of the Agency or anyone directly or indirectly employed by them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder’s obligations under Section 3.18.
11. The Design-Builder shall designate a responsible member of the Design-Builder’s organization at the site whose duty shall be the prevention of accidents. This person shall be the Design-Builder’s superintendent unless otherwise designated by the Design-Builder in writing to the Agency.
12. The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.
13. Injury or Damage to Person or Property

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

1. Hazardous Materials
2. The Design-Builder is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Design-Builder encounters a hazardous material or substance which was not discoverable as provided in Section 3.3 and not required by the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons or serious loss to real or personal property resulting from such material or substance encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Agency in writing. Hazardous materials or substances are those hazardous, toxic, or radioactive materials or substances subject to regulations by applicable governmental authorities having jurisdiction, such as, but not limited to, the S.C. Department of Health and Environmental Control, the U.S. Environmental Protection Agency, and the U.S. Nuclear Regulatory Commission.
3. Upon receipt of the Design-Builder’s written notice, the Agency shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Agency shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Agency in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Agency. If either the Design-Builder has an objection to a person or entity proposed by the Agency, the Agency shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Agency and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder’s reasonable additional costs of shut-down, delay and start-up. In the absence of agreement, the Agency will make an interim determination regarding any delay or impact on the Design-Builder’s additional costs. The Agency’s interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 14.
4. The Work in the affected area shall be resumed immediately following the occurrence of any one of the following events: (a) the Agency causes remedial work to be performed that results in the absence of hazardous materials or substances; (b) the Agency and the Design-Builder, by written agreement, decide to resume performance of the Work; or (c) the Work may safely and lawfully proceed, as determined by an appropriate governmental authority or as evidenced by a written report to both the Agency and the Design-Builder, which is prepared by an environmental engineer reasonably satisfactory to both the Agency and the Design-Builder.
5. The Agency shall not be responsible under this Section 9.4 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Contract Documents. The Agency shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Design-Builder’s fault or negligence in the use and handling of such materials or substances.
6. In addition to its obligations under Section 3.19, the Design-Builder shall indemnify the Agency for the cost and expense the Agency incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 9.4.1, except to the extent that the cost and expense are due to the Agency’s fault or negligence.
7. Emergency

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder’s discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Article 14 and Article 6. The Design-Builder shall immediately give the Agency notice of the emergency. This initial notice may be oral followed within five days by a written notice setting forth the nature and scope of the emergency. Within fourteen days of the start of the emergency, the Design-Builder shall give the Agency a written estimate of the cost and probable effect of delay on the progress of the Work.

ARTICLE 10 BONDS AND INSURANCE

1. Design-Builder’s Insurance and Bonds
2. The Design-Builder shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Design-Builder shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Agency and Agency’s consultants shall be named as additional insureds under the Design-Builder’s commercial general liability policy or as otherwise described in the Contract Documents.
3. The Design-Builder shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Design-Builder shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.
4. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Design-Builder shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.
5. Failure to Purchase Required Property Insurance

If the Design-Builder fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Design-Builder shall inform the Agency in writing prior to commencement of the Work. Upon receipt of notice from the Design-Builder, the Agency may delay commencement of the Work and may obtain insurance that will protect the interests of the Agency in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall not be equitably adjusted. In the event the Design-Builder fails to procure coverage, the Design-Builder waives all rights against the Agency to the extent the loss to the Design-Builder (including Subcontractors and Sub-subcontractors) would have been covered by the insurance to have been procured by the Design-Builder. The cost of the insurance shall be charged to the Design-Builder by a Change Order. If the Design-Builder does not provide written notice, and the Agency is damaged by the failure or neglect of the Design-Builder to purchase or maintain the required insurance, the Design-Builder shall reimburse the Agency for all reasonable costs and damages attributable thereto.

1. Notice of Cancellation or Expiration of Design-Builder’s Required Insurance

Within three (3) business days of the date the Design-Builder becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Design-Builder shall provide notice to the Agency and all additional insureds of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Agency: (1) the Agency, upon receipt of notice from the Design-Builder, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Agency or the Design-Builder; (2) the Contract Time and Contract Sum shall not be equitably adjusted; and (3) the Design-Builder waives all rights against the Agency to the extent any loss to the Design-Builder, Subcontractors, and Sub-subcontractors would have been covered by the insurance had it not expired or been cancelled. If the Agency purchases replacement coverage, the cost of the insurance shall be charged to the Design-Builder by an appropriate Change Order. The furnishing of notice by the Design-Builder shall not relieve the Design-Builder of any contractual obligation to provide any required coverage.

1. Notice of Cancellation or Expiration of Design-Builder’s Required Property Insurance

Within three (3) business days of the date the Design-Builder becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Design-Builder shall provide notice to the Agency of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Agency: (1) the Agency, upon receipt of notice from the Design-Builder, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Agency or the Design-Builder; (2) the Contract Time and Contract Sum shall not be equitably adjusted; and (3) the Design-Builder, Subcontractors, and Sub-Subcontractors waives all rights against the Agency to the extent any loss to the Design-Builder, Subcontractors, and Sub-Subcontractors would have been covered by the insurance had it not expired or been cancelled. The furnishing of notice by the Design-Builder shall not relieve the Design-Builder of any contractual obligation to provide required insurance.

1. Agency’s Insurance
2. The Agency shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Agency shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.
3. Waivers of Subrogation
4. The Agency and Design-Builder waive all rights against (1) each other and any of their Subcontractors, sub-Subcontractors, agents, and employees, each of the other; and (2) Separate Design-Builders, if any, and any of their Subcontractors, sub-Subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement, except such rights as they have to proceeds of such insurance held by the Design-Builder. The Agency or Design-Builder, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the, Separate Design-Builders, Subcontractors, and sub-Subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 10.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.
5. If during the Project construction period the Agency insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Agency waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.
6. Limitation on the Agency’s Waiver of Subrogation

South Carolina law prohibits the State from indemnifying a private party. Accordingly, and notwithstanding anything in the Agreement to the contrary, including but not limited to Sections 11.3.1, 11.3.2. and 11.4, the Agency cannot and does not waive subrogation to the extent any losses are covered by insurance provided by the South Carolina Insurance Reserve Fund.

1. Loss of Use, Business Interruption, and Delay in Completion Insurance

The Agency, at the Agency’s option, may purchase and maintain insurance that will protect the Agency against loss of use of the Agency’s property, or the inability to conduct normal operations, due to fire or other causes of loss. The Agency waives all rights of action against the Design-Builder for loss of use of the Agency’s property, due to fire or other hazards however caused.

1. Adjustment and Settlement of Insured Loss
2. A loss insured under the property insurance required by the Agreement shall be adjusted by the Agency as fiduciary and made payable to the Agency as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 10.5.2. The Agency shall pay the Design-Builder their just shares of insurance proceeds received by the Agency, and by appropriate agreement the Design-Builder shall make payment to its Subcontractors in similar manner.
3. Prior to settlement of an insured loss, the Agency shall notify the Design-Builder of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Design-Builder shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Design-Builder does not object, the Agency shall settle the loss and the Design-Builder shall be bound by the settlement and allocation. Upon receipt, the Agency shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Agency does not terminate the Contract for convenience, the Agency and Design-Builder shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Design-Builder timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Agency may proceed to settle the insured loss, and any dispute between the Agency and Design-Builder arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 14. Pending resolution of any dispute, the Agency may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.
4. If required in writing by a party in interest, the Design-Builder as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Design-Builder’s duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Design-Builder shall deposit in a separate account proceeds so received, which the Design-Builder shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Agency terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder.

ARTICLE 11 - UNCOVERING AND CORRECTION OF THE WORK

1. Uncovering Work
2. If a portion of the Work is covered contrary to the requirements specifically expressed in the Contract Documents, including inspections of work-in-progress required by all authorities having jurisdiction over the Project, it must, upon demand of the Agency or authority having jurisdiction, be uncovered for observation and be replaced at the Design-Builder’s expense without change in the Contract Time.
3. If a portion of the Work has been covered that the Agency has not specifically requested to examine prior to its being covered, the Agency may request to see such Work and it shall be uncovered by the Design-Builder. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Agency’s expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Design-Builder’s expense unless the condition was caused by the Agency or a separate Design-Builder in which event the Agency shall be responsible for payment of such costs.
4. Correction of Work
5. Before Substantial Completion
6. The Design-Builder shall promptly correct Work rejected by the Agency or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Agency’s consultants made necessary thereby, shall be at the Design-Builder’s expense.
7. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Contract Documents.
8. If the Design-Builder, a Subcontractor, or anyone for whom either is responsible, uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Design-Builder shall cause such item to be restored to ''like new" condition at no expense to the Agency.
9. After Substantial Completion
10. In addition to the Design-Builder’s obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 8.10.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Agency to do so unless the Agency has previously given the Design-Builder a written acceptance of such condition. The Agency shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Agency fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Agency waives the rights to require correction by the Design-Builder. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Agency, the Agency may correct it in accordance with Section 2.13.
11. The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.
12. The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2 unless otherwise provided in the Contract Documents.
13. The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Design-Builder nor accepted by the Agency.
14. The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Agency or separate Design-Builders caused by the Design-Builder’s correction or removal of Work that is not in accordance with the requirements of the Contract Documents.
15. Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder’s liability with respect to the Design-Builder’s obligations other than specifically to correct the Work.
16. Acceptance of Nonconforming Work

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

ARTICLE 12 - MISCELLANEOUS PROVISIONS

1. Governing Law
2. The Contract, any dispute, claim, or controversy relating to the Contract, 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.
3. 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.
4. Rights and Remedies
5. Unless expressly provided otherwise, duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
6. No action or failure to act by the Agency or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.
7. Notwithstanding Section 8.11.4, the rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this contract shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses:

3.5 Warranty

3.18 Royalties, Patents and Copyrights

3.19 Indemnification

6.5 Cost or Pricing Data

10.1.1 Design-Builder's Liability Insurance

10.1.2 Performance and Payment Bond

14.6 Claims for Listed Damages

14.8 Dispute Resolution

14.9 Service of Process

1. Tests and Inspections
2. Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Agency, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Agency timely notice of when and where tests and inspections are to be made so that the Agency may be present for such procedures. The Agency shall bear costs of tests, inspections or approvals that do not become requirements until after negotiations are concluded. The Agency shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.
3. Building Inspections, Special Inspections, and testing requirements, if any, as required by the ICC series of Building Codes shall be purchased by the Agency.
4. Design-Builder shall schedule and request inspections in an orderly and efficient manner and shall notify the Agency whenever the Design-Builder schedules an inspection. Design-Builder shall be responsible for the cost of inspections scheduled and conducted without the Agency’s knowledge and for any increase in the cost of inspections resulting from the inefficient scheduling of inspections.
5. If the Agency or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 12.4.1, the Agency will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Agency, and the Design-Builder shall give timely notice to the Agency of when and where tests and inspections are to be made. Such costs, except as provided in Section 12.4, shall be at the Agency’s expense.
6. If procedures for testing, inspection or approval under Sections 12.4.1 and 12.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Agency consultant’s services and expenses shall be at the Design-Builder’s expense and shall be deducted from future Applications of Payment.
7. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Design-Builder and promptly delivered to the Agency.
8. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.
9. Interest

Payments due to the Design-Builder and unpaid under the Contract Documents 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 Agency 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.

1. Procurement of Materials by Agency

The Design-Builder accepts assignment of all purchase orders and other agreements for procurement of materials and equipment by the Agency that are identified as part of the Contract Documents. The Design-Builder shall, upon delivery, be responsible for the storage, protection, proper installation, and preservation of such Agency purchased items, if any, as if the Design-Builder were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. Unless the Contract Documents specifically provide otherwise, all Design-Builder warranty of workmanship and correction of the Work obligations under the Contract Documents shall apply to the Design-Builder’s installation of and modifications to any Agency purchased items.

1. Interpretation of Building Codes

As required by Title 10, Chapter 1, Section 180 of the South Caroline Code of Laws, as amended, OSE shall determine the enforcement and interpretation of all building codes and referenced standards on state buildings. The Design-Builder shall refer any questions, comments, or directives from local officials to the Agency and OSE for resolution. Any nonconforming Construction shall be corrected by the Design-Builder at no additional cost to the Agency.

1. Minority Business Enterprises

Design-Builder shall notify Agency of each Minority Business Enterprise (MBE) providing labor, materials, equipment, or supplies to the Project under a contract with the Design-Builder. Design-Builder’s notification shall be via the first monthly status report submitted to the Agency after execution of the contract with the MBE. For each such MBE, the Design-Builder shall provide the MBE’s name, address, and telephone number, the nature of the work to be performed or materials or equipment to be supplied by the MBE, whether the MBE is certified by the South Carolina Office of Small and Minority Business Assistance, and the value of the contract.

ARTICLE 13 - TERMINATION OR SUSPENSION OF THE CONTRACT

1. Termination by The Design-Builder
2. The Design-Builder may terminate the Contract if the Work is stopped for a period of 45 consecutive days through no act or fault of the Design-Builder or a Subcontractor, Sub-Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:
3. Issuance of an order of a court or other public authority having jurisdiction that requires substantially all Work to be stopped
4. An act of government, such as a declaration of national emergency that requires substantially all Work to be stopped; or
5. The Agency has not made payment on a Certificate for Payment within the time stated in the Contract Documents and the Design-Builder has stopped work in accordance with Section 8.8
6. The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder or a Subcontractor, Sub-Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Agency as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.
7. If one of the reasons described in Section 13.1.1 or 13.1.2 exists, the Design-Builder may, upon seven days’ written notice to the Agency, terminate the Contract and recover from the Agency payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination.
8. If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Design-Builder because the Agency has persistently failed to fulfill the Agency’s obligations under the Contract Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days’ written notice to the Agency, terminate the Contract and recover from the Agency as provided in Section 13.1.3.
9. Termination by the Agency for Cause
10. The Agency may terminate the Contract if the Design-Builder:
11. repeatedly refuses or fails to supply enough properly skilled workers or proper materials, or otherwise fails to prosecute the Work, or any separable part of the Work, with the diligence, resources and skill that will ensure its completion within the time specified in the Contract Documents, including any authorized adjustments;
12. fails to make payment to Subcontractors for materials or labor in accordance with the Contract Documents and the respective agreements between the Design-Builder and the Subcontractors;
13. repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
14. otherwise is guilty of substantial breach of a provision of the Contract Documents.
15. When any of the above reasons exist, the Agency may without prejudice to any other rights or remedies of the Agency and after giving the Design-Builder and the Design-Builder’s surety, if any, seven days’ written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:
    1. Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder; and
    2. Finish the Work by whatever reasonable method the Agency may deem expedient. Upon written request of the Design-Builder, the Agency shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Agency in finishing the Work.
16. When the Agency terminates the Contract for one of the reasons stated in Section 13.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.
17. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Agency’s Consultant services and expenses made necessary thereby, and other damages incurred by the Agency and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Agency.
18. If, after termination for cause, it is determined that the Agency lacked justification to terminate under Section 13.2.1, or that the Design-Builder’s default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency under Section 13.4.
19. Suspension by the Agency for Convenience
20. The Agency may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Agency may determine.
21. The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.3.1. No adjustment shall be made to the extent:
22. that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
23. that an equitable adjustment is made or denied under another provision of the Contract.
24. Termination by the Agency for Convenience
25. The Agency may, at any time, terminate the Contract in whole or in part for the Agency’s convenience and without cause. The Agency shall give written notice of the termination to the Design-Builder specifying the part of the Contract terminated and when termination becomes effective.
26. Upon receipt of written notice from the Agency of such termination for the Agency’s convenience, the Design-Builder shall:
27. cease operations as directed by the Agency in the notice
28. take actions necessary, or that the Agency may direct, for the protection and preservation of the Work
29. except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders; and
30. complete the performance of the Work not terminated, if any.
31. In case of such termination for the Agency’s convenience, the Agency shall pay the Design-Builder for Work properly executed, costs incurred by reason of such termination, including costs attributable to termination of Subcontracts, and any other adjustments otherwise set forth in the Agreement.
32. Design-Builder's failure to include an appropriate termination for convenience clause in any subcontract shall not (i) affect the Agency's right to require the termination of a subcontract, or (ii) increase the obligation of the Agency beyond what it would have been if the subcontract had contained an appropriate clause.
33. Upon written consent of the Design-Builder, the Agency may reinstate the terminated portion of this Contract in whole or in part by amending the notice of termination if it has been determined that:
34. the termination was due to withdrawal of funding by the General Assembly, Governor, or State Fiscal Accountability Authority or the need to divert project funds to respond to an emergency as defined by Regulation 19-445.2110(B) of the South Carolina Code of Regulations, as amended
35. funding for the reinstated portion of the work has been restored
36. circumstances clearly indicate a requirement for the terminated work; and
37. reinstatement of the terminated work is advantageous to the Agency.

ARTICLE 14 - CLAIMS AND DISPUTES

1. Claims
2. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term “Claim” also includes other disputes and matters in question between the Agency and Design-Builder arising out of or relating to the Contract. A voucher, invoice, payment application or other routine request for payment that is not in dispute when submitted is not a Claim under this definition. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 14.1.1 does not require the Agency to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.
3. Notice of Claims
4. Claims by either the Agency or Design-Builder, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 11.2.2, shall be initiated by notice to the other party. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim, the specific contractual adjustment or relief requested and the basis of such request. Claims by either party under this Section 14.2.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later except as stated for adverse weather days in Section 14.5.2. By failing to give written notice of a Claim within the time required by this Section, a party expressly waives its claim. give written notice of a Claim within the time required by this Section, a party expressly waives its claim.
5. Claims by either the Agency or Design-Builder, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 11.2, shall be initiated by notice to the other party.
6. Continuing Contract Performance
7. Pending final resolution of a Claim, including any administrative review allowed under Section 15.6, except as otherwise agreed in writing or as provided in Section 8.8 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Agency shall continue to make payments in accordance with the Contract Documents.
8. The Contract Sum and Contract Time shall be adjusted in accordance with the Agency’s decision, subject to the right of either party to proceed in accordance with this Article 14.
9. Claims for Additional Cost

If the Design-Builder wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 9.5.

1. Claims for Additional Time
2. If the Design-Builder wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder’s Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. Claims for an increase in the Contract Time shall be based on one additional calendar day for each full calendar day that the Design-Builder is prevented from working.
3. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.
4. Claims for adverse weather shall be based on actual weather conditions at the job site or other place of performance of the Work, as documented in the Design-Builder's job site log.
5. For the purpose of this Contract, a total of five (5) days per calendar month (non-cumulative) shall be anticipated as ''adverse weather'' at the job site, and such time will not be considered justification for an extension of time. If, in any month, adverse weather develops beyond the five (5) days, the Design-Builder shall be allowed to claim additional days to compensate for the excess weather delays only to the extent of the impact on the approved construction schedule and days the Design-Builder was already scheduled to work. The remedy for this condition is for an extension of time only and is exclusive of all other rights and remedies available under the Contract Documents or imposed or available by law.
6. The Design-Builder shall submit monthly with their pay application all claims for adverse weather conditions that occurred during the previous month. The Agency shall review each monthly submittal in accordance with Section 14.5 and inform the Design-Builder promptly of its evaluation. Approved days shall be included in the next Change Order. Adverse weather conditions not claimed within the time limits of this Subparagraph shall be considered to be waived by the Design-Builder. Claims will not be allowed for adverse weather days that occur after the scheduled (original or adjusted) date of Substantial Completion.
7. Claims for increase in the Contract Time shall set forth in detail the circumstances that form the basis for the Claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the work, and the number of days increase in the Contract Time claimed as a consequence of each such cause of delay. The Design-Builder shall provide such supporting documentation as the Agency may require including, where appropriate, a revised construction schedule indicating all the activities affected by the circumstances forming the basis of the Claim.
8. The Design-Builder shall not be entitled to a separate increase in the Contract Time for each one of the number of causes of delay which may have concurrent or interrelated effects on the progress of the Work, or for concurrent delays due to the fault of the Design-Builder.
9. Claims for Listed Damages

Notwithstanding any other provision of the Contract Documents, but subject to a duty of good faith and fair dealing, the Design-Builder and Agency waive Claims against each other for listed damages arising out of or relating to this Contract.

1. For the Agency, 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 12.4 (Interest), (viii) lost revenue and profit for lost use of the property, (ix) costs resulting from lost productivity or efficiency.
2. For the Design-Builder, 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 12.4 (Interest); (vii) unamortized equipment costs; and, (viii) losses incurred by Subcontractors for the types of damages the Design-Builder has waive as against the Agency. Without limitation, this mutual waiver is applicable to all damages due to either party’s termination in accordance with Article 13.
3. Nothing contained in this Section shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. This mutual waiver is not applicable to amounts due or obligations under Section 3.19 (Indemnification).
4. Claim and Disputes - Duty of Cooperation, Notice, and Agencys Initial Decision
5. Design-Builder and Agency are fully committed to working with each other throughout the Project to avoid or minimize claims. To further this goal, Design-Builder and Agency agree to communicate regularly with each other at all times notifying one another as soon as reasonably possible of any issue that if not addressed may cause loss, delay, and/or disruption of the Work. If claims do arise, Design-Builder and Agency each commit to resolving such claims in an amicable, professional, and expeditious manner to avoid unnecessary losses, delays, and disruptions to the Work.
6. Claims shall first be referred to the Agency for initial decision. An initial decision shall be required as a condition precedent to resolution pursuant to Section 15.6 of any Claim arising prior to the date of final payment, unless 30 days have passed after the Claim has been referred to the Agency with no decision having been rendered, or after all the Agency’s requests for additional supporting data have been answered, whichever is later. The Agency will not address claims between the Design-Builder and persons or entities other than the Agency.
7. The Agency will review Claims and within ten days of the receipt of a Claim (1) request additional supporting data from the claimant or a response with supporting data from the other party or (2) render an initial decision in accordance with Section 14.7.5.
8. If the Agency requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Agency when the response or supporting data will be furnished or (3) advise the Agency that all supporting data has already been provided. Upon receipt of the response or supporting data, the Agency will render an initial decision in accordance with Section 14.7.5.
9. The Agency will render an initial decision in writing; (1) stating the reasons therefor; and (2) notifying the parties of any change in the Contract Sum or Contract Time or both. The Agency will deliver the initial decision within two weeks of receipt of any response or supporting data requested pursuant to Section 16.4 or within such longer period as may be mutually agreeable to the parties. If the parties accept the initial decision, the Agency shall prepare a Change Order with appropriate supporting documentation for the review and approval of the parties and the Office of State Engineer. If either the Design-Builder, Agency, or both, disagree with the initial decision, the Design-Builder and Agency shall proceed with dispute resolution in accordance with the provisions of Section 14.8.
10. In the event of a Claim against the Design-Builder, the Agency may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder’s default, the Agency may, but is not obligated to, notify the surety and request the surety’s assistance in resolving the controversy.
11. Dispute Resolution
12. If a claim is not resolved pursuant to Section 14.7 to the satisfaction of either party, both parties shall attempt to resolve the dispute at the field level through discussions between Design-Builder’s Representative and Agency’s Representative. If a dispute cannot be resolved through Design-Builder’s Representative and Agency’s Representative, then the Design-Builder’s Senior Representative and the Agency’s Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than twenty-one days after such a request is made, to attempt to resolve such dispute. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute. The meetings required by this Section are a condition precedent to resolution pursuant to Section 14.8.2.
13. If after meeting in accordance with the provisions of Section 14.8.1, the Senior Representatives determine that the dispute cannot be resolved on terms satisfactory to both the Design-Builder and the Agency, then either party may submit the dispute by written request to South Carolina’s Chief Procurement Officer for Construction (CPOC). Except as otherwise provided in Article 14, all claims, claims, or controversies relating to the Contract 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 in the absence of jurisdiction a federal court located in, Richland County, State of South Carolina. Design-Builder agrees that any act by the State regarding the Contract is not a waiver of either the State’s sovereign immunity or the State’s immunity under the Eleventh Amendment of the United State's Constitution.
14. If any party seeks resolution to a dispute pursuant to Section 14.8.2, the parties shall participate in non-binding mediation to resolve the claim. If the claim is governed by Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws as amended and the amount in controversy is $100,000.00 or less, the CPOC shall appoint a mediator, otherwise, the mediation shall be conducted by an impartial mediator selected by mutual agreement of the parties, or if the parties cannot so agree, a mediator designated by the American Arbitration Association (“AAA”) pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator.
15. Without relieving any party from the other requirements of Sections 14.7 and 14.8, either party may initiate proceedings in the appropriate forum prior to initiating or completing the procedures required by Sections 14.7 and 14.8 if such action is necessary to preserve a claim by avoiding the application of any applicable statutory period of limitation or repose.
16. Service of Process

Design-Builder consents that any papers, notices, or process necessary or proper for the initiation or continuation of any claims, claims, or controversies relating to the Contract; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Design-Builder by certified mail (return receipt requested) addressed to Design-Builder at the address provided for the Design-Builder’s Senior Representative 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.