

**GENERAL CONSTRUCTION
CONTRACT TERMS & CONDITIONS**

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Section I. DEFINITIONS AND TERMINOLOGY

A. **Defined Terms**-Wherever used in the Contract Documents, the terms listed below will have the meanings ascribed which are applicable to both the singular and the plural thereof.

1. **Abandonment**-a willful decision by the contractor suspending the progress of the work for an uninterrupted period of three (3) or more consecutive days (excluding Saturdays, Sundays, or national holidays) not requested by the owner or the engineer and not caused by natural phenomena or acts of God.
2. **Addenda**-Written or graphic instruments issued prior to the opening of bids that clarify, correct, or change the Bidding Requirements or the Contract Documents.
3. **Agreement**-The written instrument which is evidence of the covenant between owner and the contractor covering the work.
4. **Application for Payment**-The form acceptable to the owner which is to be used by the contractor 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.
5. **Asbestos**-Any material that contains more than one percent (1%) asbestos fiber and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
6. **Bid**-The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the work to be performed.
7. **Bidding Documents**-The bidding requirements and the proposed contract documents (including all addenda issued prior to receipt of bids).
8. **Bidding Requirements**-The advertisement or invitation to bid, instructions to bidders, bid security form, if any, and the bid form with any supplements.
9. **Bonds**-Bid performance and payment bonds and other instruments of security.
10. **Change Order**-A document recommended by the project engineer which is signed by the contractor and the owner authorizing an addition, deletion, or revision in the work or an adjustment in the contract price or the contract time, issued on or after the effective date of the agreement.
11. **Claim**-A demand or assertion by the owner or the contractor seeking an adjustment of contract price or contract time, or both, or other relief with respect to the terms of the contract. A demand for money or services by a third party is not a claim.
12. **Contract**-The entire and integrated written agreement between the owner and the contractor concerning the work. The contract supersedes prior negotiations, representations, or agreements, whether written or oral.

13. **Contract Documents**-The contract documents establish the rights and obligations of the parties and include the agreement, addenda (pertaining to the contract documents), contractor's bid (including documentation accompanying the bid and any post-bid documentation submitted prior to the notice of award) when attached as an exhibit to the agreement, the notice to proceed, the bonds, these general terms and conditions, the supplementary terms and conditions (if any), the specifications and the drawings as the same are more specifically identified in the agreement, together with all written amendments, change orders, work change directives, and field orders written issued on or after the effective date of the agreement. Approved shop drawings and the reports and drawings of subsurface and physical conditions are not contract documents. Only printed or hard copies of the items listed in this paragraph are contract documents. Files in an electronic media format of text, data, graphics and the like may be furnished from time to time by Engineer to the contractor are not contract documents.

14. **Contract Price**-The moneys payable by the owner to the contractor for completion of the work in accordance with the contract documents as stated in the agreement (subject to the provisions relating to unit price work, if applicable).

15. **Contract Time**-The number of days or the dates stated in the agreement to: (i) achieve substantial completion; and (ii) complete the work so that it is ready for final payment pursuant to the engineer's written recommendation of final payment.

16. **Contractor**-The individual or business entity with whom the owner as entered into the agreement.

17. **Cost of the work**-See Article 7 of the Horry County Procurement Code and the Regulations promulgated thereunder.

18. **Drawings**-That part of the contract documents prepared or approved by the engineer that graphically shows the scope, extent, and character of the work to be performed by the contractor. Shop drawings and other contractor submittals are not drawings as defined herein.

19. **Effective Date of the Agreement**-The date indicated in the agreement on which it becomes effective, but if no such date is indicated, it means the date on which the agreement is signed and delivered by the last of the two parties to sign and deliver.

20. **Engineer**-Any individual or entity providing technical assistance or construction-related services to the owner, including, but not limited to, engineering, architecture, landscaping, designing, consulting, construction supervision or any other professional service for the project. The engineer shall be licensed, if the State of South Carolina requires such a license, in areas appropriate to the type of construction services contemplated by the owner. .

21. **Engineer's Consultant**-An individual or entity having a contract with the engineer to furnish services as the engineer's professional associate or consultant with respect to the project and who is identified as such in the supplementary conditions.

22. **Field Order**-A written order issued by the engineer which requires minor changes in the work by which does not involve a change in the contract price or the contract time.
23. **General Requirements**-The general requirements pertain to all sections of the specifications.
24. **Hazardous Environmental Condition**-The presence at the site of asbestos, PCB's, petroleum, hazardous waste or radioactive material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the work.
25. **Hazardous Waste**-The term hazardous waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 U.S.C. §6903) as amended.
26. **Laws and Regulations; Laws or Regulations**-Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.
27. **Liens**-Charges, security interests, or encumbrances upon project funds, real property, or personal property.
28. **Milestone**-A principal event specified in the contract documents relation to an intermediate completion date or time prior to substantial completion of all the work.
29. **Notice of Award**-The written notice by the owner to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, The owner will sign and deliver the agreement.
30. **Notice to Proceed**-A written notice given by the owner to the contractor fixing the date on which the contract time (including milestones, if applicable) will commence to run and on which the contractor shall start to perform the work under the contract documents.
31. **Owner**-That political subdivision of the State of South Carolina known as Arcadian Shores Special Tax District.
32. **Partial Utilization**-Occupancy by the owner of a substantially completed part of the work for the purpose for which it is intended (or a related purpose) prior to substantial completion of all work.
33. **PCB's**-Polychlorinated biphenyl's.
34. **Petroleum**-Crude oil or any fractional derivatives thereof which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit (60°F.) and fourteen and seven-tenths pounds per square inch absolute (14.7 psia)), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.

35. **Project**-The total construction of which the work to be performed under the contract documents may be the whole, or a part as may be indicated elsewhere in the contract documents.

36. **Project Manual**-The bound documentary information prepared for bidding and constructing the work.

37. **Radioactive material**-Source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954 (42 U.S.C. § 2011, *et seq.*) as amended.

38. **Resident Project Representative**-The authorized representative of the owner who may be assigned to the site or any part thereof.

39. **Samples**-Physical examples of materials, equipment, or workmanship that are representative of some portion of the work and which establish the standards by which such portion of the work will be judged.

40. **Shop Drawings**-All drawings, diagrams, illustrations, schedules, or other data or information which are specifically prepared or assembled by the contractor to illustrate some portion of the work.

41. **Site**-Lands or areas indicated in the contract documents as being furnished by the owner upon which the work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by the owner which are designated for the use of the contractor.

42. **Specifications**-That part of the contract documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the work and certain administrative details applicable thereto.

43. **Stoppage**-Any willful suspension of the work on the project by the contractor for an uninterrupted period of three (3) or more consecutive days (excluding Saturdays, Sundays, or national holidays) for any reason not requested by the owner or the engineer and not caused by conditions created by natural phenomena or acts of God.

44. **Subcontractor**-A individual or entity having a direct contract with the contractor or with any other subcontractor for the performance of a part of the work at the site.

45. **Substantial Completion**-The time at which the work (or a specified part thereof) has progressed to the point where, in the opinion of the engineer, the work (or a specified part thereof) is sufficiently complete, in accordance with the contract documents, so that the work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the work refer to substantial completion thereof.

46. **Supplementary Conditions**-That part of the contract documents which amends or supplements these general conditions.

47. **Supplier**-A manufacturer, fabricator, provider, distributor, materialman, or vendor having a direct contract with the contractor or with any subcontractor to furnish materials or equipment to be incorporated in the work by contractor or any subcontractor.

48. **Underground Facilities**-All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

49. **Unit Price Work**-Work to be paid for on the basis of unit prices.

50. **Work**-The entire completed construction or the various separately identifiable parts thereof required to be provided by the contract documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the contract documents.

51. **Work Change Directive**-A written statement to the contractor issued on or after the effective date of the agreement recommended by the engineer and signed by the owner ordering an addition, deletion, or revision in the work, or responding to differing or unforeseen subsurface or physical conditions under which the work is to be performed or to emergencies. A work change directive will not change the contract price or the contract time but is evidence that the parties expect that the change ordered or documented by a work change directive will be incorporated in a subsequently issued change order following negotiations by the parties as to its effect, if any, on the contract price or contract time.

52. **Written Amendment**-A written statement modifying the contract documents, signed by the owner and the contractor on or after the effective date of the agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the contract documents.

B. Terminology

1. **Intent of Certain Terms or Adjectives**-Whenever in the contract documents the terms "as allowed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action as to the work, it is intended that such action will be solely to evaluate, in general, the completed work for compliance with the requirements of and information in the contract documents and conformance with the design concept of the completed project as a functioning whole as shown or indicated in the contract documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to the engineer any duty or authority to supervise or direct the performance of the work or any duty or authority to

undertake responsibility contrary to the provisions of Section IX or any other provision of the contract document.

2. **Day**-The word “day” shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

3. **Defective**-The word “defective,” when modifying the word “work,” refers to work that is unsatisfactory, faulty or deficient in that it does not conform to the contract documents, or has been damaged prior to the engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by the owner at substantial completion in accordance with Section XIV).

4. **Furnish**-The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the site (or some other specified location) ready for use or installation and in operable condition.

5. **Install**-The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

6. **Perform; Provide**-When used in connection with services, materials, or equipment shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

C. **Technical Terminology**-Unless otherwise stated in the contract documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the contract documents in accordance with such recognized meaning.

Section II. PRELIMINARY MATTERS

A. **Delivery of Bonds**-When the contractor delivers the executed agreements to Horry County, the contractor shall also deliver to the owner such bonds as the contractor shall be required to furnish.

B. **Copies of Documents**-The owner shall furnish to the contractor up to ten copies (10) of the contract documents. Additional copies will be furnished upon request at the cost of reproduction.

C. **Commencement of Contract Time; Notice to Proceed**-The contract time will commence to run on the thirtieth (30th) day after the effective date of the agreement or, if a notice to proceed is given, on the day indicated in the notice to proceed. A notice to proceed may be given at any time within 30 days after the effective date of the agreement. In no event will the contract time commence to run later than the sixtieth (60th) day after the day of bid opening or the thirtieth (30th) day after the effective date of the agreement, whichever date is earlier.

D. Starting the Work-Contractor shall start to perform the work on the date when the contract time commences to run. No work shall be done at the site prior to the date on which the contract time commence to run.

E. Before Starting Construction

1. **Contractor's review of contract documents-**Before undertaking each part of the work, contractor shall carefully study and compare the contract documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall report in writing to the engineer any conflict, error, ambiguity, or discrepancy which contractor may discover within ten (10) days of such discovery. Engineer shall provide a written clarification or interpretation, in consultation with the owner, prior to contractor commencing any work thereby affected. The contractor shall not be liable to the owner or the engineer for failure to report any conflict, error, ambiguity, or discrepancy in the contract documents unless the contractor knew or reasonably should have known thereof.

2. **Preliminary Schedules-**Within ten (10) days after the effective day of the agreement (unless otherwise specified in the general requirements), the contractor shall submit to the engineer for timely review:

a. A preliminary progress schedule indicating the time (numbers of days or dates) for starting and completing the various stages of work, including any milestones specified in the contract documents;

b. A preliminary schedule of shop drawings and sample submittals which will list each required submittal and the time for submitting, reviewing, and processing each submittal; and

c. A preliminary schedule of values for all of the work which includes quantities and prices of items which when added together equal the contract price and subdivides the work into component parts in sufficient detail to serve as the basis for progress payments during performance of the work. Such prices will include an appropriated amount of overhead and profit applicable to each item of work.

3. **Evidence of insurance-**Before a contract is deemed accepted by the owner, the contractor shall deliver to the owner, with copies to each additional insured identified in the supplementary conditions, certificates of insurance (and other evidence of insurance which the owner may reasonably request) which the contractor is required to purchase and maintain in accordance with Section V.

F. Preconstruction Conference-If, in the sole discretion of the owner, a finding that a preconstruction conference is necessary, within twenty (20) days after the contract time start to run, but before any work at the site is started, a conference attended by the owner, the contractor, the engineer, and others, as appropriate, will be held to establish a working understanding among the parties as to the work and to discuss the schedules referred to in paragraph II E.2., procedures

for handling shop drawings and other submittals, processing applications for payment, and maintaining required records.

G. Initial Acceptance of Schedules-Unless otherwise provided in the contract documents or unless waived the owner, at least ten (10) days before submission of the first application for payment, a conference attended the owner, the contractor, the engineer, and others, as appropriate, will be held to review for acceptability to the owner and the engineer, as provided below, the schedules submitted in accordance with paragraph II E.2. The contractor shall have an additional ten (10) days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be make to the contractor until acceptable schedules are submitted.

1. **Progress Schedule**-A progress schedule will be acceptable if it provided an orderly progression of the work to completion within any specified milestones and the contract time and it is in conformance with the contract documents. Such acceptance will not interfere with or relieve the contractor from the contractor's full responsibility for work on any milestones or completion dates.

2. **Schedule of Shop Drawings and Samples**-The contractor's schedule of shop drawing and sample submittals will be acceptable if it provides a workable arrangement for reviewing and processing the required submittals and is in conformance with the contract documents.

3. **Schedule of Values**-The contractor's schedule of values will be acceptable as to form and substance if it provides a reasonable allocation of the contract price to component parts of the work and is in conformance with the contract documents.

Section III. CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

A. Intent-It is the intent of the contract documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the contract documents. The contract documents are complementary; what is called for by one is binding as if called for by all. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the contract documents or from prevailing custom or trade usage will be provided, whether or not specifically called for, at no additional cost to the owner. If a prevailing custom or usage of trade is in conflict with the contract documents, the contract documents shall control the relationship between the parties.

B. Reference Standards-Standards, specifications, codes, laws, and regulations-Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to laws or regulations, whether such reference by specific or by implications, shall mean the standard, specification, manual, code, laws, or regulations in effect at the time of opening of bids (or on the effective date of the agreement if there were no bids), except as may be otherwise specifically stated in the contract documents. No provision of any such standard, specification, manual, or industry code, or any instructions of a supplier, shall be effective to change the duties or responsibilities of the owner, the engineer, the contractor, or any of their subcontractors, consultants, agents, or employees from those set forth in the contract documents,

nor shall any such provision or instruction be effective to assign to the owner any duty or authority to supervise or direct the performance of the work or any duty or authority to undertake responsibility inconsistent with the provisions of the contract documents.

C. Reporting and Resolving Discrepancies

1. **Reporting discrepancies**-If, during the performance or the work, the contractor discovers any conflict, error, ambiguity, or discrepancy within the contract documents or between the contract documents and any provision of any law or regulations applicable to the performance of the work or any standard, specification, manual, or industry code, or of any instruction of any supplier, the contractor shall report it to the owner and the engineer, in writing, within forty-eight (48) hours of such discovery. The contractor shall not proceed with the work affected thereby (except in an emergency as required herein to meet the circumstances of the emergency) until an amendment or supplement to the contract documents has been issued in accordance with one of the methods indicated in paragraph III D. The contractor shall not be liable to the owner or the engineer for failure to report any such conflict, error, ambiguity, or discrepancy unless the contractor knew or reasonably should have known thereof.

2. **Resolving discrepancies**-Except as may be otherwise specifically stated in the contract documents, the provisions of the contract documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the contract documents and:

a. The provisions of any standard, specification, manual, industry code, or instruction (whether or not specifically incorporated by reference in the contract documents); or

b. The provisions of any laws or regulations applicable to the performance of the work (unless such an interpretation of the provisions of the contract documents would result in violation of such law or regulations).

D. Amending or Supplementing Contract Documents-The contract documents may be amended to provide for additions, deletions, and revisions in the work or to modify the terms and conditions thereof in one or more of the following ways: (i) a written amendment; (ii) a change order; or (iii) a work change directive. The requirements of the contract documents may be supplemented, and minor variations and deviations in the work may be authorized, by one or more of the following ways: (i) a field order; (ii) approval of a shop drawing or sample; or (iii) written interpretation or clarification.

E. Reuse of Documents-The contractor and any subcontractor or supplier or other individual or entity performing or furnishing any of the work under a direct or indirect contract with the owner: (i) shall not have or acquire any title to or ownership rights in any of the drawings, specifications, or other documents (or copies of any thereof) prepared for the project whether or not the seal of the engineer or the engineer's consultants, including electronic media editions; and (ii) shall not reuse any of such drawings, specifications, other documents, or copies thereof on extensions of the project or any other project without written consent of the owner and the engineer and specific written verification or adaptation by the engineer, if applicable. This

prohibition shall survive final payment, completion, and acceptance of the work, or termination or completion of the contract. Nothing herein shall preclude the contractor from retaining copies of the contract documents for record purposes.

Section IV. AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

A. Availability of Lands-The owner shall furnish the site. The owner shall notify the contractor of any encumbrances or restrictions not of general application, but specifically related to use of the site with which the contractor must comply in performing the work. If such specific encumbrances or restrictions were not part of the bid, the contractor shall be entitled to a modification of the contract price and contract time, or both, as provided herein, to the extent such encumbrances or restrictions modify the work. The owner will obtain, in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. The contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment. Upon reasonable request, The owner shall furnish the contractor with a current statement of record legal title and description of the lands upon which the work is to be performed and the extent of the owner's interest therein.

B. Subsurface and Physical Conditions

1. Reports and Drawings-The Contract Documents identify:

a. Those reports of explorations and tests of subsurface conditions at or contiguous to the site that the engineer has used in preparing the contract documents; and

b. Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except underground facilities) that the engineer has used in preparing the contract documents.

2. No Reliance by Contractor on Technical Data-The contractor may not rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not contract documents. The contractor may not rely upon or make any claim against the owner, Horry County, the engineer, or any of the engineer's consultants with respect to:

a. The completeness of such reports and drawings for the contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by the contractor, and safety precautions and programs incident thereto; or

b. Other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

c. Any interpretation of or conclusion drawn by the contractor from any “technical data” or any such other data, interpretations, opinions, or information.

C. Differing Subsurface or Physical Conditions

1. **Notice**-If the contractor believes that any subsurface or physical condition at or contiguous to the site that is uncovered or revealed either:

a. Is of such a nature as to establish that any “technical data” as provided in paragraph IV B. is materially inaccurate; or

b. Is of such a nature as to require a change in the contract documents; or

c. Differs materially from that shown or indicated in the contract documents; or

d. Is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract documents;

then the contractor shall, within twenty-four hours (24 hrs.) after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any work in connections therewith (except in an emergency as provided herein to the extent necessary to meet the emergency), notify the owner and the engineer in writing about such condition. The contractor shall not further disturb such condition or perform work in connection therewith (except in an emergency as stated) until receipt of written orders to do so.

2. **Engineer’s Review**-After receipt of written notice as required hereinabove, the engineer will promptly review the pertinent condition, determine the requirements for obtaining additional exploration or tests, and advise the owner and the contractor within twenty-four hours (24 hrs.) of the engineer’s findings and conclusions.

3. **Price and Time Adjustments**-The contract price or the contract time, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in the contractor’s cost of, or time required for, performance of the work; subject, however, to the following:

a. Such condition must meet any one or more of the categories described in paragraph IV C.1.; and

b. With respect to work that is paid for on a unit price basis any adjustment in contract price will be subject to the provisions of Sections IX and XI.

4. **Exceptions**-The contractor shall not be entitled to any adjustment in the contract price or the contract time if:

a. the contractor knew or should have known of the existence of such conditions at the time the contractor made a final commitment to the owner in respect of contract price and contract time by the submission of a bid or becoming bound under a negotiated contract, whichever occurs later; or

b. the existence of such condition could or should reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the site and contiguous areas required by the bidding requirements or contract documents to be conducted by or for the contractor, or reasonably should have been conducted, prior to the contractor's making such a final commitment; or

c. The contractor failed to give the written notice within the time as required by paragraph IV C.1.

5. **Disputes**-If the owner and the contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the contract price or contract time, a claim may be made. However, in no event shall Horry County, Horry County, the engineer, or the engineer's consultant's be liable to the contractor for any claims, costs, losses, or damages (including, but not limited to, all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by the contractor on or in connection with any other project or anticipated project.

D. Underground Facilities

1. **Shown or Indicated**-The information and data shown or indicated in the contract documents with respect to existing underground facilities at or contiguous to the site is based on information and data furnished to the engineer by the owners of such underground facilities, including Horry County, or by others. Unless it is otherwise expressly provided in the supplementary conditions:

a. The owner and the engineer shall not be responsible for the accuracy or completeness of any such information or data; and

b. The cost of all of the following will be included in the contract price, and the contractor shall have full responsibility for: (i) reviewing and checking such information and data; (ii) locating all underground facilities shown or indicated in the contract documents; (iii) coordination of the work with the owners of such underground facilities during construction; and (iv) the safety and protections of all such underground facilities and repairing any damage thereto resulting from the work.

2. **Not Shown or Indicated**-If an underground facility is uncovered or revealed at or contiguous to the site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the contract documents, the contractor shall, within twenty-four

hours (24 hrs.) after becoming aware thereof and before further disturbing conditions affected thereby or performing any work in connection herewith (except in an emergency as stated herein to the extent necessary to meet the emergency), identify the owner of such underground facility and give written notice to that owner and the engineer. Upon receipt of the contractor's notification, the engineer will review the underground facility and determine the extent, if any, to which a change is required in the contract documents to reflect and document the consequences of the existence or location of the underground facility. During such time, the contractor shall be responsible for the safety and protection of such underground facility. If engineer concludes that a change in the contract documents is required, a work change directive or a change order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the contract price or contract time, or both, to the extent that they are attributable to the existence or locations of any underground facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the contract documents and the contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If the owner and the contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in the contract price or contract time, the dispute shall be resolved pursuant to Article 9 of the Horry County Procurement code and the regulations promulgated thereunder, which are incorporated herein by reference.

E. Reference Points-Unless otherwise stipulated in the contract documents, the owner y shall provide engineering surveys to establish reference points for construction which in the engineer's judgment are necessary to enable the contractor to proceed with the work. The contractor shall be responsible for laying out the work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of the owner. The contractor shall report to the engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

F. Hazardous Environmental Conditions at Site

1. **Reports and Drawings**-Reference is made to the supplementary conditions or other contract documents for the identification of those reports and drawings relating to a hazardous environmental condition identified at the site, if any, that have been utilized by the engineer in the preparation of the contract documents.

2. **Limited Reliance by Contractor on Technical Data**-The contractor may reasonably rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not contract documents. The contractor may not rely upon or make any claim against the owner, Horry County, the engineer or any of the engineer's consultants with respect to:

- a. the completeness of such reports and drawings for the contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by the contractor and safety precautions and programs incident thereto; or

b. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

c. Any interpretation of or conclusion drawn by the contractor from any “technical data” or any such other data, interpretations, or information.

3. **Responsibility**-The contractor shall not be responsible for any hazardous environmental condition uncovered or revealed at the site, which was not shown or indicated in drawings or specifications or identified in the contract documents to be within the scope of the work. The contractor shall be responsible for a hazardous environmental condition created with any materials brought to or work completed on the site by the contractor, subcontractors, suppliers, or anyone else for whom the contractor is responsible.

4. **Notifications and Abatement**-If the contractor encounters a hazardous environmental condition or if the contractor or anyone for whom the contractor is responsible creates a hazardous environmental condition, the contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all work in connection with such condition and in any area affected thereby (except in an emergency as defined herein and to the extent necessary to meet the emergency); and (iii) notify Horry County and the engineer (and within twenty-four hours (24 hrs.) thereafter confirm such notice in writing). The owner shall consult with the engineer concerning to determine the appropriate course of action to evaluate such condition or take corrective action, if any.

5. **Resumption of Work**-The contractor shall not be required to resume work in connection with such condition or in any affected area until after the owner has obtained any required permits related thereto and delivered to the contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of work; or (ii) specifying any special conditions under which such work may be resumed safely. If the owner and the contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in contract price or contract time, or both, as a result of such work stoppage or such special conditions under which work is agreed to be resumed by the contractor, a claim may be made.

6. **Refusal to Resume Work**-If, after receipt of such written notice, the contractor does not agree to resume such work based on a reasonable belief it is unsafe, or does not agree to resume work under such special conditions, the the owner may order the portion of the work that is in the area affected by such condition to be deleted from the work. If the owner and the contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in contract price or contract time as a result of deleting such portion of the work, a claim may be made.

7. **Indemnification**-The contractor shall indemnify and hold harmless the owner and its officers, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including, but not limited to, all fees and charges for engineers, architects, attorneys, and other professionals and all

court or arbitration or other dispute resolution costs) arising out of or relating to a hazardous environmental condition created by the contractor or by anyone for whom the contractor is responsible.

8. **Application**-The provisions of paragraphs IV B., IV C., and IV D are not intended to apply to a hazardous environmental condition uncovered or revealed at the site.

Section V. BONDS AND INSURANCE

A. Performance, Payment and Other Bonds-The contractor shall furnish performance and payment bonds, each in an amount at least equal to the contract price as security for the faithful performance and payment of all the contractor's obligations under the contract documents. These bonds shall remain in effect at least until one year (1 yr.) after the date when final payment becomes due, except as provided otherwise by laws or regulations or by the contract documents. The contractor shall furnish such other bonds as required by the contract documents. All bonds shall be in the form prescribed by the contract documents except as provided otherwise by laws or regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A certified copy of such agent's authority to act must accompany all bonds signed by an agent. If the surety on any bond furnished by the contractor is declared bankrupt or becomes insolvent or its right to do business in South Carolina is terminated or it ceases to be listed as stated above, the contractor shall, within twenty days (20) thereafter substitute another bond and surety that complies with the requirements set forth herein. Failure to comply may result in a stop work order. All costs associated with the stop work order and/or replacement of the bonding documents shall be the responsibility of the contractor.

B. Licensed Sureties and Insurers-All bonds and insurance required by the contract documents shall be purchased and maintained by the contractor and shall be obtained from surety or insurance companies that are duly licensed or authorized in South Carolina to issue bonds or insurance policies for the limits and coverage's so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the supplementary conditions.

C. Certificates of Insurance-The contractor shall deliver to the owner, with copies to each additional insured, if any, identified in the supplementary conditions, certificates of insurance (and other evidence of insurance requested by the owner) which the contractor is required to purchase and maintain.

D. Contractor's Liability Insurance

1. **Types of Coverage**-The contractor shall purchase and maintain such liability insurance as is appropriate for the work being performed and as will provide protection from claims set forth below which may arise out of or result from the contractor's performance of the work and the contractor's other obligations under the contract documents, whether it is to be performed by the contractor, any subcontractor or supplier,

or by anyone directly or indirectly employed by any of them to perform any of the work, or by anyone for whose acts any of them may be liable:

- a. claims under workers' compensation, disability benefits, and other similar employee benefit laws;
- b. claims for damages because of bodily injury, occupational sickness or disease, or death of the contractor's employees;
- c. claims for damages because of bodily injury, sickness or disease, or death of any person other than the contractor's employees;
- d. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by the contractor, or (ii) by any other person for any other reason;
- e. builder risk insurance sufficient to cover all potential losses occurring thereunder;
- f. claims for damages, other than to the work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
- g. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle.

2. **Types of Insurance**-The policies of insurance so required by paragraph V(D)(1) to be purchased and maintained shall:

- a. with respect to insurance required by paragraphs V D.1.c. through V D.1.f., inclusive, include as an additional insured (subject to any customary exclusion in respect of professional liability) Horry County and any other individuals or entities identified in the supplementary conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded these additional insureds shall provide primary coverage for all claims covered thereby;
- b. include at least the specific coverages and be written for not less than the limits of liability provided in the supplementary conditions or required by laws or regulations, whichever is greater;
- c. include completed operations insurance;

d. include contractual liability insurance covering the contractor's indemnity obligations under Section VI;

e. include a provision or endorsement the coverage afforded will not be cancelled, materially changed, or renewal refused until at least thirty days (30) prior to written notice has been given to the owner and such other additional insureds as are identified in the supplementary conditions to whom a certificate of insurance has been issued;

f. remain in effect at least until final payment and at all time thereafter when the contractor may be correcting, removing, or replacing defective work in accordance with Section XIII; and

g. With respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years (2 yrs.) after final payment (and the contractor shall furnish the owner and each other additional insured identified in the supplementary conditions, to whom a certificate of insurance has been issued, evidence satisfactory to the owner of continuation of such insurance at final payment and one year (1 yr.) thereafter.

E. Acceptance of Bonds and Insurance; Option to Replace-If the owner has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the contractor in accordance with this section on the basis of non-conformance with the contract documents, the owner shall notify the contractor in writing, within thirty days (30) after receipt of the certificates (or other evidence requested) required by paragraph II E.3. If the contractor does not purchase or maintain all of the bonds and insurance required by the contract documents, the contractor shall notify the owner in writing of such failure to purchase prior to the start of the work, or of such failure to maintain at any time during the contract time. Upon the failure to purchase or maintain required insurance and without prejudice to any other right or remedy, the owner may elect to terminate the project or, at its option, obtain equivalent bonds or insurance to protect its interests at the expense of the contractor.

Section VI. CONTRACTOR'S RESPONSIBILITIES

A. Supervision and Superintendence-The contractor shall supervise, inspect, and direct the work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the work in accordance with the contract documents. The contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. The contractor shall not be responsible for the negligence of the engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction that is shown or indicated in and expressly required by the contract documents. The contractor shall be responsible to see that the completed work complies accurately with the contract documents. At all time during the progress of the work, the contractor shall assign a competent resident superintendent thereto who shall not be replaced without written notice to the owner and the engineer. The superintendent shall be the contractor's representative at the site and shall have authority to act on and bind the contractor.

All communications given to or received from the superintendent shall be binding on the contractor.

B. Labor; Working Hours-The contractor shall provide an adequate number of competent, suitably qualified personnel to survey, lay out, and construct the work as required by the contract documents. The contractor shall, at all time, maintain good discipline and order at the site. Except as otherwise required for the safety or protection of persons or the work or the property at the site or adjacent thereto, and except as otherwise stated in the contract documents, all work at the site shall be performed during regular working hours. Contractor will not permit overtime work or the performance of work on Saturday, Sunday, or any legal holiday without the written consent (which will not be unreasonably withheld) of the owner given after prior written notice to the engineer.

C. Services, Materials, and Equipment-Unless otherwise specified in the general requirements, the contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the work. All materials and equipment incorporated into the work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the contract documents. All warranties and guarantees specifically called for by the specifications shall expressly run to the benefit of the owner. If required by the engineer, the contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise provided in the contract documents.

D. Progress Schedule-The contractor shall adhere to the progress schedule established in accordance with paragraph II G. The progress schedule may be adjusted pursuant to the following:

1. **Adjustments**-The contractor shall submit to the owner and the Engineer for acceptance (to the extent indicated in paragraph II G. proposed adjustments in the progress schedule that will not result in changing the contract time (or milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the general requirements applicable thereto. The engineer, after consultation with the owner, may accept or reject the proposed adjustments, but such acceptance will not be unreasonably withheld.

2. **Adjustments Requiring Change Order**-Proposed adjustments in the progress schedule that will change the contract time or milestones shall be submitted in accordance with the requirements of Section XII. Such adjustments may only be made by a change order or written amendment in accordance with Section XII.

E. Substitutions and "Or-Equals"-Whenever an item of material or equipment is specified or described in the contract documents by using the name of a proprietary item or the

name of a particular supplier, the specification or description is intended to specify that particular material, equipment or supplier. This shall apply both to named materials, equipment or suppliers as well as specified methods, techniques, procedures, means, or sequences of construction stated in the contract documents. Substitutions or “or-equals” are permitted only with the express written approval of the owner and the engineer pursuant to the following procedure:

1. **Request**-The contractor shall submit a written request for substitution or use of an “or-equal) to the owner and the engineer. The request shall, with great specificity, state the reasons for the substitution and/or “or-equal,” the differences between the specified item and the proposed item, warranty or guarantee differences, if any, and the price differential.
2. **Certification**-The contractor shall certify that the proposed substitution and/or “or-equal” is functionally equal to the named item and will perform in the same manner as the named item. The contractor shall also state any price differential between the proposed item and the named item.
3. **Engineer’s Review**-The engineer shall be allowed a reasonable time to evaluate any such proposal. No substitution or “or-equal” shall be permitted until the engineer has completed the review and a change order or approved shop drawing is delivered to the contractor. The owner may, at its option, require the contractor furnish a special guarantee on the substitution or “or-equal.”
4. **Expenses**-The contractor shall bear all expenses associated with the approval of the proposed substitution or “or-equal,” including, but not limited to, engineering costs, testing costs and furnishing required data.

F. Subcontractors, Suppliers and Others

1. **Objection to Subcontractors, Suppliers**-The contractor shall not employ any subcontractor, supplier, or other individual or entity, whether initially or as a replacement, against whom the owner has a reasonable objection. The contractor shall not be required to employ any subcontractor, supplier, or other individual or entity to furnish or perform any of the work against whom the contractor has a reasonable objections.
2. **Identification of Subcontractors, Suppliers**-The contractor shall identify all subcontractors, suppliers, or other individuals or entities relating to the project to the owner prior to starting the work. If the owner has an objection to any of those listed, the owner shall notify the contractor of such objection, in writing, within ten days (10) of receipt of the identifications. If the owner makes no objection within the time permitted the subcontractors, suppliers, or other individuals or entities will be deemed accepted by the owner.
3. **Contractor Responsibility**-The contractor shall be fully responsible to the owner and the engineer for all acts and omissions of the subcontractors, suppliers, and other individuals or entities performing or furnishing any of the work just as the contractor is

responsible for the contractor's own acts and omissions. Nothing in the contract documents shall create for the benefit of any such subcontractor, supplier, or other individual or entity any contractual relationship between the owner or the engineer and any such subcontractor, supplier, or other individual or entity, nor shall it create any obligation on the part of the owner or the engineer to pay or to see to the payment of any moneys due any such subcontractor, supplier, or other individual or entity, except as may be required by laws or regulations.

4. **Scheduling Subcontractors**-The contractor shall be solely responsible for scheduling and coordinating the work of subcontractors, suppliers, and other individuals and entities performing or furnishing any of the work under a direct or indirect contract with the contractor.

5. **Communications**-The contractor shall require all subcontractors, suppliers, and such other individuals or entities performing or furnishing any of the work to communicate with the owner and the engineer through the contractor.

6. **Division of Work**-Unless otherwise specifically stated in the contract documents, the divisions and sections of the specifications and the identifications of any drawings shall not control the contractor in dividing the work among the subcontractors or suppliers or delineating the work to be performed by any specific trade.

7. **Relationship with Subcontractors**-All work performed for the contractor by a subcontractor or supplier will be pursuant to an appropriate agreement between the contractor and the subcontractor or supplier which specifically binds the subcontractor or supplier to the applicable terms and conditions of the contract documents for the benefit of the owner and the engineer. All such documents outlining the relationship between the contractor and the subcontractors shall include a specific agreement by the subcontractor not to file any lien against the owner or any of the property of the owner, whether real or personal property or fixtures thereon.

G. **Patent Fees and Royalties**-The contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the work or incorporation into the work of any invention, design, process, product, or device which is subject to patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the contract documents for use in the performance of the work and if, to the actual knowledge of the owner or the engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed in the contract documents by the owner. To the fullest extent permitted by laws and regulations, the contractor shall indemnify and hold harmless the owner, the engineer, the engineer's consultants, and the officers, directors, partners, employees or agents, or other consultants of each and any of them from and against all claims, costs, losses, and damages (including, but not limited to, all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement or patent rights or copyrights incident to the use in the performance of the work or resulting from the incorporation in the work of any invention, design, process, product, or device not specified in the contract documents.

H. **Permits**-Unless otherwise provided in the supplementary conditions, the contractor shall obtain and pay for all construction permits and licenses. The owner shall assist the contractor, when necessary, in obtaining such permits and licenses. The contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the work which are applicable at the time of opening of the bids, or, if there are no bids, in the effective date of the agreement. The contractor shall pay all charges of utility owners for connection to the work, and the owner shall pay all charges for such utility owners for capital costs related thereto, such as, but not limited to, plant investment fee and impact fees.

I. Laws and Regulations

1. **Compliance**-The contractor shall give all notices and comply with all laws and regulations applicable to the performance of the work. Except where otherwise expressly required by applicable laws and regulations, neither the owner nor the engineer shall be responsible for monitoring the contractor's compliance with any laws or regulations.

2. **Failure to Conform**-If the contractor performs any work, knowing or having reason to know that it is contrary to laws or regulations, the contractor shall bear all claims, costs, losses, and damages (including, but not limited to, all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such work; however, it shall not be the contractor's primary responsibility to make certain that the specifications and drawings are in accordance with laws and regulations, but this shall not relieve the contractor of contractor's obligations under paragraph III C.

3. **Subsequent Changes**-Changes in laws or regulations not known at the time of opening of bids (or, on the effective date of the agreement if there were no bids) having an effect on the cost or time of performance of the work may be the subject of an adjustment in contract price or contract time. If the owner and the contractor cannot agree on entitlement to or on the amount or extent, if any, of any such adjustment, a claim may be filed.

J. **Taxes**-The contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by the contractor in accordance with the laws and regulations of South Carolina which are applicable during the performance of the work.

K. Use of Site and Other Areas

1. **Limitations on the Use of Site and Other Areas**-The contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the site and other areas permitted by laws and regulations, and shall not unreasonably encumber the site and other areas with construction equipment or other materials or equipment. The contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the work. Should any claim be made by any

such owner or occupant because of the performance of the work, the contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. To the fullest extent permitted by laws and regulations, the contractor shall indemnify and hold harmless the owner and its officers, directors, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including, but not limited to, all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against the owner, Horry County, the engineer, or any other party indemnified hereunder to the extent caused by or based upon the contractor's performance of the work.

2. Removal of Debris during Performance-During the progress of the work, the contractor shall keep the site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable laws and regulations.

3. Cleaning-Prior to substantial completion of the work, the contractor shall clean the site and make it ready for utilization by the owner. At the completion of the work, the contractor shall remove from the site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the contract documents.

4. Loading Structures-The contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall the contractor subject any part of the work or adjacent property to stresses or pressures that will endanger it.

L. Safety and Protection

1. Responsibility-The contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work. The contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to: (i) all persons on the site or who may be affected by the work; (ii) all the work an materials and equipment to be incorporated therein, whether in storage on or off the site; and (iii) other property at the site or adjacent thereto, including, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of construction.

2. Safety Programs and Procedures-The contractor shall comply with all applicable laws and regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety protection. The contractor shall notify owners of adjacent property and of underground facilities and other utility owners when prosecution of the work may affect them, and shall cooperate with them in the protection, removal, relocations, and replacement of their property. All damage, injury, or loss to any

property referred to herein caused directly, indirectly, in whole or in part, by the contractor, any subcontractor, supplier, or other individual or entity directly or indirectly employed by any of them to perform any work, or anyone whose acts any of them may be liable, shall be remedied by the contractor (except damage or loss attributable to the fault of the drawings or specifications or to the acts or omissions of the engineer or the engineer's consultants, or anyone employed by any of them, or anyone whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the contractor or any subcontractor, supplier, or other individual or entity directly or indirectly employed by any of them). The contractor's duties and responsibilities for safety and for protection of the work shall continue until such time as all the work is completed and the owner has issued a notice to the contractor in accordance with paragraph VI L.1. that the work is acceptable (except as otherwise expressly provided in connection with substantial completion).

M. Safety Representative-The contractor shall designate a qualified and experienced safety representative at the site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

N. Hazard Communication Programs-The contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between employers at the site in accordance with laws or regulations.

O. Emergencies-In emergencies affecting the safety or protection of persons or the work or property at the site or adjacent thereto, the contractor is obligated to act to prevent threatened damage, injury, or loss. The contractor shall give the owner and the engineer written notice within forty-eight hours (48 hrs.) if contractor believes that any significant changes in the work or variations from the contract documents have been caused thereby or are required as a result thereof. If the engineer, in consultation with the owner, determines that a change in the contract documents is required because of the actions taken by the contractor in response to such an emergency, a work change directive or change order will be issued.

P. Shop Drawings and Samples

1. **Submission**-The contractor shall submit shop drawings to the engineer for review and approval in accordance with the acceptable schedule of shop drawings and sample submittals. All submittals will be identified as the engineer may require and in the number of copies specified in the contract documents. The data shown on the shop drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to provide and enable the engineer to review the information for the limited purposes required by the section.

2. **Samples**-The contractor shall also submit samples to the engineer for review and approval in accordance with the acceptable schedule of shop drawings and sample submittals. Each sample will be identified clearly as to material, supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as the engineer

may require to enable the engineer to review the submittal for the limited purposes required by this section.

3. **Work Before Approval**-Where a shop drawing or sample is required by the contract documents or the schedule of shop drawings and sample submittals acceptable to the owner and the engineer as required by Section II G., any related work performed prior to the engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of the contractor.

4. **Before Submission**-Before submitting each shop drawing or sample, the contractor shall have determined and verified:

a. All field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

b. All materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the work;

c. All information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto;

d. The contractor shall also have reviewed and coordinated each shop drawing or sample with other shop drawings and samples and with the requirements of the work and the contract documents;

e. Each submittal shall bear a stamp or specific written indication that the contractor has satisfied the contractor's obligations under the contract documents with respect to the contractor's review and approval of that submittal;

f. At the time of each submittal, the contractor shall give the engineer specific written notice of such variations, if any, that the shop drawing or sample submitted may have from the requirements of the contract documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each shop drawing and sample submitted to the engineer for review and approval of each such variation.

5. Engineer's Review

a. The engineer will timely review and approve shop drawings and samples in accordance with the schedule of shop drawings and sample submittals.

b. The engineer's review and will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically called for by the contract drawings).

c. The engineer's review and approval of shop drawings or samples shall not relieve the contractor from responsibility for any variation from the requirements of the contract documents unless the contractor has, in writing, called the engineer's attention to each such variation at the time of submittal.

6. **Re-submission**-The contractor shall make corrections required by the engineer and shall return the required number of corrected copies of shop drawings and submitted new samples for review and approval. The contractor shall direct specific attention, in writing, to revisions other than the corrections called for by the engineer on previous submittals.

Q. **Continuing Work**-The contractor shall carry on the work and adhere to the progress schedule during all disputes or disagreements with the owner or any person or entity acting on behalf of the owner. No work shall be delayed or postponed pending resolution of any disputes or disagreements except as permitted by paragraph XV D. or as the owner and the contractor may otherwise agree in writing.

R. Contractor's General Warranty and Guarantee

1. **Contract Compliance**-The contractor warrants and guarantees to the owner that all work will be in accordance with the contract documents and will not be defective. The contractor's warranty hereunder excludes defects or damages caused by: (i) abuse or improper maintenance; or (ii) normal wear and tear under the usage intended by the parties at the time of bid opening (or, if no bidding occurs, at the time of the effective date of the agreement).

2. **Absolute Compliance**-The contractor's obligation to perform and complete the work in accordance with the contract documents shall be absolute. None of the following will constitute acceptance of work that is not in accordance with the contract documents or a release of the contractor's obligations to perform the work in accordance with the contract documents: (i) recommendation by the engineer or payment by the owner of any progress or final payment; (ii) the issuance of a certificate of substantial completion by the engineer or any payment related thereto by the owner; (iii) use or occupancy of the work or any part thereof by the owner; (iv) any acceptance by the owner or any failure to do so; (v) any review and approval of a shop drawing or sample submittal to the engineer; (vi) any inspection, test, or approval by others; or (vii) any correction of defective work by the owner.

S. Indemnification

1. **In General**-The contractor shall indemnify and hold harmless the owner and its officers, directors, employees, agents, and other consultants from and against all claims, costs, losses, and damages (including, but not limited to, all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the work caused by any act or omission of the contractor. Such indemnification shall be binding

upon the contractor regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder.

2. **Extent**-In any and all claims against the owner or its officers, directors, employees, agents, or consultants, the indemnification obligation stated hereinabove shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the contractor.

Section VII. OTHER WORK

A. Related or Unrelated Work at Site

1. **In General**-The owner may perform other work, related or unrelated, to the project at the site that is the subject of this contract. The owner may use its own employees, let other direct contracts therefor, or have other work performed by utility owners. If such work is not noted in the contract documents of this agreement, then, prior to starting any such other work, the owner shall give written notice thereof to the contractor. Upon receipt of such notice, the contractor shall notify the owner within ten (10) working days if such work shall affect the contractor's ability to complete the work as intended at the time the bids were submitted. If the contractor and the owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment to the contract price or contract time, then a claim may be filed.

2. **Access**-The contractor shall afford each other contractor who is a party to such an other direct contract and each utility owner proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other storage of materials and equipment and the execution of such other work and shall properly coordinate the work with theirs. Unless otherwise provided in the contract documents, the contractor shall do all cutting, fitting, and patching of the work that may be required to properly connect or otherwise make its several parts come together and properly integrate with each other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work after obtaining the written consent of the owner, the engineer and the other party whose work will be affected. The duties and responsibilities of the contractor under this paragraph are for the benefit of the utility owners and other contractors to the extent that there are comparable provisions for the benefit of the contractor in said direct contracts between the owner and such utility owners and other contractors.

3. **Contractor's Responsibility**-If the proper execution or results of any part of the contractor's work depends upon work performed by others under this section, the contractor shall inspect such other work and promptly report to the engineer in writing any delays, defects or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of the contractor's work. The contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with the contractor's work except for latent defects or latent deficiencies.

B. Coordination-If owner intends to contract with others for the performance of other work on the project at the site, the following will be set forth in supplementary conditions: (i) the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified; (ii) the specific matters to be covered by such authority and responsibility will be itemized; and (iii) the extent of such authority and responsibility will be provided. Unless otherwise provided in the Supplementary Conditions, Horry County shall have sole authority and responsibility for such coordination.

Section VIII. OWNER'S RESPONSIBILITIES

A. Communications to Contractor-Except as otherwise provided in these General Conditions, the owner shall issue all communications to the contractor through the engineer.

B. Furnishing Data-The owner shall promptly furnish the data required of the owner under the contract documents.

C. Prompt Payment-The owner shall make payments to the contractor promptly when they are due as provided in the contract documents.

D. Land and Easements; Reports and Tests-The owners's duties in respect to providing lands and easements and providing engineering surveys to establish reference points shall be as set forth in the contract documents. The owner's duties in identifying and making available to the contractor such copies of reports of explorations and test of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site that have been used by the engineer in preparing the contract documents are set forth elsewhere in the contract documents.

E. Change Orders-The owner shall execute all change orders recommended by the engineer, provided, however, such change orders must be in the best interest of the owner.

F. Inspections, Tests and Approvals-The owner's obligations for conducting certain tests, inspections and approvals are set forth in Section XIII C.

G. Limitations on owner's Responsibilities-The owner shall not supervise, direct, or have control or authority over, nor be responsible for, the contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of the contractor to comply with the laws or regulations applicable to the performance of the work. The owner will not be responsible for the contractor's failure to perform the work in accordance with the contract documents.

H. Financial Responsibility-In undertaking to enter into this agreement, the owner certifies that it has the funds available for payment pursuant to the contract schedule.

Section IX. ENGINEER'S STATUS DURING CONSTRUCTION

A. The owner's Representative-The engineer will be the owner's representative during the construction period. The duties and responsibilities of the engineer are set forth in these contract documents and, if the engineer is not an employee the owner, in the contract documents

between the owner and said engineer, which contract documents are incorporated herein by reference.

B. Site Visits by Engineer-The engineer will make visits to the site at regular intervals appropriate to the various stages of construction as necessary to exercise sound professional judgment in the progress made on the process and the quality of the construction. Based upon the information obtained during the site visits, the engineer shall appraise the owner as to whether the work is progressing according to the contract documents. While making site inspections, the engineer shall not supervise, direct, control, or have authority over or responsibility for the contractor's means, methods, sequences, or procedures of construction, or the safety precautions or programs incident thereto, or for the failure of the contractor to comply with the laws and regulations applicable to the performance of the work.

C. Project Representative-If the owner and the engineer agree, the engineer will furnish a resident project representative to assist the engineer in providing more extensive observation of the work. The responsibilities and authority and limitations thereon of any such resident project representative and assistants will be the same as those of the engineer, or, at the discretion of the engineer, lesser responsibilities and authority. If the owner designates another representative or agent to represent the owner at the site who is not the engineer's employee, agent or consultant, then the responsibilities and authority and limitations of such other individual shall be set forth in the supplementary conditions.

D. Clarifications and Interpretations-The engineer shall issue, with reasonable promptness and after consultation with the owner, such written clarifications or interpretations of the requirements of the contract documents, which are consistent with the intent of and reasonable inferences from the contract documents.

E. Authorized Variations in Work-The engineer may authorize minor variations in the work from the requirements of the contract documents which do not involve an adjustment in the contract price or contract time and are compatible with the design concept of the completed project as a functioning whole as may be indicated by the contract documents.

F. Rejecting Defective Work-The engineer will have authority to disapprove or reject work which the engineer believes to be defective, or that the engineer believes will not produce a completed project that conforms to the contract documents or that will prejudice the integrity of the design concept of the completed project as a functioning whole as indicated by the contract documents.

G. Shop Drawings, Change Orders and Payments-In connections with the engineer's authority as to shop drawings, see paragraph IV P. In connection with the engineer's authority as to change orders, see Sections X, XI, and XII. In connection with the engineer's authority as to applications for payment, see Section XIV.

H. Determinations for Unit Price Work-The engineer will determine the actual quantities and classifications of unit price work performed by the contractor. The engineer will review with the owner the engineer's preliminary determinations on such matters before

rendering a written decision thereon. Such written decision may be in the form of a recommendation of an application for payment.

I. Requirements of Contract Documents and Acceptability of Work-The engineer will be the initial interpreter of the requirements of the contract documents and the judge of the acceptability of the work thereunder, in consultation with the owner.

J. Limitations on Engineer's Authority and Responsibilities-Neither the engineer's authority or responsibility under this Section IX or any other part of the contract documents nor any decision made by the engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by the engineer shall create, impose, or give rise to any duty in contract, tort or otherwise owed by the engineer to the contractor, any subcontractor, any other individual or entity, or to any surety for or employee or agent of any of them.

Section X. CHANGES IN THE WORK; CLAIMS

A. Authorized Changes in the Work-Without invalidating the agreement and without notice to the surety, the owner may, at any time or from time to time, order additions, deletions, or revisions in the work by written a amendment, a change order, or a work change directive. Upon receipt of any such document, the contractor shall promptly proceed with the work involved, which will be performed under the applicable conditions in the contract documents (except as otherwise specifically provided). If the owner and the contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the contract price or contract time, then a claim may be filed..

B. Unauthorized Changes in the Work-The contractor shall not be entitled to an increase in the contract price or an extension of the contract time with respect to any work that is not specified in the contract documents, as amended, modified or supplemented as provided in paragraph III D., except in the case of emergency as provided in paragraph VI O. or in the case of uncovering work as provided in paragraph XIII D.

C. Execution of Change Orders-Prior to beginning any work involving changes to the original contract documents, the owner and the contractor shall execute a change order listing the terms and conditions of such changes as the engineer shall recommend. Change orders are discretionary to the owner. Change orders are mandatory for the contractor. Change orders shall be required whenever: (i) they are requested by the owner; (ii) required because of acceptance of defective work or the owner's correction of defective work; or (iii) agreed to by the parties.

D. Notification to Surety-If notice of any change affecting the general scope of the work or the provisions of the contract documents (including, but not limited to, contract prices and contract time) is required by the provisions of any bond to be given to the surety, the giving of such notice will be the contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

E. Claims and Disputes-All claims and disputes relating in any manner to the contract documents, contract price, contract time, interpretations, or clarifications shall be resolved

pursuant to the Horry County Procurement Code, Article 9, and the regulations promulgated thereunder.

Section XI. COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

A. **Cost of the Work**-All costs for any contract requiring calculation of costs shall be computed pursuant to the terms and conditions outlined in the Horry County Procurement Code and the regulations promulgated thereunder.

B. **Cash Allowances**-Cash allowances shall be computed in accordance with the terms and conditions of the Horry County Procurement Code and the regulations promulgated thereunder, and is incorporated into the contract documents by reference.

C. **Unit Price Work**-All unit price work shall be calculated in accordance with the Horry County Procurement Code and the regulations promulgated thereunder, and is incorporated in the contract documents by reference.

Section XII. CHANGES TO CONTRACT PRICE; CHANGES TO CONTRACT TIME

A. **Change of Contract Price**-The contract price may only be changed by a change order or by a written amendment. Any claim for an adjustment in the contract price shall be in writing.

B. **Change of Contract Time**-The contract time (or milestones) may only be changed by a change order or a written amendment. Any claim for an adjustment in the contract time (or milestones) shall be in writing. In every case, the contractor shall make such a request as soon as it is known or should have been known that an extension of time was required. Extensions of time requested after the expiration of the contract times, including those delays beyond the contractor's control, shall be at owner's sole discretion.

C. **Delays Beyond Contractor's Control**-Where the contractor is prevented from completing any part of the work within the contract time (or milestones) due to a delay beyond the control of the contractor, the contractor may submit a written request for a change in the contract time. Any dispute as to the entitlement to or extent, if any, of such changes shall be resolved pursuant to the Horry County Procurement Code and the regulations promulgated thereunder and are incorporated in these contract documents by reference. A willful stoppage or abandonment of the work by the contractor shall not be deemed beyond the control of the contractor and shall not be grounds for any change in the contract time. Delays beyond the contractor's control shall include, but are not limited to, acts or neglect to act of utility owners or other contractors performing other work as set forth in Section VII, fires, floods, epidemics, or acts of God.

D. **Delays Within Contractor's Control**-The contract time (or milestones) will not be extended due to delays within the control of the contractor. Delays attributable to and within the control of a subcontractor or supplier shall be deemed to be delays within the control of the contractor.

E. Delays Beyond the owner's and Contractor's Control-Where contractor is prevented from completing any part of the work within the contract time (or milestones) due to delay beyond the control of both owners and the contractor, an extension of the contract time (or milestones) in an amount equal to the time lost due to the delay shall be contractor's sole and exclusive remedy for such delay.

F. Delay Damages-In no event shall the owner or the engineer be liable to the contractor, any subcontractor, any supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from (i) delays caused by or within the control of the contractor; or (ii) delays beyond the control of both the owner and the contractor, including, but not limited to, fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Section VII. Nothing in this paragraph bars a change in the contract price pursuant to Section XII to compensate the contractor due to delay attributable to actions or inactions of the owner or any for which the owner is responsible.

Section XIII. TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

A. Notice of Defects-Prompt notice of all defective work of which the owner or the engineer has actual knowledge will be given to the contractor. All defective work may be accepted, rejected, or corrected as provided herein.

B. Access to Work-The owner, the engineer, the engineer's consultants, other representatives and personnel of the owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the site and the work at reasonable time for their observation, inspection, and testing. The contractor shall provide all of them with proper and safe conditions for such access and advise them of the contractor's site safety procedures and programs so that they may comply herewith as applicable.

C. Tests and Inspections

1. The contractor shall give the engineer timely notice of readiness of the work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.

2. The owner may, at its option, employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the contract documents, except: (i) for inspections, tests, or approvals covered by paragraphs XIII C.3. and XIII C.4, herein; (ii) those costs incurred in connection with tests or inspections conducted to uncover work shall be paid as provided in this Section ; (iii) as otherwise specifically provided in the contract documents. Failure to specify responsibility for specific tests shall be interpreted as being the responsibility of the contractor.

3. If laws or regulations of any public body having jurisdiction require any work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, the contractor shall assume full responsibility for

arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish the engineer the required certificates of inspection or approval.

4. Unless otherwise specifically stated in the Contract Documents, the contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for the owner's and the engineer's acceptance of materials or equipment to be incorporated in the work; or acceptance of materials, mix designs, or equipment submitted for approval prior to the contractor's purchase thereof for incorporation in the work. Such inspections, tests, or approvals shall be performed by organizations acceptable to the owner and the engineer.

5. If any work (or the work of others) that is to be inspected, tested, or approved is covered by the contractor without the written concurrence of the engineer, it must, if requested by the engineer, be uncovered for observation.

6. Uncovering of work as provided in subparagraph XIII C.5. shall be at the contractor's expense, unless the contractor has given the engineer five (5) business days notice of the contractor's intention to cover the same and the engineer has not acted within that time by some response to the contractor.

7. The contractor shall reimburse the owner for failed acceptance tests.

D. Uncovering Work-If work is covered contrary to the written request of the engineer, it must, if requested by the engineer, be uncovered for the engineer's observation and replaced at the contractor's expense. If the engineer considers it necessary or advisable that covered work be observed by the engineer or inspected or tested by others, the contractor, at the engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as the engineer may require, that portion of the work in question, furnishing all necessary labor, material, and equipment. If it is found that such work is defective, the contractor shall pay all claims, costs, losses, and damages (including, but not limited to, all costs of repair or replacement of work of others); and the owner shall be entitled to an appropriate decrease in the contract price. If, however, such work is not found to be defective, the contractor shall be allowed an increase in the contract price or an extension of the contract time (or milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree on the extent, if any, of an adjustment to the contract price or the contract time, a claim may be filed.

E. Owner may Stop Work-If the work is defective, or the contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the work in such a way that the completed work will conform to the contract documents, the owner may order the contractor to stop the work, or any portion thereof, until the cause for such order has been rectified or eliminated; however, this right of the owner to stop the work shall not give rise to any duty on the part of the owner to exercise this right for the benefit of the contractor, any subcontractor, any supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

F. Correction or Removal of Defective Work-The contractor shall correct all defective work, whether or not fabricated, installed, or completed, or if the work has been rejected by the engineer, remove it from the project and replace it with work that is not defective. The contractor shall pay all claims, costs, losses, and damages (including, but not limited to, all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including, but not limited to, all costs of repair or replacement of work of others).

G. Correction Period

1. If within one year (1 yr.) after the date of substantial completion or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special guarantee required by the contract documents or specific provision of the contract documents, any work found to be defective, or if the repair of any damages to the land or areas made available for the contractor's use by the owner or permitted by laws and regulations as contemplated in paragraph VI K. is found to be defective, the contractor shall promptly, without cost to the owner and in accordance the owner's written instructions, (i) repair such defective land or areas; or (ii) correct such defective work or, if the defective work has been rejected by the owner, remove it from the project and replace it with work that is not defective; and (iii) satisfactorily correct or repair or remove and replace any damage to other work, to the work of others or other land or areas resulting therefrom. If the contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the owner may have the defective work removed and replaced, and all claims, costs, losses, and damages (including, but not limited to, all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal or replacement (including, but not limited to, all costs of repair or replacement of work of others) will be paid by the contractor.
2. In special circumstances where a particular item of equipment is placed in continuous service before substantial completion of all of the work, the correction period for that item may start to run from an earlier date if so provided in the specifications or by written agreement.
3. Where defective work (and damage to other work resulting therefrom) has been corrected or removed and replaced under this paragraph XIII G., the correction period hereunder with respect to such work will be extended for an addition period of one year (1 yr.) after such correction or removal and replacement has been satisfactorily completed.
4. The contractor's obligations under this paragraph XIII G. are in addition to any other obligation or warranty. The provisions of this paragraph XIII G. shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

H. Acceptance of Defective Work-If, instead of requiring correction or removal and replacement of defective work, the owner (and, prior to the engineer's recommendation of final payment, the engineer) prefers to accept it, the owner may do so. The contractor shall pay all claims, costs, losses, and damages (including, but not limited to, fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to the owner's evaluation of and determination to accept such defective work and the diminished value of the work to the extent not otherwise paid by the contractor pursuant to this sentence. If any such acceptance occurs prior to the engineer's recommendation of final payment, a change order will be issued incorporating the necessary revisions in the contract documents with respect to the work, and the owner shall be entitled to an appropriate decrease in the contract price, reflecting the diminished value of work so accepted. If the acceptance occurs after such recommendations, the contractor shall pay an appropriate amount to the owner. Any disputes as to entitlement to any change in the contract price shall be resolved pursuant to the Horry County Procurement Code, Article 9 and the regulations promulgated thereunder, and is incorporated herein by reference.

I. The owner may Correct Defective Work

1. If the contractor fails, within a reasonable time after written notice from the engineer, to correct defective work or to remove and replace rejected work as required by the engineer, or if the contractor fails to perform the work in accordance with the contract documents, or if the contractor fails to comply with any other provision of the contract documents, the owner may, after seven (7) days written notice to the contractor, correct and remedy any such deficiency.
2. In exercising the rights and remedies under this paragraph, the owner shall proceed expeditiously. In connection with such corrective and remedial action, the owner may exclude the contractor from all or part of the site, take possession of all or part of the work and suspend the contractor's services related thereto, take possession of the contractor's tools, appliances, construction equipment and machinery at the site, and incorporate in the work all materials and equipment stored at the site or for which the owner has paid the contractor but which are stored elsewhere. The contractor shall allow the owner, the owner's representatives, agents and employees, The owner's other contractors, and the engineer and the engineer's consultants access to the site to enable the owner to exercise the rights and remedies of this paragraph.
3. All claims, costs, losses, and damages (including, but not limited to, all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) incurred and sustained by the owner in exercising the rights and remedies under this paragraph will be charged against the contractor, and a change order will be issued incorporation the necessary revisions in the contract documents with respect to the work; and the owner shall be entitled to an appropriate decrease in the contract price. Such claims, costs, losses, and damages will include, but not be limited to, all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of the contractor's defective work.

4. The contractor shall not be allowed an extension of the contract time (or milestones) because of any delay in the performance of the work attributable to the exercise by the owner..

Section XIV. PAYMENTS TO CONTRACTOR AND COMPLETION

A. **Schedule of Values**-The schedule of values established as provided in paragraph II G. will serve as the basis for progress payments and will be incorporated into a form of application for payment acceptable to the owner and the engineer. Progress payments on account of unit price work will be based on the number of units completed.

B. Progress Payments

1. Applications for Payments

a. At least twenty (20) days before the date established for each progress payment (but not more often than once a month), the contractor shall submit to the engineer for review an application for payment filled out and signed by the contractor covering the work completed as of the date of the application and accompanied by such supporting documentation as is required by the contract documents. If payment is requested on the basis of materials and equipment not incorporated in the work, but delivered and suitably stored at the site or at another location agreed to in writing, the applications for payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that the owner has received the materials and equipment free and clear of all liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect the owner's interest therein, all of which must be satisfactory to the owner.

b. Beginning with the second application for payment, each application shall include an affidavit of the contractor stating that all previous progress payments received on account of the work have been applied on account to discharge the contractor's legitimate obligations associated with prior applications for payment.

c. The amount of retainage with respect to progress payments will be stipulated in the agreement.

2. Review of Applications

a. The engineer, within ten (10) days after receipt of each application for payment, either indicate in writing a recommendation of payment and present the application to the owner or return the application to the contractor indicating, in writing, the engineer's reasons for refusing to recommend payment. In the latter case, the contractor may make the necessary corrections and resubmit the applications.

b. The engineer's recommendation of any requested in an applications for payment will constitute a representation by the engineer to the

owner, based upon the engineer's observations on the site of the executed work as an experienced and qualified design professional and on the engineer's review of the application for payment and the accompanying data and schedules, that to the best of the engineer's knowledge, information and belief: (i) the work has progressed to the point indicated; (ii) the quality of the work is generally in accordance with the contract documents (subject to an evaluation of the work as a functioning whole prior to or upon substantial completion, to the results of any subsequent tests called for in the contract documents, to a final determination of quantities and classifications for unit price work under Section IX, and to any other qualifications stated in the recommendations); and (iii) the conditions precedent to the contractor's being entitled to such payment appear to have been fulfilled in so far as it is the engineer's responsibility to observe the work.

c. Neither the engineer's review of the contractor's work for the purposes of recommending payments nor the engineer's recommendation of any payment, including final payment, will impose responsibility on the engineer to supervise, direct, or control the work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for the contractor's failure to comply with laws and regulations applicable to the contractor's performance of the work. Additionally, said review or recommendation will not impose responsibility on the engineer to make any examination to ascertain how or for what purposes the contractor has used the moneys paid on account of the contract price, or to determine that title to any of the work, materials or equipment has passed to the owner free and clear of any liens.

d. The engineer may refuse to recommend the whole or any part of any payment if, in the engineer's opinion, it would be incorrect to make the representations to the owner referred to in paragraph XIV B.2. The engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary, in the engineer's opinion, to protect the owner from loss because: (i) the work is defective, or completed work has been damaged, requiring correction or replacement; (ii) the contract price has been reduced by written amendment or change orders; (iii) the owner has been required to correct defective work in accordance with paragraph XIII I.; or (iv) the engineer has actual knowledge of the occurrence of any of the events enumerated in paragraph XV B.

3. Payment Becomes Due-Twenty (20) days after presentation of the application for payment to the owner with the engineer's recommendation, the amount recommended will (subject to provisions of paragraph XIV B.4.) become due, and when due will be paid by the owner to the contractor.

4. Reduction in Payment-the owner may refuse to make payment of the full amount recommended by the engineer because: (i) claims have been made against the owner on

account of the contractor's performance or furnishing of the work; (ii) liens have been filed in connection with the work, except where the contractor has delivered a bond satisfactory to the owner to secure the satisfaction and discharge of such liens; (iii) there are other items entitling the owner to a set-off against the amount recommended; or (iv) the owner has actual knowledge of the occurrence of any events enumerated in paragraph XIV B. or paragraph XV B.

C. Contractor's Warranty of Title-The contractor warrants and guarantees that title to all work, materials, and equipment covered by any application for payment, whether incorporated in the project or not, will pass to the owner no later than the time of payment free and clear of all liens.

D. Substantial Completion-When the contractor considers the entire work ready for its intended use, the contractor shall notify the owner and the engineer, in writing, that the entire work is substantially complete (except for items specifically listed by the contractor as incomplete) and request that the engineer issue a certificate of substantial completion. Promptly thereafter, the owner, the contractor, and the engineer shall make an inspection of the work to determine the status of completion. If the engineer does not consider the work substantially complete, the engineer will notify the contractor, in writing, giving the reasons therefor. If the engineer considers the work substantially complete, the engineer will prepare and deliver to the owner a tentative certificate of substantial completion which shall fix the date of substantial completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. The owner shall have seven (7) days after receipt of the tentative certificate during which to make written objection to the engineer as to any provisions of the certificate or attached list. If, after considering the objections, the engineer concludes that the work is not substantially complete, the engineer will, within fourteen (14) days after submission of the tentative certificate to the owner notify the contractor, in writing, stating the reasons therefor. If, after consideration of the owner's objections, the engineer considers the work substantially complete, the engineer will, within said fourteen (14) days, execute and deliver to the owner and the contractor a definitive certificate of substantial completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as the engineer believes justified after consideration of any objections from the owner. At the time of delivery of the tentative certificate of substantial completion, the engineer will deliver to the owner and the contractor a written recommendation as to division of responsibilities pending final payment between the owner and the contractor with respect to security, operation, safety, and protection of the work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless the owner and the contractor agree otherwise and so inform the engineer, in writing, prior to the engineer's issuing the definitive certificate of substantial completion, the engineer's aforesaid recommendation will be binding on the owner and the contractor until final payment. The owner shall have the right to exclude the contractor from the site after the date of substantial completion, but the owner shall allow the contractor reasonable access to complete or correct items on the tentative list.

E. Partial Utilization-Use by the owner, at the owner's option, of any substantially completed part of the work which has specifically been identified in the contract documents, or which the owner, the engineer, and the contractor agree constitutes a separately functioning and usable part of the work that can be used

by the owner for its intended purpose without significant interference with the contractor's performance of the remainder of the work, may be accomplished prior to substantial completion of all the work, subject to the following conditions:

1. The owner at any time may request the contractor, in writing, to permit the owner to use any such part of the work which the owner believes to be ready for its intended use and substantially complete. If the contractor agrees that such part of the work is substantially complete, the contractor will certify to the owner and the engineer that such part of the work is substantially complete and request the engineer to issue a certificate of substantial completion for that part of the work. The contractor may, at any time, notify the owner and the engineer, in writing, that the contractor considers any such part of the work ready for its intended use and substantially complete and request the engineer to issue a certificate of substantial completion for part of the work. The owner, the contractor, and the engineer shall make an inspection of that part of the work to determine its status of completion. If the engineer does not consider that part of the work to be substantially complete, the engineer will notify the owner and the contractor, in writing, the reasons therefor. If the engineer considers that part of the work to be substantially complete, the provisions of paragraph XIV D. will apply with respect to certification of substantial completion of that part of the work and the division of responsibility in respect thereof and access thereto.
2. No occupancy or separate operation of part of the work may occur prior to the assumption by the owner of the risk of loss in that portion of the building.

F. **Final Inspection**-Upon written notice from the contractor that the entire work or an agreed portion thereof is complete, the engineer will promptly make a final inspection with the owner and the contractor. The engineer will notify the contractor, in writing, of all particulars in which this inspection reveals that the work is incomplete or defective. The contractor shall immediately take such measures as are necessary to complete such work or remedy such deficiencies.

G. Final Payment

1. Application for Payment

a. After the contractor has, in the opinion of the engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the contract documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in paragraph VI L.), and other documents, the contractor may make application for final payment following the procedure for progress payments.

b. The final application for payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the contract documents, including, but not limited to, the evidence of insurance; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective

releases or waivers (satisfactory to the owner) of all lien rights arising out of or liens filed in connection with the work.

c. In lieu of the releases or waivers of liens specified herein, and as approved by the owner, the contractor may furnish receipts or releases in full and an affidavit of the contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the work for which the owner or the owner's property might, in any way, be responsible, have been paid or otherwise satisfied. If any subcontractor or supplier fails to furnish such a release or receipt in full, the contractor may furnish a bond or other collateral satisfactory to the owner to indemnify the owner against any lien.

2. **Review of Application and Acceptance**-If, on the basis of the engineer's observation of the work during construction and final inspection, and the engineer's review of the final application for payment and accompanying documentation as required by the contract documents, the engineer is satisfied that the work has been completed and the contractor's other obligations under the contract documents have been fulfilled, the engineer will, within ten (10) days after receipt of the final application for payment, indicate in writing the engineer's recommendation of payment and present the application for payment to the owner for payment. At the same time, the engineer will also give written notice owner and the contractor that the work is acceptable subject to the provisions of this Section. Otherwise, the engineer will return the application for payment to the contractor, indicating, in writing, the reasons for refusing to recommend final payment, in which case the contractor shall make the necessary corrections and resubmit the application for payment.

3. **Payment becomes Due**-Thirty days (30) after the presentation to the owner of the application for payment and accompanying documentation, the amount recommended by the engineer will become due and, when due, will be paid by the owner to the contractor.

H. **Final Completion Delayed**-If, through no fault of the contractor, final completion of the work is significantly delayed, and if the engineer so confirms, the owner shall, upon receipt of the contractor's final application for payment and recommendation of the engineer, and without terminating the agreement, make payment on the balance due for that portion of the work fully completed and accepted. If the remaining balance to be held by the owner for work not fully completed or corrected is less than the retainage stipulated in the agreement, and if bonds have been furnished as required in Section V, the written consent of the surety to the payment of the balance due for that portion of the work fully completed and accepted shall be submitted by the contractor to the engineer with the application for payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

I. **Waiver of Claims**- The making and acceptance of the final payment will constitute: (i) a waiver of all claims by the owner against the contractor, except claims arising from unsettled liens, from defective work appearing after final inspection pursuant to this Section,

from failure to comply with the contract documents or the terms of any special guarantees specified therein or from the contractor's continuing obligations under the contract documents; and (ii) a waiver of all claims by the contractor against the owner other than those previously made in writing which are unsettled.

Section XV. SUSPENSION OF WORK AND TERMINATION

A. The owner may Suspend Work-At any time and without cause, the owner may suspend the work or any portion thereof for a period of not more than ninety (90) consecutive days by notice, in writing, to the contractor and the engineer which will fix the date on which work will be resumed. The contractor shall resume the work on the date so fixed. The contractor shall be allowed an adjustment in the contract price or an extension of the contract time, or both, directly attributable to any such suspension if the contractor makes an appropriate claim.

B. The owner may Terminate For Cause

1. The occurrence of any one or more of the following events will justify termination for cause: (i) The contractor's persistent failure to perform the work in accordance with the contract documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established in Section II as adjusted from time to time pursuant to Section VI); (ii) the contractor's disregard of the laws or regulations of any public body having jurisdiction; (iii) the contractor's disregard of the authority of the engineer; or (iv) the contractor's violation in any substantial way of any provision of the contract documents.

2. If one or more of the events identified herein occur, the owner may, after giving the contractor (and the surety, if any) seven (7) days written notice, terminate the services of the contractor, exclude the contractor from the site, and take possession of the work and all the contractor's tools, appliances, construction equipment, and machinery at the site, and use the same to the full extent they could be used by the contractor (without liability to the contractor for trespass or conversion), incorporate in the work all materials and equipment stored on the site or for which the owner has paid the contractor but which are stored elsewhere, and finish the work as the owner may deem expedient. In such case, the contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price exceeds all claims, costs, losses, and damages (including, but not limited to, all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) sustained by the owner arising out of or relating to completing the work, such excess will be paid to the contractor. If such claims, costs, losses, and damages exceed such unpaid balance, the contractor shall pay the difference to the owner. Such claims, costs, losses, and damages incurred by the owner will be reviewed by the engineer and incorporated in a change order. When exercising any rights or remedies under this paragraph, the owner shall not be required to obtain the lowest price for the work performed.

3. Where the contractor's services have been so terminated by the owner, the termination will not affect any rights or remedies of Horry County against the contractor then existing or which may thereafter accrue. Any retention or payment of moneys due the contractor by the owner will not release the contractor from liability.

C. The owner may Terminate for Convenience

1. Upon seven (7) days written notice to the contractor and the engineer, the owner may, without cause and without prejudice to any other right or remedy of the owner, elect to terminate the contract. In such a case, the contractor shall be paid (without duplication of any item): (i) for completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such work; (ii) for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work, plus fair and reasonable sums for overhead and profit on such expenses; (iii) for all claims, costs, losses, and damages (including, but not limited to, all fees and charges of engineers, architects, attorneys and other professionals and court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with subcontractors, suppliers, and others; and (iv) for reasonable expenses directly attributable to termination.

2. The contractor shall not be paid on amount of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

D. Contractor may Stop Work or Terminate-If, through no act or fault of the contractor, the work is suspended for more than ninety (90) consecutive days by the owner, or under an order of the court or other public authority, or engineer fails to act on any application for payment within thirty (30) days after it is submitted, or the owner fails for thirty (30) days to pay the contractor any sum finally determined to be due, the contractor may, upon seven days written notice to the owner and the engineer, an provided the owner and the engineer do not remedy such suspension or failure within that time, terminate the contract and recover from the owner payment on the same terms as provided in paragraph XV C. In lieu of terminating the contract and without prejudice to any other right or remedy, if the engineer has failed to act on an application for payment within thirty (30) days after it was submitted, or the owner has failed for thirty (30) days to pay the contractor any sum finally determined to be due, the contractor may, seven (7) days after written notice to the owner and the engineer, stop the work until payment is made of all such amounts due the contractor, including interest thereon. The provisions of this paragraph are not intended to preclude the contractor from making a claim for an adjustment in contract price or contract time or otherwise for expenses or damage directly attributable to stopping the work as permitted by this paragraph.

Section XVI. DISPUTE RESOLUTION

A. **In General-**Dispute resolution procedures are set forth in the Horry County

B. Procurement Code, Article 9 (*please click on the following link <http://www.horrycounty.org/portals/0/docs/procurement/CodeandReg.pdf>. and see Appendix E*) and the regulations promulgated there under and are incorporated into these contract documents by reference.

C. **Exclusivity**-No dispute resolution procedures conflicting with those contained in the Horry County Procurement Code, Article 9 may be incorporated into these contract documents except on specific written consent of the Horry County Administrator or the designated representative of the Horry County Administrator.

Section XVII. MISCELLANEOUS

A. **Giving Notice**-Whenever any provision of the contract documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the entity for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

B. **Computation of Time**-When any period of time is referred to in the contract documents be days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period fall on a Saturday, Sunday, or on a day made a legal holiday by law of South Carolina, such day will be omitted from the computation.

C. **Cumulative Remedies**-The duties and obligations imposed by these general conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any manner as a limitation of, any rights or remedies available to any or all of them which are otherwise imposed or available by laws or regulations, by special warranty or guarantee, or by other provisions of the contract documents, and the provisions of this paragraph will be as effective as if repeated specifically in the contract documents in connection with each particular duty, obligation, right, and remedy to which they apply.

D. **Survival of Obligations**-All representations, indemnification's, warranties, and guarantees made in, required by, or given in accordance with the contract documents, as well as all continuing obligations indicated in the contract documents, will survive final payment, completion, and acceptance of the work or termination or completion of the agreement.

E. **Controlling Law and Venue**-This contract is to be governed by the laws of the State of South Carolina. Venue is only permissible in the Court of Common Pleas for Horry County located in Conway, South Carolina.