SE-377
MINOR CONSTRUCTION CONTRACT

AGENCY: Midlands Technical College

PROJECT NAME: MTC - Reed Hall Restroom Renovations - Airport Campus

PROJECT NUMBER: H59-N131-CL

THIS AGREEMENT is made this the _____ day of _____ in the year Two Thousand _____ by and between

NAME: Midlands Technical College

ADDRESS: 1260 Lexington Dr.

West Columbia, Sc 29170

hereinafter called the "Agency", and

NAME: _____

ADDRESS: _____

_____

hereinafter called the "Contractor."

WHEREAS, the Agency solicited for construction services, for the work description below:

WORK DESCRIPTION: Renovation to the existing Restrooms in Reed Hall on the Airport Campus. Work to include Update for ADA access and new partions and finishes

WHEREAS, Contractor submitted the lowest responsive and responsible quote to provide the services described above.

NOWTHEREFORE, in consideration of the mutual covenants and obligations set forth herein, the Agency and Contractor (hereinafter jointly referred to as the "parties") agree as follows:

1. CONTRACT TERMS AND EXTENSIONS:

1.1 The effective date of this agreement shall be the date at the top of this page. The Date of Commencement of the Work shall be _____, 20_____ . The Contract Time is established as _____ calendar days and shall be measured from the Date of Commencement.

1.2 The Contractor agrees that the Agency shall be entitled to withhold or recover from the Contractor Liquidated Damages in the amount of **$150.00** for each Calendar Day the Contractor fails to achieve Substantial Completion of the Work within the Contract Time specified or adjusted as provided in the Contract Documents.

1.3 The Agency shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be _____, subject to additions and deductions as provided in the Contract documents.

1.4 The Construction project is subject to the expenditure limits set forth in SC Code § 11-35-1550 and further explained in the Manual for Planning and Execution of State Permanent Improvements, (the "Manual"). The cost for the original scope of the Contract combined with any modification to the Contract purporting to exceed the limit of $100,000 is null and void.

2. CONTRACT DOCUMENTS:

2.1 Documents forming a part of the contract are:

2.1.1 This Minor Construction Contract (SE-377);

2.1.2 Agency purchase requisition form dated _____; and any modifications issued by the Agency pursuant to this Contract,

2.1.3 The following other documents:

Project Drawings & Specifications dated _____

_____

_____

2.2 The Contract is the entire and integrated agreement between the parties and supersedes prior negotiations, representations, or agreements, whether written or oral.

2.3 The Contract can only be modified by written agreement signed by both the Agency and the Contractor. The Contract Documents do not create a contractual relationship between the Contractor and any separate Contractor having a contract with the Agency; between the Agency and any subcontractor to the Contractor of any tier; or between any persons or entities other than the Agency and the Contractor.

2.4 The "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

2.5 The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

2.6 The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

2.7 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

2.7.1 The Contractor acknowledges that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (a) conditions bearing upon transportation, disposal, handling, and storage of materials; (b) the availability of labor, water, electric power, and roads; (c) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (d) the conformation and conditions of the ground; and (e) the character of equipment and facilities needed preliminary to and during work performance.

2.7.2 The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Agency, as well as from the drawings and specifications made a part of this contract.

2.7.3 Any failure of the Contractor to take the actions described and acknowledged in this Section will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Agency.

3. AGENCY

3.1 The term "Agency" means the Agency or the Agency's Representative. Agency designates the individual listed below as its Representative, which individual has the authority and responsibility to bind the Agency with respect to all matters regarding the Contract and requiring the Agency's approval or authorization:

NAME: W. Carey Page

TITLE: Associate Director of Operations

ADDRESS: 1260 Lexington Dr., West Columbia, SC 29170

TELEPHONE: (803) 822-3217 **EMAIL:** pagewc@midlandstech.edu

3.2 The Agency shall furnish, with reasonable promptness, information requested by the Contractor that is necessary for the performance of the Contract Services and under the Agency's control. Any information or documentation provided by the Agency to the Contractor relating to the Project or Site is provided only for the convenience of the Contractor. The Agency makes no representation or warranty to as to the sufficiency, completeness, or accuracy of such information.

3.3 Utility Access and Use:

☒ If this box is checked, the Agency shall allow the Contractor to use reasonable quantities of water and electricity for construction purposes without charge, as long as these utilities are available and in close proximity to the Work area. Contractor shall be conscientious in controlling excessive or frivolous use of the utilities or the Agency may charge the Contractor for wasteful usage.

3.4 Sanitary Facilities:

☐ The Contractor may use those sanitary facilities designated by the Agency as available for use.

☒ The Contractor may not use the Agency's sanitary facilities. The Contractor shall provide sanitary facilities at the job site and maintain same in a clean and sanitary condition for the use of its employees and employees of its subcontractors for the duration of construction. The sanitary facilities shall conform to the requirements of the South Carolina Department of Health and Environmental Control.

3.5 Permits, Assessments, and Easements: The Agency shall secure and pay for all building permits, zoning permits, assessments, and easements except as required by the terms of the Contract.

3.6 Agency's Architect-Engineer (A/E): The Agency may retain an independent A/E to prepare design documents for the work. In such event, the A/E will be a representative of the Agency during the performance of such work through final completion of such work. In the absence of an independent A/E, the Agency will assign one of its employees to act as A/E for the work. The Contractor shall cooperate with the A/E in the performance of its duties.

3.7 Construction by Agency: The Agency may do work with its own forces or award separate contracts for work on the same project. The Contractor shall allow access to the site by the Agency's work force or separate Contractor(s) and shall cooperate in coordinating the progress of the work with the Agency. The Agency shall have the responsibility to coordinate the activities of the various Contractors working at the project location.

4. CONTRACTOR

4.1 The term "Contractor" means the Contractor or the Contractor's Representative. Contractor designates the individual listed below as its Contractor's Representative, which individual has the authority and responsibility to bind the Contractor with respect to all matters regarding the Contract and requiring the Contractor's approval or authorization:

NAME: _____

TITLE: _____

ADDRESS: _____

TELEPHONE: _____ **EMAIL:** _____

4.2 Supervision and Performance of the Work: The Contractor shall supervise, perform, and direct the Work, using the professional skill, care, and attention reasonably required for similar projects. The Contractor shall be solely responsible for and have control over means, methods, techniques, sequences, and procedures and for coordinating the Work, unless the Contract Documents give other specific instructions concerning these matters. The Contractor agrees to faithfully and fully perform the terms of this Contract and shall complete the Work in accordance with the Contract Documents and deliver the Work to the Agency free and clear of all liens and claims. The Contractor shall, at all times during the progress of the Work, employ enough skilled workers and have on hand and maintain an adequate supply of materials and equipment to complete the Work in accordance with the agreed to construction schedules.

4.3 Employee Discipline: The Contractor shall enforce discipline and good order among the Contractor's and subcontractors' employees, and other persons carrying out the Work. Contractor shall be responsible to the Agency for acts and omissions of the Contractor's employees, subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

4.4 Safety: The Contractor shall comply with all federal and state work site safety requirements and shall be responsible for initiating, maintaining, and supervising reasonable safety precautions and programs in connection with the performance of the Contract Services. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable and appropriate protection to prevent damage, injury or loss to (1) employees on the Work and other persons who may be affected thereby; (2) the Work and materials and equipment to be incorporated therein; and (3) other property at the site of the Work or adjacent thereto.

4.5 Waste Materials and Rubbish: The Contractor shall keep the premises and surrounding areas free from accumulation of waste materials or rubbish caused by the Work. Upon Final Acceptance of the Work, the Contractor shall, to the Agency's satisfaction, remove from and about the site, all waste materials, rubbish, surplus material, and Contractor's tools, equipment, machinery.

4.6 Recycling: The Contractor shall give preference to the use of products containing recycled content in the performance of the Work. The Contractor shall cooperate with any recycling program established for the site of the work or available through the state or a political subdivision of the state.

4.7 Access to the Work: The Contractor shall provide the Agency with unrestricted access to the Work in preparation and progress wherever located.

4.8 Use of Site: The Contractor shall confine its operations to the portions of the site identified in the Drawings or otherwise approved by the Agency and shall not unreasonably encumber the portions of the site used for the Work with materials, equipment, or similar items. The Contractor and all subcontractors shall use only such entrances to the Site as are designated by the Agency. During occupied hours, Contractor shall limit construction operations to methods and procedures that do not adversely affect the environment of occupied spaces within the site, including but not limited to creating noise, odors, air pollution, ambient discomfort, or poor lighting.

4.9 Correction of the Work:

4.9.1 The Agency shall have the right and authority to reject Work that does not conform to the Contract Documents. The Contractor shall promptly correct Work rejected by the Agency for failing to conform to the requirements of the Contract Documents, whether or not fabricated, installed or completed. The provisions of this Section apply to Work done by subcontractors as well as to Work done by direct employees of the Contractor.

4.9.2 If the Contractor fails to correct the Work, or any portion thereof, that is not in accordance with the requirements of the Contract Documents or fails to carry out Work or provide information in accordance with the Contract Documents, the Agency may make written demand upon the Contractor to cure its defaults within seven days. Within seven days after receipt of the Agency's demand, the Contractor shall cure its defaults unless the default is such that it is not capable of cure within seven days. If the default is such that it is not capable of cure within seven days, the Contractor shall reach an agreement with the Agency on a plan to cure its defaults within five days after receipt of the Agency's demand. The Contractor shall commence and diligently and continuously pursue the cure of such defaults in accordance with the agreed plan. If the Contractor fails to cure its defaults as heretofore provided, the Agency may order the Contractor, in writing, to stop the Work, or any portion thereof, until the Contractor has eliminated the cause for such order or has provided the Agency with a plan for corrective action acceptable to the Agency. The right of the Agency to stop the Work shall not give rise to a duty on the part of the Agency to exercise this right for the benefit of the Contractor or any other person or entity.

4.9.3 Correction after Substantial Completion: If, within one year after the date of Substantial Completion of the Work, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Agency to do so. The Contractor's obligation set forth in this Section 4.9.3 is in addition to the Contractor's obligations under Section 4.11.

4.9.4 Nothing contained in this Section 4.9 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of such time period as described in this Section 4.9 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

4.10 Manufacturers' Warranties: At Final Completion of the Work, the Contractor shall furnish the Agency two original complete sets of all manufacturers' warranties, guarantees, parts lists, and literature applicable to equipment, systems, fittings, and furnishings included in the Work (collectively referred to as "*Manufacturers' Warranties*"), completed in favor of the Agency. These Manufacturers' Warranties are in addition to and not in lieu of the Contractor's warranty set forth in Section 4.11, and the Agency is entitled to look to the Contractor for remedy in all cases where the Contractor's warranty applies regardless of whether a Manufacturer's Warranty also applies. The Agency shall acknowledge receipt of the sets of Manufacturers' Warranties on the set itself, and the Contractor shall cause six (6) copies of an acknowledged set to be made and furnished to the Agency. All Manufacturers' Warranties will be for applicable periods and contain terms not less favorable to the Agency than those terms that are standard for the applicable industries and will either be issued in the first instance in the name of and for benefit of the Agency or be in a freely assignable form and be assigned to the Agency without limitations.

4.11 Contractor Warranty: The Contractor warrants to the Agency that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from faults and defects not inherent in the quality required or permitted, that the materials, equipment and Work will conform with the requirements of the Contract Documents, and that the Work will be free from any encumbrances, liens, security interests, or other defects in title upon conveyance of title to the Agency. The Contractor's warranty excludes remedy for damage or defect to the extent caused by (i) abuse by anyone other than the Contractor or those for whose acts the Contractor is responsible, (ii) modifications not approved or executed by the Contractor or subcontractors, (iii) improper or insufficient maintenance or operation not the fault of the Contractor or those for whose acts the Contractor is responsible, or (iv) normal wear and tear under normal usage. If required by the Agency, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment and the recommended maintenance thereto to meet the requirements of this Section.

4.12 After completion of the Work but no later than the date of Substantial Completion, the Contractor shall submit operation and maintenance manuals, recommended spare parts lists, and copies of all warranties to the Agency. As-Built drawings shall be submitted no later than the Final Completion Date.

4.13 Compliance with Law:

4.13.1 The Contractor shall comply with and give all notices required by federal, state, county, and municipal laws, ordinances, regulations, and orders bearing on the performance by the Contractor of the duties or responsibilities under this Contract.

4.13.2 The Contractor shall promptly remedy any violation of any such law, ordinance, rule, regulation, or order that comes to its attention to the extent that the same results from its performance of the Work. The Contractor shall promptly, and in no event later than the close of the next business day following receipt, give notice to the Agency by telephone, with confirmation in writing, of receipt by the Contractor of any information relating to violations of laws, ordinances, rules, regulations, and orders.

4.14 Subcontractors:

4.14.1 The Contractor shall furnish in writing to the Agency for its approval the names of the subcontractors to whom the Contractor plans to award any portion of the Contract Services.

4.14.2 Contracts between the Contractor and subcontractors shall require each subcontractor, to the extent of the Contract Services to be performed by the subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Agency.

4.14.3 The Contractor shall be responsible to the Agency for acts and omissions of the subcontractors, their agents and employees, and any other persons performing portions of the Contract Services, to the same extent as the acts or omissions of the Contractor hereunder.

4.15 Publicity: Contractor shall not publish any comments or quotes by State employees or include the State in either news releases or a published list of agencies, without the prior written approval of the Agency.

4.16 Indemnification

4.16.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Agency and the Agency's agents and employees from and against claims, damages, losses and expenses, including, but not limited to, reasonable attorney's fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused by negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

4.16.2 In claims against any person or entity indemnified under Section 4.16.1 by an employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 4.16 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Contractor or a subcontractor under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts.

4.17 Shop Drawings and Samples:

4.17.1 Contractor shall prepare or cause to be prepared shop drawings for fabricated items. Shop drawings shall consist of drawings, diagrams, illustrations, schedules, brochures, and other data which are prepared by the Contractor, sub-Contractor, manufacturer, supplier, or distributor and depict that portion of the work. Shop drawings shall be submitted, reviewed, and approved by the Contractor prior to submitting to the Agency and A/E. Shop drawings approved by the Contractor shall bear a stamp denoting that they have been review and are "approved" or "approved as noted" or similar designation. Contractor shall submit the number of sets as specified in the plans or specifications or in the absence of a specification submit enough copies for the Agency to retain two copies plus the number desired to be returned to the Contractor. The Agency and A/E will review the shop drawings with reasonable promptness but only for conformity with the design.

4.17.2 Contractor shall submit samples as required by the Drawings and Specifications. Samples are physical examples furnished by the Contractor of sufficient size and quantity to provide a good representation of the material proposed to be installed. Samples submitted will not be returned unless requested by Contractor and agreed to by the A/E. The Contractor shall pay shipping costs. The final installed product shall match the approved sample.

4.18 Inspection and Testing of Materials:

4.18.1 The Contractor shall leave uncovered all areas of work that will be covered that are called out in the construction documents to be left uncovered, or the Agency or A/E requests to be left uncovered prior to being inspected. The Contractor shall give adequate notice to the Agency and A/E of the time requested for an inspection of areas to be covered.

4.18.2 If the Contractor covers areas that were to be left uncovered, the Contractor shall cause the area to be uncovered for inspection. After being inspected, the Contractor shall repair the area with craftsmen skilled in the appropriate trades needed for the repair at no additional cost to the Agency.

4.19 Substitutions:

4.19.1 The Contractor shall submit proposed substitutions to the Agency for the Agency's approval prior to execution of the Work.

4.19.2 Reference in the Contract Documents to a designated material, product, thing, or service by specific brand or trade name followed by the words "or equal" and "or approved equal" shall be interpreted as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may use the products of other another manufacturer provided it is an 'approved equal' that meets or exceeds the specification for the specified product. The Contractor must submit adequate information about the product to show that the submitted product meets the level of quality as the product specified.

4.19.3 The Contractor shall not substitute any product, article, appliance, equipment, or material that is specified without prior written approval of the Agency.

4.20 Receiving and Storing Materials and Equipment: The Contractor shall have an authorized person or persons to receive all items delivered to the site of the Work and shall properly unload, check for completeness of shipment, and in-transit damage. The Contractor shall properly handle and store materials, supplies, equipment etc. in accordance with the Contract documents or manufacturer's printed instructions for each product.

4.21 Schedule and Reports: Promptly after the award of the Contract, the Contractor shall present a construction schedule in a form satisfactory to the Agency. The schedule shall not exceed the time limits current under the Contract Documents. The Contractor shall update the schedule at appropriate intervals as required by the conditions of the Work, showing the actual progress of the Work and adjustment in completion dates. If the Work falls behind schedule, the Contractor shall present a plan for completion of the Work by the scheduled date for completion.

4.22 Time for Completion:

4.22.1 If the Contractor is delayed at any time in the commencement or progress of the Work, the Contractor shall make a request for extension of time within seven days of the event giving rise to the request. The Contractor shall adequately document delays of the work that are due to circumstances beyond the control of the Contractor and shall submit the documentation to the Agency with a request for an extension. In the event of ongoing delay, the Contractor shall notify the Agency in its request for an extension of time that the cause of delay is ongoing. In such case, the Contractor shall supplement its request when the cause of delay ends or the project is completed, whichever is sooner.

4.22.2 The Agency will review each request for time extension and equitably adjust the time for completion where (1) the event of delay actually impacted the critical path of the project and was beyond the control of the Contractor, and (2) completion of the Work was actually delayed.

5. INSURANCE AND BONDS

5.1 Commercial General Liability, Business Automobile Liability, and Worker's Compensation: The Contractor shall purchase from and maintain, in a company or companies lawfully authorized to do business in South Carolina, such insurance as will protect Contractor from claims set forth below, which may arise out of or result from Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

a. claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;

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 usual personal injury liability coverage;

e. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

f. claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

g. claims for bodily injury or property damage arising out of completed operations; and

h. claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.17, Indemnification.

5.1.1 The insurance required by Section 5.1 shall be written for not less than the limits of liability specified below or required by law, whichever is greater. Coverage shall be written on an occurrence basis and shall be maintained without interruption from the date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work set forth in Section 4.9 or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

a. COMMERCIAL GENERAL LIABILITY:

(1) General Aggregate (per project)..... $1,000,000

(2) Products/Completed Operations..... $1,000,000

(3) Personal and Advertising Injury..... $1,000,000

(4) Each Occurrence $1,000,000

(5) Fire Damage (Any one fire)..... $50,000

(6) Medical Expense (Any one person)..... $5,000

b. BUSINESS AUTO LIABILITY (including All Owned, Non-owned, and Hired Vehicles):

(1) Combined Single Limit .....$1,000,000 OR

(2) Bodily Injury & Property Damage (each) $750,000

c. WORKER'S COMPENSATION:

(1) State Statutory

(2) Employers Liability .....$100,000 per Acc.

$500,000 Disease, Policy Limit

$100,000 Disease, Each Employee

In lieu of separate insurance policies for Commercial General Liability, Business Auto Liability, and Employers Liability, the Contractor may provide an umbrella policy meeting or exceeding all coverage requirements set forth in this Section 5.1. The umbrella policy limits shall not be less than $5,000,000.

5.1.2 Prior to commencement of the Work, and thereafter upon replacement of each required policy of insurance, Contractor shall provide to the Agency a written endorsement to the Contractor's general liability insurance policy that:

a. names the Agency as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations;

b. provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless all additional insured have been given at least ten (10) days prior written notice of cancellation for non-payment of premiums and thirty (30) days prior written notice of cancellation for any other reason; and

c. provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of the Agency as secondary and noncontributory.

5.1.3 Before commencement of the Work, and thereafter upon renewal or replacement of each required policy of insurance, Contractor shall provide to the Agency a signed, original certificate of liability insurance (ACORD 25). Consistent with this Section 5.1, the certificate shall identify the types of insurance, state the limits of liability for each type of coverage, name the Agency as Certificate Holder, provide that the general aggregate limit applies per project, and provide that coverage is written on an occurrence basis. Both the certificates and the endorsements must be received directly from either the Contractor's insurance agent or the insurance company. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, naming the Agency as an additional insured for claims made under the Contractor's completed operations, and otherwise meeting the above requirements, shall be submitted with the Contractor's final request for payment for the Work and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 5.1. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

5.1.4 A failure by the Agency either (i) to demand a certificate of insurance or written endorsement required by Section 5.1, or (ii) to reject a certificate or endorsement on the grounds that it fails to comply with Section 5.1, shall not be considered a waiver of Contractor's obligations to obtain the required insurance.

5.2 Property Insurance:

☐ If this box is checked, Contractor shall provide the following:

5.2.1 Builder's Risk Insurance: Contractor shall purchase property insurance written on a builder's risk "all risk" or equivalent policy form on a replacement cost basis. Contractor shall maintain such property insurance until the Agency has made final payment for the Work or until no person or entity other than the Agency has an insurable interest in the property required by this Section 5.2 to be covered, whichever is later. This insurance shall include and be in an amount sufficient to cover at all times during the performance of the Work, the interests of the Contractor, Subcontractors and Sub-subcontractors in the Project. The property insurance shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, false work, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

5.2.2 Equipment Breakdown Insurance: In the event the Contractor installs and runs and/or operates (whether for testing or other purposes) heating, air conditioning, and electrical machinery and equipment, the Contractor shall purchase and maintain equipment breakdown (boiler and machinery) insurance, which shall specifically cover such objects during installation and until final acceptance by the Agency. This insurance shall include interests of the Agency, Contractor, and subcontractors at any tier in the Work, and the Agency and Contractor shall both be named insured.

5.2.3 Before an exposure to loss may occur, the Contractor shall file with the Agency a copy of each policy that includes insurance coverage required by this Section 5.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project.

5.2.4 Waiver of Subrogation: The Agency and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent the property insurance provided by the Contractor pursuant to this Section 5.2 covers and pays for the damage, except such rights as they have to proceeds of such insurance held by the Contractor. The Agency or Contractor, as appropriate, shall require of the subcontractors, sub-subcontractors, agents and employees, each of the other, by appropriate written agreements, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

5.3 Performance and Payment Bonds:

☒ If this box is checked, prior to beginning work, the Contractor shall deliver to the Agency a Performance Bond and a Labor & Material Payment Bond. Each bond shall be in the amount of 100% of the Contract Sum. The Contractor's Performance Bond shall be in the form of the SE-355, Performance Bond, and the Labor & Material Payment Bond shall be in the form of the SE-357, Labor & Material Payment Bond. The surety company providing the Bonds shall have, at a minimum, a "Best Rating" of "A" as stated in the most current publication of "Best's Key Rating Guide, Property - Casualty." Contractor's failure to provide bonds as herein required shall be an event of default justifying the Agency, in its sole discretion, in terminating this Contract for cause.

6. CONTRACT ADMINISTRATION

6.1 Changes in the Work:

6.1.1 Any changes in the work must be approved by the Agency and executed by a modification to the Agency purchase requisition form. The modification must be signed by the Contractor and Agency.

6.1.2 At the Agency's request, the Contractor shall prepare a proposal to perform the work of a proposed modification setting forth the amount of the proposed adjustment, if any, in the Contract Sum; and the extent of the proposed adjustment, if any, in the Contract Time. The Agency's request shall include any revisions to the Drawings or Specifications necessary to define the changes in the Work. Within fifteen days of receiving the request, the Contractor shall submit the proposal to the Agency and Architect along with all substantiating documentation.

6.1.3 In the absence of a total agreement concerning the item(s) for a contract modification, a Construction Change Directive shall be used.

6.1.4 Agreed Overhead and Profit Rates:

For any adjustment to the Contract Sum for which overhead and profit may be recovered, the Contractor agrees to charge and accept, as full payment for overhead and profit, the following percentages of costs attributable to the change in the Work. The percentages cited below shall be considered to include all indirect costs including, but not limited to: field and office managers, supervisors and assistants, incidental job burdens, small tools, and general overhead allocations. The allowable percentages for overhead and profit are as follows:

a. To the Contractor for work performed by the Contractor's own forces, 17% of the Contractor's actual costs.

b. To each Subcontractor for work performed by the Subcontractor's own forces, 17% of the subcontractor's actual costs.

c. To the Contractor for work performed by a subcontractor, 10% of the subcontractor's actual costs (not including the subcontractor's overhead and profit).

6.2 Payments:

6.2.1 Contractor may submit monthly applications for payment for the Work scheduled to last two months or more in duration. Contractor shall submit only one application for payment for the Work scheduled to last less than two months in duration.

6.2.2 If the Contractor intends to submit more than one application for payment, the Contractor shall submit to the A/E, within ten days of Contract award, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the A/E may require. This schedule, unless objected to by the A/E, shall be used as a basis for reviewing the Contractor's Applications for Payment. Contractor shall base its monthly applications for payment on work completed up to the date of the application using the approved schedule of values. The sum of all payments to the Contractor shall not exceed the agreed upon cost of the work set forth in the Minor Construction Contract as adjusted by subsequent modifications to the Contract, if any.

6.2.3 Contractor's applications for payment may include materials suitably stored on site for use in the Work provided the Contractor submits:

a. Proof of purchase & delivery;

b. Documentation showing the location of the material;

c. Certificate of insurance for the material with adequate coverage showing the Agency as the certificate holder.

6.2.4 The Agency will make payments to the Contractor for completed work based on the actual units or quantity of work completed. The Agency will make payments on the undisputed amounts of an application for payment within 21 days of receipt of the application.

6.2.5 Subcontractor Payments (Chapter 6 of Title 29 of the South Carolina Code of Laws, as amended): The Contractor shall pay each subcontractor no later than seven (7) days after receipt of payment from the Agency the amount to which the subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the subcontractor's portion of the Work. By appropriate agreement with its subcontractors, the Contractor shall require each subcontractor to make payments to Sub-subcontractors in a similar manner.

6.2.6 If the Agency does not pay the Contractor within seven (7) days after the time established in Section 6.2.4 the undisputed amount of a payment request, then upon seven (7) additional days written notice to the Agency, the Contractor may stop the Work until the Contractor has received payment of the undisputed amount owing. The Contract Time and the Contract Sum shall be equitably adjusted by the amount of the Contractor's reasonable costs of shut down, delay and start-up, plus interest as provided for in the Contract Documents.

6.2.7 Retainage: The Agency, at its option, may withhold retainage as provided in SC Code § 11-35-3030(4).

6.2.8 Final Payment: Upon final payment by the Agency to the Contractor for the Work, all rights, title, and interest in and to all improvements and equipment constructed or installed on the premises shall vest in the Agency at no additional cost, free and clear of all any liens and encumbrances created or caused by the Contractor.

6.2.9 Withholding of Payments: Payments may be withheld to the extent of, and on account of:

a. defective Work not remedied, or Work not performed in accordance with the Contract Documents;

b. claims filed by third parties;

c. failure of the Contractor to make payments promptly to the subcontractors for labor, materials, or equipment;

d. persistent failure to carry perform the Work in accordance with the Contract Documents;

e. failure by the Contractor to perform its obligations under the Contract Documents; or

f. a default by the Contractor under the Contract Documents.

The Agency shall promptly notify the Contractor of any reason for withholding payment.

6.3 Completion and Closeout: Upon Final Completion of all Work, the Contractor shall notify the Agency of its completion. The Agency shall schedule a Final Inspection and allow the Contractor to demonstrate that all equipment and systems operate as designed. The Agency may elect to have other persons, firms or agencies participate in the inspections. Projects exceeding the Agency's construction procurement certification level shall require an inspection by the Office of State Engineer (OSE) and the State Engineer's issuance of a Certificate of Occupancy. (The Contractor may find Agency construction certification limits on Procurement Services website at https://procurement.sc.gov/agency/audits/cert-limits) Final payment will not be due nor retained funds released until:

a. the Agency agrees that the project is complete;

b. OSE or the Agency, which ever has authority, issues a Certificate of Occupancy (SE-585); and

c. the Agency receives from the Contractor the following:

(1) Affidavit of payment of debts and claims;

(2) Consent of Surety, if any, to final payment.

7. DISPUTE RESOLUTION

7.1 Both parties shall attempt to resolve disputes through good faith negotiations.

7.2 All disputes, claims, or controversies relating to the Contract, that cannot be resolved through good faith negotiations between the parties shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Contractor agrees that any act by the State regarding the Contract is not a waiver of either the State's sovereign immunity or the State's immunity under the Eleventh Amendment of the United States Constitution. As used herein, "the State" includes the Agency and the State Fiscal Accountability Authority.

7.3 Interest: Payments due to the Contractor and unpaid under the Contract Documents shall bear interest only if and to the extent allowed by Title 29, Chapter 6, Article 1 of the South Carolina Code of Laws. Amounts due to the Agency shall bear interest at the rate of one percent a month or a pro rata fraction thereof on the unpaid balance as may be due.

7.4 Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any claims or controversies relating to the Contract; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided for the Contractor's Representative or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.

7.5 Continuation of Work: Pending final resolution of any dispute under this Contract, the Contractor will proceed diligently with the performance of its duties and obligations under the Contract Documents, and the Agency will continue to make payments of undisputed amounts in accordance with the Contract Documents.

8. LIMITATION OF LIABILITY

8.1 Notwithstanding any other provision of the Contract Documents, but subject to a duty of good faith and fair dealing, the Contractor and Agency waive Claims against each other for listed damages arising out of or relating to this Contract. This mutual waiver includes:

8.1.1 For the Agency, listed damages are (i) lost revenue and profit, (ii) losses resulting from injury to business or reputation, (iii) additional or escalated overhead and administration expenses, (iv) additional financing costs, (v) costs suffered by a third party unable to commence work, (vi) reasonable attorney's fees, (vii) any interest, except to the extent allowed by Section 6.3 (Interest), (viii) lost revenue and profit for lost use of the property, (ix) costs resulting from lost productivity or efficiency, and (x) damages incurred by the Agency for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

8.1.2 For the Contractor, listed damages are (i) lost revenue and profit, (ii) losses resulting from injury to business or reputation, (iii) additional or escalated overhead and administration expenses, (iv) additional financing costs, (v) reasonable attorney's fees, (vi) any interest, except to the extent allowed by Section 6.3 (Interest); (vii) unamortized equipment costs; and (viii) losses incurred by subcontractors for the types of damages the Contractor has waived as against the Agency.

8.2 This mutual waiver is applicable, without limitation, to all listed damages due to either party's termination in accordance with Section 11. Nothing contained in this Section 8 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. This mutual waiver is not applicable to amounts due or obligations under Section 4.16 (Indemnification).

9. HAZARDOUS MATERIALS

9.1 Contractor's Responsibilities with Respect to Hazardous Materials:

9.1.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance which was not discoverable as provided in Section 2.7 and not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons or serious loss to real or personal property resulting from such a material or substance encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Agency of the condition. Hazardous materials or substances are those hazardous, toxic, or radioactive materials or substances subject to regulations by applicable governmental authorities having jurisdiction, such as, but not limited to, the S.C. Department of Health and Environmental Control, the U.S. Environmental Protection Agency, and the U.S. Nuclear Regulatory Commission.

9.1.2 Upon receipt of the Contractor's notice, the Agency shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Agency and Contractor. By Change Order, the Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

9.2 Hazardous Materials Introduced to the Site by Contractor: If the Contractor, its subcontractors, and any party for whom they may be liable, introduces any Hazardous Materials to the Site then the Contractor, at its sole cost and expense, shall be responsible for any response, removal, cleanup, and/or other remedial action required by applicable law. If any Mold occurs within the Site as the result of the negligent implementation of the Project or the improper functioning of the Conservation Measures, then the Contractor, at its sole cost and expense, shall be responsible for any response, removal, cleanup, or other remedial action required by applicable law. Except as to the Contractor's initial response to an emergency, any such remedial action(s) shall require the prior review and approval of the Agency.

10. MISCELLANEOUS PROVISIONS

10.1 Governing Law: This Contract shall be governed by the laws of South Carolina, except its choice of law rules.

10.2 Severability: If any provision of this Contract shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

10.3 No Waiver: No course of dealing or failure of the Agency and/or the Contractor to enforce strictly any term, right or condition of this Contract shall be construed as a waiver of such term, right or condition. No express waiver of any term, right, or condition of this Contract shall operate as a waiver of any other term, right, or condition.

10.4 Rights Cumulative: Except as otherwise provided in this Contract, (i) rights and remedies available to the Agency and/or the Contractor as set forth in this Contract shall be cumulative with and in addition to, and not in limitation of, any other rights or remedies available to the Parties at law and/or in equity, and (ii) any specific right or remedy conferred upon or reserved to the Agency and/or the Contractor in any provision of this Contract shall not preclude the concurrent or consecutive exercise of a right or remedy provided for in any other provision hereof.

10.5 Notices: Any notices required to be given under this Contract shall be in writing and shall be delivered either by (i) certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid, in the U.S. mail; (ii) a reputable messenger service or a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with such messenger or courier; or (iii) personal delivery with receipt acknowledged in writing, in which case notice shall be deemed delivered when received. All notices shall be sent to the representatives identified in the Part G of the Agreement at the addresses provided therein. The foregoing addresses may be changed from time to time by notice to the other Party in the manner herein provided for.

10.6 Economic Conflict of Interest: A Contractor shall not have or exercise any official responsibility regarding a public contract in which the Contractor, or a business with which he is associated, has an economic interest. A person working for Contractor shall not have or exercise any official responsibility regarding a public contract in which the person, an individual with whom he is associated, or his family members have an economic interest. If Contractor is asked by any person to violate, or does violate, either of these restrictions, Contractor shall immediately communicate such information to the Agency Representative. The State may rescind, and recover any amount expended as a result of, any action taken, or contract entered in violation of this provision. The terms "business with which he is associated," "economic interest," "family member," "immediate family," "individual with whom he is associated," "official responsibility" and "person" have the meanings provided in SC Code § 8-13-100.

10.7 Illegal Immigration: Contractor certifies and agrees that it will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agrees to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable both to Contractor and its subcontractors or sub-subcontractors; or (b) that Contractor and its subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to SC Code § 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." Contractor agrees to include in any contracts with its subcontractors language requiring its subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14. (An overview is available at www.procurement.sc.gov)

10.8 Drug-Free Workplace: The Contractor certifies to the Agency that Contractor will provide a Drug-Free Workplace, as required by Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.

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

10.10 Non-Indemnification: Any term or condition is void to the extent it requires the State to indemnify anyone. It is unlawful for a person charged with disbursements of state funds appropriated by the General Assembly to exceed the amounts and purposes stated in the appropriations (SC Code § 11-9-20). It is unlawful for an authorized public officer to enter into a contract for a purpose in which the sum is in excess of the amount appropriated for that purpose. It is unlawful for an authorized public officer to divert or appropriate the funds arising from any tax levied and collected for any one fiscal year to the payment of an indebtedness contracted or incurred for a previous year. (SC Code § 11-1-40)

10.11 Enforcement and Interpretation of Building Codes: As required by SC Code § 10-1-180), OSE shall determine the enforcement and interpretation of all building codes and referenced standards on state buildings. The Contractor shall refer any questions, comments, or directives from local officials to the Agency and OSE for resolution. When the amount of the contract exceeds the construction procurement certification of the Agency, the Contractor shall not commence the Work before receiving a copy of the Building permit issued by OSE. (The Contractor may find Agency construction certification limits on Procurement Services website at https://procurement.sc.gov/agency/audits/cert-limits)

10.12 Assignment: The Agency and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements and obligations contained in this Contract. Neither party to the Contract shall assign the Contract as a whole, or in part, without written consent of the other and then only in accordance with and as permitted by SC Regulation 19-445.2180. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

10.13 Open Trade: During the Contract term, including any renewals or extensions, Contractor will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code § 11-35-5300.

11. SUSPENSION OR TERMINATION

11.1 Agency Right of Suspension: The Agency may, at any time, suspend the work, in whole or in part, with or without cause for such period of time as determined by the Agency. Except in the event of suspension due to a default of the Contractor, the Contract sum will be equitably adjusted to reflect reasonable costs actually incurred by the Contractor due to delay or interruption resulting from such suspension.

11.2 Agency Right of Termination:

11.2.1 Termination for Cause: If the Contractor defaults, persistently fails or neglects to perform the Work in accordance with the Contract Documents, or fails to perform a provision of the Contract, the Agency shall provide written notice of such default, failure, or neglect to the Contractor. If the Contractor fails to cure such default, failure, or neglect within fifteen days from receipt of the Agency's notice, the Agency may, without prejudice to any other right or remedy the Agency may have, terminate the Contract and take possession of the area at the Site affected by the Work.

11.2.2 Termination for Convenience: The Agency may, for its convenience, terminate all or any portion of the Work, or terminate this entire Contract, by ten (10) days written notice stating the effective date of the termination. Thereafter, the Agency shall pay the Contractor for Work actually performed before the date of termination. No payments shall be made for Work not actually performed, and no payment shall be made or due for lost profits on account of Work not performed.

11.3 Contractor Right of Termination:

11.3.1 The Contractor may terminate the Contract if work is stopped through no fault of the Contractor, or other persons performing work either directly or indirectly for the Contractor, for a period of time exceeding 60 consecutive calendar days due to a court order or other public authority having jurisdiction; or a Declared National emergency which requires the work to be stopped.

11.3.2 Agency Failure to Make Payment: Subject to the Agency's right to withhold payments pursuant to Section 6.2.9, if the Agency fails to make payments to the Contractor as set forth in Section 6.2 and any other applicable provisions of the Contract Documents, the Contractor may, upon thirty (30) days' prior written notice to the Agency, terminate the Contract and recover from the Agency payment for all Work performed and for proven loss with respect to materials, equipment, tools, and machinery, including reasonable overhead, profit and damages applicable to the Work for the Contract Services performed through the date thereof.

AGENCY:	**CONTRACTOR:**
BY:_____ *(Signature of Representative)*	**BY:**_____ *(Signature of Representative)*
PRINT NAME: W. Carey Page	**PRINT NAME:**_____
PRINT TITLE: Associate Director of Operations	**PRINT TITLE:**_____
DATE:_____	**DATE:**_____