

South Carolina Division of Procurement
Services, Office of the State Engineer Version of
 AIA[®] Document C132[™] – 2009

*Standard Form of Agreement Between Owner
and Construction Manager as Adviser*

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Cite this document as “AIA Document C132[™]–2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser — SCOSE Version,” or “AIA Document C132[™]–2009 — SCOSE Version.”

South Carolina Division of Procurement Services, Office of the State Engineer Version of AIA® Document C132™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Adviser

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

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

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

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

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

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

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

The Owner and Construction Manager agree as follows.

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ARTICLE 1 INITIAL INFORMATION

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

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

§ 1.1.1 *Reserved*

§ 1.1.2 *Reserved*

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

§ 1.1.4 The Owner's anticipated construction schedule:

- .1 Commencement of construction:
- .2 Substantial Completion date or milestone dates:
- .3 Other anticipated scheduling information, if any:

§ 1.1.5 The Owner intends the following procurement method for the Project:

(Design-Bid-Build, Construction Manager at Risk, etc.)

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction, if any, are set forth below:
(List number and type of bid/procurement packages.)

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.5:

Name:
Title:
Address:
Telephone: **FAX:**
Email:

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

Name:
Title:
Address:
Telephone: **FAX:**
Email:

§ 1.1.10 The Owner will retain the following consultants and contractors:
(List name, legal status, address and other information.)

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

§ 1.1.11 The Construction Manager identifies the following representative in accordance with Section 2.4:
(List name, address and other information.)

Name:
Title:
Address:
Telephone: **FAX:**
Email:

§ 1.1.12 The Construction Manager's staffing plan as required under Section 3.3.2 shall include (Identify as Basic or Additional Services):
(List any specific requirements and personnel to be included in the staffing plan, if known.)

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the schedules, the Construction Manager's services and the Construction Manager's compensation.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

§ 2.1 The Construction Manager shall provide the services as set forth in this Agreement.

§ 2.2 The Construction Manager shall perform its services consistent with the skill and care ordinarily provided by construction managers practicing in the same or similar region under the same or similar circumstances. The Construction Manager shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Project. The Construction Manager shall notify the Owner in a prompt and timely manner of any discovered discrepancies, inconsistencies or missing information necessary to provide reasonably accurate and complete documents. The Owner's approval, acceptance, use of or payment for all or any part of the Construction Manager's services shall in no way alter the Construction Manager's obligations or the Owner's rights hereunder.

§ 2.3 The Construction Manager shall provide its services in conjunction with the services of an Architect as described in AIA Document B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition, SCOSE Edition. The Construction Manager shall not be responsible for actions taken by the Architect.

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

§ 2.4.1 The Construction Manager shall not change its staffing plan identified in Section 1.1.12 above without the Owner's written consent, which consent the Owner shall not unreasonably withhold.

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

§ 2.6 Insurance

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

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

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

§ 2.6.4 Workers' Compensation Insurance with statutory benefits and limits which shall fully comply with all State and Federal requirements and have limits not less than \$500,000 per accident, \$500,000 per disease and \$500,000 policy limit on disease.

§ 2.6.5 Professional Liability Errors and Omissions Insurance with limits of not less than \$1,000,000 per claim and in the aggregate. The Construction Manager shall maintain this coverage in effect during the term of this Agreement and for two (2) years after the Date of Substantial Completion. The Construction Manager shall give prompt written notice

to the Owner of any and all claims made against this policy during the period in which this policy is required to be maintained pursuant to this Agreement.

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

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

§ 2.6.8 Endorsements & Additional Insured

§ 2.6.8.1 All policies for insurance must be endorsed to contain a provision giving the Owner a ten (10) days prior written notice of cancellation of that policy for non-payment of premiums and a thirty (30) day prior written notice by certified mail of any cancellation or nonrenewal of that policy (including individual coverages of the policy, or any reduction in policy limits) for any other reason.

§ 2.6.8.2 Prior to performing services, and thereafter upon replacement of each required policy of insurance, the shall provide to the Owner a written endorsement to the Construction Manager's general liability insurance policy that (i) names the Owner as an additional insured, (ii) where such notice is available, provides that no cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless all additional insureds 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 (iii) provides that the Construction Manager's liability insurance policy shall be primary, with any liability insurance of the Owner as secondary and noncontributory. Prior to performing services, and thereafter upon renewal or replacement of each required policy of insurance, the Construction Manager shall provide to the Owner a signed, original certificate of liability insurance (ACORD 25). The certificate shall identify the types of insurance, state the limits of liability for each type of coverage, include a provision for written notice prior to cancellation as set forth in Section 2.6.8.2(ii), name the Owner as a Certificate Holder, provide that the general aggregate limit applies per project, and provide that coverage is written on an occurrence basis. Both the certificates and the endorsements must be received directly from either the Construction Manager's insurance agent or the insurance company. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Construction Manager with reasonable promptness.

§ 2.7 Third Party Indemnification. Without limitation and notwithstanding any provision in this agreement, the Construction Manager shall indemnify and hold harmless the Indemnitees for and against claims, damages, losses and expenses (including attorneys' fees) asserted by a third party against an Indemnitee arising out of or resulting from negligent acts or omissions of the Construction Manager, a consultant, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself). The Construction Manager shall not be required to indemnify an Indemnitee to the extent Indemnitee's damages result from Indemnitee's own negligence. Such obligation shall not be construed to negate, abridge, or reduce any other rights, including any other obligations of indemnity, which would otherwise exist as to a party or person described in this Section 2.7. As used in this paragraph, "Indemnitees" means the State (including its instrumentalities, agencies,

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departments, boards, and political subdivisions), the contractor, the subcontractors at all tiers, and the officers, agents and employees of all the forgoing.

§ 2.8 Decisions By The Construction Manager. Any reference in the Contract Documents to the Construction Manager taking action or rendering a decision with a “reasonable time” or “reasonable promptness” is understood to mean no more than fourteen (14) days, unless otherwise specified in the Contract Documents or otherwise agreed to by the parties.

ARTICLE 3 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES

§ 3.1 Definition

The Construction Manager's Basic Services consist of those described in Sections 3.2 and 3.3 or identified elsewhere in this Agreement as Basic Services and include usual and customary construction coordination and scheduling, constructability review, cost estimating, and allocation of construction activities with the Prime Contractor, or among the Multiple Prime Contractors.

§ 3.1.1 Services Provided In Two Stages/Contract Depends On Continued Funding

(*Owner Check Box if Applicable*)

§ 3.1.2 The services to be provided by the Construction Manager under this Agreement shall be divided into two stages. Stage 1 Services shall include all Basic Services through completion of Schematic Design Phase Services. Stage 2 Services shall include all services from the start of the Design Development Phase through the completion of all services to be provided under this Agreement.

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

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

§ 3.1.5 The Construction Manager acknowledges and agrees that upon completion of Stage 1 Services, further work will be suspended for a reasonable amount of time, as determined by the meeting schedules of the Joint Bond Review Committee and State Fiscal Accountability Authority, as needed for the Owner to prepare and submit a revised Project scope and budget to the Joint Bond Review Committee and State Fiscal Accountability Authority for their approval. In the event that the Joint Bond Review Committee and State Fiscal Accountability Authority do not approve additional funding for the Project, the Owner intends to terminate this contract pursuant to the "Termination for Convenience" clause of this contract subject to limits on agency's obligation to pay under Section 3.1.4 and provided the Construction Manager shall not be entitled to recover as damages or otherwise, anticipated profits on work not performed. The Owner shall provide the Construction Manager notice of the lack of funding for Stage 2 Services within a reasonable time of the Owner's receiving that notice.

§ 3.2 Preconstruction Phase

§ 3.2.1 The Construction Manager shall review the program furnished by the Owner and any evaluation of the Owner's program provided by the Architect, to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner and Architect.

§ 3.2.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.2.3 The Construction Manager shall prepare, and deliver to the Owner, a written Construction Management Plan that includes, at a minimum, the following: (1) preliminary evaluations required in Section 3.2.2, (2) a Project schedule, (3) cost estimates, and (4) Contractors' scopes of Work, if multiple Contractors or fast-track construction will be used. The Construction Manager shall periodically update the Construction Management Plan over the course of the Project.

§ 3.2.4 Based on preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems and may also provide its own suggestions.

§ 3.2.5 The Construction Manager shall expeditiously review design documents during their development and advise the Owner and Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect on constructability, availability of materials and labor, sequencing for phased construction, time requirements for procurement, installation and construction, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 3.2.6 The Construction Manager shall prepare and periodically update the Project schedule included in the Construction Management Plan for the Owner's and Architect's review and the Owner's acceptance. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and highlight items that could affect the Project's timely completion.

§ 3.2.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement. The Construction Manager shall include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in the estimates of the Cost of the Work. Such estimates shall be provided for the Owner's and Architect's review and the Owner's approval. The Construction Manager shall advise the Owner and Architect if it appears that the Cost of the Work may exceed the Owner's budget and make recommendations for corrective action.

§ 3.2.8 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations whenever the Construction Manager determines that design details adversely affect constructability, cost or schedules.

§ 3.2.9 If Multiple Prime Contracts are used, the Construction Manager shall provide recommendations and information to the Owner and Architect regarding the assignment of responsibilities for temporary Project facilities and equipment, materials and services for common use of the Contractors. The Construction Manager shall verify that such requirements and assignment of responsibilities are included in the proposed Contract Documents.

§ 3.2.10 The Construction Manager shall provide recommendations and information to the Owner regarding the allocation of responsibilities for safety programs among the Multiple Prime Contractors.

§ 3.2.11 The Construction Manager shall provide recommendations to the Owner on the division of the Project into individual Contracts for the construction of various categories of Work. If multiple Contracts are to be awarded, the Construction Manager shall review the Drawings and Specifications and make recommendations as required to provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project are assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes is minimized, and (4) proper coordination is provided for phased construction.

§ 3.2.12 The Construction Manager shall update the Project schedule to include the components of the Work, including phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products, including those that must be ordered well in advance of construction, and the occupancy requirements of the Owner.

§ 3.2.13 If equipment or materials are to be furnished by the Owner, the Construction Manager shall assist the Owner and coordinate the ordering and delivery of equipment or materials, including those that must be ordered well in advance of construction.

§ 3.2.14 The Construction Manager shall assist the Owner in selecting and coordinating the professional services of surveyors, special consultants and testing laboratories required for the Project.

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§ 3.2.15 The Construction Manager shall provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. The Construction Manager shall make recommendations for actions designed to minimize adverse effects of labor shortages.

§ 3.2.16 The Construction Manager shall assist the Owner in obtaining information regarding applicable requirements for equal employment opportunity programs for inclusion in the Contract Documents.

§ 3.2.17 Following the Owner's approval of the Drawings and Specifications, the Construction Manager shall update and submit the latest estimate of the Cost of the Work and the Project schedule for the Owner's and Architect's review and the Owner's approval.

§ 3.2.18 The Construction Manager shall submit the list of prospective bidders for the Owner's and Architect's review.

§ 3.2.19 The Construction Manager shall assist the Architect's effort to issue bidding documents to bidders and attend the pre-bid conference. The Construction Manager shall provide the current Project schedule to the Architect for issuance with each set of bidding documents. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda.

§ 3.2.20 The Construction Manager shall assist the Owner with bid analyses and make recommendations to the Owner for the Owner's award of Contracts or rejection of bids.

§ 3.2.21 The Construction Manager shall assist the Owner in preparing Construction Contracts and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Multiple Prime Contractors.

§ 3.2.22 The Construction Manager shall assist the Owner and Architect in connection with the Owner's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.

§ 3.3 Construction Phase Administration of the Construction Contract

§ 3.3.1 Subject to Section 4.3, the Construction Manager's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.3.2 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed.

§ 3.3.3 The Construction Manager shall provide on-site administration of the Contracts for Construction in cooperation with the Architect as set forth below and in AIA Document A232™-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser, SCOSE Edition, unless otherwise provided in this Agreement. The Construction Manager shall perform all duties and obligations that are assigned to the Construction Manager in the General Conditions unless such duties or obligations on the part of the Construction Manager are expressly waived in this Agreement. If the Owner and Contractor modify AIA Document A232-2009, those modifications shall not affect the Construction Manager's services under this Agreement unless the Owner and the Construction Manager amend this Agreement.

§ 3.3.4 The Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Contractor(s) with those of the Construction Manager, the Owner and the Architect. The Construction Manager shall coordinate the activities of the Contractor(s) in accordance with the latest approved Project schedule and the Contract Documents.

§ 3.3.5 Utilizing the construction schedules provided by the Contractor(s), the Construction Manager shall update the Project schedule, incorporating the activities of the Owner, Architect, and Contractor(s) on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery and procurement of products, including those that must be ordered well in advance of construction. The Project schedule shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project schedule as required to show current conditions. If an update indicates that the previously approved Project schedule may not be met, the Construction Manager shall recommend corrective action, if any, to the Owner and Architect.

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§ 3.3.6 The Construction Manager shall assist the Owner with scheduling meetings to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Architect and Contractor(s).

§ 3.3.7 Utilizing information from the Contractor(s), the Construction Manager shall monitor the sequence of construction and assignment of space in areas where the Contractor(s) are performing Work, in accordance with the Contract Documents and the latest approved Project schedule.

§ 3.3.8 The Construction Manager shall attend all tests and inspections required by the Contract Documents or governmental authorities, and verify the delivery of test and inspection reports to the Owner, OSE, and Architect.

§ 3.3.9 The Construction Manager shall endeavor to obtain satisfactory performance from the Contractor(s). The Construction Manager shall recommend courses of action to the Owner when requirements of a Contract are not being fulfilled.

§ 3.3.10 The Construction Manager shall monitor and evaluate activities in progress and estimates for uncompleted tasks and advise the Owner and Architect. If the Contractor is required to submit a Control Estimate, the Construction Manager shall meet with the Owner and Contractor to review the Control Estimate. The Construction Manager shall promptly notify the Contractor if there are any inconsistencies or inaccuracies in the information presented. The Construction Manager shall also report the Contractor's cost control information to the Owner.

§ 3.3.11 *Reserved*

§ 3.3.12 The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records.

§ 3.3.12.1 The Construction Manager shall develop and implement procedures for the review and processing of Applications for Payment for progress and final payments.

§ 3.3.12.2 Not more frequently than monthly, the Construction Manager shall review and certify the amounts due the Contractor(s) as follows:

- .1 Where there is only one Contractor responsible for performing the Work, the Construction Manager shall, within seven days after the Construction Manager receives the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect.
- .2 Where there are Multiple Prime Contractors responsible for performing different portions of the Project, the Construction Manager shall, within seven days after the Construction Manager receives each Contractor's Application for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each Contractor, (2) prepare a Summary of Contractors' Applications for Payment by summarizing information from each Contractor's Application for Payment, (3) prepare a Project Application and Certificate for Payment, (4) certify the total amount the Construction Manager determines is due all Multiple Prime Contractors collectively, and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 3.3.12.3 The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's evaluations of the Work and on the data comprising the Contractors' Applications for Payment, that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed to the Owner in writing by the Construction Manager prior to the issuance of a Certificate for Payment. The issuance of a Certificate for Payment shall further constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

§ 3.3.12.4 The certification of an Application for Payment or a Project Application for Payment by the Construction Manager shall not be a representation that the Construction Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques,

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sequences for the Contractor's own Work, or procedures; (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.3.13 The Construction Manager shall review the safety programs developed by the Contractor(s) and make recommendations to the Owner for any safety programs not included in the Work of the Contractor(s). The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractor(s), Subcontractors, agents or employees of the Contractor(s) or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 3.3.14 The Construction Manager shall determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. The Construction Manager shall not have the authority to reject Work. The Construction Manager shall record any rejection of Work by the Architect in its daily log and include information regarding the rejected Work in its progress reports to the Architect and Owner pursuant to Section 3.3.20.1. The Construction Manager may suggest to the Owner the need for additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed.

§ 3.3.15 The Construction Manager shall advise and consult with the Owner and Architect during the performance of its Construction Phase Services. The Construction Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Construction Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Construction Manager shall not be responsible for a Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall be responsible for the Construction Manager's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor(s), Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 3.3.16 The Construction Manager shall transmit to the Architect requests for interpretations and requests for information of the meaning and intent of the Drawings and Specifications with its written recommendation, and assist in the resolution of questions that may arise.

§ 3.3.17 The Construction Manager shall review requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Architect and Owner, and, if they are accepted, prepare Change Orders and Construction Change Directives that incorporate the Architect's modifications to the Contract Documents.

§ 3.3.17.1 Prior to preparing any Contract Modification, the Construction Manager shall (a) request from the Contractor any substantiating data required by Article 7 of the General Conditions of the Contract for Construction, including cost or pricing data reference in Section 7.6.1, as applicable, and (b) assist the Owner in a thorough review of the information provided.

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

§ 3.3.18 The Construction Manager shall assist the Initial Decision Maker in the review, evaluation and documentation of Claims, subject to Section 4.3.1.7.

§ 3.3.19 Utilizing the submittal schedules provided by each Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from the Owner, Owner's consultants, Owner's separate contractors and vendors, governmental agencies, and all other participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Owner and Architect. The Construction Manager shall promptly review all Shop Drawings, Product Data, Samples and

other submittals from the Contractor(s) for compliance with the submittal requirements of the Contract, coordinate submittals with information contained in related documents, and transmit to the Architect. The Construction Manager's actions shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Contractor(s), the Owner, or the Architect.

§ 3.3.20 The Construction Manager shall keep a daily log containing a record of weather, Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Owner may require.

§ 3.3.20.1 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of remaining and outstanding submittals;
- .4 Request for information, Change Order, and Construction Change Directive status reports;
- .5 Tests and inspection reports;
- .6 Status report of nonconforming and rejected Work;
- .7 Daily logs;
- .8 Summary of all Contractors' Applications for Payment;
- .9 Cumulative total of the Cost of the Work to date including the Construction Manager's compensation and reimbursable expenses at the job site, if any; and
- .10 Any other items the Owner may require:

§ 3.3.20.2 In addition, for Projects constructed on the basis of the Cost of the Work, the Construction Manager shall include the following additional information in its progress reports:

- .1 Contractor's work force report;
- .2 Equipment utilization report;
- .3 Cost summary, comparing actual costs to updated cost estimates; and
- .4 Any other items as the Owner may require:

§ 3.3.21 Utilizing the documents provided by the Contractor, the Construction Manager shall maintain at the site one copy of all Contracts, Drawings, Specifications, addenda, Change Orders, Inspection and Testing Reports, Inspection and Testing Deficiency Reports and other Modifications, in good order and marked currently to record all changes and selections made during construction, and in addition, approved Shop Drawings, Product Data, Samples and similar required submittals. The Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. The Construction Manager shall make all such records available to the Architect and the Contractor, and upon completion of the Project, shall deliver them to the Owner.

§ 3.3.22 The Construction Manager shall assist the Owner with the delivery, storage, protection and security of Owner-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Work.

§ 3.3.23 With the Architect and the Owner's maintenance personnel, the Construction Manager shall observe the Contractor's final testing and start-up of utilities, operational systems and equipment and observe any commissioning as the Contract Documents may require.

§ 3.3.24 The Construction Manager shall assist the Architect in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.

§ 3.3.25 When the Work is substantially complete, the Construction Manager shall prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion. The Construction Manager shall submit the executed Certificate to the Owner and Contractor. The Construction Manager shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work, the Construction

Manager shall evaluate the completion of the Work and make recommendations to the Architect when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting final inspections.

§ 3.3.26 The Construction Manager shall forward to the Owner, with a copy to the Architect, the following information received from the Contractor(s): (1) certificates of insurance ; (2) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (3) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (4) any other documentation required of the Contractor under the Contract Documents, including warranties and similar submittals.

§ 3.3.27 The Construction Manager shall deliver all keys, manuals, record drawings and maintenance stocks to the Owner. The Construction Manager shall forward to the Architect a final Project Application for Payment and Project Certificate for Payment or final Application for Payment and final Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

§ 3.3.28 Duties, responsibilities and limitations of authority of the Construction Manager as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner. Consent shall not be unreasonably withheld.

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

§ 3.6.6.5 The Construction Manager shall obtain from the Contractor information and "marked" drawings indicating all significant changes in the work made during construction, as required by the Manual. The information and drawings shall be delivered to the Architect for the purpose of producing "Record Plans".

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Unless otherwise provided in this agreement, Additional Services listed below and not identified as a Basic Service are not included in Basic Services but may be required for the Project. The Construction Manager shall provide the listed Additional Services only if specifically designated in the table below as the Construction Manager's responsibility, and the Owner shall compensate the Construction Manager as provided in Section 11.2.

(Designate the Additional Services the Construction Manager shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Services	Responsibility (Construction Manager, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Measured drawings		
§ 4.1.2 Architectural interior design (B252™-2007)		
§ 4.1.3 Tenant-related services		
§ 4.1.4 Commissioning (B211™-2007)		
§ 4.1.5 LEED® certification (B214™-2012)		
§ 4.1.6 Furniture, furnishings, and equipment design (B253™-2007)		

§ 4.2 Insert a description of each Additional Service designated in Section 4.1, if not further described in an exhibit attached to this document.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating this Agreement. Except for services required due to the fault of the Construction Manager, any Additional Services provided in accordance with this Section 4.3 shall entitle the Construction Manager to compensation pursuant to Section 11.3.

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

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;
- .2 Services necessitated by the enactment or revision of codes, laws or regulations or official interpretations after the date of this Agreement;
- .3 Preparation of documentation for alternate bid or proposal requests proposed by the Owner;
- .4 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .5 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Construction Manager is party thereto; or
- .6 Providing consultation concerning replacement of Work resulting from fire or other cause during construction and furnishing services required in connection with the replacement of such Work.
- .7 *Reserved*
- .8 *Reserved*

§ 4.3.2 To avoid delay in the Construction Phase, the Construction Manager shall provide the following Additional Services, promptly the Owner, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Construction Manager, and the Owner shall have no further obligation to compensate the Construction Manager for those services:

- .1 *Reserved*
- .2 To the extent the Construction Manager's Basic Services are affected, providing Construction Phase Services, other than those required in Section 3.3.29, 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier, provided the delay in Substantial Completion of the Work is for causes beyond the control of the Construction Manager.
- .3 Services required in an emergency to coordinate the activities of a Contractor in the event of risk of personal injury or serious property damage, consistent with Section 3.3.13.

§ 4.3.3 *Reserved*

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including the Owner's program, other objectives, schedule, constraints and criteria, special equipment, systems, and site requirements.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect of such increase or decrease and the corresponding changes in the Project's scope and quality with reasonable promptness.

§ 5.3 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it the risk of additional costs. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B132-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser, SCOSE Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and Architect, and any further modifications to the agreement.

§ 5.5 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions pertaining to documents the Construction Manager submits in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's services.

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

§ 5.7 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

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

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

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

§ 5.12 The Owner reserves the right to perform construction and operations related to the Project with the Owner's own forces, and to award contracts in connection with the Project which are not part of the Construction Manager's responsibilities under this Agreement. The Construction Manager shall notify the Owner if any such independent action will interfere with the Construction Manager's ability to perform the Construction Manager's responsibilities under this Agreement. When performing construction or operations related to the Project, the Owner agrees to be subject to the same obligations and to have the same rights as the Contractors.

§ 5.13 The Owner will endeavor to communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Construction Manager of any direct communications that may affect the Construction Manager's services.

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

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

§ 5.16 Notwithstanding anything to the contrary contained in this Agreement, the Owner's review and approval of any and all documents or other matters required herein shall not be construed to be for the purpose of determining the Construction Manager has met his professional duty of care in the preparation of the Instruments of Service.

§ 5.17 The Owner shall review the Architect's documents and the Construction Manager's estimate of the Cost of the

Init.

Work for each phase (Schematic, Design Development, Construction Documents, and Bid Documents) with reasonable promptness and shall submit its written approval to the Architect and OSE.

§ 5.18 Decisions by the Owner

Any reference in the Contract Documents to the Owner taking action or rendering a decision with a “reasonable time” or “reasonable promptness” is understood to mean no more than fourteen (14) days, unless otherwise specified in the Contract Documents or otherwise agreed to by the parties.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the contractors’ general conditions costs, overhead and profit. The Cost of the Work includes the compensation of the Construction Manager and Construction Manager’s Consultants during the Construction Phase only, including compensation for reimbursable expenses at the job site, if any. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner’s budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2 and 6.4. Evaluations of the Owner’s budget, preliminary estimates for the Cost of the Work and detailed estimates of the Cost of the Work prepared by the Construction Manager represent the Construction Manager’s judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials or equipment, over Contractors’ methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the budget proposed, established or approved by the Owner, or from any cost estimate or evaluation prepared by the Construction Manager.

§ 6.3 If the Architect is providing detailed cost estimating services as an Additional Service, and a discrepancy exists between the Construction Manager’s cost estimates and the Architect’s cost estimates, the Architect and the Construction Manager shall work cooperatively to conform the cost estimates to one another.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager’s estimate of the Cost of the Work exceeds the Owner’s budget and previously approved estimates, the Construction Manager shall notify and make recommendations to the Owner and Architect. The Architect, in consultation with the Construction Manager, shall review the Construction Managers estimate and make appropriate recommendations to the Owner to adjust the Project’s size, quality or material selection. With approval from the Owner, the Architect shall prepare revisions to the Drawings, Specifications or other documents to incorporate the accepted recommendations.

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

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Construction Manager and the Construction Manager’s consultants, if any, shall not own or claim a copyright in the Instruments of Service. The Construction Manager, the Construction Manager’s consultants, if any, and the Owner warrants that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Construction Manager intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Construction Manager shall not use or allow to be used the Drawings, Specifications and reports or the unique design aspects of this Project for any other project, without the prior written approval of Owner. The Construction Manager may re-use standard specification texts and details.

§ 7.3 Upon the filing by the Construction Manager of a petition in bankruptcy or upon any other proceeding or action by or against the Construction Manager under the relevant law on bankruptcy, this Agreement shall be governed by Section

365(n) of the U.S. Bankruptcy Code, if applicable. If any person seeks to reject this Agreement pursuant to bankruptcy law, the Owner shall have the option of using the Instruments of Service for either the original term of this Agreement or a period of five years after rejection is requested.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

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

§ 8.1.1.1 The Construction Manager agrees that any act by the State regarding this Agreement is not a waiver of either the State's sovereign immunity or the State's immunity under the Eleventh Amendment of the United States Constitution. As used herein, the phrase, "the State" includes any governmental entity transacting business with the Construction Manager pursuant to the Agreement and the State Fiscal Accountability Authority.

§ 8.1.2 Limitations of Liability

To the extent damages are covered and paid for by property insurance provided by the Contractor, the Owner and Construction Manager waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232-2009, General Conditions of the Contract for Construction, SCOSE Edition. The Owner or the Construction Manager, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 Notwithstanding any other provision of this Agreement (including Sections 2.7 and 2.8), but subject to a duty of good faith and fair dealing, the Construction Manager and Owner waive claims against each other for listed damages arising out of or relating to this Agreement. Listed Damages are (1) damages incurred by the Owner for rental expenses, for losses of use of the Work, except to the extent such losses are covered by insurance or occur after acceptance of the certificate of substantial completion, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons, and for attorney's fees, insurance and interest (excluding post-judgment); and, (2) damages incurred by the Construction Manager for principal office expenses and overhead, including, but not limited to, the compensation of personnel stationed there, rent, utilities and office equipment; for losses of financing, business and reputation, for loss of profit, for attorney's fees, insurance and interest (excluding post-judgment), and for claims made by the Construction Manager's consultants for the types of damages the Construction Manager has waived as against the Owner. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.1.4 Waiver of Construction Manager Claims Against the Contractor

Notwithstanding any other provision of this Agreement, but subject to a duty of good faith and fair dealing, the Construction Manager waives all claims against both the Contractor and any of the Contractor's subcontractors (at any tier) for Listed Damages arising out of or relating to this Contract. The Listed Damages are damages incurred by the Construction Manager for principal office expenses and overhead, including, but not limited to, the compensation of personnel stationed there, rent, utilities and office equipment; for losses of financing, business and reputation, for loss of profit, for attorney's fees, insurance and interest (excluding post-judgment), and for claims made by the Construction Manager's consultants for the types of damages the Construction Manager has waived as against the Owner.

§ 8.2 Mediation

§ 8.2.1 Reserved

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

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

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

§ 8.3 *Reserved*

§ 8.4 Continuing Obligations During Disputes

In the event of any Controversy between Owner and Construction Manager under this Agreement, including but not limited to, whether or not any services Owner expects Construction Manager to perform are within the scope of Basic Services or any dispute as to whether or not Construction Manager is entitled to additional compensation for any Work requested, Construction Manager shall continue to proceed diligently with the performance of its services under this Agreement pending resolution of the dispute, and Owner agrees to pay Construction Manager in accordance with this Agreement for all services rendered by Construction Manager which are not the subject of the Controversy.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Construction Manager in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Construction Manager's option, (subject to Section 8.4) cause for suspension of performance of services under this Agreement. If the Construction Manager elects to suspend services, the Construction Manager shall give written notice to the Owner. Unless the Construction Manager receives payment in full for undisputed amounts within twenty-one (21) days of the Owner's receipt of the Construction Manager's notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Construction Manager shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Construction Manager shall be paid all undisputed sums due prior to suspension and any direct expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

§ 9.4 Either party may terminate this Agreement upon not less than fourteen (14) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

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

§ 9.6 In the event of termination not the fault of the Construction Manager, the Construction Manager shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

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

§ 9.7.1 *Reserved*

§ 9.7.2 *Reserved*

ARTICLE 10 MISCELLANEOUS PROVISIONS

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

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2009, General Conditions of the Contract for Construction, SCOSE Edition, except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Construction Manager.

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

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

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Construction Manager.

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

§ 10.7 Subject to the Owner's written approval, which shall not be unreasonably withheld, the Construction Manager shall have the right to include photographic or artistic representations of the design of the Project among the Construction Manager's promotional and professional materials. However, the Construction Manager's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Construction Manager in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Construction Manager in the Owner's promotional materials for the Project. Construction Manager shall not publish any comments or quotes by State employees, or include the State in either news releases or a published list of customers, without the prior written approval of the Owner.

§ 10.8 If the Construction Manager or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party, to the extent permitted by law, shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know

the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

§ 10.9 Construction Manager's Records

Upon request, the Construction Manager shall provide the Owner with copies of all documents, in their original form, in the Construction Manager's possession that regard the Project.

§ 10.10 Publicity

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

§ 10.11 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 procurement officer. The state may rescind, and recover any amount expended as a result of, any action taken or contract entered in violation of this provision. The terms "business with which he is associated," "economic interest," "family member," "immediate family," "individual with whom he is associated," "official responsibility" and "person" have the meanings provided in Section 8-13-100.

§ 10.12 Drug-Free Workplace

The Construction Manager certifies to the Owner that Construction Manager will provide a Drug-Free Workplace, as required by Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.

§ 10.13 False Claims

According to the S.C. Code of Laws § 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.

§ 10.14 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. (§ 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. (§ 11-1-40)

§ 10.15 Retention And Audit of Architect's Records

The Construction Manager and the Construction Manager's Consultants shall comply with all applicable obligations of §11-35-2220 of the SC Code of Laws, as amended.

§ 10.16 Audit Of Cost Or Pricing Data

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

§ 10.17 Contract Audit

If this Contract or any Modification (other than a firm fixed price contract) is negotiated, the Owner shall be entitled to audit the books and records of the Construction Manager and the Construction Manager's Consultants to the extent that such books and records relate to the performance of the Contract or any Modification. Such books and records shall be maintained by the Construction Manager for a period of three years from the date of final payment under the Contract

and by any Consultants for a period of three years from the date of final payment under the Construction Manager's contract with the Consultant, unless a shorter period is otherwise authorized in writing by the Chief Procurement Officer. As used in this paragraph, the phrase "Chief Procurement Officer" shall have the definition given that phrase in SC Code Ann. §11-35-310.

§ 10.18 Force Majeure

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

§ 10.19 No Waiver

Owner does not waive any prior or subsequent breach of the terms of the Agreement by making payments on the Agreement, by failing to terminate the Agreement for lack of performance, or by failing to strictly or promptly insist upon any term of the Agreement. Only a procurement officer has actual authority to waive any of the Owner's rights under this Agreement. Any waiver must be in writing.

§ 10.20 Headings

The headings used in this Agreement are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

§ 10.21 Open Trade Representation (Jun 2015)

By signing this Agreement, Construction Manager represents that Construction Manager is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300. [02-2A083-1]. During the contract term, including any renewals or extensions, Construction Manager 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 Section 11-35-5300. [07-7A053-1].

ARTICLE 11 COMPENSATION

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

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

Stage 2 (Design Development Phase through completion of all Work of the Agreement): \$

§ 11.1.1 For Preconstruction Phase Services in Section 3.2:

(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

§ 11.1.2 For Construction Phase Services in Section 3.3:

(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Construction Manager as follows:
(Insert amount of, or basis for, compensation.)

§ 11.4 *Reserved*

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

Employee or Category	Rate (\$0.00)
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§ 11.6 Compensation for Reimbursable Expenses

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

- .1 Transportation and authorized out-of-town travel and subsistence subject to Section 11.6.3;
- .2 Long distance services, project dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 *Reserved*;
- .7 Professional photography, and presentation materials requested by the Owner;
- .8 Construction Manager's consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Construction Manager's consultants; and
- .9 All taxes levied on professional services and on reimbursable expenses.
- .10 *Reserved*
- .11 *Reserved*

§ 11.6.2 For Reimbursable Expenses the compensation shall be the actual costs incurred by the Construction Manager and the Construction Manager's consultants. The Construction Manager and the Construction Manager's consultants shall be allowed a reasonable markup not to exceed 10% for administrative cost related Reimbursable Expenses.

§ 11.6.3 Unless authorized in writing by the Owner prior to incurring the expense, no expense for transportation, travel, or subsistence will be reimbursable to the extent the expense exceeds the amount for which a state employee would be reimbursed under the Travel Regulations. Travel Regulations means the State of South Carolina Statewide Disbursement Regulations found at [http://www.cg.sc.gov/guidanceandformsforstateagencies/Documents/CGsAPP/03-31-16/DisbursementRegulation_03-31-16.pdf]. There shall be no charge for time spent in travel.

§ 11.7 Payments to the Construction Manager

§ 11.7.1 An initial payment of zero dollars (\$0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.7.2 Payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Construction Manager's invoice. Payments due to the Construction Manager and unpaid under this Agreement 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 Owner shall bear interest at the rate of one percent a month or a pro rata fraction thereof on the unpaid balance as may be due.

§ 11.7.3 The Owner shall not withhold amounts from the Construction Manager's compensation to impose a penalty. The Owner shall have all of its common law, equitable, and statutory rights of set-off.

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document C132™–2009, Standard Form Agreement Between Owner and Construction Manager as Adviser, SCOSE Edition
- .2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
- .3 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- .4 Other documents:
(List other documents, if any, including additional scopes of service forming part of the Agreement.)

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

OWNER *(Signature)*

CONSTRUCTION MANAGER *(Signature)*

(Printed name and title)

(Printed name and title)

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