



CHARLESTON COUNTY PARK & RECREATION COMMISSION
861 Riverland Drive
Charleston, South Carolina 29412

CONTRACT FOR CONSTRUCTION
BETWEEN
CONTRACTOR AND OWNER

AGREEMENT

made as of the *month,date,year*

CONTRACTOR: Name:
 Address:
 Phone:
 Contact Person:
 Email:

OWNER: Charleston County Park & Recreation Commission
("CCPRC") 861 Riverland Drive
 Charleston, South Carolina 29412

CCPRC'S PROJECT NUMBER: 2020-004

PROJECT: REPLACEMENT OF THE FOLLY BEACH FISHING PIER (FBFP)

The Owner and Contractor agree as set forth below.

ARTICLE 1
THE CONTRACT DOCUMENTS

1.1 The Contract Documents for this Contract consist of this Agreement, and any Exhibits or special conditions attached hereto, the Drawings, Specifications, all Addenda issued prior to execution of the Agreement between the Owner and Contractor, all change orders issued subsequent thereto, and all documents listed below:

List any additional documents here. (In the case of any ambiguities, CCPRC's contract and Procurement Policy will apply)

Contractor's Proposal and Price Form

ARTICLE 2
THE WORK

The Contractor and the Owner agree that all labor, materials, equipment, and services required for the work, including permitting, compliance with all state and local codes and construction of the project, as applicable.

2.1 The Work for this project includes the demolition of the existing timber pier including the removal and proper disposal of all existing piles, stringers, decking, railing, benches, and shade structures. The SOW also includes the construction and removal of a temporary access ramp that is to be constructed in accordance with US Army Corps of Engineers (USACE) and the South Carolina Department of Health and Environmental Control Ocean & Coastal Resource Management (SCDHEC-OCRM) Permit Criteria.

2.2 Details of the proposed work are provided in the Construction Documents.
See Construction Drawings /Technical Specifications.

ARTICLE 3
THE CONTRACT SUM

3.1 The Owner agrees to pay the Contractor for the performance of the work for the price of Not to exceed sum Dollars. (\$000.00) in current funds, subject to additions and deductions for changes as may be agreed upon in writing.

The price specified shall include all taxes and duties of any kind levied by federal, state, municipal, or other governmental authority, which either party is required to pay with respect to the materials or services covered by this Agreement. At a minimum, invoices shall contain the identity of the provider of the services, the date of the services, a description of the services, and any applicable taxes. If the letter of authorization accompanying these terms and conditions allows the payment of "reimbursables", they shall be paid at Contractor's actual cost and subject to audit by the Owner.

Out of state Contractors are required to complete form I-312, Nonresident Taxpayer Registration Affidavit Income Tax Withholding form.

3.2 Payment will be made on the basis of the units of work actually performed. No revisions will be made without prior receipt of a written change order or directive from the Owner.

ARTICLE 4 CHANGES IN THE CONTRACT

4.1 Changes Requested by Owner. Owner may unilaterally, at any time, on written order, without notice to the surety, and without invalidating the Contract, make changes in the work herein contracted for. Owner shall notify the Contractor that it is considering such a change and Contractor shall provide Owner with a proposed price and scheduling proposal for all costs and impacts arising from the changed work in writing within seven (7) calendar days of Owner's written notice. Thereafter, if the parties are in agreement, Owner and Contractor shall execute a written change order which modifies this Agreement. In the absence of such an agreement, the parties shall proceed pursuant to Article 3.2. The agreed amount of payment and adjustment in Contract schedule, if any, in a written executed change order constitutes a full, complete, and final payment for all work arising from the change order. Contractor, in executing any such change order, waives any entitlement to additional compensation or extensions of time arising from the change.

4.2 Changes Requested by Contractor. Should Contractor find it necessary to request any changes in the scope of work or any time extensions during the course of construction, Contractor shall submit a written request which includes a pricing and a scheduling proposal to the Owner within seven (7) days of the event giving rise to the change request. If Owner is in agreement, Owner shall issue a written change order or may request additional information within seven (7) days of receipt of Contractor's request. All pricing and scheduling proposals are subject to independent verification and audit. Contractor agrees to make all records relating to any pricing or scheduling proposal available for Owner's inspection. Absent written approval of the Owner, through the execution of a written change order, or issuance of a change directive, the Contractor shall not proceed with performing such additional work (unless Owner determines that such work is in the original scope of this contract). Contractor acknowledges that Owner's execution of a written change order or change directive under Article 3.2 is a condition precedent to any payment for work included in the Change Order or any adjustment in the Contractor's schedule. Contractor hereby waives any entitlement to additional compensation or extensions of time to the extent that Contractor performs any additional work without written approval of Owner.

4.3 Construction Change Directive. To the extent that Owner desires to make changes pursuant to Article 4.1 or 4.2, above, and the parties are unable to execute a written change order as a consequence of disagreements as to the cost adjustment or scheduling impact of such changes, Owner may unilaterally direct the Contractor, in writing, to perform work through a written construction change directive. Contractor shall promptly perform such work in accordance with the change directive. In such instance Owner shall pay the Contractor any undisputed sums upon completion of the work. In such cases, Contractor may assert claim for additional payment pursuant to Article 11, hereunder.

4.4 Limits on Contract Adjustments: The following limitations shall apply to any change orders issued pursuant to Articles 4.1 and 4.2, or any construction change directives under Article 3.2. Owner's total liability for any changes under Article 3 shall not exceed the cumulative total of the

following costs which are incurred in connection with the performance of a change order or change directive:

- (a) The Contractor's direct labor, costs and labor burden associated with performance of the work,
- (b) The direct costs of any subcontractor,
- (c) The direct costs of any materials, including applicable sales taxes,
- (d) Rental costs of any rental equipment,
- (e) Ownership costs of any owned equipment, and
- (f) Field and general overhead, direct profit, and profit above subcontractor cost shall be considered as an aggregate total and shall not exceed 15 % of the change order cost.

4.5 Owner's Right to Audit: The Contractor shall keep full and accurate records of all costs incurred and items billed in connection with the performance of the Work, which records shall be open to audit by Owner or its authorized representatives during the performance of the Work and until three (3) years after Final Payment. In addition, the Contractor shall make it a condition of all Subcontractors relating to the Work that any and all Subcontractors will keep accurate records of costs incurred and items billed in connection with their work and that such records shall be open to audit by Owner or its authorized representatives during the performance of the Work and until two (2) years after its completion.

4.6 Contractor recognizes and acknowledges that from time to time on construction projects of this magnitude, some delay is inevitable and contractor's price takes into account such periodic, sporadic and relatively brief delays. The Owner shall not be liable to the Contractor for the occurrence of any reasonable delay (any delay of seven calendar days or less for each occurrence is deemed reasonable) to the Contractor's work by the act, neglect, or default of the Owner, or on account of any circumstances caused or contributed to by the Contractor. Contractor shall be entitled to a time extension for any period of delay caused by Owner. To the extent Contractor believes any act or failure to act of the Owner gives rise to an unreasonable delay, Contractor shall notify Owner in writing within seven (7) days of the circumstances given rise to the delay. Contractor's failure to notify Owner of such delay in writing, constitutes a waiver of any entitlement to additional compensation or extension of time for any costs or extensions of time incurred prior to such written notice. Contractor hereby waives any claim or entitlement to lost profit, consequential damages, extended home office overhead or unabsorbed or under-absorbed home office overhead for such reasonable periods of delay or such unreasonable periods of delay attributed to Contractor's failure to provide timely notice to Owner.

ARTICLE 5

TIME

5.1 The Contractor shall be required to (a) commence work under this contract within 10 calendar days after the date the Contractor receives the notice to proceed, and (b) execute the work diligently. The work to be performed by the Contractor under this Contract shall be substantially completed 30 days prior to Final Completion which is 2 years from the Notice-to-Proceed. The time stated for completion shall include final cleanup of the premises

5.2 Substantial Completion; Substantial completion of the Work, or designated portion thereof, is when the construction is sufficiently complete, in accordance with the Contract Documents, so that Owner or separate contractors can occupy and utilize the Work for the use for which it is intended with all of the installations, parts and systems required by the Work hereunder operable and in accordance with the Contract Documents and where all such Work is complete, accessible, operable and usable by Owner for its full and unimpeded intended usage. Only minor or incidental corrective work under punch list items and final cleaning (if required) beyond cleaning needed for Owner's full use may remain for Final Completion.

5.2.1 Upon Substantial Completion, the Owner shall review any list submitted to him by listing outstanding "punch list" items. Owner shall prepare his own punch list with appropriate values for each item.

5.3 The Contractor is required to submit a Construction Schedule covering commencement of construction through completion of the work on this project. The Contractor is required to submit and periodically update the Construction Schedule on a monthly basis or, if specifically requested by the Owner every two weeks. The Contractor agrees to furnish any and all information requested by the Owner for these periodic updates. Further, the Contractor agrees to perform his work in accordance with the various completion dates and milestones in the Construction Schedule.

5.4 The Contractor is expressly obligated to coordinate and schedule its work and the work of its subcontractors in cooperation with the Construction Schedule.

5.5 The Construction Schedule will indicate the dates for starting and completion of the various stages of construction (hereinafter referred to as Interim Completion Dates). The Interim Completion Dates set forth in the Construction Schedule shall not be revised without notice to the Owner. In the event an Interim Completion Date is not met by the Contractor, the Contractor will submit a written corrective action plan for approval by the Owner which plan will set forth the method by which the next Interim Completion Date will be met. Owner assumes no responsibility for the accuracy or completeness of Contractor's schedule and scheduling adjustments.

5.6 Within seven (7) days after the date of this Agreement, and every two (2) weeks thereafter, or more often, if required by the Owner, through the date of Substantial Completion of the Project, the Owner will, at the site of the Project, hold Progress Meetings which shall be attended by the Contractor's Superintendent at which the progress of the Work will be reviewed and discussed. The Owner shall preside over these meetings and shall prepare written minutes of the meetings for the Owner and Contractor. In the event it appears at any such meeting that the Contractor will not meet any Interim Completion Date set forth in the Construction Schedule, the Contractor expressly agrees that it will use its best efforts, including the employment of additional personnel, to see that the Interim Completion Date is met at no additional cost to Owner.

5.7 The Contractor will cooperate with the Owner and other contractors whose work might interfere with the Contractor's work and will participate in the preparation of coordinated drawings in areas of congestion, specifically noting and advising the Owner of any such interference. Further, the Contractor will cooperate with the Owner in scheduling his work so as to not conflict or interfere with the work of others. Additionally, the Contractor shall take all necessary precautions

to properly protect the finished work of other trades, the Owner's property, including all protected trees, wildlife, and natural habitat and property of other contractors or park visitors.

5.8 No extension of time of the work to be performed under this Contract will be recognized without the written confirmation and approval of the Owner, according to the following procedures:

5.8.1 The Contract time shall be adjusted only for Changes in the Work, Suspension of Work, and excusable delays. In the event the Contractor requests an extension of the Contract Time, he shall furnish such justification and supporting evidence as the Owner may deem necessary for the determination as to whether the Contractor is entitled to an extension of the time under the provisions of the Contract. The Owner, after receipt of such justification and supporting evidence, shall make his findings of fact and decision thereon and shall advise the Contractor in writing thereof. If the Owner finds that the Contractor is entitled to any extension of the Contract Time, the Owner's determination as to the total number of days of extension shall be based upon the currently approved Project Schedule and on the data relevant to the extension as described in the Contract Documents. Such data will be included in the next periodic updating of the Schedule. The Contractor acknowledges and agrees that actual delays (due to changes, suspension of Work or excusable delays) in activities which, according to the schedule, do not affect the Contract Time will not be the basis for a change therein.

5.8.2 Subject to other provisions of the Contract Documents, the Contractor may be entitled to an extension of the Contract Time (but not increase in the Contract Price) for delays arising from unforeseeable causes beyond the control and without the fault or negligence of the Contractor or its Subcontractors as follows:

1. Labor strikes including strikes affecting transportation that do, in fact, directly and critically affect the progress of the Work; however, an extension of Contract Time on account of an individual labor strike shall not exceed the number calendar days of said strike;
2. Acts of God, tornado, fire, hurricane, blizzard, earthquake, typhoon, or flood that damage completed Work or stored materials;
3. Action of the public enemy, acts of the state, federal, or local government in its sovereign capacity, and acts of another separate contractor or subcontractor in the performance of a Contract with Owner relating to the Project.
4. Weather days as outlined below.

5.8.3 Weather Day: For weather delays, the Contractor shall be entitled to a one day extension of time for each day in any given month that the actual rain days measured at the Charleston International Airport exceed the NOAA average monthly rainfall for the month in Charleston, South Carolina. In order to qualify as a weather day and/or rain day, there must be at least one-hundredth of an inch precipitation on the date in question. The average number of days in each month receiving one-hundredth of an inch or more of rain in Charleston, South Carolina, according to NOAA are as follows:

<u>Month</u>	<u>Days</u>	<u>Month</u>	<u>Days</u>
January	10	July	14
February	7	August	17
March	6	September	11
April	6	October	8
May	9	November	6
June	14	December	10

The rain gauge at the Charleston International Airport shall be used as the determinate for daily rain measurement. The Contractor shall submit any request for rain days by the tenth day of the following month. Rain and weather delay extensions of time are non-compensable delays and the Contractor shall be entitled to no additional compensation as consequence of rain and weather related extensions hereunder.

5.8.4 Contractor shall notify Owner in writing within seven (7) days of the first instance of any delay, disruption, interference or hindrance for which Contractor contends it is entitled to an adjustment in Contract time. The failure of the Contractor to notify the Owner within time limits prescribed herein shall be deemed a material prejudice to the interests of Owner and shall constitute an absolute waiver of the claim and the right to file thereafter prosecute the same.

5.9 Failure to complete the work on time; It is mutually agreed by and between the Parties hereto that time shall be an essential part of this Contract and that in case of the failure on the part of the Contractor to complete this Contract within the time specified and agreed upon, Owner will be damaged thereby; and the amount of said damages inclusive of expenses for inspection, superintendence and necessary traveling expenses being difficult, if not impossible, of definite ascertainment and proof, it is hereby agreed that the amount of such damages shall be the appropriate sum set forth in the Schedule of Liquidated Damages as liquidated damages for every calendar day's delay in finishing the Work in excess of the number of calendar days prescribed; and the Contractor hereby agrees that said sum shall be deducted from moneys due the Contractor under the Contract or, if no money is due the Contractor, the Contractor hereby agrees to pay Owner as liquidated damages, and not by any way of penalty, such total sum as shall be due for such delay, computed aforesaid.

5.10 If the Contractor shall neglect, fail, or refuse to complete the work within the time specified herein, or any proper extension thereof granted, then the Contractor does hereby agree, as part of the consideration for the awarding of this Contract, to pay to the Owner:

(a) the sum of One Thousand Dollars (\$1000.00) per day, not as a penalty, but as liquidated damages to the Owner for each and every calendar day that the Contractor's performance extends beyond the time for Substantial Completion in the Contract for substantially completing the work, as extended by any proper change order.

ARTICLE 6
PAYMENT SCHEDULE

6.1 The Owner shall pay the Contractor monthly progress payments within 30 days of receipt of approved AIA Document/ Application and Certification of Payment according to the Contractor's schedule of values, less 10% retainage to be held until final payment.

6.2 The Contractor shall, before submission of the first Application for Payment, submit to the Owner a schedule of values of the various parts of the work aggregating the total sum of this Contract, made out in such detail as the Contractor and Owner may agree upon, or as required by the Owner and, if required, supported by such evidence as to its correctness as the Owner may direct. This schedule, when approved by the Owner, shall be used as a basis for Applications for Payment, unless it is found to be in error. In applying for payment, the Contractor shall submit a statement based upon this schedule.

6.3 Final payment shall be made within thirty (30) days after the last of the following:

- (a) completion of the punch list;
- (b) acceptance and occupancy of the project;
- (c) submission of final Subcontractor/supplier lien releases;
- (d) submission and approval of final invoice;
- (e) submission of all product warranties and operating manuals;
- (f) successful Final Completion inspection by the Owner as provided in Article 6.5.

Before the issuance of any monthly progress payments and/or final payment, the Contractor, if required by the Owner, shall submit evidence, including, but not limited to, waivers of lien, satisfactory to the Owner that all payrolls, material bills, and all known indebtedness connected with the Contractor's work have been satisfied. Contractor shall promptly pay all suppliers and sub-contractor and shall indemnify and hold harmless Owner from any and all sources of claims arising from Contractor's failure to promptly pay its suppliers and Contractors. Additionally and to the fullest extent allowed by South Carolina Law, Contractor shall indemnify and hold harmless Owner from any and all manner of claims (including reasonable attorney's fees) allegedly covered in whole or in part or arising from in whole or impart the Contractor's negligence, failure, errors, omissions, tortuous conduct, breach of standards or customs or codes or any duties arising under this agreement.

Contractor shall provide list of all sub-contractors.

6.4 Final Inspection: The Owner will make only two (2) such inspections to determine Final Completion. If these inspections determine that the Work is not finally complete, successive inspections requested by the Contractor shall be charged to the Contractor at the normal billing rate of the Owner or at \$800.00 per person, per day, whichever is less.

6.5 Following the Owner's issuance of the Certificate of Substantial Completion of the Work or designated portion thereof, and the Contractor's Final Completion of Work, the Contractor shall forward to the Owner that a written notice that the Work is ready for final inspection and acceptance, and shall also forward to the Owner a final Application for Payment.

6.6 Should there prove to be outstanding obligations or liens to Sub-Contractors or Suppliers prior to Final Payment the Contractor shall defend and indemnify Owner from all claims and costs Owner may incur in satisfying, discharging or defending against any such claim, obligation or lien or any action brought or judgment recovered thereon and all costs and expenses, including reasonable attorney's fees and other costs of such defense, incurred in connection therewith. Contractor authorizes Owner to interplead such Final Payments at Contractor's expense without recourse to Owner.

ARTICLE 7 PERFORMANCE AND PAYMENT BONDS

7.1 The Owner requires performance and payment bonds from the Contractor in the amount of the Contract; the cost of the bonds to be paid by the Contractor.

7.2 Owner reserves the right to approve the surety company writing the bonds.

7.3 No payment will be due or made under this Contract until the required bonds are received and approved by the Owner. If the Contractor cannot furnish the required bonds in a form and amount acceptable to the Owner, the Contractor agrees that the Owner may anytime, at its option, declare this Contract null and void.

7.4 No change, alteration, modification or addition in the terms, covenants or conditions of this Contract shall in any way exonerate in whole or in part, any surety on any bond furnished by or on behalf of the Owner.

7.5 The above referenced 100% performance and payment bonds in form and with surety acceptable to Owner are a condition precedent to this Contract.

ARTICLE 8 INDEMNITY

8.1 If in the execution or performance of this Contract, the Contractor shall have failed to perform the work in accordance with the terms, conditions, provisions, or covenants of this Contract or shall have violated any laws, rules, orders, regulations or ordinances applicable to the work hereunder, then the Contractor shall indemnify and save the Owner harmless from all damages, penalties or expenses (including attorneys' fees) paid by the Owner or imposed upon the Owner as a result of any such failures or violations committed by the Contractor in the execution of performance of the work hereunder.

8.2 The Contractor agrees to indemnify the Owner against, and hold the Owner harmless from, any and all claims, demands, liabilities, losses, expenses, suits and actions (including attorneys' fees) for or on account of any injury to any person or any death at any time resulting from such injury, or any damage to any property, which may arise (or which may be alleged to have arisen) out of or in connection with the work covered by this to the extent Contractor is responsible. The Contractor specifically agrees to defend any and all suits, which may be brought against the Owner on account of any such injury, death or damage. The obligation of the Contractor's indemnifying and holding the Owner harmless shall be enforceable only if the injury, death or damage complaint was attributable solely to the fault or negligence of the Contractor or their officers, agents, or employees

and not in any manner or in any part attributable to the Owner. The Contractor agrees to reimburse the Owner for all sums which the Owner may pay or be compelled to pay in settlement of any claim hereunder, including any claims under the provisions of any Workmen's Compensation law or any plan for employee's benefits which the Owner may adopt. The Owner may withhold from any payment otherwise due pursuant to this Contract such amount or amounts which may be reasonably necessary to protect it against liability for any personal injury, death or property damage resulting from the performance of work hereunder.

ARTICLE 9 **INSURANCE**

9.1 Unless otherwise provided herein, the Contractor shall have direct liability for the acts of his employees and agents.

9.2 Prior to the commencement of any work hereunder by the Contractor, the Contractor shall procure at his expense and maintain for the duration of this Contract such insurance as will protect both the Owner and the Contractor from any and all claims for personal injury, death, property damage, workmen's compensation or other claims arising from performance of the Contract for which insurance protection is available. The Contractor shall carry on the work at his own risk. In case of any loss or damage occurring at the project site by fire, windstorm, or any other cause, to any equipment, tools, construction supplies, temporary structures, un-erected material, or partially or wholly completed construction prior to final acceptance of the project by the Owner, the Contractor shall, at his own expense, repair or replace the same.

9.3 See solicitation Insurance, for full insurance requirements.

9.4 A certificate from the Contractor's insurance carrier, stating the amount and nature of the Contractor's insurance coverage shall be delivered to the Owner prior to the Contractor commencing work on the project.

ARTICLE 10 **TERMINATION**

10.1 Default. In the event the Contractor, or his agents, fails to properly man this project with sufficient skilled crews, or fails to supply qualified and specified materials, or fails in any way to diligently and expeditiously perform the work as directed by the Owner or as required by an agreed upon progress schedule, or fails to keep the progress of its work, or fails to pay its subcontractors, labor and/or material suppliers, or fails to comply with any applicable ordinance, law or regulation applicable to the project, or files a petition for voluntary bankruptcy or has a petition for bankruptcy filed against it, or fails to abide by or perform any and all terms, covenants, or conditions contained in this Contract, or should any work stoppage take place by this Contractor, his agents or his workmen, due to any strike, picket, walkout or boycott at any location at which the Owner does business, the Owner may, at its option, notify the Contractor, by certified mail, of the Contractor's default and require Contractor to cure said default within seven (7) days. If the Owner determines that the Contractor has not cured the default within said seven (7) days, then the Owner may, at its option, without releasing or waiving its rights and remedies against the Contractor or the Contractor's surety and without prejudice to any other right it may be entitled to hereunder or by

law, and after giving the Contractor seven (7) days additional written notice, terminate this Contract and take possession of all materials, tools, appliances and equipment, supplies own by Owner and finish the Contractor's work by whatever means, methods, or agency the Owner may, in his sole discretion, select.

10.2 In the event that the Contractor is defaulted, then the Contractor shall not be entitled to any further payments under this Agreement until Contractor's work has been completed and accepted by Owner, and all moneys expended and all of the costs, losses, damages and extra expense, including all management, administrative and other overhead and other direct and indirect expenses (including attorneys' fees) incurred by the Owner incident to such completion of the Contractor's work shall be deducted from the contract sum herein stated, and if such expenditures together with said costs, losses, damages and extra expenses exceed the unpaid balance of the Contract sun, the Contractor agrees to pay promptly to the Owner, on demand, the full amount of such excess, including costs of collection, attorneys' fees, and interest thereon at the maximum legal rate of interest per annum until paid.

10.3 Convenience. Additionally, Owner shall have the right to terminate this Contract, by written notice, without Contractor being at fault, for any cause or for its convenience (including without limitation on public funds), and require Contractor to immediately stop work. In such event, Owner shall pay Contractor for the work actually performed in an amount proportionate to this Contract sum. Owner shall not be liable to Contractor for any other costs, nor for prospective, lost or anticipated profits on work not performed. Any default termination subsequently determined to have been erroneous shall be treated as a termination for convenience.

10.4 Assignment: Effective as of any termination of the Contract, Owner may accept assignment of the Contractor's interest in those Subcontracts and Purchase Orders entered into by The Contractor prior to termination which Owner specifically requests by written notice. All Subcontracts and Purchase Orders shall provide that they are freely assignable by Contractor the Owner and its assigns. Owner shall be at liberty to negotiate with and engage any Subcontractors, Suppliers, or others that contractor dealt with prior to termination. All materials and equipment paid for as a consequence of termination shall become Owner's property.

ARTICLE 11 DISPUTES

11.1 All disputes arising out of this Contract or the breach thereof shall be decided in accordance with CCPRC Procurement Policy, which is incorporated herein by reference. After the exhaustion of the remedies and procedures in the CCPRC Procurement Policy, the parties agree any disputes under this agreement shall be resolved in Charleston County, South Carolina, in a court of competent jurisdiction (non-jury). The contractor by entering into this contract, expressly waives any right to a jury trial.

11.2 Contractor shall carry on the Work and adhere to the Progress Schedule during and notwithstanding all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Contractor and Owner may otherwise agree in writing.

ARTICLE 12
MISCELLANEOUS PROVISIONS

12.1 GOVERNING LAW

12.1.1 This Agreement shall be governed by the laws of the State of South Carolina.

12.2 CONTRACTOR'S GENERAL DUTIES AND STATUS

12.2.1 The Contractor accepts the relationship of trust and confidence established between him and the Owner by this Agreement. He covenants with the Owner to furnish his best skill and judgment and to cooperate with the Owner in furthering the interests of the Owner. He agrees to furnish efficient business administration and superintendence and to furnish at all times an adequate supply of workmen and materials, and to perform the work in the best way and in the most expeditious manner consistent with the interest of the Owner.

12.2.2 Contractor shall fully comply with Owner's SBE Policies and requirements hereto and incorporated by reference.

12.3 SUPERVISION

12.3.1 The Contractor shall supervise and direct the work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the Contract.

12.3.2 The Contractor shall be responsible to the Owner for the acts and omissions of his employees, subcontractors and their agents and employees, and other persons performing any of the work under a contract with the Contractor.

12.3.3 The Contractor shall at all times enforce strict discipline and good order among his employees and subcontractors and shall not employ on the work any unfit person or anyone not skilled in the task assigned to him. The Contractor agrees that he will remove from the project site any employee of the Contractor or subcontractor whom the Owner deems to be incompetent, careless, insubordinate or otherwise objectionable. Contractor shall provide Owner with a list of all subcontractors and key personnel (project managers and superintendents) prior to performing work.

12.3.4 Any damage prior to final acceptance and payment for the Project shall be immediately corrected by Contractor at its expense. Inspection or supervision by Owner shall not relieve Contractor of its obligations under this Agreement. Contractor shall promptly perform any and all punch list work submitted to it by Owner.

12.3.5 Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate through the Owner's designated project manager. Communications by and with the Owner's consultants shall be through the Owner. Communications by and with

Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors outside of the Scope of Work shall be through the Owner.

12.4 CONTRACTOR'S WARRANTIES

12.4.1 In addition to all implied warranties under South Carolina law, the Contractor represents and warrants:

.1 That all materials and equipment furnished under this Agreement will be new unless otherwise specified, and that all work will be of a good and workmanlike quality, free from faults and defects and in conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

.2 That he is financially solvent, able to pay his debts as they mature, and possessed of sufficient working capital to complete this Agreement; that he is able to furnish the plant, tools, material, supplies, equipment and labor, and is experienced in and competent to perform the work contemplated by this Agreement, and that he is qualified to do business in the State of South Carolina.

.3 That he holds a license, permit or other special license to perform the services included in this Agreement, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license.

12.5 CONTRACTOR'S GUARANTEE OF WORK

12.5.1 Contractor agrees to promptly make good, without cost to Owner, any and all defects due to faulty workmanship and/or materials which may appear within the guarantee or warranty period established in the Contract Documents, and if no such period be stipulated in the Contract Documents, then such guarantee shall be for a period of one year from date of completion and acceptance of the project by Owner. This remedy is in addition to and does not supersede any and all other common law obligations or duties created by any implied warranties under South Carolina law. Contractor further agrees to execute any special guarantees as provided by the Contract Documents or required by law. Contractor shall require similar guarantees from all vendors and lower tier subcontractors.

12.5.2 Contractor shall pay for all changes to the work resulting from such defects in workmanship or materials and all expenses necessary to replace or repair the work, including that damaged or disturbed by making replacements or repairs. This guarantee is in addition to all other guarantees, warranties and rights contained in the Contract Documents.

12.6 ASSIGNMENTS AND CONTRACTS

12.6.1 The Contractor shall not assign this Contract or any amounts due or to become due thereunder without the written consent of the Owner. The Contractor shall not subcontract the whole of this Contract without the written consent of the Owner. The Contractor shall furnish to the Owner in writing:

- .1 a designation of the Work to be performed with the bidders own forces and at a minimum, the low bidder must perform at least thirty percent of the total scope of the work.
- .2 names of the manufactures, products and the suppliers of principal items or systems of materials and equipment proposed for the Work; and
- .3 names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the principal portions of the work.

12.7 SAFETY OF PERSONS AND PROPERTY

12.7.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work.

12.7.2 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- .1 all employees on the work and all other persons who may be affected thereby;
- .2 all the work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor; and
- .3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- .4 Contractor shall be responsible for: 1. Maintenance and protection of Work until final completion and acceptance, including, but not limited to, the storage of materials and equipment, erection of temporary structures and provisions for drainage as necessary to protect Work from injury, damage or loss. 2. Any injury, damage, or loss to Work resulting from the action of the elements or any other cause, irrespective of fault or negligence, excepting only such injury, damage, or loss as is caused solely by the negligence of willful misconduct of Owner. 3. Protection of its Work and materials and the Work and materials of its Subcontractors from damage or injury from the weather. Any portion of Work suffering injury, damage, or loss for which Contractor is responsible under 1, 2, or 3

above will be considered defective and shall be corrected or replaced without additional cost to Owner.

12.7.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

12.7.4 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss. The Contractor shall report, within three (3) days, to the Owner, any injury to the Contractor's employees at the site of the project.

12.7.5 The Contractor shall comply with the Williams-Steiger Occupational Safety and Health Act of 1970. The Contractor has the specific responsibility to comply with Chapter XIII of the Occupational Safety and Health Act of 1970 entitled "Safety and Health Regulations for Construction" and published in the Federal Register, Volume 36, Saturday, April 17, 1971. The Contractor shall hold Owner harmless against any and all claims that may arise because of failure on the part of the Contractor to comply with the Williams-Steiger Occupational Safety and Health Act of 1970 and the said "Safety and Health Regulations for Construction" issued pursuant thereto.

12.8 CLEANING UP

12.8.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. The Contractor is solely responsible for removing his waste materials or rubbish from the project site. At the completion of the work he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials.

12.8.2 In the event of the Contractor's failure to so remove such waste materials or rubbish, and after 24 hours' notice, the Owner shall have the right to remove same and charge the cost thereof against monthly progress payments or final payment due to or become due to the Contractor.

12.9 WAIVER

12.9.1 No consent or waiver, express or implied, by either party to this Agreement to or of any breach or default by the other in the performance of any obligations hereunder, shall be deemed or construed to be a consent or waiver to or of any other breach or default by such party hereunder. Failure on the part of any party hereto to complain of any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder. Inspection by, payment by, or tentative approval or acceptance by the Owner or the failure to the Owner to perform any inspection hereunder, shall not constitute a final acceptance of the work or any part thereof and shall not release the Contractor of any of its obligations hereunder.

12.10 LAWS, PERMITS, FEES AND NOTICES

12.10.1 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the work under this Contract. The Contractor shall secure and pay for all permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Contractor's work, the furnishing of which is required of the Owner by the Contract Documents.

12.10.2 Copies of any and all permits, licenses and certificates shall be delivered to the Owner as soon as they are obtained. Along with the request for final payment, the Contractor shall deliver the originals of such permits, licenses and certificates to the Owner.

12.10.3 The Contractor shall comply with federal, state and local tax laws, social security acts, unemployment compensation acts and workers' or workmen's compensation acts insofar as applicable to the performance of this Contract.

12.11 NON-DISCRIMINATION

12.11.1 The Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color or national origin.

12.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

12.12.1 Prior to the submission of the Contractor's First Application for Payment, or within thirty (30) days after execution date of Contract, whichever is sooner, the Contractor shall submit to the Owner all required shop drawings and samples.

12.12.2 The approval by the Owner, his representative, or any shop drawings, product data or other submittals by the Contractor shall not relieve Contractor of liability for any deviations from any contract requirements unless specifically called to the Owner's attention, in writing, and so acknowledged by the Owner in writing.

12.13 TEMPORARY SITE FACILITIES AND STORED MATERIALS

12.13.1 Temporary site facilities shall be coordinated with the Owner's project manager. Any storage facilities placed on site will be placed with the approval of the Owner's project superintendent or project manager.

12.14 TERMS

12.14.1 Terms used in this Agreement which are defined in the Contract Documents shall have the meanings designated in those Contract Documents.

12.15 RECORD DRAWINGS

12.15.1 Record Drawings: In addition to the prints specified elsewhere to be furnished by the Owner, the Owner shall furnish the Contractor one complete set of white prints and general drawings. Contractor and/or its subcontractor under his direction shall record on the set each and every change that is made from the general drawings at the time it is made. This includes any changes that are made in partitions, doors, or otherwise an arrangement of construction of the building as well as a complete set and record of the exact manner in which electrical, mechanical, piping, etc. is installed. Dimensions shall be included where necessary to locate the piping and other items that will be concealed in the finished building and that may be later necessary to service. Contractor shall also provide a final as-built survey showing all underground utilities within the project limits. Upon completion of construction, Contractor and/or subcontractor shall turn over to the Owner the record set showing the buildings and all service thereto exactly as built and installed.

12.16 TESTS AND INSPECTION

12.16.1 Where Contract Documents require the Work be inspected, tested, or approved, and when Contractor determines that the Work is Substantially Complete, he shall give timely notice, including written notice where required. However, should work requiring testing, inspection or approval not be in readiness, Contractor shall pay salaries, professional fees, travel and living expenses, as applicable, for persons inconvenienced by false notice.

ARTICLE 13 MODIFICATIONS

13.1 Any modifications or changes to any contract entered into as a result of this contract must be by written change order with the same formality and of equal dignity prior to the initiation of any such change as outlined in Article 1 and 2.

ARTICLE 14 PROMPT PAYMENT- SUBCONTRACTOR

14.1. Subject to the provisions on retainage provided in Paragraph (2) below, when a subcontractor has satisfactorily performed a work item of the subcontract, the Contractor must pay the subcontractor for the Work item within seven (7) Calendar Days of the Contractor's receipt of payment from Owner. A subcontractor shall be considered to have "satisfactorily performed a work item of the subcontract" when Owner pays the Contractor for that Work item.

14.1.2 The Contractor may withhold as retainage up to five (5%) percent of a subcontractor's payment until satisfactory completion of all work items of the subcontract. "Satisfactorily completion of all work items of the subcontract" shall mean when Owner pays the Contractor for the last work item of the subcontract. The Contractor must release to the subcontractor any retainage withheld within seven (7) Calendar Days from the date the Contractor receives payment from Owner for the last work item of the subcontract.

