

**AGREEMENT
FOR THE DESIGN & CONSTRUCTION
of**

Carolina Crossroads
Phase 2 – Broad River Rd. At I-20 Interchange

Richland County, South Carolina

A DESIGN-BUILD PROJECT

**BETWEEN
SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
AND
ARCHER-UNITED JV**

____ day of OCT 04 2021, 2021

Project ID P039719

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WHEREAS, the South Carolina Department of Transportation, as an agency of the State of South Carolina, wishes to improve the safety and operation of the state highway system by reconstructing the US 176 (Broad River Road) at I-20 interchange in Richland County (Carolina Crossroads Phase 2) (hereinafter referred to as “the Project”); and

WHEREAS, the South Carolina Department of Transportation, as a servant of the people of the State of South Carolina, wishes to see this strategic Project completed; and

WHEREAS, limitations imposed by traditional methods of designing, and constructing highways would mean that the Project could be completed only after an unacceptable delay; and

WHEREAS, the South Carolina Department of Transportation, working with the Federal Highway Administration (FHWA), has devised an innovative plan to allow the commencement and completion of the Project in a timely and cost-effective manner; and

WHEREAS, pursuant to Section 57-5-1625 SC Code of Law, the South Carolina Department of Transportation desires to award a highway construction contract using a Design / Build procedure; and

WHEREAS, after a competitive process, Archer-United JV has been selected to participate in this venture by designing and building the Project; and

WHEREAS, the South Carolina Department of Transportation wishes to avail itself of and rely on CONTRACTOR’s expertise and proven track record in designing and constructing such projects, on time and within budget; and

WHEREAS, CONTRACTOR wishes to provide that expertise and to participate in this venture for the good of the people of the State of South Carolina;

NOW THEREFORE, this agreement (Agreement or Contract) is executed and made, effective as of the Effective Date as defined herein, between the SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION (“SCDOT”) and Archer-United JV (“CONTRACTOR”). In consideration of the covenants hereinafter set forth, the parties hereto mutually agree as follows:

I. CONTRACT DOCUMENTS

The Contract shall be composed of these commercial terms, all exhibits, SCDOT's Request for Proposals and all attachments, Request for Qualifications and all attachments, CONTRACTOR's Proposal and all attachments, and CONTRACTOR's Statements of Qualifications and all attachments. In case of conflict, the order of precedence of the Contract Documents shall be: (1) these commercial terms; (2) the Exhibits; (3) SCDOT Request for Proposals (RFP) document and Attachment B; (4) CONTRACTOR's Proposal and attachments, clarifications, and communications; and (5) SCDOT Request for Qualifications (RFQ) and CONTRACTOR's Statement of Qualifications (SOQ), as modified by post-shortlisting SCDOT approvals (e.g. modified Key Individuals) with such SCDOT approvals included. In the event of a conflict between the Project Design Criteria and Special Provisions identified in the Agreement Exhibits, the order of precedence shall be (1) the Project Design Criteria and (2) Special Provisions. The Project Information Package is provided for information only and is not a Contract Document. SCDOT makes no representations or warranties regarding the accuracy of the information contained therein.

Notwithstanding the foregoing, if a Contract Exhibit contains different provisions on the same subject matter than another Contract Exhibit, then the provisions that establish the higher quality, manner or method of performing the subject work or use more stringent standards, as determined by SCDOT, will prevail. In the event of a conflict among any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the Project established by reference to a described manual or publication within any Contract Exhibit (or among Exhibits), then the standard, criterion, requirement, condition, procedure, specification or other provision offering higher quality or better performance as determined by SCDOT will apply.

If CONTRACTOR becomes aware of any such conflict, CONTRACTOR shall promptly notify SCDOT of the conflict, who shall issue a written determination regarding which of the conflicting items is to apply promptly after CONTRACTOR's notification

II. PROJECT SCOPE

A. Scope of Work

CONTRACTOR shall provide all services, labor, materials, equipment, supplies, tools, transportation, and required efforts to perform all design, preliminary engineering, surveying, geotechnical services, scheduling, permitting, right of way services, procurement, construction, utility coordination, demolition, material disposal and any other services necessary or appropriate to design and construct the Project as defined in the Project Scope of Work made a part hereof as EXHIBIT 3, and Project Design Criteria made a part hereof as EXHIBIT 4-8 and Attachment B; provided, however, that nothing in Exhibit 3 or Exhibit 4 shall be construed to limit CONTRACTOR's general obligation to deliver the Project for the Contract Price within the Contract Time in accordance with,

subject to the constraints (e.g. Rights of Way constraints) and other conditions within this Contract, applicable laws, and applicable governmental approvals and permits.

B. Design and Construction Responsibilities

1. **CONTRACTOR**, consistent with applicable South Carolina licensing laws and other laws, shall provide all work contemplated in this Agreement by or under the supervision of the Key Individuals and such other qualified South Carolina licensed design professionals and/or design consultants who hold all necessary and valid licenses, registrations, certification, permits, approvals, and qualifications to perform the design work and quality control, including, but not limited to, surveys, roadway design, maintenance of traffic, geotechnical exploration and design, hydraulic analyses, storm water management, erosion control, superstructure design, and foundation and substructure design including seismic analyses for the preparation of the required drawings, specifications and other design submittals to permit **CONTRACTOR** to complete the work in accordance with the Contract. **CONTRACTOR** shall not shift design work from one firm to another without the prior written approval of SCDOT, given in its reasonable discretion.
2. **CONTRACTOR** may rely on traffic, geotechnical and survey information provided in Attachment B – Supplemental Design Criteria. The **CONTRACTOR** shall incorporate the information into the final Project Documents. **CONTRACTOR** shall supplement the geotechnical and survey information provided as required for its design.
3. **CONTRACTOR** shall provide through itself or subcontractors the necessary supervision, labor, inspection, testing, material, equipment, machinery, temporary utilities and other temporary facilities to permit performance of all of the work required to deliver the Project including but not limited to demolition, earthwork, drainage, foundation work, maintenance of traffic, roadway work, structural work, excavation, erosion and sediment control work, field layout work, construction management, and inspection, utility coordination and relocation, railroad coordination, **CONTRACTOR** quality control (QC) and acceptance testing, maintenance, and all other work necessary to complete design and construction of the Project in accordance with the Contract. **CONTRACTOR** shall perform all design and construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract. **CONTRACTOR** at all times shall exercise control over the means, methods, sequences and techniques of construction. **CONTRACTOR**'s operations and construction methods shall comply with all applicable federal, state and local regulations with regard to worker safety, protection of health and protection of the environment and applicable permit requirements.
4. **CONTRACTOR** shall design and construct the Project within the constraints set out in the approved environmental document. Except only with respect to those governmental approvals or permits that SCDOT expressly agrees to obtain herein under and then only with respect to the obligations to obtain such governmental approvals or permits. **CONTRACTOR** shall obtain, maintain, pay costs of same, and abide by the provisions of all applicable governmental approvals, including

applicable environmental permits, any conditions of individual right of way agreements, and all environmental commitments set forth in Exhibit 8. The CONTRACTOR shall sign the Contractor Certification Form and these terms will be made part of the Contract.

5. It shall be the responsibility of CONTRACTOR to comply with all applicable federal, state, and local laws in connection with the services set forth in this Contract. This obligation shall include, but not be limited to, procurement of all permits and licenses not obtained by SCDOT provided, however, that with respect to any permit or licenses that must be obtained in the name of SCDOT, CONTRACTOR shall perform all functions within its power to obtain the permit, including mitigation, and SCDOT will fully cooperate in this effort and perform any functions that must be performed by SCDOT. CONTRACTOR shall be responsible for payment of all charges, fees, and taxes, and for providing all notices necessary and incident to the performance of the Project as of the Effective Date of this Agreement. The Contract Price shall include all charges, fees and taxes related to the above obligations and if any charges, fees or taxes are waived by the regulatory or governmental entity, then the amount waived shall be deducted from the Contract Price.
6. CONTRACTOR shall remain in good standing with the State and promptly notify SCDOT in writing if it is determined to be disqualified, suspended, debarred, or otherwise excluded from bidding, proposing, or contracting with any federal or state department of agency.

C. Design Criteria

It shall be the responsibility of CONTRACTOR to design all aspects of the Project in accordance with the Contract Documents. For the Project, CONTRACTOR shall provide a completed set of construction plans signed and sealed by a licensed professional engineer in South Carolina. CONTRACTOR shall be fully responsible for the accuracy of the design and compliance with specifications, standards and Project Criteria.

The standard of care for all design professional services performed by the designer of record and its sub-consultants pursuant to this Agreement shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. Further, notwithstanding anything contained herein, the indemnity related to design services shall be limited to the extent of any negligence (acts, errors, or omissions) of the design of the Project or otherwise negligently failing to adhere to the standard of care as defined herein.

D. Design Review

1. Prior to the Preconstruction Meeting, CONTRACTOR shall provide a Design Review Submittal Schedule to SCDOT. The Design Review Submittal Schedule shall include a Gantt chart of the submittal packages and will serve as the basis for reviewing the design and construction plans. The Design Review Submittal Schedule shall be updated and included with each submittal package. CONTRACTOR,

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CONTRACTOR'S design consultant, subcontractors, suppliers and SCDOT shall discuss the schedule and procedures for submitting design plans at the Preconstruction Meeting. CONTRACTOR, CONTRACTOR's design consultant, subcontractors and suppliers shall not provide any design deliverables until the Design Review Submittal Schedule is approved by SCDOT.

2. A Design Quality Management Plan shall be submitted for review and approval concurrent with the Design Review Submittal Schedule and prior to any Design Submittals. The plan shall clearly detail the processes and steps utilized by the designer and CONTRACTOR to consistently produce quality designs and plans. The Design Quality Management Plan shall be the first submittal listed in the Design Review Submittal Schedule. CONTRACTOR shall not provide any design deliverables until the Design Quality Management Plan is approved by SCDOT.
3. All submittal packages shall be uploaded electronically utilizing ProjectWise Deliverables Management and an email shall be sent to SCDOT that verifies the contents of the upload. A complete submittal package shall be limited to one phase (ex. Preliminary/ROW/Final/Release For Construction (RFC)) of one roadway segment or structure and include all design deliverables specified in Exhibit 4z.
4. Prior to beginning any construction activities, permanent or temporary, the Traffic Management Plan and Conceptual Work Zone Traffic Control plans for the entire Project shall be submitted by the CONTRACTOR and approved by SCDOT.
5. If approved by SCDOT, one Maintenance of Traffic submittal package, including but not limited to, an NPDES permit application and related plans, may be allowed to provide the opportunity to begin construction of non-permanent work items, such as clearing and grubbing, shoulder strengthening, minor demolition not adversely impacting traffic or operations.
6. CONTRACTOR shall provide submittal packages as defined in Exhibit 4z. Prior to commencement of permanent construction activities on any defined segment or structure, SCDOT will have the right, but not the obligation, to review and comment upon all submittal packages pertaining to said segment or structure. SCDOT reserves the right to provide comments on the design or plans at any time when an issue is identified that is not compliant with the Project Design Criteria, the RFP or is an error or omission.
7. All documents of a submittal package must be uploaded utilizing ProjectWise Deliverables Management by 11:59PM for the review period to begin the next business day. No more than one new submittal package shall be uploaded utilizing ProjectWise Deliverables Management within a five business day period. SCDOT reserves the right to utilize Bluebeam Studio to facilitate design reviews between SCDOT and the CONTRACTOR. The initial review period for each submittal package shall be 15 business days following the date SCDOT receives an accurate and complete submittal in conformity with the Contract. SCDOT review comments will be sent to the CONTRACTOR, who shall respond within five business days and prior to subsequent phase submittals. SCDOT will then status CONTRACTOR'S responses and will provide additional comments, if any, within five business days. If any open

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comments remain after the initial 15 day review and subsequent five day review and comment periods, there will be no time constraint for the CONTRACTOR to respond. For all subsequent rounds of CONTRACTOR responses, SCDOT will status CONTRACTOR'S responses and will provide additional comments, if any, within five business days. Review comments for Preliminary, ROW, and Final phases of each segment or structure shall be closed before the associated RFC plans are authorized to be submitted and prior to commencement of construction, demolition or disposal activities.

8. CONTRACTOR shall revise design deliverables and upload utilizing ProjectWise Deliverables Management (PWDM) for verification to allow SCDOT to close review comments. Verification design deliverables are not required for preliminary phase submittal packages. Verification design deliverables are required to close SCDOT comments in order to approve ROW and authorize RFC phase submittal packages. CONTRACTOR shall clearly identify and describe any changes made to a verification design deliverable that are unrelated to SCDOT review comments. A complete verification package shall include revised contents for all design deliverables with open SCDOT review comments and be submitted along with CONTRACTOR responses. After comments are closed and before RFC submittal packages are uploaded utilizing ProjectWise Deliverables Management, any changes made to design deliverables may, at the sole discretion of SCDOT, require a new submittal package be provided and require adjustment to the CONTRACTOR's Design Review Submittal Schedule.
9. SCDOT's participation in the review and comment process is fully discretionary to SCDOT; however, no review or comment nor any failure to review or comment by SCDOT shall operate to absolve CONTRACTOR of its responsibility to design and build the Project in accordance with the Contract Documents.
10. SCDOT reserves the right to reject any submittal package that does not conform to the requirements of the Agreement or that is incomplete. SCDOT will provide a written notice that includes the basis for SCDOT rejection for any submittal package that does not conform to the requirements of the Contract Documents or is incomplete. Rejected submittal packages must be completed or revised to comply with the requirements of the Contract Documents. Revised submittal packages will be considered a new submittal package and reviewed as described above. CONTRACTOR may not assert that SCDOT's rejection of any nonconforming or incomplete submittal packages entitle it to any relief hereunder.
11. Bentley ProjectWise Explorer and Bentley CONNECT Services will be used as the Electronic Document Management System (EDMS) for the Project. Unless otherwise stated in this Agreement, the CONTRACTOR, including the lead designer, and Independent Quality Firm (IQF) personnel, will interact with the EDMS via the Bentley CONNECT Services web portal. CONTRACTOR shall obtain and bear the cost of its own licensing with Bentley. Upon execution of the Contract, CONTRACTOR shall provide documentation of Bentley licensing to SCDOT. Upon receipt of licensing documentation, SCDOT, or its designee, will grant CONTRACTOR access to the SCDOT Carolina Crossroads ProjectWise

environment. CONTRACTOR is responsible for ensuring that any subcontractors and subconsultants of any tier having access to SCDOT data are required to employ good cyber threat preventative measures. CONTRACTOR shall use the National Institute of Standards and Technology's Risk Management Framework as its cybersecurity framework or other comparable frameworks and standards for cyber security protection. CONTRACTOR shall provide SCDOT, upon request, third party certifications to verifying implementation of an industry recognized cyber security framework during the Project. Other comparable cyber security frameworks include: NIST RMF; NIST CSF; ISO IES 27001/ISO 27002; SOC 2; IASME Governance; CIS Controls version 7; COBIT 5; FedRAMP; HIPAA; GDPR; FISMA; NERC CIP; HITRUST CSF.

E. Maintenance of Traffic

The SCDOT work zone mobility requirements found within the Rule on Work Zone Safety and Mobility: The Policy for South Carolina Department of Transportation and Rule on Work Zone Safety and Mobility: Implementation, Maintenance, and Safety Guidelines (Policy) shall apply to this Project. These requirements apply to the CONTRACTOR, all subcontractors, and designated representatives acting on behalf of the CONTRACTOR performing duties with responsibilities relative to a work zone, including but not limited to planning, project development, design, construction, and maintenance.

The CONTRACTOR shall design, develop, implement and maintain a set of coordinated strategies to manage the work zone impacts of the Project designated as the Transportation Management Plan. These strategies will include a Temporary Traffic Control plan, a Transportation Operations component, and a Public Information component. The Policy and the anticipated work zone impacts of the Project shall determine the level of detail, content, and scope of the TMP. The primary component, the Temporary Traffic Control plan shall address traffic control and safety throughout and adjacent to the Project site. A secondary component, the Transportation Operations plan, will address management of traffic operations in the Project site and all adjacent areas impacted by the Project. The final component, the Public Information plan, addresses communications with the public and entities impacted by the Project. The CONTRACTOR's Transportation Management Plan and its components shall comply with the requirements of this Agreement and subsequent Exhibits, Part 6 of the Manual on Uniform Traffic Control Devices (MUTCD) latest edition, and SCDOT policies, standard specifications and all addendums to the standard specifications, the typical traffic control standard drawings for road construction, and procedures.

F. Ownership of Documents

1. The Project Documents are intended by the parties each to be a "work-made-for-hire" as used in 17 U.S.C. § 101, et seq., and SCDOT shall be the owner of the Project Documents and, except as expressly set forth otherwise in this clause F., all associated Intellectual Property.

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2. Upon the Effective Date of this Agreement, CONTRACTOR grants SCDOT an irrevocable, transferable, perpetual, fully paid-up, worldwide, royalty-free, nonexclusive license, with right to grant sublicenses, to reproduce the Proprietary Intellectual Property and Project Documents for the purposes of, but not limited to, promoting, using, maintaining, upgrading, or adding to the Project. The foregoing license includes license to reproduce, modify, adapt, and disclose the Proprietary Intellectual Property in connection with the Project and any interstate or state highway, whether tolled, owned, or operated by SCDOT. The foregoing right to transfer is limited to any governmental entity that succeeds to SCDOT's ownership of the Project.
3. Upon completion of the Project, SCDOT step-in, or upon early termination of this Agreement, CONTRACTOR shall provide all Project Documents to SCDOT in the format designated by SCDOT.
4. All Proprietary Intellectual Property shall remain exclusively the property of CONTRACTOR (or its subcontractors, suppliers, or vendors).
5. To the extent permitted by applicable law, SCDOT will not disclose any Proprietary Intellectual Property other than to authorized transferees and sublicensees that, to the extent permitted by applicable law, agree to be bound by the foregoing nondisclosure obligation relating thereto. Notwithstanding any provision of this Agreement to the contrary, in no event shall SCDOT or any of its directors, officers, employees, consultants or agents be liable to CONTRACTOR, any of its subcontractors, suppliers, or other vendors, or any affiliate of any of the foregoing, for any losses caused by, arising out of, relating to, or resulting from any breach of the duty of confidentiality set forth in this clause 5 and in clause 2 if such breach is not the result of gross negligence or intentional misconduct, and CONTRACTOR hereby irrevocably waives, and shall cause all such subcontractors, suppliers, and other vendors, to waive, any and all claims against SCDOT or the State of South Carolina to any such losses.
6. With respect to any Proprietary Intellectual Property owned by a person or entity other than CONTRACTOR, CONTRACTOR shall obtain from such owner, concurrently with the execution of any contract with such owner or in connection with the first use or adaptation of the Proprietary Intellectual Property for the Project, both for CONTRACTOR and SCDOT, a license on the same terms as described in clause 2 above. The foregoing requirement shall not apply, however, to mass-marketed software products (sometimes referred to as "shrink wrap software") owned by such a person or entity, where such a license cannot be extended to SCDOT using commercially reasonable efforts. The limitations imposed upon SCDOT described in clauses 2 and 5 above shall also apply to SCDOT's licenses in such Proprietary Intellectual Property.
7. Definitions. For purposes of this Article II.F., the following terms have the meanings ascribed:
 - a. Intellectual Property means all current and future legal and/or equitable rights and interests in know-how, patents (including applications), copyrights (including moral rights), trademarks (registered and unregistered), service marks, trade names,

trade secrets, trade secret rights, designs (registered and unregistered), design rights, utility models, circuit layouts, plant varieties, business and domain names, inventions, solutions embodied in technology, and other intellectual activity, and applications of or for any of the foregoing, subsisting in or relating to the Project, Project design data or Project traffic data. Intellectual Property includes traffic management algorithms, and software used in connection with the Project (including software used for management of traffic on the Project), and associated source code and source code documentation. Intellectual Property is distinguished from physical construction and equipment itself and from other Project Documents (i.e., documents that disclose Intellectual Property).

- b. Project Documents means any drawings, specifications, test data, inspection reports, QC documents, QA documents, daily diaries, other data, and any other documents (including plans, elevations, sections, details, diagrams, specifications, samples, drawings, sketches, charts, calculations, depictions, specifications, layouts, manuals, files, artwork, correspondence, and other submittals made under this Agreement), including those in electronic form, whether prepared by or on behalf of CONTRACTOR.
- c. Proprietary Intellectual Property means Intellectual Property created, used, applied or reduced to practice in connection with the Project or with CONTRACTOR's scope of the work that derives commercial value from its protection as a trade secret under applicable law or from its protection under patent law.

G. Construction Criteria

CONTRACTOR shall construct the Project in accordance with all applicable Federal, State, and local statutes and regulations. All construction shall be performed in accordance with the following criteria, which are incorporated herein by reference and made a part hereof. The construction criteria are intended to be complementary and to describe and provide for a complete work. Where the following construction criteria conflict, the order of precedence shall be as listed below:

1. Approved Alternative Technical Concepts (ATCs) in CONTRACTOR's Response to RFP, with SCDOT's approved letter (inclusive of conditions, restrictions, or other constraints on implementation, it being understood and agreed that the approved ATC without SCDOT's approval does not supersede those portions of the Contract listed below.
2. **EXHIBIT 4, 6, 7, 8, 9** – Project Design Criteria
3. **EXHIBIT 5** – Special Provisions
4. Final Construction Plans provided by SCDOT, if applicable
5. SCDOT Standard Drawings, effective as of the most recent Standard Highway Letting prior to the release of the Final RFP ([see Design Build Website - https://www.scdot.org/business/design-build.aspx](https://www.scdot.org/business/design-build.aspx))

6. SCDOT Supplemental Specifications and Supplemental Technical Specifications, effective as of the release of the Final RFP ([see Design Build Website - https://www.scdot.org/business/design-build.aspx](https://www.scdot.org/business/design-build.aspx))
7. SCDOT Standard Specifications for Highway Construction, effective as of the release of the Final RFP ([see Design Build Website - https://www.scdot.org/business/design-build.aspx](https://www.scdot.org/business/design-build.aspx))
8. Quality Assurance Program for the Carolina Crossroads Project effective as of the release of the Final RFP.
9. SCDOT Construction Manual, effective as of the release of the Final RFP
10. Qualified Products Policies (QPP) and Qualified Products List (QPL) are available on the SCDOT Internet website.

H. Project Management

1. CONTRACTOR shall be responsible for ensuring that the Project is designed and constructed in conformance with the Contract, all referenced documents and specifications, applicable governmental approvals and permits, and applicable laws and regulations.
2. CONTRACTOR shall provide Project management services sufficient to supervise the activities of its own personnel and subcontractors. CONTRACTOR shall provide a sufficient number of persons on site to provide for the design and construction management, quality control, and quality acceptance responsibilities of the Project and otherwise for delivery of the Project in accordance with the Contract, all referenced documents and specifications, applicable governmental approvals and permits, and applicable laws and regulations.
3. SCDOT and FHWA, if applicable, representatives will have full and complete access to the Project, the work in progress, the "Daily Diaries", and to other technical documents and Project Documents associated with design, construction, demolition, material disposal, materials, quality control, quality assurance, materials installation, and testing, and other Project Documents. CONTRACTOR shall provide SCDOT, and its designee to CONTRACTOR, with reasonable prior written notice of, and be afforded the opportunity to participate in any meetings that may be held concerning the Project. As used in this paragraph, "notice" shall require actual written notice to SCDOT or SCDOT's Agent.

I. Control of the Work

1. CONTRACTOR shall determine the appropriate means, methods and scheduling necessary to complete the work timely and in accordance with all construction requirements. SCDOT and FHWA, if applicable, will have the right to review and inspect the work at any time.

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2. SCDOT is not required to, nor shall be construed as obligated to, discover or to accept defective, faulty or otherwise nonconforming work. SCDOT's right to have any such work promptly corrected shall not be waived by any action of SCDOT.
3. SCDOT will have the authority to suspend the work, in accordance with Article XVII - Default, Suspension and Termination - of this Agreement.

J. Contract Deliverables

CONTRACTOR shall submit deliverables including, but not limited to, the following as set forth in the CONTRACT. All deliverables shall contain proper references to both the Contract ID number and the appropriate Project ID number for that specific location. Deliverables noted below with an asterisk shall be included in the Design Review Submittal Schedule and follow Design Review procedures as outlined in Article II, Section D of the Agreement.

1. Contract Deliverable Matrix
2. All deliverables as specified in **EXHIBIT 4z***
3. CPM Schedule, as specified in **Article IV**
4. Design Review Submittal Schedule including Gantt Chart of Submittals*
5. Schedule of Values, as specified in **EXHIBIT 2**
6. Design Quality Management Plan*
7. Construction Quality Management Plan
8. Clearing and Grubbing Plan
9. CONTRACTOR's Erosion Control Plan
10. SCDHEC Notice of Intent (NOI) for Stormwater Discharges Covered Under SC NPDES Construction General Permit SCR160000) & Storm Water Pollutant Prevention Plan and signed Contractor Certification Form (SCDHEC 0437)
11. Wetland and Stream Mitigation
12. Crane Operator Documents
13. Community and Public Relations Support Plan, as specified in **EXHIBIT 5**
14. EEO, DBE, and OJT Requirements, as specified in **Article XVIII & EXHIBIT 5**
15. Right-of-Way documents, as specified in **Article VIII and Exhibit 9**
16. Escrow Proposal Documents
17. CONTRACTOR's Materials Certification
18. Railroad Coordination Documents & Insurance Certificates per **EXHIBIT 6**
19. HAZMAT surveys for structures not already surveyed, SCDHEC Notice of Demolition for Construction Manager for Mega Projects Signature

20. Utility Coordination Reports, including Utility Agreements, and Supporting Documentation
21. Shop Plans and Working Drawings
22. As-Built Plans
23. Sustainability Action Plan
24. Environmental Compliance Plan
25. Hazardous Waste Management Plan

K. Incorporation of ATCs

1. In the event that the approved ATCs incorporated into the Contract Documents require additional third-party approvals, governmental approvals, permits, analysis, assessment, or findings prior to implementation, CONTRACTOR shall (a) be solely responsible for the cost and schedule impact of any related review, analysis, assessment, approvals, permits and findings; (b) be solely responsible for the risk that any approvals, permits or findings are not granted, issued, approved or obtained or timely granted, issued, approved or obtained; and (c) not be entitled to any increase in the Contract Price or extension of the Contract Time as a result of any delay or cost associated with any such approvals, permits, analysis, assessment, or findings related to such ATC, including the inability to obtain any approvals, permits or findings.
2. If the Contract incorporates any approved ATCs and: (a) CONTRACTOR does not comply or is unable to comply with one or more of SCDOT conditions, restrictions, or other constraints on implementation imposed in connection with approval of the ATC, (b) CONTRACTOR is unable to obtain any approval, permit, or finding required for the ATC, or (c) the ATC otherwise proves to be infeasible, then CONTRACTOR shall comply with the Contract requirements that would have been applicable but for the ATC, without any increase in the Contract Price, extension of the Contract Time or any other entitlement to a change order hereunder. In such case and depending upon the circumstances (including if CONTRACTOR fails to use all reasonable efforts to implement the ATC or obtain any such approvals, permits, or findings, SCDOT may also be entitled to (i) a reduction in the Contract Price in an amount equal to the estimated value of the ATC on the Cost Proposal, as reasonably determined by SCDOT, but which in no event shall be less than cost (plus mark-up and profit) of the ATC as reflected in the Cost Proposal, and (ii) a reduction in the Contract Time in an amount equal to the estimated schedule savings as a result of the ATC not being implemented, as reasonably determined by SCDOT.
3. ATCs submitted by unsuccessful Proposers who have accepted the stipend may, in SCDOT's sole discretion, be presented to CONTRACTOR as a Contract Change Request.

L. Subcontracts

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1. CONTRACTOR shall retain or cause to be retained only subcontractors that are qualified, experienced and capable in the performance of the portion of the work assigned. CONTRACTOR shall assure that each subcontractor has at the time of execution of the corresponding subcontract, supply agreement, or other vendor contract, and maintains at all times during performance of the assigned work, all licenses required by applicable laws. For purposes of this clause, “subcontract, supply agreement, or other vendor contract” shall be referred to as a “Subcontract.”
2. The retention of subcontractors by CONTRACTOR will not relieve CONTRACTOR of its responsibility hereunder or for the quality of the work or materials provided by it. CONTRACTOR shall supervise and be fully responsible to SCDOT for the acts, omissions, negligence, intentional misconduct, or breach of applicable law, contract, governmental approval or permit by any subcontractor, vendor, supplier, or other contractor to CONTRACTOR (a “subcontractor”, or by any member or employee of CONTRACTOR or any such subcontractor, vendor, supplier, or other contractor (each, a “Contractor-Related Entity”), as though CONTRACTOR directly employed all such individuals. No subcontract entered into by CONTRACTOR will impose any obligation or liability upon SCDOT to any such subcontractor or any of its employees. Nothing in this Agreement will create any contractual relationship between SCDOT and any subcontractor.
3. Each Subcontract shall:
 - a. Set forth a standard of professional responsibility or a standard for commercial practice equal to the requirements of this Agreement and prudent industry practices for work of similar scope and scale and shall set forth effective procedures for claims and change orders.
 - b. Require the subcontractor to carry out its scope of work in accordance with this Agreement, all applicable governmental approvals and permits, and applicable law.
 - c. Physically Include Form FHWA-1273.
 - d. Incorporate the general wage decisions applicable to the Project.
 - e. Without cost to CONTRACTOR or SCDOT, expressly permit assignment to SCDOT or its successor, assign or designee of all CONTRACTOR’s rights under the Subcontract, contingent only upon delivery of request from SCDOT following termination of this Agreement, allowing SCDOT or its successor, assign or designee to assume the benefit of CONTRACTOR’s rights with liability only for those remaining obligations of CONTRACTOR accruing after the date of assumption, such assignment to include the benefit of all subcontractor warranties, indemnities, guarantees and professional responsibility.
 - f. Expressly state that any acceptance of assignment of the Subcontract to SCDOT or its successor, assign or designee shall not operate to make the assignee responsible or liable for any breach of the Subcontract by CONTRACTOR or for any amounts

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due and owing under the Subcontract for work or services rendered prior to assumption (but without restriction on the Subcontractor's rights to suspend work or demobilize due to CONTRACTOR's breach).

- g. Expressly include a covenant to recognize and attorn to SCDOT upon receipt of notice from SCDOT that it has exercised its rights under this Agreement (including specifically step-in rights in the context of Contractor Defaults), without necessity for consent or approval from CONTRACTOR or to determine whether SCDOT validly exercised its rights, and CONTRACTOR's covenant to waive and release any claim or cause of action against the subcontractor arising out of or relating to its recognition and attornment in reliance on any such notice.
- h. Not be assignable by the subcontractor to any person or entity other than SCDOT (or its assignee) without CONTRACTOR's prior consent.
- i. Not be assignable by the CONTRACTOR to any person other than SCDOT (or its assignee) without SCDOT's prior consent.
- j. Expressly include requirements that the Subcontractor will: (i) maintain usual and customary books and records for the type and scope of business operations in which it is engaged (e.g., constructor, equipment supplier, designer, service provider); (ii) permit audit thereof with respect to the Project or work by each of CONTRACTOR, FHWA and SCDOT pursuant to this Agreement, (iii) provide progress reports to CONTRACTOR appropriate for the type of work it is performing sufficient to enable CONTRACTOR to provide the reports it is required to furnish SCDOT under this Agreement.
- k. Include the right of CONTRACTOR to terminate the Subcontract in whole or in part upon any termination by SCDOT of this Agreement for SCDOT's convenience without liability of CONTRACTOR or SCDOT for the subcontractor's lost profits, business opportunity, or any consequential, incidental, indirect, special, or punitive damage.
- l. Expressly require the Subcontractor to participate in meetings between CONTRACTOR and SCDOT, upon SCDOT's request, concerning matters pertaining to such Subcontract or its work.
- m. Include an agreement by the subcontractor to give evidence in any dispute resolution proceeding pursuant to this Agreement, if such participation is requested by either SCDOT or CONTRACTOR.
- n. Expressly include a provision prohibiting cross-contract offset between the parties thereto, meaning that if a subcontractor is performing work on multiple contracts for the other party to the Subcontract or the other party's affiliates, the other party or its affiliate shall not withhold payment from the subcontractor on its Subcontract because of disputes or claims on another contract.

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- o. Expressly require the subcontractor to make payments to sub-subcontractors, and be liable for interest payments to sub-subcontractors, under applicable law.
 - p. Contain no waiver of the prompt payment protections for the subcontractor provided under applicable law.
 - q. Expressly provide that all claims and charges of the subcontractor and its subcontractors at any time shall not attach to any interest of SCDOT in the Project or the Project ROW.
 - r. Expressly include a covenant, expressly stated to survive termination of the Subcontract, to promptly execute and deliver to SCDOT a new contract between the subcontractor and SCDOT on the same terms and conditions as the Subcontract, in the event: (i) the Subcontract is rejected by CONTRACTOR in bankruptcy or otherwise wrongfully terminated by CONTRACTOR; and (ii) SCDOT delivers request for such new contract following termination or expiration of this Agreement.
 - s. Be consistent in all other respects with the terms and conditions of this Agreement to the extent such terms and conditions are applicable to the scope of work of such subcontractors, and include all provisions required by this Agreement.
 - t. Expressly require the Subcontractor to notify CONTRACTOR and SCDOT, in writing, promptly following any determination by any federal or state department or agency that the subcontractor is disqualified, suspended, debarred, or otherwise excluded from bidding, proposing, or contracting with any such federal or state department or agency.
4. CONTRACTOR shall not amend any Subcontract with respect to any of the foregoing matters without the prior consent of SCDOT.
5. CONTRACTOR shall not enter into any Subcontracts with any person or entity then debarred or suspended from submitting bids by any agency of the State.
6. Additional Requirements Relating to Subcontracts
7. Prior to any subcontractor performing any work on the Project, CONTRACTOR shall submit the Subcontractor/Hauler Approval Request Form for approval. SCDOT reserves the right to request the subcontract at any time. If requested by SCDOT, then CONTRACTOR shall submit a true and complete copy of the proposed Subcontract to SCDOT for such review and approval. SCDOT may disapprove any proposed Subcontract for reasons to include but not limited to default or delinquency of subcontractor.
8. Subcontracts with Affiliates
- a. For purposes of this clause, "Affiliate" means (i) any equity member of CONTRACTOR, (ii) any person or entity who directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control

with CONTRACTOR or any such equity member, or (iii) any person or entity for which ten percent or more of the equity interest in such person or entity is held directly or indirectly, beneficially, or of record, by CONTRACTOR, any such equity member, or any affiliate of any person or entity described under clause (ii). “Control” means the possession, directly or indirectly, of the power to cause the direction of the management of an entity, whether through voting rights, securities, by contract, family relationship, or otherwise.

- b. CONTRACTOR shall have the right to have work and services performed by Affiliates only under the following terms and conditions (in addition to all other general requirements for Subcontracts set forth in this Agreement):
 - i. CONTRACTOR shall execute a written Subcontract with the Affiliate;
 - ii. The Subcontract shall comply with all applicable provisions of this clause, be consistent with prudent industry practices, and be in form and substance substantially similar to Subcontracts then being used by CONTRACTOR or Affiliates for similar work or services with unaffiliated subcontractors;
 - iii. The Subcontract shall set forth the scope of work and services and all the pricing, terms and conditions respecting the scope of work and services;
 - iv. The pricing, scheduling and other terms and conditions of the Subcontract shall be no less favorable to CONTRACTOR than those that CONTRACTOR could reasonably obtain in an arms’ length, competitive transaction with an unaffiliated Subcontractor. CONTRACTOR shall bear the burden of proving that the same are no less favorable to CONTRACTOR; and
 - v. No Affiliate shall be engaged to perform any work or services which this Agreement states are to be performed by an independent or unaffiliated party. No Affiliate shall be engaged to perform any work or services that would be inconsistent with prudent industry practices.
- c. CONTRACTOR shall make no payments to Affiliates for work or services in advance of provision of such work or services, except for reasonable mobilization payments or other payments consistent with arm’s length, competitive transactions of similar scope.

III. CONTRACT PRICE/CONTRACT PAYMENTS

A. Contract Price

The “Contract Price” shall be \$127,000,000.00. In consideration for the Contract Price, CONTRACTOR shall perform all of its responsibilities under the Contract. The Contract Price shall include all work identified in the Agreement and subsequent Exhibits and as identified in the Cost Proposal Bid Form – **EXHIBIT 1**.

B. Contract Price Adjustments

1. Allowable adjustments

When expressly permitted hereunder, only to the extent so permitted, and except as otherwise expressly stated with respect to an aspect of the work (or basis for a change to the Contract Price) the Contract Price may be added to or deducted from as a result of any of the following:

- a. A “Change” or “Force Account Directive”.
- b. Differing site condition set forth in Article XIII.
- c. Suspension for Convenience as set forth in Article XVII.
- d. Intentional or bad faith acts or omissions by SCDOT that unreasonably interfere with CONTRACTOR’s performance and cause delay of work on the critical path of the Project.
- e. Changes in legal requirements or regulations that are effective subsequent to the date of submission of CONTRACTOR’s response to the RFP.
- f. Discovery of hazardous materials not previously identified in Exhibit 8 Environmental Criteria and Attachment B as set forth in Article XI
- g. Discovery of archeological or paleontological sites not previously identified set forth in Article X.
- h. Actual Premium Right Of Way Acquisition Costs as set forth in Article VIII. No additional amount for overhead, profit, bonds and insurance will be considered for this item.
- i. Adverse Utility Adjustments impacts meeting the requirements as set forth in Article VII.
- j. Adverse Railroad coordination impacts as set forth in Article VII.

If the critical path is not affected, the Contract Price may be adjusted as follows. The additional 10% adjustment accounts for costs attributable to profit and all overheads.

$$\text{Allowable Contract Price Adjustment} = \text{Direct Costs} + (10\% \times \text{Direct Costs})$$

If the critical path is affected, the Contract Price may be adjusted as follows. The additional 10% adjustment accounts for costs attributable to profit and all overheads (except Extended Job Site).

$$\begin{aligned} \text{Allowable Contract Price Adjustment} \\ &= \text{Direct Costs} + \text{Extended Job Site Overhead} \\ &+ (10\% \times (\text{Direct Costs} + \text{Extended Job Site Overhead})) \end{aligned}$$

Extended Job Site Overhead equals the Rate (D), established in Exhibit 5, times an approved Time Extension.

Other than as provided above, the Contract Price shall not be increased for Contract Time extensions or, except as expressly stated otherwise herein, delay damages. Contract Price adjustments shall be documented by change order through the Contract Change Request process signed by both parties and shall be reflected immediately in a revision to the Schedule of Values. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this Agreement.

2. Changes

- a. A “Change” shall be any deviation or variation from the Project Scope or the Project Criteria. No Change shall be implemented without the express written approval of SCDOT.
- b. SCDOT or the CONTRACTOR may initiate a “Contract Change Request” in writing via the Contract Change Requests process in Exhibit 5. If SCDOT approves the change, CONTRACTOR shall perform the services as changed.

3. Force Account Directive

- a. A Force Account Directive is a written order from SCDOT directing a Change prior to agreement with CONTRACTOR on adjustment, if any, to the Contract Price or Contract Time. If a price for the work cannot be agreed upon or a time constraint requires expedited work, CONTRACTOR shall perform the work under Force Account Procedures as outlined in Section 109.5 of SCDOT’s Standard Specifications.

4. Direct Costs

For the purpose of a Contract Price Adjustment, and except as expressly stated otherwise herein, “Direct Costs” shall be defined as:

- a. Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers’ compensation insurance;
- b. Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- c. Actual costs of machinery and equipment owned by CONTRACTOR or any affiliated or related entity exclusive of hand tools;
- d. Actual costs paid for rental of machinery and equipment exclusive of hand tools;

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- e. Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes; and
- f. Costs incurred or fees paid for design work related to the change or event.

5. Other Reductions to the Contract Price

Without limiting any of SCDOT’s rights hereunder with respect to withholding, offset, or recovery of any amount, wherever the Exhibits to this Contract, by their terms, prescribe discretionary reductions to the Contract Price for certain technical matters, then the next succeeding application for payment shall document SCDOT’s exercise of such prerogative (e.g., pavement tolerances under Section 105 of Exhibit 5; liquidated damages under Section 2.8 of Exhibit 4c).

C. Contract Payments

1. Schedule of Values

- a. Prior to, execution of this Agreement, CONTRACTOR shall provide a Schedule of Values acceptable to SCDOT and work may not start until the Schedule of Values is approved by SCDOT. The Schedule of Values will serve as the basis for cost loading of the CPM Schedule. The aggregate value of the Schedule of Value shall not exceed the Contract Price, as may be adjusted pursuant to this Contract from time to time. The CPM schedule shall include sufficient information to provide for monetary and quantitative tracking of the work by SCDOT. Updates to the cost-loaded CPM schedule shall serve as the basis for progress payments requested by and made to CONTRACTOR. If the Contract Price is adjusted, CONTRACTOR shall revise its Schedule of Values and the CPM Schedule to reflect the adjustment in the Contract Price. The revised Schedule of Values must be approved by SCDOT prior to the time for the subsequent request for a progress payment otherwise no progress payments will be made. The Schedule of Values shall be incorporated herein as EXHIBIT 2. The Schedule of Values shall include Lump Sum items that will serve as measurement and payment for any item referred to in this Contract as a “contract unit bid price” item.

2. Mobilization

- a. Mobilization shall not exceed 10% of the total Contract Price as shown in the Schedule of Values. Mobilization will be paid as shown in the table below.

Mobilization Payment No.	Payment Percentage of Mobilization SOV	Payable when:
1	5%	1 st Progress Payment following NTP
2	20%	Start of Construction
3	50%	10% of Price ¹ is earned
4	25%	25% of Price ¹ is earned

(1) Price is defined as Contract Price minus Mobilization Schedule of Value Amount

3. Periodic Progress Payment Applications

- a. No application for payment of the Contract Price shall be submitted until SCDOT gives a notice to proceed. Applications for payment of the Contract Price may be submitted no more than once a month. Each application for payment of any portion of the Contract Price shall set forth, in accordance with the Schedule of Values and the cost-loaded CPM schedule, the percentage of all items comprising the work completed since CONTRACTOR's immediately prior request for payment. The application for payment of the Contract Price may also request payment for equipment and materials not yet incorporated into the Project, provided that (i) SCDOT is satisfied that the equipment and materials are suitably stored at either the Project or another acceptable location, (ii) the equipment and materials are protected by suitable property insurance for which SCDOT is an additional named insured and (iii) upon payment, SCDOT will receive title to the equipment and materials free and clear of all liens and encumbrances.

4. Periodic Progress Payments

- a. SCDOT will review each application for payment and respond within seven calendar days. SCDOT will generate an "Estimate Summary to Contractor" and "Contractor Concurrence Form" for CONTRACTOR review. The final, CONTRACTOR submitted "Contractor Concurrence Form", with the attached "Estimate Summary to Contractor", shall be the undisputed application for payment. SCDOT will make each payment of undisputed amounts within 21 calendar days after receipt of the corresponding application for payment. In the event of a dispute over the quality of work or percentage of the Project completed, SCDOT's decision is controlling and final. Payment by SCDOT will not preclude or estop SCDOT from correcting any measurement, estimate, or certificate regarding the percentage completion of the Project, and future payments may be adjusted accordingly.

5. Prompt Payment of Subcontractors

CONTRACTOR shall comply with the requirements of the SCDOT Prompt Payment Clause Supplemental Specification.

6. Withholding of Payment

SCDOT may withhold all or part of any payment under the Contract for any of the reasons listed below. Except for clause 6. f. below, any funds withheld will be released upon CONTRACTOR fully remedying the defect, fault, or failure and will be included in the next regularly schedule pay estimate. Payment will be subject to retainage if applicable.

- a. Any uncured CONTRACTOR default as set forth in Article XVII;
- b. Reasonable evidence that the Work will not be Substantially Complete within the Construction Time as adjusted and that the unpaid balance of the Contract Price will not be adequate to cover Liquidated Damages for the actual unexcused delay;
- c. Any fines or other charges to SCDOT due to CONTRACTOR's failure to comply with permit requirements or other regulations;
- d. Notice of cancellation of insurance;
- e. Violation of Design QC Plan or Construction Quality Management Plan (CQMP);
or,
- f. Deductions set forth in Article VII.

D. Retainage

SCDOT will not withhold retainage provided that Project is proceeding satisfactorily. However, if at any time SCDOT determines that CONTRACTOR fails to meet contractual terms or the Project is not proceeding satisfactorily, SCDOT may retain up to 10% of the undisputed progress payment as retainage until compliance with the contractual terms are met.

IV. CONTRACT TIME

A. Project Schedule

1. Time for Completion of Project: Time is of the essence. The Project shall be Substantially Complete within 1176 calendar days from Notice to Proceed. The Notice to Proceed shall be no later than 45 days from the effective date of the Agreement. The PROPOSER must identify the time required for the Construction Time of the Project on the Cost Proposal Bid Form. Final Completion shall be reached as defined in paragraph 5 below.
 - a. Contract Time shall be the number of calendar days from effective date of agreement to Final Completion.
 - b. Construction Time is defined as calendar days from Notice to Proceed to Substantial Work Completion on the Project.
2. Substantial Completion: When CONTRACTOR believes that it has reached Substantial Completion, it shall notify SCDOT in writing. Substantial Completion is the point in the Project when the work has been designed and constructed in accordance with the typical section in the plans over the entire length of the Project, including tie ins to adjacent projects or existing roads, all travel lanes in their final configuration are open to the public, traffic can move unimpeded through the Project

at the normal, posted speed, all safety features are installed and are being properly maintained, no lanes will have to be closed to complete any remaining work, all required illumination is installed, functional, and operating, all required signs and signals are installed, functional and operating, all required ITS systems are installed, functional, ITS testing has been successfully completed, and the ITS is operational, all submittals required under the Contract have been submitted and, as applicable, approved by SCDOT as to form and content, there exists no uncured default that is the subject of a notice (unless Substantial Completion will affect its full and complete cure) and all work is completed complies with applicable laws, permits, and has otherwise passed all demonstration, performance, and acceptance testing except for “Project Close-out Activities”. “Project Close-out Activities” are defined as punch list items, site cleanup, demobilization, and final Project documentation, including but not limited to as-built plans.

3. Critical Path Method Schedule: CONTRACTOR shall prepare and maintain a schedule for the Project using the Critical Path Method of scheduling (hereinafter called “CPM Schedule”) conforming to this section, and on or before such date as required. CONTRACTOR may not proceed with any further design or any construction work until the CPM Schedule has been prepared and reviewed by SCDOT and comments by SCDOT resolved. CONTRACTOR shall prepare a Level II CPM Schedule in accordance with this Contract and the SCDOT Supplemental Specifications with the following exceptions:
 - a. Submit to the SCDOT the initial baseline CPM schedule within 30 days from the Effective Date of this Agreement. No Contract payment will be made to Contractor and no construction work may begin until a CPM baseline schedule is received and accepted by SCDOT. Update the baseline CPM schedule for monetary and quantitative tracking purposes as RFC plans are developed. Submit a final baseline CPM Schedule once all RFC Plans are available.
 - b. Cost-load the CPM schedule using the expenses identified in the schedule of values. Use the schedule of values to establish Expense Categories and assign to the correct activities.
 - c. Include submittal activities. Allow duration for these activities to include SCDOT and Railroad review periods.
 - d. Reuse of deleted activity ID’s from schedule update to schedule update is not allowed.
 - e. Failure to include any element of work or any activity including but not limited to Utility Adjustments, right of way acquisition, and permitting will not relieve the CONTRACTOR from completing all work within the Construction Time at no additional time or cost to the SCDOT, notwithstanding the acceptance of the schedule by SCDOT.

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- f. Develop project specific calendars reflecting all seasonal restrictions included in this Agreement and non-work days. Address durations for weather within activity duration, not within the calendar.
 - g. Use only a Work Breakdown Structure (WBS) to organize schedule activities. At a minimum, breakout the design and construction phases. These two breakouts shall have the same parent within the structure.
 - h. Submit monthly updates no later than 15 days following the most recent estimate period end date, whether or not an estimate was generated. Set the data date the same as the most recent estimate period end date.
 - i. If SCDOT determines any schedule submission fails to satisfy these requirements or otherwise purports to deliver the Project after the deadline for Substantial Completion, then SCDOT will return the submission to the CONTRACTOR. A corrected schedule shall be provided within 7 calendar days from the SCDOT's transmittal date.
 - j. The CONTRACTOR may plan for early completion; however, the schedule shall never reflect a completion date earlier than the original Substantial Completion date. SCDOT will not be liable in any way for CONTRACTOR's failure to complete the Project prior to the original Substantial Completion date. Any additional costs, including extended overhead incurred between CONTRACTOR's scheduled early completion date and the original Substantial Completion date, shall be the responsibility of the CONTRACTOR.
 - k. Include in each narrative a detailed listing of crews utilized on activities and their responsibilities. In lieu of this, the CONTRACTOR may request to submit a Resource Loaded CPM schedule.
4. Progress Review Meetings:
- a. Review Meetings shall be held between CONTRACTOR and SCDOT at least every 2 weeks. Periodic construction meetings shall be held by CONTRACTOR with its consultants and subcontractors to coordinate the work, update the schedule, provide information and resolve potential conflicts.
 - b. SCDOT and CONTRACTOR will hold a regular CPM Progress Meeting at which all principal parties are expected to attend. These meetings will be held the week before the application for payment is due so that job progress will coincide with the payment application. At this meeting, CONTRACTOR shall provide the most recent schedule with notations showing actual start dates, actual finish dates, and activity progress. If the schedule provided indicates an actual or potential delay to the completion of the Contract, CONTRACTOR shall provide a narrative identifying the problems, causes, the activities affected and describing the means and methods available to complete the Project by the Contract Time.

5. **Final Completion:** Final Completion shall be achieved within 180 calendar days after Substantial Completion as defined in this Agreement. When CONTRACTOR believes that all elements of its work on the Project, including all of the requirements of the Contract, have been completed, it shall notify SCDOT in writing. Within 30 days thereafter, SCDOT will acknowledge Project completion or will advise CONTRACTOR in writing of any aspect of the Contract or the Project Scope that is incomplete or noncompliant with the terms of this Agreement. CONTRACTOR shall complete all corrective action within thirty (30) days after written notification of incomplete or noncompliant items. CONTRACTOR will notify SCDOT in writing upon completion of necessary corrective action. SCDOT will verify completion of the corrective action in writing to CONTRACTOR. The number of days referenced above to achieve Final Completion does not include SCDOT's review period and the CONTRACTOR's corrective action time. Upon verification, the Project shall be deemed to have achieved Final Completion.
6. **Long Stop:** Long Stop Dates shall be defined as 90 calendar days after Substantial Completion and 90 calendar days after Final Completion.
7. **Inspection/Acceptance; No Waiver:** No inspection, acceptance, payment, partial waiver, or any other action on the part of SCDOT will operate as a waiver of any portion of this Agreement or of any power reserved herein or any right to damages or other relief, including any warranty rights, except insofar as expressly waived by SCDOT in writing. SCDOT will not be precluded or estopped from recovering from CONTRACTOR any overpayment as may be made to CONTRACTOR.

B. Time Extensions

Time may be extended if there is a delay to the critical path of the Project caused by an event listed below. All requests for time extensions shall be made in writing to SCDOT within 20 days of the event causing the delay. All time extensions must be approved in writing by SCDOT. Time extensions may be allowed for the following events that affect the critical path, in each case subject to the terms and conditions in cited Articles of this Contract, if any:

1. Force Majeure as that term is defined in this Contract;
2. Changes or Force Account Directives;
3. Differing Site Conditions is defined in this Contract;
4. Injunctions, lawsuits, or other efforts by individuals or groups that hinder, delay, or halt the progress of the Project, provided that such efforts are not premised on alleged wrongs or violations by CONTRACTOR or its subcontractors;
5. Interference with or delay of work on the critical path of the Project by SCDOT; however, CONTRACTOR shall not be entitled to a time extension if SCDOT's actions are necessitated by CONTRACTOR's actions, omissions, failure to perform quality work, or failure to comply with Contract requirements;

6. Changes in the legal requirements or regulations which are effective subsequent to the date of this Agreement;
7. Discovery of hazardous materials not previously identified as set forth in this Contract;
8. Discovery of archeological or paleontological remains not previously identified as set forth in this Contract; or
9. Adverse Utility Adjustments impacts meeting the requirements set forth in this Contract.
10. Adverse Railroad coordination impacts as set forth in.
11. Adverse permit acquisition impacts as set forth in this Contract.
12. Failure or inability of SCDOT to make available for construction to CONTRACTOR any Hold-off Parcels by the respective time set forth for each hold-off parcel in the Right of Way Certification in Attachment B, provided that “make available for construction” means that:
 - a. SCDOT has obtained permanent right of entry through settlement, condemnation process or otherwise, which in each case may be subject to covenants, restrictions, and limitations with which the CONTRACTOR must comply; and
 - b. SCDOT has completed relocation, demolition, Hazardous Materials remediation, and clearance (which includes data recovery for any identified cultural resources), except Utility Adjustments.

C. Owner’s Right to Stop Work

SCDOT will have the authority to suspend the work in accordance with this Contract.

D. Liquidated Damages

1. CONTRACTOR shall pay liquidated damages to SCDOT in the amount of Twenty Thousand Dollars (\$20,000) for each day for which the project is not substantially complete, as defined in Article IV.
2. CONTRACTOR shall pay liquidated damages to SCDOT in the amount of Two Thousand Five Hundred (\$2,500) for each day that Final Completion, as defined in Article IV, is not achieved.
3. The parties acknowledge, recognize and agree that because of the unique nature of the Project, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by SCDOT as a result of the CONTRACTOR’s failure to complete the Project as specified in the Contract. Therefore, any sums payable under this provision are in the nature of liquidated damages, and not a penalty, and are fair and reasonable and such payment represent a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failure. Liquidated damages are SCDOT’s sole remedy for delayed completion;

however, liquidated damages do not apply to CONTRACTOR's liability for other contractual breaches, duties, or obligations.

V. CONSTRUCTION QUALITY ASSURANCE PROGRAM

A. CONTRACTOR's Responsibilities

1. CONTRACTOR shall execute its responsibilities for Quality Control (QC) and Quality Acceptance (QA) as outlined in the Quality Assurance Program (QAP) for Carolina Crossroads (CCR) in Attachment B. Work shall not commence until CONTRACTOR has met the requirements of the QAP for CCR, including submittal and approval of the CONTRACTOR'S Construction Quality Management Plan (CQMP).
2. The Independent Quality Firm's (IQF) and SCDOT's testing in no way relieves CONTRACTOR of its obligation to comply with the Contract requirements. All materials incorporated into the Project must meet or exceed Contract requirements and specifications. Further, any testing by IQF or SCDOT will not relieve CONTRACTOR of any of its warranty obligations.

B. SCDOT's Responsibilities

1. SCDOT or its designee will be responsible for the Owner Verification (OV) and Independent Assurance (IA) portions of the program to include conducting oversight inspections and testing.

VI. INSURANCE AND BONDING

A. Insurance

1. CONTRACTOR shall purchase and maintain insurance using a company or companies that maintain an A.M. Best rating of not less than A-VII with coverage forms acceptable to SCDOT. The insurance described below shall be maintained uninterrupted for the duration of the Project, including warranty periods, and shall protect CONTRACTOR from claims set forth below which may arise out of or result from CONTRACTOR's operations under the Contract, whether such operations be performed by CONTRACTOR or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable:
 - a. Claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts;
 - b. Claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;
 - c. Claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;

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- d. Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (2) by any other person;
 - e. Claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
 - f. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle;
 - g. Claims involving contractual liability insurance applicable to the Contractor's obligations under the indemnity provisions of this contract; and
 - h. Claims involving professional liability.
2. The minimum limits of liability for the following types of insurance are required, except where greater limits are required by statute:

- a. Workers' Compensation, including: Worker's Compensation Insurance/Employer's Liability

State Statutory limits	Employer's Liability
	\$100,000 per accident
	\$500,000 per disease
	\$100,000 each employee

- b. Commercial General Liability
 - \$2,000,000 per occurrence
 - \$4,000,000 annual aggregate

Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 (or substitute for providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, contractual liability and personal injury and advertising injury. The policy shall contain the per project endorsement.

- c. Business Automobile Liability
 - \$1,000,000 per occurrence

This policy shall cover Any Auto, including Owned, Hired and Non-owned Automobiles. Business auto coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage.

- d. Umbrella Liability Coverage
 - \$25,000,000 per occurrence
 - \$25,000,000 annual aggregate

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4. Limits shown in this provision are minimum acceptable limits and in no way limit available coverage to the additional insured. CONTRACTOR's CGL and commercial umbrella policies shall contain no provision providing that the limits available to an additional insured are less than the limits available to the CONTRACTOR. SCDOT shall be given all the same rights and insurance coverage as CONTRACTOR.
5. There shall be no endorsements or modifications of the CGL limiting the scope of coverage for liability arising from explosion, collapse, underground property damage or work performed by contractors on behalf of SCDOT.
6. Hazardous Materials: If the CONTRACTOR is required to remove and haul any hazardous waste from the Project, or if the Project involves such similar environmental exposure, pollution liability coverage equivalent to that provided under the ISO Pollution Liability – Broadened Coverage for Covered Autos Endorsement (CA 99 48), shall be provided, and the Motor Carrier Act Endorsement (MCS 90) shall be attached. Limits of pollution liability shall be not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Coverage shall apply on an "occurrence form" basis, shall cover at a minimum bodily injury, property damage, defense costs and clean-up costs and be extended to include non-owned disposal sites and transportation coverage. This insurance shall remain in effect after acceptance by Owner for the time period required to satisfy the statute of limitations in South Carolina. However, if coverage is written on a "claims made form", then the Contractor's Pollution Liability coverage shall include a retroactive date that precedes the commencement of work under this Agreement. Such coverage shall apply as primary and non-contributory insurance with respect to any other insurance or self-insurance programs, including any deductibles, afforded to, or maintained by SCDOT. Pollution Liability policy must include contractual liability coverage.
7. Waiver of Subrogation: CONTRACTOR shall waive its rights against SCDOT, other additional insured parties, and their respective agents, officers, directors and employees for recovery of damages, or any other claims, to the extent these damages are covered by the CGL, business auto, pollution liability, workers compensation and employer's liability or commercial umbrella maintained pursuant to this section of the Agreement.
8. CONTRACTOR shall provide Builder's Risk Insurance acceptable to the SCDOT in the amount of the Contract Price protecting the respective interests of SCDOT and CONTRACTOR and covering physical loss or damage to the work during construction of the project. The certificate of insurance shall be provided to the SCDOT at the time of execution of this Agreement. The CONTRACTOR shall also obtain \$1,000,000 in Delay in Start Up Coverage under the Builder's Risk policy. The policy shall name the SCDOT as an additional insured and shall reference the Project by name. The certificate shall also state that the coverage will not be cancelled or reduced without 30 days prior written notice to the SCDOT.
9. After Final Completion of the work, CONTRACTOR shall maintain CGL, professional liability, and commercial umbrella coverage to include liability coverage

for damage to insured's completed work equivalent to that provided under ISO CG 00 01 for eight years after substantial completion.

10. By execution of the contract, the CONTRACTOR accepts the responsibility to provide the liability insurance policies and endorsements as specified herein. Failure of SCDOT to identify a deficiency in the Certificate of Insurance submitted by the CONTRACTOR's insurance agent as evidence of the specified insurance or to request other evidence of full compliance with the liability insurance specified shall not be construed as a waiver of the CONTRACTOR's obligation to provide and maintain the required insurance for the duration of the contract. The CONTRACTOR shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverages. The CONTRACTOR is not relieved of any liability or other obligations assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

B. Bonding

1. CONTRACTOR shall at the time of the execution of this Agreement, provide SCDOT the following bonds:
 - a. A Performance and Indemnity Bond from a surety or sureties satisfactory to SCDOT. The amount of bond shall be equal to the Contract Price.
 - b. A Payment Bond from a surety or sureties satisfactory to SCDOT. The amount of bond shall be equal to the Contract Price.

These bonds shall be in accordance with the requirements of S.C. Code Ann. §57-5-1660, (1976 as amended) and S.C. Code Ann. §29-6-250 (2000). Bonds shall be issued by a surety company licensed in the State of South Carolina with an "A" minimum rating of performance as provided in the most current publication of "A.M. Best Key Rating Guide, Property Liability" and signed by the surety's agency or attorney-in-fact. Surety must be listed on the current U.S. Department of the Treasury Financial Management Service list of approved bonding companies as approved for an amount equal to or greater than the amount for which it obligates itself in the Bond. If surety qualifies by virtue of its Best's listing, the amount of the Bond may not exceed ten percent of policyholders' surplus as shown in the latest A.M. Best's Key Rating Guide.

2. CONTRACTOR shall also provide a warranty bond, acceptable to SCDOT, in the amount of \$5,000,000 to cover the warranty obligations of the contract.

VII. UTILITIES AND RAILROAD COORDINATION

A. Definitions:

For purposes of this Article VII, the following terms have the meanings ascribed:

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1. **Betterment** means any upgrading of the Utility facility during the course of a Utility Adjustment that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Utility Owner, including but not limited to, placement of Utility outside of SCDOT right of way for convenience, an increase in the capacity, capability, efficiency or function of the adjusted facility over that which was provided by the existing Utility or an expansion of the existing Utility. The following are not “Betterments”:
 - a. any upgrading which is required for accommodation of the Project;
 - b. replacement devices or materials that are of equivalent standards although not identical;
 - c. replacement of devices or materials no longer regularly manufactured with the next higher grade or size;
 - d. any upgrading required by applicable laws, regulations, or ordinances;
 - e. replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase); and
 - f. any upgrading required by the Utility Owner’s applicable Standards provide in criteria in Attachment B..
2. **Concurrent Delays** See Evaluation of Delays Special Provision
3. **Incidental Utility Work** means all of the following work necessary for the construction of the Project:
 - a. Temporary Relocations;
 - b. Relocations of Service Lines;
 - c. Protections in Place;
 - d. The adjustment of utility appurtenances (e.g., manholes, valve boxes, and vaults) for line and grade upon completion of roadway work;
 - e. All work necessary to remove any utilities (whether or not in use as of the effective date of this Agreement) in situations for which leaving the utilities in place is not feasible or not permitted, or for facilities which the CONTRACTOR proposes be removed to accommodate or permit construction of the Project, regardless of whether replacements for such utilities are being installed in other locations; and
 - f. All work necessary to abandon in place any utility in accordance with proper procedures (e.g., flushing, capping, slurry backfill, etc.).

4. **In-Contract Utility Work** means Utility Work that is performed by the CONTRACTOR for a Utility Owner that has chosen to have Utility Adjustments, Protection in Place, or other disposition of the Utility Owner's utility facility with respect to the Project be performed by CONTRACTOR
5. **Materially Inaccurate** means with respect to the description or identification of a Utility provided in the Utility information as set forth in Attachment B:
 - a. With the exception of those underground utilities that were subject to a Utility Adjustment under an SCDOT encroachment permit after the completion of Level B SUE and Level C SUE, an underground utility (excluding appurtenances and Service Lines) that conflicts with the Project shall be considered a material inaccuracy if the utility is not identified at all in the Utility information.
 - b. The Utility information as set forth in Attachment B regarding horizontal and vertical positions of all underground Utilities is an estimate only, shall not be considered Materially Inaccurate, and shall not be relied upon.
 - c. The Utility information as set forth in Attachment B regarding the size of an underground utility shall be considered materially inaccurate if one of the following applies, with regard to any difference (whether larger or smaller) between the utility's actual inside diameter, excluding appurtenances (the "actual size") and the inside diameter indicated for such utility in the Utility information (the "stated size"):
 - i. The utility's stated size is 12" or less, and the utility's actual size is 24" or more,
 - ii. The utility's stated size is greater than 12" but less than or equal to 36", and the utility's actual size differs from the stated size by more than 50% of the stated size,
 - iii. The utility's stated size is greater than 36" but less than or equal to 72", and the utility's actual size differs from the stated size by more than 25% of the stated size, or
 - iv. The utility's stated size is greater than 72", and the utility's actual size differs from the stated size by more than 15% of the stated size.
6. **No Prior Rights Arrangement** means the circumstances where a Utility Owner is obligated under South Carolina law to perform a Utility Adjustment or Protection in Place with respect to the Utility Owner's facility that has real property rights junior to SCDOT's senior real property rights with respect to the utility facility's location, the costs for which are borne by the Utility Owner. Accordingly, CONTRACTOR has no claim, or basis for claim, for additional time or compensation arising out of or relating to delays or additional costs incurred relating to No Prior Rights Arrangement Utilities. No Prior Rights Arrangements are circumstances under which there is no Utility Agreement. No Prior Rights Arrangements include encroachment permits.

7. **Prior Rights** means where a utility occupies a parcel by fee simple title, easement or other legal means, as evidenced by Utility-provided documentation that clearly shows the Utility's rights or title predate(s) the SCDOT's right-of-way acquisition.
8. **Protection in Place** means any action taken to avoid damaging a utility facility which does not involve removing or relocating that facility, including but not limited to staking the location of a facility, exposing the facility, locating construction equipment so as to avoid impacts to facilities, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. For example, temporarily lifting power lines without cutting them would be considered a Protection in Place; whereas temporarily moving power lines to another location after cutting them would be considered a phased Utility Adjustment and not a Protection in Place. The term "Protection in Place" includes both temporary measures and permanent installations meeting the foregoing definition.
9. **Service Line** means a utility line, the function of which is to connect directly the improvements on an individual property (e.g., a single family residence or an industrial warehouse) to another utility line located off such property, which other utility line connects more than one such individual line to a larger system, as well as any cable or conduit that supplies an active feed from a Utility Owner's facilities to activate or energize a Governmental Entity's local lighting and electrical systems, traffic control systems, street lights, communications systems and/or irrigation systems.
10. **Temporary Relocation** means any (a) interim relocation of any utility facility (i.e., the installation, removal and disposal of an interim facility) pending installation of a permanent utility facility in the same or a new location, and (b) removal and reinstallation of the utility facility in the same place without an interim relocation.
11. **Utility or utility** means a privately, publicly, or cooperatively owned facility (which term includes lines, systems and other facilities, and includes municipal and/or government facilities as defined under state law) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, waste, or any other similar commodity including any fire or police signal system as well as streetlights associated with roadways owned by local agencies. However, when used in the context of Utility Adjustments of facilities to accommodate the Project, the term "Utility" or "utility" excludes (a) storm water facilities, and (b) traffic signals, ramp metering systems, and flashing beacon systems for the Project. The appurtenances to each utility facility shall be considered part of the facility, including the utility source, guide poles, Service Lines, supports, etc. Without limitation, any service lateral connecting directly to a utility shall be considered an appurtenance to that utility, regardless of the ownership of such service lateral. The appurtenances to each facility shall be considered part of the facility.
12. **Utility Adjustment** means each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously abandoned utility facilities as well as newly-abandoned facilities), replacement, rearrangement, reinstallation, necessary safety and protective measures, and/or modification of existing Utilities necessary to

accommodate the Project or CONTRACTOR's work and necessary for the continuous operation of the system's service. The term "Utility Adjustment", however, excludes work associated with facilities owned by any railroad. For any utility crossing the Project's right of way, the Utility Work for each crossing of the Project's right of way by that utility shall be considered a separate Utility Adjustment. For any utility installed longitudinally within the Project's right of way, the Utility Work for each continuous segment of that utility located within the Project's right of way shall be considered a separate Utility Adjustment. The term "Utility Adjustments" specifically excludes any work relating to storm water facilities providing drainage for the Project's right of way. The term "relocation," or "adjustment," or words of similar meanings used in any Utility Agreements have the same meaning as "Utility Adjustment".

13. **Utility Agreement** means an agreement between a Utility Owner and SCDOT relating to the Utility Adjustment, Protection in Place, or other disposition of the Utility Owner's utility facility with respect to the Project. Utility Agreements are "Prior Rights Contracts", where a Utility Owner's facility that has senior real property rights to SCDOT's rights with respect to the utility facility's location.
14. **Utility Owner** means the operator of any Utility (including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies as defined under state law).
15. **Utility Standards** means the standard specifications, special provisions, standards of practice, Standard Material & Construction Specifications, and construction methods that a Utility Owner customarily applies to facilities (comparable to those utility facilities that are the subject of a Utility Adjustment or Protection in Place on account of the Project) constructed by the Utility Owner (or for the Utility Owner by its contractors). The term includes "Design Criteria" (Criteria) which are the Utility Standard of the Utility.
16. **Utility Work** means the design and construction necessary for a Utility Adjustment, including any Incidental Utility Work necessary for the Utility Adjustment. Any Utility Work furnished or performed by CONTRACTOR is part of the CONTRACTOR's scope of work; any Utility Work furnished or performed by a Utility Owner is not part of CONTRACTOR's scope of the work.

B. General Obligations

1. CONTRACTOR shall be responsible for coordinating, documenting, monitoring, scheduling, and providing all efforts to know and understand the Project construction and demolition activities with all Utilities that may be affected by the Project, including but not limited to, sending plans, meetings, correspondence, phone calls, as may be necessary to perform work for this Project, needed for the construction of the Project. This includes coordination with Utilities that perform their own Utility Work and coordination with Utilities that have chosen the CONTRACTOR to perform In-Contract Utility Work.

2. **CONTRACTOR shall ensure completion of all Utility Adjustments that are necessary or desirable (according to CONTRACTOR's design of the Project) to accommodate the Project in accordance with the then-current CPM Schedule.**
3. **CONTRACTOR shall be responsible for all conflict avoidance measures, including all temporary relocation costs, if applicable, and eliminating any conflicts as among all Utilities within the Project's right of way. This includes performing such design work, additional Subsurface Utility Engineering (SUE) (including quality Level A), surveying and coordinating to avoid conflicts, including specifically where Utilities from different Utility Owners are co-located or closely located. CONTRACTOR shall ensure that each relocated utility does not present a current or future conflict with the Project or other Utility Adjustments. CONTRACTOR shall ensure that there are no conflicts with the proposed highway improvements, or between each of the Utilities relocation plans. The resolution of any conflicts between Utility Owners and the construction of the Project shall be the responsibility of the CONTRACTOR. If said Utility Owner interferes or fails to relocate conflicting utilities in a timely manner, see Delay Relief section below.**
4. **CONTRACTOR shall conduct a reasonable investigation of the Project work site prior to commencement of any construction work in any particular area to facilitate proper identification of all utility facilities in that area and include in its design work all such utility facilities so as to minimize disruption to Utilities and Utility Owners' normal operations, to avoid conflicts between or among Utilities and the completed Project where possible, and to minimize conflicts where conflicts cannot be avoided. If there is a dispute between the CONTRACTOR and SCDOT as to whether a Utility Adjustment is required, SCDOT shall have the final determination.**
5. **CONTRACTOR shall coordinate, monitor, document and otherwise undertake the necessary efforts to cause Utility Owners performing their own Utility Adjustments to perform such work timely, in coordination with the CONTRACTOR'S work under this Agreement, and in compliance with the standards of design and construction and other applicable requirements specified in the Agreement.**
6. **CONTRACTOR shall ensure that all Utility Work performed by or on behalf of CONTRACTOR complies with the requirements of this Contract.**
7. **CONTRACTOR is responsible for complying with the Utility Standards provided in Attachment B.**
8. **CONTRACTOR at all times shall coordinate and cooperate, and require its subcontractors, consultants, and suppliers to coordinate and cooperate with SCDOT, Utility Owners, adjacent property owners, and any third parties (whether retained by or on behalf of SCDOT) performing work on or around the Project's right of way.**

C. Specific Obligations

1. **CONTRACTOR shall not commence Utility Work until the following conditions have been satisfied:**

- a. All governmental approvals or permits necessary to begin Utility Work on that portion of the Project's right of way have been obtained, and CONTRACTOR has furnished, or caused to be furnished, to SCDOT fully executed copies of any such approvals or permits;
 - b. All rights of access acceptable to SCDOT, in its discretion, for such portion of the Project have been identified and obtained, as applicable, including resolution of disputes relating to Prior Rights;
 - c. CONTRACTOR has satisfied any other requirements or conditions to commencement of Utility Work set forth under Exhibit 7.
2. For those Utilities that have Prior Rights and elect not to be In-Contract but perform its own Utility Adjustments, such Utility Work will be covered by an executed Utility Agreement. CONTRACTOR shall be responsible for collecting and submitting the Utility Agreement documentation as set forth in Exhibit 7.
 3. For those Utilities where the CONTRACTOR determines that the SCDOT has prior rights, CONTRACTOR, may exercise these rights. If the Utility Owner disputes that SCDOT has senior real property rights in such portion of the Project's right of way, then CONTRACTOR shall promptly notify SCDOT, and SCDOT shall be responsible for addressing the dispute. As between CONTRACTOR and SCDOT, SCDOT shall have final determination of the Utility Owner's real property rights and specifically, as between SCDOT and the Utility Owner, which entity has Prior Rights.
 4. CONTRACTOR shall not authorize a Utility to begin its Utility Adjustments until approved in writing by SCDOT.
 5. CONTRACTOR shall provide timely design information reasonably required by the Utility Owners who are performing their own Utility Adjustments under Utility Agreements and No Prior Rights Arrangements.
 6. CONTRACTOR shall address any requests by Utility Owners that CONTRACTOR design and/or construct a Betterment. Any Betterment performed as part of a Utility Adjustment by CONTRACTOR shall be subject to the same standards and requirements as if it were a necessary Utility Adjustment, and are included in Attachment B. Under no circumstances shall CONTRACTOR proceed with any Betterment that is incompatible with the Project or are not in compliance with applicable law, governmental approvals or permits obtained for the Project, this Agreement, or the CPM Schedule. Under no circumstances will CONTRACTOR be entitled to any additional compensation or time extension hereunder as the result of any Betterment, which is not identified in Attachment B, whether performed by CONTRACTOR or by the Utility Owner.

D. Utility Costs

1. CONTRACTOR shall be responsible for the cost of all the utility coordination set forth above unless otherwise expressly stated herein.

2. CONTRACTOR shall be responsible for the cost of all In-Contract Utility Work.
3. CONTRACTOR shall bear all costs and delay risks associated with any repeated Utility Adjustments as a result of the CONTRACTORS design of the Project. CONTRACTOR shall not be responsible for any repeated Utility Adjustments for errors or omission caused by the Utility's design or construction.
4. Additional Utility Adjustments, whether Temporary Relocations or otherwise, that in each case are desired by the CONTRACTOR for but not limited to construction staging, access or convenience, shall be the sole responsibility of CONTRACTOR and all associated costs shall be borne by the CONTRACTOR.
5. CONTRACTOR is responsible for all costs associated with relocating utility facilities owned by SCDOT.
6. For those utilities that have prior rights, elect not to be In-Contract, and are located inside of the proposed Project Right of Way Limits, SCDOT will be responsible for permanent relocation costs as defined by the federal and state laws and regulations. For all other Utilities that have prior rights, the CONTRACTOR shall be responsible for relocation costs as set forth in the Utility Agreement required in Exhibit 7, Section 2, bullet 2. The actual cost of such Utility Adjustments will be deducted from the CONTRACTOR's progress payments after payments are made by SCDOT to the Utility under the Utility Agreement.
7. For those utilities where the CONTRACTOR determines that the SCDOT has prior rights, CONTRACTOR may exercise these rights and require the Utility Owner to bear the costs of the Utility Adjustment of its facility subject to state laws.
8. CONTRACTOR shall be responsible for the cost of all Incidental Utility Work, including specifically in those circumstances where CONTRACTOR may otherwise be entitled to additional costs or additional time (and accordingly costs or delays relating to Incidental Utility Work shall be excluded).

E. Standards of Performance

CONTRACTOR shall perform coordination for all Utility Work in accordance with this Agreement, Exhibit 7, Attachment B, SCDOT's "A Policy for Accommodating Utilities on Highway Rights of Way", the applicable State laws, and the Code of Federal Regulations (CFR), Title 23, Chapter 1, Subchapter G, part 645, subparts A and B. In the event of a conflict among the foregoing technical requirements, the provisions that establish the higher quality, manner or method of performing the Utility Work, or establish better practice, as determined by SCDOT in its sole discretion, shall be used.

F. Failure of Utility Owners to Cooperate:

1. CONTRACTOR shall notify SCDOT promptly if:
 - a. CONTRACTOR is unable (or anticipates that it will be unable), after diligent efforts, to reach agreement with a Utility Owner on any agreement or arrangement necessary for CONTRACTOR to perform any Utility Work, or for Utility Owner

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- to perform its own Utility Adjustments under Utility Agreement or under No Prior Rights Agreements, including encroachment permits, in either case within a reasonable time,
- b. CONTRACTOR reasonably believes for any other reason that any Utility Owner would not undertake or permit a Utility Adjustment in a manner consistent with the timely completion of the Project,
 - c. CONTRACTOR becomes aware that any Utility Owner is not cooperating in a timely manner to provide agreed-upon work or approvals, or
 - d. Except as expressly stated otherwise in this Contract, any other dispute arises between CONTRACTOR and a Utility Owner with respect to the Project, despite CONTRACTOR's diligent efforts to obtain such Utility Owner's cooperation or otherwise resolve such dispute.
2. Such notification may include a request that SCDOT assist in resolving the dispute or in otherwise obtaining the Utility Owner's timely cooperation. CONTRACTOR shall provide SCDOT with such information as SCDOT requests regarding the Utility Owner's failure to cooperate and the effect of any resulting delay to the critical path reflected on the then-current CPM Schedule. After delivering to SCDOT any such notification or request for assistance, CONTRACTOR shall continue to use diligent efforts to pursue the Utility Owner's cooperation.
3. If CONTRACTOR requests SCDOT's assistance pursuant to the above paragraph, then, subject to clause F.4 below, the following provisions shall apply:
- a. CONTRACTOR shall provide evidence reasonably satisfactory to SCDOT that (i) the subject Utility Adjustment is necessary, (ii) the time for completion of the Utility Adjustment in the then-current CPM Schedule was, in its inception, a reasonable amount of time for completion of such work, (iii) CONTRACTOR has made diligent efforts to obtain the Utility Owner's cooperation, and (iv) the Utility Owner is not cooperating. (The foregoing clauses F(1)(a) through (d) are referred to herein as the "conditions to assistance").
 - b. Following SCDOT's receipt of satisfactory evidence, SCDOT shall take such reasonable steps as CONTRACTOR may request to obtain the cooperation of the Utility Owner or resolve the dispute; however, SCDOT shall have no obligation to pursue legal proceedings, or to exercise any other remedy available to it under applicable law or existing contract, unless SCDOT elects to do so in its sole discretion.
 - c. Any assistance SCDOT provides shall not relieve CONTRACTOR of its sole responsibility for compliance with its obligations and timely completion of all Utility Work, except as otherwise expressly set forth herein.

4. If SCDOT objects in writing to a request for assistance pursuant to the above clause, based on CONTRACTOR's failure to satisfy one or more of the conditions to assistance, then CONTRACTOR shall take such further action as is appropriate to satisfy the condition(s) (and as pertains to conditions F.1.(c) and F.1.(d), take such action within the succeeding ten days to obtain the Utility Owner's cooperation) and shall then have the right to submit another request for assistance on the same subject matter. No resubmittal will be accepted unless all SCDOT objections have been addressed in accordance with this clause 4. This process shall be followed until CONTRACTOR succeeds in obtaining the Utility Owner's cooperation or in otherwise resolving the dispute or until SCDOT determines, based on evidence CONTRACTOR presents, the conditions to assistance have been satisfied.

G. Relief for Certain Utility-Related Circumstances

1. CONTRACTOR shall have no right to make a claim under this clause, and shall bear either or both of any additional costs or delays to the then-current CPM Schedule, arising out of, relating to, or resulting from any breach of this Agreement any negligence, recklessness, willful misconduct, fraud, or violation of any applicable law, governmental approval or permit by or on behalf of CONTRACTOR. CONTRACTOR shall bear the burden of proving that any delay to the CPM Schedule could not have reasonably been mitigated or avoided. Furthermore, CONTRACTOR hereby acknowledges and agrees that it has assumed all risks with respect to the need to effect all Utility Adjustments required for the Project.
2. So long as CONTRACTOR has met its burden of proof described above and has achieved the conditions for SCDOT's assistance, where SCDOT's efforts were unable to mitigate or remove the impediment to the progress of the Utility Work, then, the CONTRACTOR shall be entitled to submit a Contract Change Request subject to the conditions below:
 - a. Additional time will be determined by the Evaluation of Delays Special Provision for the following issues:
 - i. SCDOT's failure to meet any time parameters set forth in Exhibit 7;
 - ii. Utility Owner's unreasonable refusal to approve a Utility Adjustment of its utility facility within the boundaries of the Project right of way;
 - iii. delays by Utility Owners under Utility Agreements;
 - iv. delays by Utility Owners under No Prior Rights Arrangements;
 - v. delays caused by Materially Inaccurate Utility information with respect to underground utilities only (excluding Service Lines); and
 - vi. delays directly attributable to any material modification to the terms and conditions of any Utility Standards or approved Relocation Sketches provided to CONTRACTOR that has a material impact on CONTRACTOR's obligations under this Agreement.
 - b. CONTRACTOR is responsible for all costs incurred under clauses 2. a. i, ii, iii, vi. Above for the first 180 days of time granted for the Utility delay. After 180 days of

time granted for Utility delay CONTRACTOR and SCDOT shall share the cost equally until 360 days; provided, CONTRACTOR demonstrates actual, direct, and documented costs incurred are solely and directly incurred under clauses 2. a. i, ii, iii, vi. After 360 days of time granted for Utility delay, SCDOT shall bear the remaining costs; provided, CONTRACTOR demonstrates actual, direct, and documented costs incurred are solely and directly incurred under clause 2. a. i, ii, iii, and iv. above.

- c. The burden of actual, direct, and documented costs incurred which are solely and directly attributable to the delays described in clauses 2. a. v. and vi. above, are those of the SCDOT.
3. CONTRACTOR's entitlement to a Contract Change Request under clause 2 above is subject to the following additional limitations:
- a. CONTRACTOR shall not be entitled to any disruption damages related to Utility delay claims.
 - b. CONTRACTOR shall not be entitled to any punitive, indirect, special, incidental, or consequential damages in connection with any additional costs claimed pursuant to clause 2 above;
 - c. Delay costs shall be limited to those as listed in Section 105.16.5 of the SCDOT standard specifications 2007;
 - d. CONTRACTOR shall not be entitled to any relief under clause 2.a.v. above (Materially Inaccurate Utility information) if the existence of a Utility in the correct location and/or size, as applicable, was known to CONTRACTOR, or an person or entity for which CONTRACTOR is legally responsible, as of the submission of the Cost Proposal or would have become known to CONTRACTOR as of such date by undertaking a Reasonable Investigation, as defined in Article XIII, Differing Site Conditions.

If Railroad property is impacted by the Project, the following provisions shall apply:

H. Railroad Coordination

1. CONTRACTOR shall be responsible for all coordination, monitoring, and otherwise undertake the necessary efforts to work with the involved Railroad or Railroad Companies (Railroad), including but not limited to, sending plans, meetings, correspondence, phone calls, writing/reviewing Right of Entry agreement, as may be necessary to perform work on or within 50 feet of Railroad property for this Project, needed for the construction of the Project. All correspondence shall include the railroad file number and railroad milepost information. CONTRACTOR shall provide project specific information and railroad coordination material to SCDOT as set forth in EXHIBIT 6.

2. As the Railroad may update such information from time to time, CONTRACTOR shall bear the additional burden as well as benefit from any reduced burden in connection with any such updated information without adjustment to the Contract Time or the Contract Price; provided, however, that such updated information shall be part of these technical requirements without further action by the Parties; provided, further, that if SCDOT desires that CONTRACTOR perform some or all of the original scope of the work as relates to Railroad's reduced burden, then CONTRACTOR shall comply with such direction, without abrogating CONTRACTOR's responsibility for the design of the Project.
3. CONTRACTOR's obligation relating to insurance policies and processes shall be deemed additional insurance-related obligations of the CONTRACTOR under this Agreement.

I. Right of Entry

CONTRACTOR shall apply for and obtain approval from the Railroad for all required right of entry agreements necessary for the Project, including but not limited to, surveys, boring, etc. CONTRACTOR shall provide a copy of the right of entry agreement to SCDOT prior to entering the Railroad's property. The CONTRACTOR shall apply for right of entry 120 days prior to commencing work where Right of Entry is necessary. CONTRACTOR shall comply with the conditions of entry and right of way/real property interest document requirements in Exhibit 6.

J. Approved Plans

CONTRACTOR shall perform work on Railroad property in accordance with plans, specifications, special provisions and Railroad manuals set forth in Exhibit 6. CONTRACTOR shall not perform work until the CONTRACTOR's plans have been approved by the Railroad. Any revision to the approved plans shall not be carried out until the Railroad provides CONTRACTOR written approval of the revisions.

K. Railroad Costs, Railroad Design Reviews

1. CONTRACTOR shall be responsible for the cost of railroad coordination and any other cost for services provided by the Railroad or the Railroad's Agent that exceeds the Preliminary Engineering and Construction Force Account Estimates provided in Attachment B, or as modified by an approved ATC. This includes all expenses such as Railroad flagging operations and Railroad design reviews. CONTRACTOR shall also be responsible for all costs associated with designing and constructing the Project on or within Railroad Property or right of way.
2. CONTRACTOR shall be responsible for Railroad cost at the prevailing industry flagging rate plus overhead for the flagging expenses and associated flagging condition, including any inflation or rate increases, up to those durations outlined in Attachment B, or as modified by an approved ATC and CONTRACTOR, within the

Contract Price, shall be responsible for costs at such rates, with such markups, for duration at or beyond those outlined in Attachment B.

3. CONTRACTOR shall establish appropriate design review time frames and package submittals consistent with the earlier of those required hereunder or as may be requested by the Railroad in order to mitigate the costs for railroad review of Project plans. SCDOT will be responsible for all costs associated with Railroad design review of the CONTRACTOR's design plans, including any inflation or rate increases, up to those durations outlined in Attachment B, or as modified by an approved ATC.

L. Relief for Certain Railroad Costs, Delays

1. CONTRACTOR shall have no right to make a claim under this clause, and shall bear either or both of any additional costs or delays to the then-current CPM Schedule, arising out of, relating to, or resulting from any breach of this Agreement or of the provisions of the Railroad Agreements assigned or delegated to CONTRACTOR, any negligence, recklessness, willful misconduct, fraud, or violation of any applicable law, governmental approval or permit by or on behalf of CONTRACTOR. CONTRACTOR shall bear the burden of proving that any delay to the CPM Schedule could not have reasonably been mitigated or avoided. Furthermore, CONTRACTOR hereby acknowledges and agrees that it has assumed all risks with respect to the need to work with the Railroad.
2. So long as CONTRACTOR has met its burden of proof described above, then, subject to the conditions below, CONTRACTOR shall be entitled to a Contract Change Request that provides for, in each case without double counting for Concurrent Delays for which CONTRACTOR would otherwise be entitled to relief:
 - a. Additional time, on a day-by-day basis, to achieve Substantial Completion for each day of delay to the CPM Schedule which results in an identifiable and measurable delay of an activity on the critical path under the then-current CPM Schedule, after consumption of all then-available float.
 - b. Actual, direct, and documented costs incurred solely and directly attributable following notification of delays to the critical path reflected on the most recent agreed CPM Schedule in excess of 90 days of delay. The 90 days may comprise consecutive impact periods. After 90 days the CONTRACTOR and SCDOT shall share impact costs on an equal basis for 91-180 days. After 180 days SCDOT will be responsible for cost of delays to the critical path reflected on the most recent agreed CPM Schedule.
3. Contractor's entitlement to a Contract Change Request above is subject to the following additional limitations:
 - a. CONTRACTOR shall not be entitled to any disruption damages in connection with any additional costs claimed with respect to any Railroad-related delay;

- b. CONTRACTOR shall not be entitled to any punitive, indirect, special, incidental, or consequential damages in connection with any additional costs claimed above;
- c. Delay costs shall be limited to those as listed in Section 105.16.5 of the SCDOT standard specifications 2007 as revised; and
- d. CONTRACTOR shall not be entitled to an extension of time or additional costs if the delay arising out of, relating to, or resulting from Railroad participation in the Project is concurrent with any other unrelated delay to an activity on the critical path under the then-current CPM Schedule for which CONTRACTOR is responsible under this Agreement.

M. Progress Payments Reduction

Once the RR Agreements are executed, SCDOT shall review and administer the invoices for costs received from the Railroad. The approved Railroad invoiced amount that exceeds the Preliminary Engineering and Construction Force Account Estimates provided in Attachment B, or as modified by an approved ATC, will be deducted from Progress Payments due and owing to the CONTRACTOR.

N. Separate Utility Agreement

CONTRACTOR is advised that all Utility Adjustments required within Railroad right of way or property will require separate agreements between the affected Utility Owner and the Railroad. CONTRACTOR shall notify the Utility Owner that it needs to obtain a Railroad encroachment permit. CONTRACTOR shall be responsible for all coordination necessary for the Utility Owner to obtain permits for Utility Adjustments within Railroad property.

VIII. RIGHT-OF-WAY

A. Definitions:

1. **Right of Way Services** means all acquisition services, including written appraisals and negotiation, as set forth in the SCDOT Acquisition Manual and all relocation assistance services as set forth in the SCDOT Relocation Assistance Manual (collectively the “Right of Way Services”).
2. **CONTRACTOR-Designated Right of Way** means any interest (permanent or temporary) in real property located outside of the proposed Project right of way limits, as depicted on the SCDOT Right of Way Plans for this Project, that is specifically identified by CONTRACTOR in an SCDOT approved Alternative Technical Concept (ATC).
3. **Just Compensation** means the SCDOT approved value, based on appraisals prepared by an appraiser from the Approved SCDOT Appraiser List of parcels impacted by the Project. In determining Just Compensation, only the value of the property to be acquired or taken, any diminution in the value of the landowner’s remaining property,

and any benefits to be derived from the proposed Project including the value of any property or rights relinquished or reverting to the landowner as a part or result thereof shall be considered.

4. **Eligible Relocation Assistance Payments** means payments approved by SCDOT pursuant to SCDOT Relocation Assistance Manual.
5. **Premium Right of Way Acquisition Costs** means the amount of a negotiated settlement that exceeds Just Compensation set in the approved SCDOT Appraisal or jury award.
6. **Additional Right of Way** means additional property identified after Contract execution that is not identified on the SCDOT Right of Way Plans or as CONTRACTOR-Designated Right of Way, is determined necessary for completing the design and construction of the Project, and which SCDOT has agreed to acquire.
7. **Additional Areas** means additional real property rights or interests, in each case that are not intended for use as part of the permanent right of way that is desired by CONTRACTOR for, but not limited to, construction staging, access, or borrow pits, or other similar temporary uses.
8. **Hold-off Parcels** means those parcels on the Right of Way Plans where Right of Way Service have not been completed prior to award of the Contract
 - a. See Special Provisions Section 104: Tract 195 Parking Requirements for additional criteria for Tract 195
9. **Project Right of Way Limits** means the new and existing limits shown in the Project Right of Way Plans in Attachment B.

B. SCDOT Right-of-Way Service Responsibilities

1. SCDOT shall perform Right of Way Services with respect to the following property:
 - a. All right of way parcels identified on SCDOT Right of Way Plans as set forth in Attachment B, (Right of Way Plans);
 - b. All CONTRACTOR-Designated Right of Way; and
 - c. All Additional Right of Way.
2. SCDOT will provide CONTRACTOR with SCDOT approved right-of-way certifications, for all parcels acquired for the design of the Project.
3. SCDOT will provide CONTRACTOR with a Right of Way Certification, included in Attachment B, which will identify Hold-off Parcels and provide a date the CONTRACTOR will have access to the parcel post award. SCDOT will update the Right of Way Certification in each Addendum to inform the CONTRACTOR of the status of Right of Way Services on Hold-off Parcels.

C. CONTRACTOR Responsibilities:

1. CONTRACTOR shall be responsible for the following:

- a. Acquisition of any Additional Areas. Acquisition of any Additional Areas shall be the sole responsibility of CONTRACTOR, and any title or interest shall be secured in the name of the CONTRACTOR. CONTRACTOR shall provide SCDOT the location and documentation for these Additional Areas when purchased or leased. CONTRACTOR shall furnish SCDOT a copy of any agreements, whether for purchase or lease, for the use of Additional Areas in conjunction with the construction of the Project. . Any necessary permit modifications are the responsibility of the CONTRACTOR.
- b. Right of Way Activity Plan. Within 45 days of execution of the Contract, CONTRACTOR shall submit a Right of Way Activity Plan to the SCDOT's right of way project manager and it shall include the following:
 - i. Establish a clear zone adjacent to properties occupied by persons to be displaced in which construction equipment shall not be operated or parked,
 - ii. Establish a clear zone for construction for properties occupied by persons to be displaced to minimize undue impacts or hardships,
 - iii. Establish a method of protecting equipment and property from vandalism or unauthorized use,
 - iv. Provide reasonable and safe access to residences or businesses that are to be displaced until such time as the property is vacant, and
 - v. Observe the property rights of landowners of adjacent and/or yet to be acquired properties.
- c. Cooperation in all respects with SCDOT and shall cause all personnel to be available to and assist SCDOT in connection with the eminent domain proceedings, including testifying as an expert witness for the duration of the Project. After completion of the Project, CONTRACTOR shall continue to provide such cooperation and assistance of personnel as and when requested by SCDOT, For purposes hereof, "personnel" means expert witnesses, surveyors, land planners and other consultants utilized by CONTRACTOR in connection with the Project,
- d. Observation and/or implementation, as applicable, of all commitments in the Right of Way instruments included in Attachment B, and
- e. Observation and/or implementation, as applicable, of any commitments in the Right of Way instruments secured by SCDOT (excluding CONTRACTOR-Designated Right of Way and Additional Right of Way) after submittal of the Cost Proposal shall be performed under a Contract Change Request.

D. SCDOT Cost:

Carolina Crossroads
Phase 2 – Broad River Road at I-20 Interchange
Richland County

1. SCDOT shall be responsible for the following:
 - a. Cost of Right of Way Services necessary to secure the right of way identified on the SCDOT Right of Way Plans set forth in Attachment B, and
 - b. Just Compensation, Eligible Relocation Assistance Payments, and Premium Right of Way Acquisition costs to secure the parcels identified on the SCDOT Right of Way Plans set forth in Attachment B, and
 - c. Cost of all commitments in the Right of Way instruments shown on SCDOT Right of Way Plans but secured by SCDOT (excluding CONTRACTOR-Designated Right of Way and Additional Right of Way) after submittal of the Cost Proposal.
 - d. 50% of Premium Right of Way Cost for CONTRACTOR Designated Right of Way.

E. CONTRACTOR Cost:

1. CONTRACTOR shall be responsible for the following:
 - a. Cost of CONTRACTOR-Designated Right of Way and Additional Right of Way which includes the following:
 - i. Right of Way Services performed by SCDOT;
 - ii. The cost of condemnation proceedings incurred by SCDOT including expert witness fees, and all fees and expenses for exhibits, transcripts, photos and other documents and materials production, other than attorneys' direct fees;
 - iii. Just Compensation;
 - iv. Premium Right of Way Acquisition Costs for Additional Right of Way;
 - v. 50% of Premium Right of Way Cost for CONTRACTOR Designated Right of Way;
 - vi. Permitting and re-evaluation or modification of permits, if necessary;
 - vii. All governmental permits or approvals for the acquisition of additional areas; and
 - viii. Eligible Relocation Assistance Payments.
 - b. Cost of Additional Areas and associated costs;
 - c. Cost of all commitments in the Right of Way instruments included in Attachment B; and
 - d. Cost of all commitments in the Right of Way instruments for CONTRACTOR-Designated Right of Way and Additional Right of Way.
2. Cost associated with securing CONTRACTOR-Designated Right of Way and Additional Right of Way shall be submitted to CONTRACTOR by SCDOT via Contract Change Request and deducted from CONTRACTOR's Contract Price

through a change order. For each request for Additional Right of Way, CONTRACTOR shall include an identification of the parcel(s)/rights(s), right of way plan sheets and a justification for its need related to the Project.

3. In the event that the Additional Right of Way is from a parcel where SCDOT is actively negotiating a Hold-off Parcel, CONTRACTOR agrees to share in the cost of the acquisition and relocation assistance as follows:
 - a. CONTRACTOR shall be responsible for the cost of the updated appraisal and Just Compensation of that portion of the property attributable to the Additional Right of Way;
 - b. CONTRACTOR shall be responsible for the cost of any increase in Eligible Relocation Assistance Payment attributable to the Additional Right of Way;
 - c. CONTRACTOR shall be responsible for 50% of the combined cost of all Right of Way Services; and
 - d. CONTRACTOR shall be responsible for 50% of the combined Premium Right of Way Acquisition Costs.
 - e. CONTRACTOR shall be responsible for 100% of the Premium Right of Way Acquisition Cost for the rights of way which may be identified on the Hold-off Parcel list, but the acquisition has been completed by signed settlement document, easement or deed prior to the request for Additional Right of Way.

F. Access to Parcels:

1. CONTRACTOR shall not enter any parcel prior to CONTRACTOR's receipt of the SCDOT right of way certification for that parcel. Only in exceptional circumstances will a certification be approved by SCDOT based on a right of entry. Certification may be on a tract-by-tract basis.
2. If CONTRACTOR enters any property in connection with the Project without having obtained the SCDOT right of way certification, in addition to all other rights and remedies provided by law or equity or available under the Contract or otherwise, CONTRACTOR shall be responsible for its costs and all costs incurred by SCDOT as a result thereof. The CONTRACTOR shall not be entitled to an extension of time in such cases where the CONTRACTOR's entry onto such property causes, results in, or contributes to a delay by SCDOT in acquiring said property or parcel, or any other property or parcel owned by the same owner.

G. Schedule, Delays:

1. SCDOT makes no guarantees or warranties when the delivery date will be for SCDOT to acquire and certify the CONTRACTOR-Designated Right of Way or Additional Right of Way. However, SCDOT will provide guidance on the time needed to acquire CONTRACTOR-Designated Right of Way during the ATC process. CONTRACTOR

is responsible for allocating sufficient time and arranging its CPM schedule to avoid impacts caused by access to CONTRACTOR-Designated Right of Way and Additional Right of Way. CONTRACTOR shall not be entitled to schedule impacts, delays or extension of time to the Project caused by Right of Way Services in securing CONTRACTOR-Designated Right of Way or Additional Right of Way.

2. CONTRACTOR shall not be entitled to schedule impacts, delays or extension of time to the Project caused by its acquisition of Additional Areas.
3. To the extent that SCDOT has not provided access to Project right of way or is unable to provide access to the Project right of way on or prior to the date set forth on the Right of Way Certification in Attachment B, SCDOT may notify CONTRACTOR of a revised projected date for delivery of access. Upon such notice or, in the absence of such notice, upon the failure to provide access on the date specified on the Right of Way Certification, CONTRACTOR shall: (i) take immediate action to minimize any cost and time impact and shall work around such parcel until access can be provided, including rescheduling and re-sequencing the work to minimize or avoid any delay to the Project; and (ii) provide SCDOT written notice, within fifteen calendar days after receipt of such notice from the SCDOT or upon SCDOT's failure to meet the date specified on the Right of Way Certification whether the lack of access will result in a delay to Substantial Completion of the Project. CONTRACTOR's failure to provide such notice shall bar the CONTRACTOR from asserting a delay or seeking delay damages for lack of access to the parcel.

IX. PERMITTING

1. The following conditional permit has been acquired and is available in Attachment B under the Environmental Compliance Article of this Contract (and consists in the only governmental approval or permit for which SCDOT is responsible hereunder:
 2. USACE Section 404 Permit in Attachment B.
 3. Any Permit modifications, alterations, re-evaluations or changes will be the responsibility of the CONTRACTOR as further detailed in Article X and Exhibit 8. CONTRACTOR shall comply with all environmental permit requirements as set forth in Exhibit 8.
 4. Utility Adjustments and other activities outside the right of way limits and/or outside of the identified impact area covered by SCDOT'S USACE Section 404 Permit the will require separate USACE Section 404 permit.
 5. Except for the aforementioned permit acquired by SCDOT, CONTRACTOR shall obtain all permits necessary for completion of this Project. This includes all permits associated with the wet Utility Adjustments by the CONTRACTOR. The CONTRACTOR shall maintain and comply with all permits obtained by SCDOT and CONTRACTOR necessary for completion of this Project. The CONTRACTOR shall comply with all local, state, and federal permitting requirements. Regarding any permit or license that must be obtained in the name of SCDOT, the CONTRACTOR shall perform all functions within its power to obtain the permit or license, and

SCDOT shall cooperate in this effort and perform the functions that the permitting process dictates must be performed by SCDOT. The CONTRACTOR shall submit permit applications to SCDOT and. SCDOT will submit the permit application to the appropriate permitting agency indicating that CONTRACTOR is acting as an agent for SCDOT. If said regulatory agencies fail to issue permits in a timely manner, SCDOT may, on an individual basis, consider a time extension for permit approval delays when CONTRACTOR can demonstrate that the application was submitted in a timely manner, all reasonable efforts have been made to expedite the permit approval, and that the delay has a direct impact on the Critical Path. CONTRACTOR shall not be entitled to additional compensation for delays in permit approval.

6. SCDOT is responsible for compensatory mitigation up to but not exceeding the mitigation credits identified for CCR Phase 2 as set forth in the USACE Section 404 Individual Permit, specifically those set forth in the Impacts and Mitigation Spreadsheet. The total number of stream and wetland credits for CCR Phase 2 is set forth in the Impacts and Mitigation Spreadsheet included in the USACE Section 404 Individual Permit (IP) and separately listed under the Environmental Compliance section in Attachment B. The Impacts and Mitigation Spreadsheet shall be completed as detailed in Exhibit 8. CONTRACTOR is responsible for all compensatory mitigation requirements in excess of the aforementioned mitigation credits.
7. CONTRACTOR is also responsible for compensatory mitigation associated with the wet utilities to be relocated by the CONTRACTOR. Compensatory mitigation for wetland/stream impacts beyond the identified impact area covered by SCDOT's USACE 404 Permit for wet Utility Adjustments may be available through an approved mitigation bank or Permittee Responsible Mitigation (PRM) as define in EPA's 2008 Mitigation Rule. If the impacts associated with the wet utilities to be relocated by the CONTRACTOR do not exceed those impacts per each jurisdictional feature identified in the approved permit of CCR Phase 2, no additional mitigation will be required.

X. ENVIRONMENTAL COMPLIANCE

A. Compliance with Environmental Commitments

CONTRACTOR shall comply with all Environmental Documents and requirements, including but not limited to:

1. All NEPA environmental determinations and commitments set forth in the combined Final Environmental Impact Statement (FEIS) / Record of Decision (ROD), approved for the Carolina Crossroads Project by the Federal Highway Administration (FHWA) on May 2, 2019 and Re-Evaluations dated August 3, 2020 and October 29, 2020, included in Attachment B, any modification thereto, and requirements of Exhibit 8;
2. All stipulations and conditions under which SCDOT received approval of the Environmental Document(s) and any modifications resulting from a re-evaluation of the Document(s). If the CONTRACTOR elects to construct the Project in a manner that is not consistent with the assumptions in the SCDOT prepared environmental documents, the CONTRACTOR will be responsible for revising the environmental

documents and provide any additional studies that may be required. All revisions will require SCDOT and FHWA, if applicable, approval prior to any right of way acquisition or construction activity;

3. All social, economic, and environmental studies required by regulatory authorities in the course of construction;
4. All cost, preparation, revision, acquisition, compliance, and adherence to conditions of any permits required by federal, state, or local laws or regulations; and
5. The resolution of any deviations from the Contract Documents, drawings or other information included in the environmental permits. Any proposed changes within the permitted areas would need to be coordinated with SCDOT's Environmental Services Office (ESO).

B. Preconstruction / Partnering Conference(s)

CONTRACTOR shall conduct one (or more, if appropriate) pre-construction / partnering conference(s) prior to any construction activity to discuss environmental, permitting and sustainability issues, which conference shall include all subcontractors, and, to the extent feasible, representatives from the U.S. Army Corps of Engineers, the S.C. Department of Health and Environmental Control Water Quality Division, the FHWA, CONTRACTOR, and SCDOT.

C. Protection of Archaeological and Paleontological Remains and Materials

1. When archaeological or paleontological remains are uncovered, CONTRACTOR shall immediately halt operations in the area of the discovery and notify SCDOT.
2. Archaeological remains consist of any materials made or altered by man which remains from past historic or prehistoric times (i.e. older than 50 years) Examples include old pottery fragments, metal, wood, arrowheads, stone implements or tools, human burials, historic docks, structures or not recent (i.e. older than 100 years) vessel ruins. Paleontological remains consist of animal remains, original or fossilized, such as teeth, tusks, bone, or entire skeletons.
3. CONTRACTOR shall cease the work in the vicinity of the discovery, notify SCDOT, and afford SCDOT the opportunity to preserve, document, and recover the remains and materials of archaeological and paleontological importance for the State. CONTRACTOR shall carry out all instructions of SCDOT for the protection of archeological or paleontological remains, including steps to protect the site from vandalism and unauthorized investigations, from accidental damage and from dangers such as heavy rainfall or runoff.
4. CONTRACTOR shall be entitled to relief under, but subject to the terms and conditions of the "Differing Site Conditions" provisions under Article XIII.

D. Community and Public Relations Support Plan

The CONTRACTOR shall provide to SCDOT for review and written approval a Community and Public Relations Support Plan as part of the Project in accordance with Exhibit 5. The Community and Public Relations Support Plan shall identify the process by which the CONTRACTOR shall (1) provide SCDOT with relevant and timely construction-related information for public distribution and (2) assist SCDOT with promoting public awareness of the Project's benefits and impacts. All costs associated with Community and Public Relations Support Plan shall be the responsibility of CONTRACTOR and be included in the Contract Price.

E. Sustainability Certification and Verification

CONTRACTOR shall be responsible for sustainable practices and techniques as part of the construction of this Project through the Envision v3 and INVEST program set forth in Exhibit 8. Applicable Envision v3 credits have been identified based on the Modified Selected Alternative, which is included in Attachment B. The applicable Envision v3 credits are listed in the Sustainability Action Plan included in Attachment B. CONTRACTOR shall obtain the credits and associated levels of achievement for those credits by the deadlines set forth in the Final Sustainability Action Plan and as required in Exhibit 8. All costs associated with obtaining, implementing and documenting Envision v3 credit requirements and INVEST documentation and application assistance shall be the responsibility of the CONTRACTOR.

XI. HAZARDOUS MATERIALS

A. Identified Hazardous Materials

1. The CONTRACTOR is referred, in addition to this Article, to Exhibit 84, Environmental Criteria and Attachment B for information and requirements regarding Hazardous Materials inspections and other environmental documentation regarding Hazardous Materials. The CONTRACTOR shall be responsible for handling, storage, remediation, and disposal of any materials, wastes, substances and chemicals deemed to be a solid waste or hazardous waste under applicable state or federal law, (hereinafter "Hazardous Materials") encountered at the Site which were identified in the Hazardous Materials inspections or other environmental documentation regarding Hazardous Materials provided in Exhibit 8, Environmental Criteria and Attachment B and the cost of these activities shall be included in the Contract Price.
2. If the CONTRACTOR's plan includes demolition, removal, or disposal of existing structures not previously inspected by SCDOT, the CONTRACTOR is required to perform lead-based paint and asbestos inspections on the existing structures prior to performing those activities. The cost of the lead-based paint and asbestos inspections shall be included in the Contract Price. Removal of lead-based paint and asbestos and lead-based paint and asbestos containing materials identified by inspections shall be by a qualified independent firm retained by the SCDOT or by negotiating a Contract Change Request with the CONTRACTOR as outlined in the procedures in Exhibit 5, Section 104 – Contract Changes. See Attachment B for asbestos containing materials and lead-based paint reports conducted by SCDOT.

3. If the CONTRACTOR's plan includes demolition, removal, or disposal of existing structures previously surveyed by SCDOT, but the asbestos inspection reports have expired, the CONTRACTOR is required to perform new asbestos inspections on the existing structures prior to performing those activities. The cost of the asbestos inspections shall be included in the Contract Price. The cost of removal, handling, storage, remediation, and disposal of asbestos containing materials identified in the expired inspection reports shall be included in the Contract Price.
4. A copy of the lead-based paint and asbestos inspection reports and the notification of demolition or renovation forms must be submitted to SCDHEC at least ten (10) working days prior to demolition of an existing structure. Prior to submitting the reports and forms to South Carolina Department of Health and Environmental Control (SCDHEC), the CONTRACTOR shall obtain the RCE's signature. The CONTRACTOR is responsible for obtaining all required permits and other approvals to proceed with the work.
5. The CONTRACTOR is responsible for all necessary containment, removal, transportation, and disposal of the subsurface and surface Hazardous Materials identified in inspections or other environmental documentation provided in Attachment B in compliance with all applicable Federal (EPA, OSHA & DOT) and State (SCDHEC & SCDOT) and local (County and Municipality) requirements for Hazardous Materials and worker health and safety.

B. Unexpected Hazardous Materials

Upon encountering any unexpected Hazardous Materials, the CONTRACTOR shall follow the procedures as described below:

1. CONTRACTOR shall stop Work immediately in the affected area and duly notify SCDOT and, if required by state or federal law, all government or quasi-government entities with jurisdiction over the Project or site.
2. Upon receiving notice of the presence of Hazardous Materials, SCDOT will take necessary measures required to verify that the Hazardous Materials are remediated or rendered harmless. Such necessary measures will include SCDOT either (i) retaining qualified independent firm or (ii) negotiating a Contract Change Request with CONTRACTOR.
3. CONTRACTOR shall resume Work at the affected area of the Project only after written notice from SCDOT that the (i) Hazardous Materials have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project.
4. CONTRACTOR's Contract Price and/or Contract Time shall be adjusted to the extent CONTRACTOR's cost and/or time of performance has been adversely impacted by the presence of Hazardous Materials.

5. If a Contract Change Request is negotiated, the CONTRACTOR shall comply with Exhibit 5, Section 104 – Contract Change.
6. For purposes of this Project, the Hazardous Material Generator shall be listed as “SCDOT” of any and all Hazardous Materials and/or hazardous wastes associated with work on the Project, with the exception that CONTRACTOR shall be the generator for all Hazardous Materials it, its consultants, subconsultants, subcontractors or suppliers, brings on to the Project or that is brought to the Project by them and subsequently is caused to be released on the Project by the CONTRACTOR, CONTRACTOR’s design consultants, subcontractors and suppliers. The foregoing shall not preclude or limit any rights or remedies that SCDOT may have against third parties and/or prior owners, lessees, licensees and occupants of the Project’s right of way.
7. SCDOT is not responsible for Hazardous Materials actually brought to the Project by CONTRACTOR, CONTRACTOR’s design consultants, subcontractors and suppliers or anyone for whose acts they may be or are liable. SCDOT is not responsible for negligent or willful acts by CONTRACTOR, CONTRACTOR’s design consultants, subcontractors and suppliers or anyone for whose acts they may be or are liable relating to Hazardous Materials found at the site. CONTRACTOR shall indemnify, defend and hold harmless SCDOT and SCDOT’s officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorney’s fees and expenses arising out of or resulting solely from those Hazardous Materials actually brought to the Project or negligent or willful acts relating to Hazardous Materials, or both by CONTRACTOR, CONTRACTOR’s design consultants, subcontractors and suppliers or anyone for whose acts they may be or are liable.

XII. DEMOLITION, REMOVAL & DISPOSAL OF STRUCTURES

CONTRACTOR shall be responsible for the demolition, removal and disposal of all structures and their appurtenances within SCDOT Right of Way necessary for the completion of the Project, to include those portions which may extend outside the right of way, but were purchased as a part of the acquisition process. Structures shall include the bridges identified in the scope of work and all buildings acquired for the Project. All necessary permitting shall comply with Articles II.B.4 and IX of the Contract. Handling and disposal of Hazardous Materials shall be in accordance with Article XI of the Contract. Before demolition of the structures, the CONTRACTOR shall complete and submit a Notification of Demolition and Renovation form to the South Carolina Department of Health and Environmental Control.

XIII. DIFFERING SITE CONDITIONS

A. Differing Site Conditions, Defined; Burden of Proof

1. “Differing Site Conditions” are concealed or latent physical conditions encountered at the Project site during the term of the Agreement that (i) materially differ from the conditions reasonably assumed to exist at the site (Type 1); or (ii) are of an unusual

nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the work provided for in the Agreement (Type 2). Type 1 conditions are those geotechnical or geological deviations from what is normally assumed to exist based on information provided in the RFP and actual site location. The only Type 2 conditions eligible for relief under this Article XIII are:

- a. The discovery at the site of any archaeological, paleontological, biological or cultural resource; provided that the existence of such resource was not disclosed in the RFP (to the extent not addressed pursuant to Article X); and
 - b. The discovery at the site of any species listed as threatened or endangered under the Federal or State Endangered Species Act, except for those species disclosed as threatened or endangered in the RFP; and
 - c. The discovery at the site of any manmade object or manmade condition not normally found in subsurface material; and
 - d. The discovery at, near or on the site of any unexpected artesian condition as determined by SCDOT.
2. The definition of Differing Site Condition excludes unanticipated utilities and unexpected Hazardous Waste.
 3. CONTRACTOR shall bear the burden of proving that a Differing Site Condition exists and that CONTRACTOR could not have reasonably (i) designed the Project or (ii) worked around the condition, including by resequencing, relocating, or redeploying its forces to other portions of the Project or other activities unrelated to its work, so as to avoid additional cost. CONTRACTOR shall have no right to claim that any condition constitutes a Differing Site Condition if (A) CONTRACTOR, or any person or entity for which CONTRACTOR is legally responsible, had actual knowledge regarding such conditions prior to submission of the Cost Proposal, or (B) such condition would have become known to CONTRACTOR based upon a Reasonable Investigation prior to the submission of the Cost Proposal, as defined below. Furthermore, CONTRACTOR hereby acknowledges and agrees that, based upon the opportunity to review all available information, seek reasonable additional information, visit the Project site prior to submission of the Cost Proposal, and make any additional subsurface explorations or soil tests that CONTRACTOR determined to have been useful, in each case, prior to the submission of the Cost Proposal, it has assumed all risks with respect to the need to work around locations impacted by Differing Site Conditions.

B. Responsibility

1. Type 1: SCDOT is responsible for only Type 1 Differing Site Conditions that exist throughout a specified area around each SCDOT-provided test hole, as listed in the geotechnical data in Attachment B. For purposes of the Type 1 portion of the definition of Differing Site conditions, “reasonably assumed to exist” means that the

geotechnical and geological conditions indicated with respect to each SCDOT test hole exist throughout an area represented by a five-foot radius drawn from the center of the test hole.

2. Type 2: SCDOT is responsible for only Type 2 Differing Site Conditions listed above.
3. CONTRACTOR shall assume responsibility for all other Differing Site Conditions not identified as Type 1 or Type 2.

C. Relief for Certain Differing Site Conditions

1. CONTRACTOR shall submit a Contract Change Request to seek any relief for Differing Site Conditions for which SCDOT has responsibility. So long as CONTRACTOR has met its burden of proof as set forth in paragraph A.3 above that a condition is a Differing Site Condition for which CONTRACTOR is entitled to certain relief, CONTRACTOR shall be entitled to submit a Contract Change Request that provides for:
 - a. additional time, to achieve Substantial Completion for a Differing Site Condition that causes or will result in an identifiable and measurable disruption to the critical path under the then-current CPM Schedule, after consumption of all then-available float; provided, however, that SCDOT may, in its sole discretion, elect to order acceleration, in which case the Contract Change Request shall not provide for an adjustment to the then-current CPM Schedule as a result of such Differing Site Condition;
 - b. actual, direct, and documented costs incurred solely and directly attributable to the Differing Site Condition;
 - c. acceleration costs, only if SCDOT elects to order acceleration.
2. CONTRACTOR's entitlement to a Contract Change Request is subject to the following additional limitations:

CONTRACTOR shall not be entitled to any disruption damages in connection with any additional costs claimed with respect to any Differing Site Condition;

- d. CONTRACTOR shall not be entitled to any punitive, indirect, special, incidental, or consequential damages in connection with any additional costs claimed with respect to any Differing Site Condition;
- e. costs shall not exceed those allowed in, and calculated pursuant to Section 105.16.5 of the SCDOT Standard Specifications, with the exception of extended job site overhead rates which shall be as set forth in Exhibit 5 of the RFP;
- f. CONTRACTOR shall not be entitled to an extension of time or additional costs if the delay attributable to the Differing Site Condition is concurrent with any other

unrelated delay to an activity on the critical path under the then-current CPM Schedule for which CONTRACTOR is responsible under this Agreement.

- g. If SCDOT directs acceleration of the Work, as part of CONTRACTOR's Contract Change Request, CONTRACTOR shall show all acceleration costs associated with meeting the original scheduled date for Substantial Completion.

D. Differing Site Condition Procedure

1. If CONTRACTOR encounters known or suspected Differing Site Conditions, CONTRACTOR shall promptly notify SCDOT by either submitting a formal notice to SCDOT (for those conditions that CONTRACTOR anticipates are CONTRACTOR's responsibility) or submitting a Contract Change Request (for those conditions that CONTRACTOR anticipates are SCDOT's responsibility), in either case without substantially disturbing or altering the affected area. If CONTRACTOR is entitled to relief, then CONTRACTOR shall not resume work that affects or reasonably could affect the condition until a Contract Change Request is executed or a Force Account order is issued for the affected work. If CONTRACTOR is not entitled to relief, or if CONTRACTOR elects not to pursue relief to which it may otherwise be entitled, then CONTRACTOR shall not resume work that affects or reasonably could affect the condition until SCDOT consents to work resuming, subject to applicable law and governmental approvals.
2. Each Contract Change Request relating to a Differing Site Condition shall be accompanied by:
 - a. a statement signed by a qualified professional setting forth (i) all relevant assumptions made by CONTRACTOR with respect to the condition at the relevant portion of the Site, (ii) justifying as reasonable the basis for all such assumptions which includes supporting documentation, (iii) explaining exactly how the condition encountered qualifies as a Differing Site Condition and (iv) listing the specific work-arounds the CONTRACTOR undertook, to mitigate any cost and delay effects of the encounter with the condition, and
 - b. a signed statement certifying that CONTRACTOR, and any person or entity for which CONTRACTOR is legally responsible (i) had no actual knowledge regarding such condition as of the submission of the Cost Proposal and (ii) such condition would not have become known to CONTRACTOR based upon a Reasonable Investigation.
3. If the request is based on Type 1 Differing Site Conditions, the Contract Change Request shall also include detailed information regarding the alleged error in the boring data provided by owner or performed by CONTRACTOR forming the basis for the request, and shall explain how CONTRACTOR's assumptions would have changed had the boring data been accurate.

4. Upon submittal of a Contract Change Request or other notice as set forth above, SCDOT will investigate the conditions within three business days and if it is determined that (1) a Differing Site Condition exists, (2) the condition is SCDOT's responsibility, and (3) the condition causes an increase in the cost or time required for performance of the work, the Contract will be adjusted consistent with the relief provided above.
5. SCDOT shall have the right to require the CONTRACTOR to resume work in the area at any time, even though an investigation may still be ongoing. CONTRACTOR shall promptly resume work in the area upon receipt of notification from SCDOT to do so.

E. Reasonable Investigation

"Reasonable Investigation" means the following activities by appropriate, qualified professionals prior to the submission of the Cost Proposal:

1. Visit and visual, non-intrusive inspection of the site and adjacent locations, except areas to which access rights have not been made available prior to the submission of the Cost Proposal;
2. Review and analysis of all reference documents;
3. Review and analysis of SCDOT-provided governmental approvals or permits, if any, available prior to the submission of the Cost Proposal;
4. Reasonable inquiry with real property, particularly those properties indicating former gas stations/auto garages, and utility owners or occupants, including request for and review of plans provided thereby, if any;
5. Review and analysis of laws, regulations, rules, ordinances, etc. applicable to the Project prior to the submission of the Cost Proposal; and
6. Other activities sufficient to familiarize CONTRACTOR with surface and subsurface conditions, including the presence of utilities, hazardous materials, archeological, paleontological and cultural resources, and threatened or endangered species, affecting the site or surrounding locations.

XIV. FORCE MAJEURE

Delays or failures of performance, in each case, that materially and adversely affect performance of the CONTRACTOR hereunder, shall not constitute breach of the Agreement if and to the extent such delays or failures of performance result in a delay to the critical path identified in the current accepted CPM Schedule that are caused by:

1. acts of God or the public enemy;
2. expropriation or confiscation of facilities;
3. compliance with any order or request of any governmental authority other than SCDOT or a party in privity with it;

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4. a change in law after the CONTRACTOR'S submission in response to the RFP that directly and substantially affects performance of the Project;
5. acts of war (including civil and revolutionary); invasion, armed conflict, violent act of foreign enemy, military or armed blockade, military or armed takeover of the Project or the Site;
6. rebellion, terrorism, riot, insurrection, civil commotion or sabotage that causes direct physical damage to, or otherwise directly causes interruption to construction or direct losses during maintenance of the Project;
7. fires, floods, earthquakes, including all foreshocks and aftershocks, where such earthquakes include ground shaking, liquefaction, settlement, or ground movements that directly impact, and cause damage to, temporary or permanent works of the Project; landslides caused by natural events, tornados, hurricanes, tropical storms, sinkholes caused by natural events, in each case directly impacting the physical improvements of the Project or CONTRACTOR'S performance of the scope of the work;
8. explosions, nuclear explosion, including radioactive contamination that triggers CONTRACTOR's obligations pertaining to hazardous materials hereunder and, in each case directly impacting the physical improvements of the Project or performance of the CONTRACTOR's scope of work,
9. national or regional unavailability or shortage of materials, as determined by SCDOT;
10. embargos directly affecting materials required to perform the CONTRACTOR'S scope of the work;
11. quarantine or suspension by the Governor, President, or other regional authority, or declared epidemic or pandemic, in each case, directly affecting the CONTRACTOR's performance of the scope of the work;
12. declared state of emergency by the Governor, the U.S. President or regional authority having jurisdiction over the Project or the CONTRACTOR'S performance of the scope of the work;
13. strikes (both national or regional strikes) or other concerted acts of workman not arising out of or relating to CONTRACTOR or any person or entity for which CONTRACTOR is responsible;
14. vehicle, as defined by 56-1-10 of South Carolina Code of Laws, collision that occurs prior to Final Completion, the impact of which causes damage to full pavement structure, bridge structure, noise wall, barrier wall/retaining wall or overhead sign structure of the Project;

(each of the foregoing a "Force Majeure Event"), except, in each case, to the extent that any of the foregoing events or consequences of such events (i) arose out of (A) any breach of Contract by CONTRACTOR or any person or entity for whom CONTRACTOR is legally responsible, (B) any act or omission by CONTRACTOR or any such person or entity, (C) any negligence, recklessness, willful misconduct, fraud, or violation of laws by CONTRACTOR or any such person or entity; or (ii) could reasonably have been avoided by CONTRACTOR or any such

person or entity (by the exercise of caution, due diligence or reasonable efforts, or otherwise). Any expense attributable to such occurrence of a Force Majeure Event shall not entitle CONTRACTOR to an adjustment in the Contract Price, as it is the Parties' intent that these events will be compensated under the CONTRACTOR's appropriate insurance policy. The duration of delay to the critical path identified in the current accepted CPM Schedule directly caused by a Force Majeure Event shall be added to the Contract Time.

CONTRACTOR shall bear the burden of proving that a Force Majeure Event exists and that CONTRACTOR could not have reasonably worked around the condition, including by resequencing, relocating, or redeploying its forces to other portions of the Project or other activities unrelated to its work, so as to avoid additional delay or cost.

XV. WARRANTY

1. CONTRACTOR warrants that it will perform all services in accordance with the standards of care and diligence normally practiced by recognized engineering and construction firms in performing services and obligations of a similar nature. CONTRACTOR warrants that all materials and equipment furnished shall be of good quality and new unless otherwise authorized by SCDOT and that the construction shall conform to the Contract requirements. CONTRACTOR agrees to promptly correct, at its own expense, defects or deficiencies in materials and workmanship that appear prior to and during a period of five years after Final Completion of the Project. This shall include all plant-produced materials (i.e. asphalt, concrete, etc.) and In-Contract Utility Work. CONTRACTOR shall not be responsible for damages caused by SCDOT's failure to provide timely notification of potentially damaged or defective work of which SCDOT had actual knowledge. CONTRACTOR shall properly perform, at the written request of SCDOT made at any time within the warranty period after Final Completion of the Project as defined in Article IV.A.5, all steps necessary to satisfy the foregoing warranty and correct any element of the Project or the services that is defective or does not reflect such standards of care and diligence. The cost of such corrective services shall be CONTRACTOR's responsibility.
2. CONTRACTOR further warrants the performance of all bridge components on all structures for five years from Final Completion of the Project. If a component fails to perform properly for any reason, including but not limited to normal wear and tear, the CONTRACTOR shall replace the failed component at no cost to SCDOT.
3. The warranty periods begin at Final Completion of the Project. CONTRACTOR shall immediately abate any warranty deficiency that poses an unsafe condition to the public; otherwise deficiencies shall be corrected no later than 30 days from the determination of corrective action. In the event CONTRACTOR, after notice, fails to promptly abate the deficiency or fails to make correction within the prescribed 30 days, SCDOT may have the deficiency corrected. All costs associated with such correction by SCDOT shall be the responsibility of the CONTRACTOR and its Surety. With respect to any component that is repaired or replaced pursuant to this warranty, the warranty period of that component shall be the longer of one year from

repair or replacement of the component or the remainder of the original warranty period.

4. CONTRACTOR shall take all steps necessary to transfer to SCDOT any manufacturer's or other third-party's warranties of any materials or other services used in the construction of the Project.
5. These warranties are in addition to all warranties implied by law.
6. In addition to the warranties outlined above, for In-Contract Utility Work the CONTRACTOR agrees to promptly correct, at its own expense, defects or deficiencies in materials and workmanship that appear prior to and during a period beginning at Substantial Utility Work Completion, as defined in Exhibit 7, ending three years from Final Completion of the Project

XVI. INDEMNITY

A. Indemnifications by CONTRACTOR

1. Definitions

- a. Indemnified Parties means SCDOT, the State of South Carolina, their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees.
- b. Loss or Losses means any and all kinds of ascertainable damage in the broadest possible meaning under South Carolina law including, but not limited to: injury, liability, obligation, cost, response cost, diminution in value, expense, fees (including fees for attorneys, accountants, professionals and expert witnesses and expenses (including those incurred in connection with the enforcement of any indemnity or other provision of the Agreement)), charge, judgment, penalty, fine or third party claims. Losses include, but are not limited to, injury to or death of persons, damage or loss of property, and harm or damage to natural resources.
- c. CONTRACTOR-Related Entity means:
 - i. CONTRACTOR;
 - ii. CONTRACTOR's shareholders, entities with an ownership interest, parent companies, partners, joint venturers or members;
 - iii. Subcontractors and suppliers;
Any other persons performing any of the work on behalf of and/or at the direction CONTRACTOR;
 - iv. Any other persons for whom CONTRACTOR may be legally or contractually responsible; and

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- v. The employees, principals, owners, parent companies, subsidiaries, members, agents, officers, directors, shareholders, representatives, consultants, successors, assigns and invitees of any of the foregoing.
2. CONTRACTOR shall release, defend, indemnify and hold harmless the Indemnified Parties from and against any and all third-party claims and other Losses (including those incurred in connection with the enforcement of this indemnity) arising out of, relating to or resulting from the following (each an “Indemnified Claim”):
- a. The breach or alleged breach of any of this Contract by CONTRACTOR-Related Entity;
 - b. The failure or alleged failure by any CONTRACTOR-Related Entity to comply with any SCDOT approvals, governmental approvals, any applicable environmental laws or other governmental rules (including environmental laws);
 - c. Any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions in performance of the work, or arising out of any use in connection with the Project of methods, processes, designs, information, or other items furnished or communicated to SCDOT or another Indemnified Party pursuant to the Contract; provided, that this indemnity shall not apply to any infringement resulting from SCDOT’s failure to comply with specific written instructions regarding use provided to SCDOT by CONTRACTOR;
 - d. The actual or alleged CONTRACTOR fault in or associated with performance of the work;
 - e. Any and all claims by any governmental entity or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any CONTRACTOR-Related Entity or any of their respective agents, officers or employees with respect to any payment for the work made to or earned by any CONTRACTOR-Related Entity;
 - f. Any and all stop notices, liens and claims filed in connection with the work, including all expenses and attorneys’, accountants’ and expert witness fees and costs incurred in discharging any stop notice, lien or claim, and any other liability to subcontractors, laborers and suppliers for failure to pay sums due for their work, services, materials, goods, equipment or supplies, provided that SCDOT is not in default in payments owing (if any) to CONTRACTOR with respect to such work and such SCDOT payment default is the direct reason for the stop notice, lien or claim;
 - g. Any release of Hazardous Materials or threatened release of Hazardous Materials

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- i. which was brought onto the Project site by any CONTRACTOR-Related Entity, or
 - ii. attributable to any CONTRACTOR fault, regardless of the source, origin, or method of deposit of such Hazardous Materials;
- h. To the extent of CONTRACTOR fault, the claim or assertion by any other person (excluding persons in privity of contract with SCDOT) that any CONTRACTOR-Related Entity (i) interfered with or hindered the progress or completion of work being performed by such other contractor, so as to cause inconvenience disruption, delay, or loss, except where the CONTRACTOR-Related Entity was not in any manner engaged in performance of the work, or (ii) failure of any CONTRACTOR-Related Entity to cooperate reasonably with other contractors in accordance therewith;
- i. Any dispute between CONTRACTOR and a Utility Owner, or any CONTRACTOR-Related Entity's performance of, or failure to perform, the obligations with respect to such Utility Owner;
- j. Any dispute between CONTRACTOR and the Railroad, or any CONTRACTOR-Related Entity's performance of, or failure to perform, or obtain approval with respect to the Railroad;
- k. Any CONTRACTOR-Related Entity's breach of or failure to perform an obligation that SCDOT owes to a third person, including governmental entities, railroads, and Utility Owners, under law or under any agreement between SCDOT and a third person, where (i) SCDOT has delegated performance of the obligation to CONTRACTOR under the Contract or (ii) the acts or omissions of any CONTRACTOR-Related Entity which render SCDOT unable to perform or abide by an obligation that SCDOT owes to a third Person, including governmental entities and Utility Owners, under any agreement between SCDOT and a third person, where the agreement was expressly disclosed to CONTRACTOR;
- l. Inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of: (i) the failure of any CONTRACTOR or CONTRACTOR-Related Entity to comply with good industry practices, requirements of the Contract or governmental approvals, (ii) any CONTRACTOR default, or (iii) the actual physical entry onto or encroachment upon another's property by the CONTRACTOR or any CONTRACTOR-Related Entity;
- m. The failure of CONTRACTOR to fully comply with any insurance requirements described in the Contract;
- n. Any failure to protect and/or maintain valuable papers and records that the Contract require CONTRACTOR to maintain;
- o. Any act, claim or amount arising or recovered under workers' compensations law;

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- p. Any errors, inconsistencies or other defects in the design or construction of the Project and/or of Utility Adjustments included in the work;
 - q. Any violation of any representation, warranty, or other covenant, obligation or agreement under the Contract or governmental laws and rules to be complied with by CONTRACTOR hereunder or thereunder;
 - r. Any failure to pay any liquidated damages under the Contract;
 - s. Errors in the design documents provided by CONTRACTOR or CONTRACTOR-Related Entity (including those pertaining to Utility Adjustments), regardless of whether such errors were also included in the RFP, Exhibits and Attachment B. CONTRACTOR agrees that, because the concepts in the RFP, Exhibit and Attachment B are subject to review and modification by CONTRACTOR, it is appropriate for CONTRACTOR to assume liability for errors in the completed Project even though they may be related to errors in the RFP, Exhibits and Attachment B; and/or
 - t. any act or omission of any CONTRACTOR-Related Entity or any CONTRACTOR default in any way causing, contributing to, relating to or arising out of (i) any bodily injury (including death) to any person or (ii) any Losses to the tangible property of third parties.
3. Subject to the releases and disclaimers herein, CONTRACTOR's indemnity obligation shall not extend to any third-party Losses to the extent directly caused by:
- a. The gross negligence, recklessness, willful misconduct, bad faith, or fraud of the Indemnified Party;
 - b. SCDOT's breach of any of its material obligations under the Contract;
 - c. An Indemnified Party's violation of any governmental laws, regulations, ordinances, zoning, permits, certifications, or approvals; or
 - d. Any material defect inherent in a prescriptive design, construction, operations or maintenance specification included in the design criteria, exhibits and Attachment B, but only where prior to occurrence of the third-party Losses, CONTRACTOR complied with such specification and did not actually know, or would not reasonably have known, while exercising reasonable diligence, that it was deficient or, if CONTRACTOR actually knew of the deficiency, unsuccessfully sought SCDOT's waiver or approval of a deviation from such specification.
4. In claims by an employee of CONTRACTOR, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section A above, shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for

CONTRACTOR or a subcontractor under workers' compensation, disability benefit or other employee benefits laws.

5. CONTRACTOR is advised that Utility Agreements and the Railroad Agreement may include certain agreements by SCDOT to indemnify, defend, save and hold harmless the Utility Owners and Railroad, respectively, with respect to certain matters. CONTRACTOR's obligations under this Indemnity Article shall automatically apply to require CONTRACTOR, to release, indemnify, defend, save and hold harmless the Utility Owners, Railroad and their employees and agents, in addition to the Indemnified Parties, with respect to all such matters.
6. For purposes of this provision, "third party" means any Person other than an Indemnified Party and CONTRACTOR, except that a "third party" includes any Indemnified Party's employee, agent or contractor who asserts a claim that is (a) against an Indemnified Party, (b) within the scope of the indemnities and (c) not covered by the Indemnified Party's worker's compensation program.
7. SCDOT, and the State does not and shall have no obligation to indemnify, defend and hold harmless CONTRACTOR or any other CONTRACTOR-Related Entity.
8. The requirement to provide an indemnity as specified in this Article is intended to provide protection to SCDOT with respect to third-party claims associated with the event giving rise to the indemnification obligation, and is not intended to provide SCDOT with an alternative cause of action against CONTRACTOR for Losses incurred directly by SCDOT with respect to the event giving rise to the indemnification obligation.

B. Defense and Indemnification Procedures

1. If SCDOT receives notice of a claim or otherwise has actual knowledge of a claim that it believes is within the scope of the indemnities under Section A, and if SCDOT gives notice thereof, then SCDOT shall have the right to conduct its own defense unless either an insurer accepts defense of the claim within the time required by governmental law and rules or CONTRACTOR accepts the tender of the claim in accordance with Section B.3 below.
2. If the insurer under any applicable insurance policy accepts the tender of defense, SCDOT and CONTRACTOR shall cooperate in the defense as required by the insurance policy and, for purposes of the Contract and proceedings relating to such matter, the applicable Indemnified Party/ies shall be deemed to be (an) insured party/ies. If no insurer under potentially applicable insurance policies provides defense, then Section B.3 below shall apply.
3. If the defense is tendered to CONTRACTOR, then within 30 days after receipt of the tender, CONTRACTOR shall provide to the Indemnified Party written notice whether it has tendered the matter to an insurer, and, if not tendered to an insurer or if the insurer has rejected the tender, shall deliver a written notice stating that CONTRACTOR:

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- a. Accepts the tender of defense and confirms that the claim is subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter;
 - b. Accepts the tender of defense but with a "reservation of rights" in whole or in part;
or
 - c. Rejects the tender of defense based on a determination that it is not required to indemnify against the claim under the terms of this Contract.
4. If CONTRACTOR has tendered the matter to an insurer, and the insurer has not rejected the tender, then, for purposes of the Contract and proceedings relating to such matter, the applicable Indemnified Party/ies shall be deemed to be (an) insured party/ies.
 5. If CONTRACTOR accepts the tender of defense under Section B.3.a or B.3.b above, CONTRACTOR shall have the right to select legal counsel for the Indemnified Party, subject to reasonable approval by the Indemnified Party, and CONTRACTOR shall otherwise control the defense of such claim, including settlement, and bear the attorneys', consultants' and expert witness fees and costs of defending and settling such claim. During such defense:
 - a. CONTRACTOR shall fully and regularly inform the Indemnified Party of the progress of the defense and of any settlement discussions; and
 - b. The Indemnified Party shall reasonably cooperate in said defense, provide to CONTRACTOR all materials and access to personnel it requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to the Indemnified Party, and, subject to governmental laws and rules, maintain the confidentiality of all communications between it and CONTRACTOR concerning such defense.
 6. If CONTRACTOR responds to the tender of defense as specified in Section B.3.C, the Indemnified Party shall be entitled to select its own legal counsel and otherwise control the defense of such claim, including settlement.
 7. Notwithstanding Sections B.3.A and B.3.B, the Indemnified Party may elect to assume its own defense at any time for a duration the Indemnified Party shall choose—including but not limited to for a limited duration up to and including the conclusion of all litigation—by delivering to CONTRACTOR written notice of such election and the reasons therefor, if the Indemnified Party, at the time it gives written notice of the claim or at any time thereafter, reasonably determines that:
 - a. A conflict exists between it and CONTRACTOR which prevents or potentially prevents CONTRACTOR from presenting a full and effective defense;
 - b. CONTRACTOR is otherwise not providing an effective defense of the Indemnified Party in connection with the claim in the opinion of the Indemnified Party; or

- c. **CONTRACTOR** lacks the financial capacity in the opinion of the Indemnified Party to satisfy potential liability or to provide an effective defense.
8. If the Indemnified Party is entitled and elects to conduct its own defense pursuant hereto of a claim for which it is entitled to indemnification, **CONTRACTOR** shall reimburse on a current basis all costs and expenses the Indemnified Party incurs in investigating and defending such claim. If the Indemnified Party is entitled to and elects to conduct its own defense, then:
 - a. In the case of a defense that otherwise would be conducted under Section B.3.A the Indemnified Party shall have the right to settle or compromise the claim with **CONTRACTOR**'s relevant insurer(s)' prior written consent, which, in each case, shall not be unreasonably withheld or delayed;
 - b. In the case of a defense that otherwise would be conducted under Section B.3.B, the Indemnified Party and **CONTRACTOR** shall consult with each other on a regular basis to determine whether settlement is appropriate and, subject to the rights of any insurer providing coverage for the claim under a policy required under this Contract and the Indemnified Party shall have the right to settle or compromise the claim with **CONTRACTOR**'s prior written consent without prejudice to the Indemnified Party's rights to be indemnified by **CONTRACTOR**; and
 - c. In the case of a defense conducted under Section B.3, the Indemnified Party shall, subject to the rights of any insurer providing coverage for the claim under a policy required under this Contract, have the right to settle or compromise the claim without **CONTRACTOR**'s prior written consent and without prejudice to its rights to be indemnified by **CONTRACTOR**.
 - d. Where **CONTRACTOR** has the right under these procedures to settle a claim, in no event shall **CONTRACTOR** agree to a settlement that will increase the risk, liability or costs of SCDOT or any other Indemnified Party or adversely affect the Project, the work or the completion deadlines without the prior written consent of SCDOT or such Indemnified Party, in its sole discretion.
 9. A refusal of, or failure to accept, a tender of defense, as well as any dispute over whether an Indemnified Party which has assumed control of defense is entitled to do so under Section B., shall be resolved according to the Claims Procedure. **CONTRACTOR** shall be entitled to contest an indemnification claim and pursue, through the Claims Procedure, recovery of defense and indemnity payments it has made to or on behalf of the Indemnified Party.

C. No Effect on Other Rights

The foregoing obligations shall not be construed to negate, abridge, or reduce other rights or obligations which would otherwise exist in favor of an Indemnified Party hereunder.

D. CERCLA Agreement

The indemnities set forth in Section A.3.g are intended to operate as agreements pursuant to Section 107(e) of CERCLA to insure, protect, hold harmless and indemnify the Indemnified Parties.

XVII. DEFAULT; SUSPENSION; TERMINATION

A. CONTRACTOR Events of Default (Contractor Default).

1. CONTRACTOR shall be in default of this Agreement if:

- a. CONTRACTOR fails to begin performance of the scope of the work promptly following issuance of the Notice to Proceed;
- a. CONTRACTOR fails to perform the scope of the work in accordance with (i) the documents described in Article I (Contract Documents), (ii) the final, and as applicable, as-approved deliverables under Article II.J, (iii) applicable standards set forth therein;
- b. CONTRACTOR refuses to remove, replace, and correct rejected materials, or nonconforming or unacceptable work;
- c. CONTRACTOR (i) suspends, ceases, or stops performance of the scope of the work, or (ii) fails to perform the scope of the work continuously and diligently to completion, in either case (A) where CONTRACTOR fails to resume performance or to prosecute the work, as determined in SCDOT's reasonable discretion) as is identified in Preliminary Notice of Delinquency and thereafter in any Notice of Delinquency (as each such term is defined in Section 108 of the Standard Specification), within 15 days after dispatch of such Notice of Delinquency, and (B) excluding work stoppages directed by SCDOT, approved by SCDOT, or for other reasons expressly permitted under this Agreement;
- d. CONTRACTOR abandons all or a material part of the Project, which abandonment is deemed to occur if (i) CONTRACTOR demonstrates through statements, acts, or omissions an intent not to continue, for any reason other than for a reasons expressly permitted under this Agreement, or (ii) no significant progress in the work is performed for a continuous period of more than 15 days unless due to CONTRACTOR's compliance with work stoppages directed by SCDOT or for reasons expressly permitted under this Agreement;
- e. CONTRACTOR fails to resume performance of the scope of the work that has been suspended or stopped within five calendar days after (i) cessation of the event preventing performance (and for which CONTRACTOR is expressly permitted to have suspended or stopped performance under this Agreement) or (ii) receipt of notice from SCDOT to resume performance;

- f. Insolvency, Bankruptcy Events:
- i. CONTRACTOR commences a voluntary case seeking liquidation, reorganization or other relief with respect to CONTRACTOR or CONTRACTOR's debts under any U.S. or foreign bankruptcy, insolvency or other similar law; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of its, or any substantial part of its, assets; becomes insolvent, or generally does not pay its debts as they become due; provides notice of its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing;
 - ii. An involuntary case is commenced against CONTRACTOR seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to such CONTRACTOR or CONTRACTOR's debts under any U.S. or foreign bankruptcy, insolvency or other similar law; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case shall not be contested by it in good faith or shall remain undismissed and unstayed for a period of 60 days;
 - iii. In any voluntary or involuntary case seeking liquidation, reorganization or other relief with respect to CONTRACTOR or its debts under any U.S. or foreign bankruptcy, insolvency or other similar law, this Agreement or any of the other Contract Documents, is rejected, including a rejection under 11 U.S.C. Section 365 or any successor statute; or
 - iv. Any voluntary or involuntary case or other act or event described in clause (g)(i) or (g)(ii) shall occur (and in the case of an involuntary case shall not be contested in good faith or shall remain undismissed and unstayed for a period of 60 days) with respect to (i) any equity member, partner or joint venture member of CONTRACTOR, or (ii) any equity member, partner or joint venture member of CONTRACTOR for whom transfer of ownership or management authority would constitute an impermissible assignment hereunder;
- g. Allows any final judgment to remain unsatisfied for a period that, in SCDOT's sole judgment, poses a material adverse effect on CONTRACTOR's ability to perform the scope of the Work and, in particular, to pay for its obligations to SCDOT, subcontractors, and suppliers in connection therewith;
- h. CONTRACTOR makes, attempts to make, or suffers a voluntary or involuntary assignment or transfer of all or any portion of this Agreement or its interest in the Project without SCDOT's consent;
- i. CONTRACTOR materially fails to observe or to perform, or to cause to be observed or performed, timely any other material covenant, agreement, obligation, term, or condition required to be observed or performed by CONTRACTOR under the Agreement including but not limited to:

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- i. Fails to supply a sufficient number of properly skilled workmen, tools, materials and equipment to assure the prompt completion of the work; or
 - ii. Failure to comply with applicable permits, law, or use of the Project violates such permits, law, or this Agreement;
- j. Any representation or warranty in the Agreement, the SOQs and Proposal (which representations and warranties of CONTRACTOR are incorporated into the Proposal explicitly or by reference), or the Proposal is false in any material respect, materially misleading, or inaccurate in any material respect when made (except as relates to continuing representations and warranties), or omits material information when made (except as relates to continuing representations and warranties);
- k. Any certificate, schedule, report, instrument, or other document delivered by or on behalf of CONTRACTOR to SCDOT under the Agreement is false or incorrect in any material respect, materially misleading, or inaccurate in any material respect when made (except as relates to continuing representations and warranties in any such certificates, schedules, reports, instruments, or other documents), or omits material information when made (except as relates to such continuing representations and warranties);
- l. CONTRACTOR (i) fails to make any payment owing to SCDOT under the Agreement in full and when due (including specifically payment of any liquidated or stipulated damages hereunder); or (ii) fails to make, absent a bona fide and valid dispute, payment in full and when due for labor, equipment, or materials in accordance with applicable law and with its agreements with consultants, subcontractors, subconsultants, vendors, or suppliers;
- m. CONTRACTOR fails (i) to obtain, provide, and maintain any insurance, surety bonds, guarantees, letters of credit, or other payment or performance security as is required under the Agreement for the benefit of the relevant parties, or (ii) to comply with any requirement of the Agreement pertaining to the amount, terms, or coverage of the insurance or security, or (iii) to pay the associated premiums, deductibles, self-insured retentions, co-insurance, or any such other amounts with respect to the insurance or security as and when due;
- n. Unless continued performance of this Agreement is permitted under the terms of a debarment agreement with the State of South Carolina or otherwise as permitted under clause 2.e. below, and after any rights of appeal have been exhausted, if CONTRACTOR, any equity or joint venture member of CONTRACTOR, any consultant, subcontractor, subconsultant, vendor, or supplier, or any person or entity for which CONTRACTOR is legally responsible (i) is determined to be disqualified, suspended, or debarred, or otherwise is excluded from bidding, proposing, or contracting with a federal or state department or agency, or (ii) has not dismissed any consultant, subcontractor, subconsultant, vendor, or supplier whose work is not substantially complete and who is determined to be disqualified,

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- suspended, debarred, or otherwise excluded from bidding, proposing, or contracting with a federal or state department or agency;
- o. CONTRACTOR fails to comply with any order by SCDOT issued under, and pursuant to a contractual right in, this Agreement, including specifically orders to suspend CONTRACTOR's performance of the scope of work, in whole or in part, within the time allowed in such order; or
 - p. CONTRACTOR fails to achieve Substantial Completion or Final Completion by the respective Long Stop Dates pursuant to Article IV.
2. Cure Periods. The following list identifies CONTRACTOR's rights to receive notice and opportunity to cure before SCDOT may exercise its remedies under clause 3 below, and this list also identifies other Contractor Defaults that are not subject to cure:
- a. Except as otherwise specifically set forth in this clause 2, CONTRACTOR and the surety providing the bond(s) pursuant to Article VI.B shall be entitled to 15 days prior written notice and opportunity to cure any Contractor Defaults before SCDOT may exercise any remedies hereunder, including specifically those under clause 3 below.
 - b. CONTRACTOR and the surety providing the bond(s) pursuant to Article VI.B shall be entitled to seven days prior written notice and opportunity to cure the Contractor Defaults under clauses XVII.A.1.h., m., and n. before SCDOT may exercise any remedies hereunder, including specifically those under clause 3 below.
 - c. Except with respect to those Contractor Defaults listed in clauses d. and e. below, if Contractor Defaults under clauses XVII.A.1.a., f., m., and n. are capable of cure (as determined by SCDOT in its sole discretion) but, by its nature, cannot be cured within such seven or 15 day period, as applicable, (also as determined by SCDOT in its sole discretion), then CONTRACTOR shall commence to cure such Contractor Default within such seven or 15 day period, as applicable, and thereafter diligently prosecute such cure to completion within 60 days or such other later time as determined by SCDOT, in its sole discretion, before SCDOT may exercise any remedies hereunder, including specifically those under clause 3 below.
 - d. Except with respect to those Contractor Defaults listed in clause c. above and clause e. below, if a Contractor Default under clause XVII.A.1.e. cannot be cured within 15 days (as determined by SCDOT in its sole discretion), then CONTRACTOR shall commence to cure such Contractor Default within such 15 day period, and thereafter diligently prosecute such cure to completion within 30 days or such other later time as determined by SCDOT, in its sole discretion, before SCDOT may exercise any remedies hereunder, including specifically those under clause 3 below.
 - e. CONTRACTOR hereby acknowledges and agrees that no notice and no opportunity to cure is required with respect to the Contractor Defaults under clauses

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XVII.A.1.g., i., k., l., o.(ii), p. and q., and SCDOT has the right to exercise its remedies hereunder immediately, including specifically those under clause 3 below.

- f. With respect to the Contractor Default under clause XVII.A.1.o., CONTRACTOR shall take appropriate steps to obtain, or to require its equity or joint venture member of CONTRACTOR, any consultant, subcontractor, subconsultant, vendor, or supplier, or any person or entity for which CONTRACTOR is legally responsible to obtain, a debarment agreement with the State of South Carolina in connection with any pending action for disqualification, suspension or debarment or any pending agreement for voluntary exclusion from bidding, proposing or contracting. If a debarment agreement is obtained that permits continued performance under this Agreement, then the disqualification, suspension, debarment or agreement for exclusion shall not be considered a Contractor Default. If, however, such a debarment agreement is not obtained, the CONTRACTOR shall have the following cure rights:
 - i. With respect to a Contractor Default under clause XVII.A.1.o(i) involving CONTRACTOR, CONTRACTOR shall have 60 days after the effective date of the disqualification, suspension, debarment or agreement for exclusion to (i) obtain a debarment agreement allowing continued performance or (ii) otherwise cure the Contractor Default;
 - ii. With respect to a Contractor Default clause XVII.A.1.o(i) involving any equity or joint venture member of CONTRACTOR involving any equity or joint venture member of CONTRACTOR, CONTRACTOR shall have 60 days after the effective date of the disqualification, suspension, debarment or agreement for exclusion (i) to remove the affected equity or joint venture member and obtain SCDOT's approval of the change in the ownership structure of CONTRACTOR, (ii) to obtain a debarment agreement allowing continued performance or (iii) otherwise cure the Contractor Default; and
 - iii. With respect to a Contractor Default under clause XVII.A.1.o(i) involving a consultant, subcontractor, subconsultant, vendor, or supplier, or any other person or entity for which CONTRACTOR is legally responsible, CONTRACTOR shall have 60 days after the effective date of the disqualification, suspension, debarment or agreement for exclusion to obtain a debarment agreement allowing continued performance or otherwise cure the Contractor Default.

3. Remedies.

a. General Provisions.

- i. Failure to provide notice to CONTRACTOR's surety providing the bond(s) pursuant to Article VI.B shall not preclude SCDOT from exercising its remedies under this clause 3.
- ii. SCDOT shall also be entitled to exercise any other rights and remedies available under this Agreement, or available at law.

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- iii. SCDOT's rights under this Agreement shall be cumulative and shall be in addition to every other right provided under this Agreement or at law, and the exercise or beginning of the exercise by SCDOT of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by SCDOT of any or all other such rights or remedies.
- iv. Except as expressly stated otherwise in this Agreement, SCDOT's exercise of any right or remedy does not waive or release, nor shall be deemed to waive or release, CONTRACTOR from any obligations or limiting other remedies that may be available to SCDOT,

b. SCDOT Step-In

- i. Subject to any surety rights under surety bond(s) placed for the Project pursuant to Article VI.B., SCDOT shall have the right, but not the obligation, to pay such amounts and or perform such acts as may then be required of CONTRACTOR under the Agreement or contracts with consultants, subcontractors, subconsultants, vendors, or suppliers, whether assigned to SCDOT.
- ii. SCDOT may appropriate any or all materials and equipment on the Site as SCDOT determines may be suitable and acceptable and, if and when consistent with the terms of any surety bond(s) placed pursuant to Article VI.B, SCDOT may direct the Surety to complete the Project, may enter into an agreement for the completion of the Project (with the surety or another contractor), or may complete the Project itself. If SCDOT exercises any right to perform any obligations of CONTRACTOR, then SCDOT may, but is not obligated to, among other things: (A) perform or attempt to perform, or cause to be performed, such work; (B) spend such sums as SCDOT deems necessary and reasonable to employ and pay such architects, engineers, consultants, and contractors, and obtain materials and equipment as may be required to complete such work; (C) execute all applications, certificates, and other documents as may be required to complete the Project, including paying such amounts and performing such other acts as may then be required from CONTRACTOR pursuant to its subcontracts with consultants, subcontractors, vendors, and suppliers; (D) modify or terminate any contractual arrangements; (E) take any other actions that SCDOT may, in its sole discretion, consider necessary to complete the Project; and (vi) prosecute and defend any action or proceeding incident to completion of the Project.
- iii. SCDOT may deduct from any amounts payable by SCDOT to CONTRACTOR such amounts payable by CONTRACTOR to SCDOT, including those damages listed in clause c. below.

c. Performance Security

- i. SCDOT may make demand upon and enforce any surety bond, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other payment or performance security available to SCDOT under this Agreement, with respect to such Contractor Default in any order.

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- ii. SCDOT will apply the proceeds of any such action to the satisfaction of CONTRACTOR's obligations under this Agreement, including payment of amounts due to SCDOT.
- iii. The provisions of clauses (i) and (ii), shall not apply where access to any such surety bond, letter of credit, guaranty or other payment or performance security is for the purpose of satisfying damages owing to SCDOT, in which case SCDOT shall be entitled to make demand, draw, enforce and collect regardless of whether Contractor Default is subsequently cured.
- iv. SCDOT will notify CONTRACTOR at the same time or promptly after it takes any action to make demand upon, draw on, enforce or collect any such surety bond, letter of credit, guaranty or other payment or performance security.

d. Damages

- i. Without limiting SCDOT's right to deduct in the event of self-performance under clause 3.b. above, and except as limited by SCDOT's agreement to liquidate certain damages as specified in the Agreement, SCDOT shall be entitled to recover any and all damages available at law on account of the occurrence of a Contractor Default. CONTRACTOR shall owe any such damages that accrue after the occurrence of Contractor Default regardless of when any notice regarding any Contractor Default is given or whether Contractor Default is subsequently cured. Such damages include, but are not limited to:
 - a) the aggregate of reimbursements owing SCDOT;
 - b) any liquidated or stipulated damages accrued;
 - c) 125% of the amounts SCDOT deems advisable to cover any existing or threatened claims of consultants, subcontractors, subconsultants, vendors, suppliers, other laborers, or other persons or entities;
 - d) amounts of any losses incurred or reasonably expected to be incurred by SCDOT in completing the Project;
 - e) the cost to complete or remediate uncompleted or other nonconforming work, plus an administrative charge equal to 10% of such costs;
 - f) throw-away costs for unused portions of the completed portions of the Project
 - g) increased financing costs of SCDOT, if any,
 - h) other damages or amounts that SCDOT has or will be incurred to rectify any breach or failure to perform by CONTRACTOR and/or to bring the condition of the Project to the standard it would have been in if

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CONTRACTOR has complied with its obligations to carry out and complete the Work in accordance with the Contract Documents; and

- i) other damages or amounts that SCDOT has determined are or may be payable to SCDOT under this Agreement.
- ii. Where this Agreement is terminated, the damages recoverable by SCDOT shall also include the present value of:
 - a) actual and projected costs to SCDOT to terminate, take over the Project, re-procure and replace CONTRACTOR;
 - b) actual and projected delay costs; and
 - c) actual and projected increases in costs to SCDOT to complete the Project.
- iii. Damages owed to SCDOT under this clause c. shall bear interest at the statutory rate of interest under S.C. Code Ann. 34-31-20 from and after the date any amount becomes due to SCDOT until the date paid. The interest rate shall accrue on all amounts SCDOT has had to pay in excess of the remaining balance of the Contract Price from the date of SCDOT's payment.
- iv. Additional Provisions pertaining to costs.
 - a) If, after termination, it is determined that the CONTRACTOR was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as a termination by SCDOT for its convenience.
 - b) In lieu of the provisions of this Article XVII for terminating this Agreement for cause, SCDOT may pay CONTRACTOR for the work already completed in accordance with the Agreement and may treat the work remaining undone as if it had never been included or contemplated by this Agreement. No claim under this clause (C) will be allowed for prospective profits on, or any other compensation relating to, work remaining and uncompleted by CONTRACTOR.
- e. Termination of the Agreement by SCDOT.
 - i. CONTRACTOR acknowledges and agrees that any Contractor Default would result in material and substantial harm to SCDOT's rights and interests under this agreement, and therefor justifies termination of this Agreement unless fully and completed cured within the applicable cure period, if any, under clause XVII.A.2.
 - ii. Upon expiration of any applicable cure period (if any), and after complying with other obligations of SCDOT, if any, under any surety bonds provided by CONTRACTOR under Article VI.B., if CONTRACTOR's surety providing such bond(s) refuses to complete the work or fails to take over the work under the terms of the performance bond, then SCDOT may in its sole discretion terminate this Agreement for cause. If SCDOT terminates this Agreement for

cause, SCDOT shall deliver a notice to the CONTRACTOR so stating, and termination will be effective three days after dispatch, unless otherwise specified in such notice.

f. Joint and Several Liability of CONTRACTOR and Surety/ies

If a Contractor Default occurs, CONTRACTOR, and any surety providing the bond(s) pursuant to Article VI.B shall be jointly and severally liable to SCDOT for all costs, damages, and expenses of SCDOT listed under clause XVII.A.3.d., including specifically any interest that accrues thereon, whether by virtue of late payment by CONTRACTOR or late payment by surety.

g. Final Release

Except as otherwise expressly provided in this Agreement, if this Agreement is earlier terminated for any reason, then SCDOT's payment to CONTRACTOR of the amounts required under this Agreement (if any) shall constitute full and final satisfaction of, and upon payment SCDOT shall be forever released and discharged from, any and all claims, causes of action, suits, demands and losses, known or unknown, suspected or unsuspected, that CONTRACTOR may have against SCDOT caused by, arising out of, relating to, or resulting from this Agreement or termination thereof, or the Project. Upon such payment, CONTRACTOR shall execute and deliver to SCDOT all such releases and discharges as SCDOT may reasonably require to confirm the foregoing, but no such written release and discharge shall be necessary to give effect to the foregoing satisfaction and release.

B. Suspension of the work for cause

1. Notwithstanding the notice and cure period provisions of this Article XVII, if not substantially cured promptly after SCDOT notifies CONTRACTOR of any of the following, SCDOT has the authority to suspend the Work by written order, wholly or in part, for CONTRACTOR's failure to:
 - a. handle (i) Hazardous Waste, or (ii) any archaeological, paleontological, biological, or cultural resource, in any case, in accordance with prudent industry practices, applicable laws, governmental approvals, or permits; or
 - b. comply with any law, governmental approval or permit.
2. If not substantially cured within three days after SCDOT delivers notice thereof to CONTRACTOR, SCDOT has the authority to suspend the Work by written order, wholly or in part, for CONTRACTOR's failure to:
 - a. observe any conditions to commencement of certain portions of the scope of the Work and thereafter commences performance;

- b. provide proof of required insurance coverage hereunder;
 - c. maintain any surety bond(s) required hereunder;
 - d. correct any nonconforming work; or
 - e. perform the scope of the work in compliance with the Agreement.
3. CONTRACTOR shall promptly comply with any such written suspension order, even if it disputes the grounds for suspension. CONTRACTOR shall promptly recommence performance of the scope of the work upon receipt of written notice from SCDOT directing CONTRACTOR to resume performance. SCDOT will lift the suspension order promptly after CONTRACTOR fully cures and corrects the applicable breach or failure to perform or any other reason for the suspension order ceases to apply.
 4. SCDOT shall have no liability to CONTRACTOR in connection with any such suspension, and CONTRACTOR shall have no right to any adjustment in the Contract Price, additional costs, or additional time on the then-current CPM Schedule in connection with any suspension of Work founded on any of the grounds set forth in this clause XVII.B.
 5. If SCDOT orders suspension of Work on one of the foregoing grounds but it is finally determined under the Agreement's dispute resolution procedures that such grounds did not exist, it shall be treated as a suspension for SCDOT's convenience under clause XVII.C.

C. Suspensions for Convenience; Suspensions for Safety

1. SCDOT may, at any time and for any reason, by written notice, order CONTRACTOR to suspend all or any part of performance of the scope of the work for the period of time that SCDOT deems appropriate for the convenience of SCDOT. CONTRACTOR shall promptly comply with any such written suspension order. CONTRACTOR shall promptly recommence performance of the scope of the work upon receipt of written notice from SCDOT directing CONTRACTOR to do so.
2. CONTRACTOR shall be entitled for additional time, on a day-by-day basis (or for such additional time, in SCDOT's sole discretion), to achieve Substantial Completion for each day of delay to the CPM Schedule caused by or will result in an identifiable and measurable disruption of an activity on the critical path under the then-current CPM Schedule, after consumption of all then-available float, any such suspensions directed by SCDOT for its convenience; provided, however, that
 - a. SCDOT shall have the right to direct suspensions of the work for convenience not exceeding 48 hours each, up to a total of 144 hours during the term before any such CONTRACTOR entitlement to additional time shall accrue;

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- b. SCDOT may nonetheless suspend the work for its convenience for lack of appropriations, in which case, any such suspension shall not serve to diminish SCDOT's balance of 144 hours then-existing, but CONTRACTOR shall be entitled to additional time and costs under this clause C for the duration of any such suspension. Subject to clause c. below, if the duration of suspensions for convenience reaches 270 days continuously, then SCDOT will be deemed to have terminated this Agreement for its convenience;
 - c. SCDOT may suspend the work for its convenience during any period of governmental shutdowns, government-declared restrictions, or other direction of the state or federal executive (including specifically any quarantine or other governmental and non-governmental measures intended to limit the spread of disease), and the duration of any such suspension shall not serve to diminish SCDOT's balance of 144 hours then-existing, nor shall continuation of any such suspension beyond 270 days continuously shall not be deemed to be a termination for SCDOT's convenience;
 - d. SCDOT may suspend the work for its convenience upon discovery of any known or suspected Hazardous Waste or any known or suspected archaeological, paleontological, biological, or cultural resource, and without limiting clause B.1.a above, the duration of any such suspension shall not serve to diminish SCDOT's balance of 144 hours then-existing, nor shall continuation of any such suspension beyond 270 days continuously shall not be deemed to be a termination for SCDOT's convenience.
3. CONTRACTOR shall not be entitled to any additional costs incurred or additional compensation arising out of, relating to, resulting from, or caused by any such suspension directed by SCDOT for its convenience not exceeding 48 hours each, up to a total of 144 hours during the term, but CONTRACTOR shall be entitled to actual, direct, and documented costs incurred resulting from suspensions directed by SCDOT for its convenience beyond any 48 hour period or beyond the aggregate of 144 hours, so long as CONTRACTOR establishes in any Contract Change Request that any delay to the CPM Schedule could not have reasonably been mitigated or avoided, and subject to the following further limitations:
 - a. CONTRACTOR shall not be entitled to any disruption damages in connection with any additional costs claimed with respect to any suspension directed by SCDOT for its convenience;
 - b. CONTRACTOR shall not be entitled to any punitive, indirect, special, incidental, or consequential damages in connection with any additional costs claimed pursuant to any suspension directed by SCDOT for its convenience;
 - c. Delay and such other actual, direct, and documented additional incremental costs shall not exceed those calculated pursuant to Section 105.16.5 of the SCDOT

Standard Specifications, with the exception of extended job site overhead rates which shall be as set forth in Exhibit 5 of the RFP.

4. CONTRACTOR shall not be entitled to an extension of time or additional costs if the delay arising out of, relating to, or resulting from any suspension directed by SCDOT for its convenience is concurrent with any other unrelated delay to an activity on the critical path under the then-current CPM Schedule for which CONTRACTOR is responsible under this Agreement.
5. Notwithstanding anything to the contrary herein, CONTRACTOR acknowledges that among SCDOT's functions and purposes under SC. Code Ann. 57-1-30(B) is to provide safe transportation for the movement of people and goods throughout the state, and accordingly, SCDOT may issue an order suspending work wholly or in part and to take appropriate action when public safety is jeopardized. CONTRACTOR shall promptly comply with any such written suspension order. CONTRACTOR shall promptly recommence performance of the scope of the work upon receipt of notice from SCDOT directing CONTRACTOR to resume performance. Any such suspension shall not be, nor be deemed to be, (a) a suspension directed by SCDOT for its convenience or (b) a suspension for cause under clause XVII.A.3.e, requiring notice and opportunity to cure or otherwise. SCDOT shall have no liability to CONTRACTOR in connection with any such suspension, and CONTRACTOR shall have no basis to submit a Contract Change Request or otherwise claim entitlement to additional cost or accommodation of delay.

D. Responsibilities of CONTRACTOR during Suspension Periods

During any suspension periods directed by SCDOT hereunder, CONTRACTOR shall continue to be responsible for the Project and shall prevent damage, loss or injury to the Project. Without limiting the generality of the foregoing, CONTRACTOR shall specifically provide for drainage, protect any known or suspected Hazardous Waste or known or suspected archaeological, paleontological, biological, or cultural resources (including taking affirmative steps to protect the site from vandalism and unauthorized investigations), protect the site from accidental damage, heavy rainfall, runoff, and shall erect necessary temporary structures, signs or other facilities required to maintain the Project. CONTRACTOR shall also maintain all insurance policies and bonds required to be in place under this Agreement, comply with all applicable governmental approvals and other permits. CONTRACTOR shall, unless otherwise directed by SCDOT, continue to be responsible for traffic control, erosion control, and maintenance of the roadway in accordance with this Agreement.

E. Termination for Convenience

1. SCDOT reserves the right to terminate the Agreement at any time, in whole or in part, and upon 30 days written notice to CONTRACTOR, if SCDOT determines it to be in the public interest. Should the Agreement be so terminated by SCDOT for its convenience, CONTRACTOR shall be paid for the value of the work, based upon the Schedule of Values, performed to the effective date of termination and reasonable

demobilization costs, together with any reasonable, pre-agreed cancellation charges by vendors, suppliers, and subcontractors. CONTRACTOR shall also be entitled to the cost of securing that portion of the work as directed by SCDOT, provided such cost is reasonable and is approved by SCDOT. In no event, shall CONTRACTOR recover any amount for work not performed. The total payment to CONTRACTOR pursuant to any termination by SCDOT for its convenience shall not exceed the Contract Price.

2. Termination of all or a portion of this Agreement shall not relieve CONTRACTOR of any responsibility it would otherwise have for the work completed, or for any claims arising from that work.
3. For avoidance of doubt, any termination by SCDOT for lack of appropriations would be a termination for convenience under this clause E.

F. Responsibilities of CONTRACTOR Following Notice of Termination of the Agreement

1. CONTRACTOR shall timely comply with the following provisions independently of, and without regard to, the timing for determining, adjusting, settling, and paying any amounts due CONTRACTOR or SCDOT on account of termination, if any:
 - a. CONTRACTOR shall promptly deliver to SCDOT or its designee possession of all Project Documents, as defined in Article II.F, in CONTRACTOR's possession or control that relates to the Project and that SCDOT deems necessary for completion of the Project;
 - b. CONTRACTOR shall discontinue performance of the scope of the Work, withdraw from the Site, and shall remove materials, equipment, tools, and instruments used by, and any debris or waste materials generated by CONTRACTOR and any subcontractor, vendor, or supplier in the performance of the scope of the Work;
 - c. If and as directed by SCDOT, CONTRACTOR shall confirm the assignment to SCDOT of any contracts with consultants, subcontractors, subconsultants, vendors, or suppliers, and CONTRACTOR shall terminate, at its sole cost, any such contracts not assigned;
 - d. CONTRACTOR shall otherwise promptly and orderly transition the work, demobilize, and transfer management, care, custody, and control of the Project to SCDOT.
2. If SCDOT determines that CONTRACTOR has failed to comply with the foregoing, then upon subsequent notice from SCDOT to CONTRACTOR making reference to this clause, CONTRACTOR acknowledges and agrees that it shall be deemed to have surrendered its access rights to the Site.
3. CONTRACTOR shall, and shall cause its consultants, subcontractors, subconsultants, vendors, and suppliers to, complete all of the foregoing prior to the effective date of

the termination of the Agreement as set forth in the termination notice to CONTRACTOR.

XVIII. DISADVANTAGED BUSINESS ENTERPRISES

The DBE goal on this Project is 14 percent of the Contract Price. CONTRACTOR is required to meet the Project DBE goal or submit evidence of Good Faith Efforts in accordance with the SCDOT DBE Supplemental Specifications. 2% (a portion of the overall DBE goal) must be met at the time of bid opening and encourage the proposer to consider firms certified as a DBE in the Professional Services industry. The remaining 12% must be met in any trade in support of Professional Services and/or constructing the project. For submittal of the professional services committal, follow the procedures set forth in Part A of the DBE Supplemental Specification. For submittal of the Construction DBE requirements, follow the procedures set forth under Design Build in Part B of the Supplemental Specification. Firms that provide Professional Services are those defined under Engineering and Design Related Services set forth in the SCDOT Manual for Procurement, Management and Administration of Engineering and Design Related Services, dated May 1, 2018. And can be found here <http://iwww.dot.state.sc.us/Professional-Services/pdf/PSCO-Manual.pdf>

Whether or not there is a DBE contract goal on the Contract, the Proposer is strongly encouraged to obtain the maximum amount of DBE participation feasible on the Contract. The selected CONTRACTOR is required to report all DBE participation through the DBE Quarterly Reports required by Part B of the SCDOT DBE Supplemental Specifications. SCDOT will have the right to audit all documentation regarding DBE participation in the Project.

XIX. ON-THE-JOB TRAINING REQUIREMENTS

There is an On-The-Job Training requirement for this Project. The CONTRACTOR shall comply with the requirements, including the number of persons to be trained, provided in the Specific Equal Employment Opportunity Responsibilities Training Special Provisions within the Federal Aid Supplemental Specifications found in Exhibit 5. The CONTRACTOR shall submit its plan for On-the-Job Training to SCDOT for written approval prior to commencing construction activities.

XX. RECORD RETENTION,

A. Maintenance of, Access to and Audit of Records

1. CONTRACTOR shall maintain at its Project office a complete set of all Books and Records including copies of all original documents delivered to SCDOT. Notwithstanding the foregoing, CONTRACTOR may, for those Books and Records that are maintained and kept in its ordinary course of business at its home office, maintain such books, records and documents in a home office or satellite office. CONTRACTOR shall keep and maintain such Books and Records in accordance

with applicable provisions of the Contract, and in accordance with good industry practice. CONTRACTOR shall, upon 48 hours' prior notice from SCDOT (or unannounced and without prior notice where there is good faith suspicion of fraud or other criminal activity), grant to SCDOT, its authorized representatives and legal counsel, and FHWA, access to the Books and Records such that SCDOT and its authorized representatives and legal counsel may review and conduct audits as and when SCDOT deems necessary. Furthermore, CONTRACTOR shall provide such persons copies of such Books and Records (including all tax returns and supporting documentation filed with any governmental entity) upon the request of SCDOT and at no cost to SCDOT. These rights of audit and inspection by SCDOT include the right to make such copies and extracts (at CONTRACTOR's expense) and to take notes. Where the payment method for any work is on a time and materials basis, such examination and audit rights shall include all books, records, documents, and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such work. If an audit indicates CONTRACTOR has been over credited under a previous progress report or progress payment, that over credit will, at SCDOT's sole option, be credited against current progress reports or payments or reimbursed to SCDOT by CONTRACTOR upon demand therefor. For avoidance of doubt, this paragraph shall remain in full force and effect regardless of whether either party or both parties have invoked or commenced the Claims Procedure.

2. For cost and pricing data submitted in connection with pricing Contract Change Requests, unless such pricing is based on adequate price competition (as determined by SCDOT), established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by governmental law, regulations and rules, SCDOT and its consultants, authorized representatives and legal counsel have the right to examine all Books and Records related to the negotiation of or performance of work under such Contract Change Request for the purpose of evaluating the accuracy, completeness, and currency of the cost or pricing data submitted. The right of examination shall extend to all Books and Records deemed necessary by such persons to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.
3. All claims or disputes filed against SCDOT shall be subject to audit at any time following the filing of the claim or dispute. The audit may be performed by employees, legal counsel, or other representatives of SCDOT or by an auditor under contract with SCDOT. No Notice is required before commencing any audit before 60 days after the Final Completion Date. Thereafter, SCDOT shall provide 20 days' Notice to CONTRACTOR, any subcontractors or their respective agents before commencing an audit. CONTRACTOR, subcontractors or their agents shall provide adequate facilities, acceptable to SCDOT, for the audit during normal business hours. CONTRACTOR, subcontractors or their agents shall cooperate with the auditors and other representatives of SCDOT. Failure of CONTRACTOR, subcontractors or their agents to maintain and retain sufficient records to allow the auditors/representatives of SCDOT to verify all or a portion of the claim or dispute or to permit the

auditors/representatives of SCDOT access to the Books and Records of CONTRACTOR, subcontractors or their agents shall constitute a waiver of the claim or dispute and shall bar any recovery thereunder.

4. Full compliance by CONTRACTOR with the provisions of this Article is a contractual condition precedent to CONTRACTOR's right to seek relief under this Contract.
5. Any rights of FHWA, Inspectors General, and the U.S. Comptroller General to review and audit CONTRACTOR, its Subcontractors, and their respective Books and Records are set forth in Exhibit 5 – Form 1273.
6. CONTRACTOR represents and warrants the completeness and accuracy of all information it or its agents provide in connection with the audits identified herein, and shall cause all subcontractors to warrant the completeness and accuracy of all information such subcontractors or their agents provide in connection with this Article.

B. Retention of Records

1. CONTRACTOR shall maintain all Books and Records relating to the work and the Project (including copies of all original documents delivered to SCDOT) until three years after the Final Completion Date or the termination of this Contract, whichever is applicable. CONTRACTOR shall provide to SCDOT written notice of where such Books and Records are kept. Notwithstanding the foregoing, all Books and Records which relate to claims being processed or disputes brought under the Claims Procedure shall be retained and made available until such disputes and claims have been finally resolved. Books and Records to be retained include all books, electronic information, and files and other evidence bearing on CONTRACTOR's costs under the Contract. CONTRACTOR shall make these Books and Records available for audit and inspection to SCDOT, at CONTRACTOR's Project office, at all reasonable times, without charge, and shall allow SCDOT to make copies of such Books and Records (at no expense to CONTRACTOR). If approved by SCDOT, photographs, microphotographs or other authentic reproductions may be maintained instead of original Books and Records.

C. Freedom of Information Act

1. CONTRACTOR acknowledges and agrees that all submittals, records, documents, drawings, plans, specifications and other materials in SCDOT's possession, including materials submitted by CONTRACTOR to SCDOT, are subject to the provisions of the Freedom of Information Act. If CONTRACTOR believes information or materials submitted to SCDOT constitute trade secrets or are otherwise exempt from disclosure under the Freedom of Information Act pursuant to S.C... Code 30-4-10, et seq., CONTRACTOR shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such document or page affected, as it determines to be appropriate. Any specific trade secret or other basis for exemption shall be clearly identified as such, and shall

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be accompanied by a concise statement of reasons supporting the claim including the specific governmental law, regulation or rule for the exemption.

2. Books and Records means any and all documents, books, records, papers or other information of, or in the possession of, any CONTRACTOR-Related Entity or affiliate relating to the Project, Project right of way, Utility Adjustments or work (including with respect to Contract Change Requests, claims and disputes), including:
 - a. all design documents and construction documents (including drawings, specifications, submittals, subcontracts, invoices, schedules, meeting minutes, budgets, forecasts and change orders);
 - b. all budgets, certificates, claims, correspondence, daily time sheet and supervisor's daily reports, data (including test data), cost accounting data, documents, expert analyses, facts, files, information, investigations, materials, notices, payroll documents, plans, projections, proposals, records, reports, requests, samples, schedules, settlements, statements, studies, surveys, tax returns and information, tests, test results, vehicular traffic information, operational information analyzed, categorized, characterized, created, collected, generated, maintained, processed, produced, prepared, provided, recorded, stored or used by any CONTRACTOR-Related Entity in connection with the Project;
 - c. union agreements;
 - d. insurance, welfare and benefits records;
 - e. payroll registers;
 - f. earnings records;
 - g. payroll tax forms;
 - h. material invoices and requisitions;
 - i. material cost distribution work sheet;
 - j. equipment records (list of company equipment, rates, etc.);
 - k. subcontractors' (including suppliers) invoices;
 - l. subcontractors' and agents' payment certificates;
 - m. canceled checks;
 - n. job cost report;
 - o. job payroll ledger;

- p. general ledger;
- q. cash disbursements journal;
- r. Project schedules;
- s. all documents that relate to each and every claim and dispute, together with all documents that support the amount of Losses that are the subject of each claim or dispute;
- t. work sheets used to prepare the claim or dispute establishing the cost components for items of the claim or dispute, including labor, benefits and insurance, materials, equipment, subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals;
- u. email;
- v. network servers, data storage devices, backup tapes/media;
- w. letters and correspondence; and
- x. with respect to all of the above, any information that is stored electronically or on computer-related media.

XXI. ESCROW PROPOSAL DOCUMENTS

The CONTRACTOR shall submit bid documentation used to prepare the technical and cost proposals for this Contract to the SCDOT in accordance with the Supplemental Specification entitled Escrow Bid Documentation dated October 1, 2014.

XXII. DISPUTE RESOLUTION

1. Each party hereby waives a trial by jury regarding any dispute between them arising out of this Contract and any such trial will be a non-jury trial before the South Carolina Circuit Court in Richland County.
2. In the event of a dispute between the parties, it shall be a condition precedent to litigation that the parties submit the dispute to the Standing Dispute Review Board pursuant to the Claims Procedure set forth in the Project Supplemental Specifications.
3. CONTRACTOR 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, any court action in connection therewith, or for the entry of judgment on any award made, may be served on CONTRACTOR by certified mail (return receipt requested) addressed to CONTRACTOR at the address provided in Article XXVI. Notice by certified mail is deemed duly given upon deposit in the United States mail.

XXIII. SCDOT'S AGENT

SCDOT will appoint an individual who will be authorized to act on behalf of SCDOT, with whom CONTRACTOR may consult at all reasonable times, and whose instructions and decisions will be binding upon SCDOT as to all matters pertaining to this Agreement and the performance of the parties hereunder.

XXIV. ASSIGNABILITY; CHANGES OF CONTROL

A. By CONTRACTOR

1. Neither the Agreement nor CONTRACTOR's interest herein, in whole or in part, shall be voluntarily or involuntarily assigned, sold, conveyed, transferred, pledged, mortgaged, or otherwise encumbered (by way of grant of right of entry, grant of special use, management, or control of the Project, or otherwise) by CONTRACTOR without the prior written consent of SCDOT. Notwithstanding the foregoing, CONTRACTOR may assign this Agreement to any entity in which the organizations signing this Agreement for CONTRACTOR, or the shareholder(s), general partner(s) or member(s) that exercise management control over such organizations, hold and exercise effective management control and hold at least 50 percent of the equity interest.
2. Any purported voluntary or involuntary sale, assignment, conveyance, transfer, pledge, mortgage, or encumbrance of this Agreement, in whole or in part, or other grant of right of entry, or grant of other special use, management or control of the Project in violation of this Section XXV.A. shall be null and void ab initio.

B. By SCDOT.

SCDOT may assign the Contract without the consent of CONTRACTOR.

C. Restrictions on Equity Transfers and Changes of Control

1. Except as permitted in this Section XXV.C, no voluntary or involuntary Change of Control of CONTRACTOR, including any Equity Transfer that would result in a Change of Control of CONTRACTOR, shall be permitted without the prior written consent of SCDOT.
2. Transfers and transactions within any of the exceptions described in clauses (a) through (e) of the definition of Change of Control are allowed at any time without necessity for SCDOT's approval but, in the case of exceptions described in clauses (a) through (c), subject to the condition that CONTRACTOR delivers to SCDOT, no later than ten days prior to the effectiveness of the transfer or transaction, a written notice describing the transfer or transaction and (if applicable) the names of the transferor and transferee, together with documentation demonstrating that the transfer or transaction is within such an exception.

3. Any purported voluntary or involuntary Equity Transfer or Change of Control in violation of this clause C. shall be null and void ab initio.

D. Definitions.

For purposes of this Article XXV, the following terms have the meanings ascribed.

1. Equity Transfer means any sale, assignment, conveyance, transfer, pledge, mortgage, or other encumbrance of any equity interest in CONTRACTOR.
2. Change of Control means any Equity Transfer, transfer of an interest, direct or indirect, in an equity member, or other sale, assignment, conveyance, transfer, pledge, mortgage, or other encumbrance financing, grant of security interest, hypothecation, transfer of interest or transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation, bankruptcy or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of CONTRACTOR or a material aspect of its business. A change in possession of the power to direct or control or cause the direction or control of the management of an equity member of CONTRACTOR may constitute a Change of Control of CONTRACTOR if such equity member possesses, immediately prior to such Change of Control, the power to direct or control or cause the direction or control of the management of CONTRACTOR. Notwithstanding the foregoing, the following shall not constitute a Change of Control:
 - a. A change in possession of the power to direct or control the management of CONTRACTOR Developer or a material aspect of its business due solely to a bona fide transaction involving beneficial interests in the ultimate parent organization of an equity member, (but not if the equity member is the ultimate parent organization), provided, however, that this exception shall not apply if the transferee in such transaction is, at the time of the transaction, suspended or debarred, or subject to a proceeding that may result in being suspended or debarred from bidding, proposing or contracting with any federal or state department or agency;
 - b. An upstream reorganization or transfer of direct or indirect interests in CONTRACTOR so long as there occurs no change in the entity with ultimate power to direct or control or cause the direction or control of the management of CONTRACTOR;
 - c. An Equity Transfer, where the transferring equity member and the transferee are under the same ultimate parent organization ownership, management and control before and after the transfer;
 - d. A change in possession of the power to direct or control the management of CONTRACTOR or a material aspect of its business due solely to bona fide open

market transactions in securities effected on a recognized public stock exchange, including such transactions involving an initial public offering; or

- e. The exercise of minority veto or voting rights (whether provided by applicable law, by CONTRACTOR's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of CONTRACTOR, provided that if such minority veto or voting rights are provided by shareholder or similar agreements, SCDOT has received copies of such agreements.

XXV. GENERAL PROVISIONS

1. This Agreement shall be governed by and interpreted in accordance with the substantive laws of the State of South Carolina.
2. Headings and titles of the various parts of this Agreement are for convenience of reference only and shall not be considered in interpreting the text of this Agreement. Modifications or amendments to this Agreement must be in writing and executed by duly authorized representatives of each party.
3. In the event that any portion or all of this Agreement is held to be void or unenforceable, the parties agree to negotiate in good faith to reach an equitable agreement which shall affect the intent of the parties as set forth in this Agreement. For purposes of construction of this Agreement, this Agreement will be considered to have been drafted by both parties and will not be construed against SCDOT because it was drafted by SCDOT.
4. All notices pertaining to this Agreement shall be in writing and, if to SCDOT, will be sufficient when sent registered or certified mail to SCDOT addressed as follows:

Deputy Secretary for Engineering
South Carolina Department of Transportation
Post Office Box 191
Columbia, South Carolina 29202-0191

All notices to CONTRACTOR shall be sufficient when sent registered or certified mail to CONTRACTOR addressed as follows: Archer-United JV
11000 Regency Parkway
Cary, NC 27518

5. The Contract Documents set forth the full and complete understanding of the parties as of the Effective Date defined herein, and supersedes any and all prior agreements, representations, and understandings of any kind.
6. The parties make no representations, covenants, warranties or guarantees, express or implied, other than those expressly set forth herein. The parties' rights, liabilities, responsibilities and remedies within respect to the work shall be exclusively those expressly set forth in this Agreement.

Carolina Crossroads
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7. In no event shall any failure by either party hereto to fully enforce any provision to this Agreement be construed as a waiver by such party of its right to subsequently enforce, assert or rely upon such provision.
8. Nothing in this Agreement is intended to create any contract rights for any party other than SCDOT and CONTRACTOR, nor are any third-party beneficiary rights intended to be created hereby.
9. All obligations of SCDOT hereunder are subject to all applicable law and appropriations by the South Carolina General Assembly. The obligation of SCDOT to make any payments under this Agreement does not constitute an indebtedness of the State of South Carolina within the meaning or application of any constitutional provision or limitation and does not constitute a pledge of the faith, credit or taxing power of the State of South Carolina or any political subdivision thereof within the meaning or application of any constitutional provision or limitation.
10. CONTRACTOR is an independent contractor, and nothing contained in this Contract shall be construed as constituting any relationship with SCDOT other than that of independent contractor. In no event shall the relationship between SCDOT and CONTRACTOR be construed as creating any relationship whatsoever between SCDOT and CONTRACTOR's employees, suppliers, or other contractors. Neither CONTRACTOR nor any of the employees, suppliers, or contractors of CONTRACTOR or any of CONTRACTOR's affiliates is or shall be deemed to be an employee of SCDOT. Except as otherwise expressly stated or implied in law or under any governmental approval or permit, CONTRACTOR has sole authority and responsibility to employ, discharge, and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all suppliers, subcontractors, and for all other persons or entities that CONTRACTOR or any supplier or subcontractor hires to perform or assist in performing the work under this Contract.
11. This Contract shall be binding on and inure to the benefit of SCDOT and CONTRACTOR and each of their successors, permitted assigns, and legal representatives.
12. CONTRACTOR's and SCDOT's representations and warranties, if any, the dispute resolution provisions, the indemnifications, the express obligations of the parties following termination, and all other provisions which by their inherent character should survive expiration or earlier termination of this Contract and/or Final Completion shall survive the expiration or earlier termination of this Contract and/or the Final Completion of the Project.
13. Persons employed by, or contracted to, SCDOT in connection with this Contract are acting solely as agents and representatives of SCDOT when carrying out the provisions of, or exercising the power or authority granted to them under, this Contract. They shall not be liable either personally or as employees of or contractors to SCDOT for actions in their ordinary course of employment or performance of contracted services.

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14. It is understood and agreed by the parties hereto that if any part, term, or provision of this Contract is by the courts held to be illegal or in conflict with any law of the State of South Carolina, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provisions to be invalid.
15. The language in all parts of the Contract shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. In the event of an ambiguity in or dispute regarding the interpretation of the Contract, the Contract shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.
16. This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
17. By execution of this contract, Contractor agrees that no member of the SCDOT Commission has or will have any interest, direct or indirect, in a contract that is being sought or gain in any way from the contract and that no current or former employee, who served in a management level position or above, may work on or invoice for services performed on a project within 365 days after their last day of employment with SCDOT. For the purposes of this bright line rule, "management level position" is defined as any SCDOT Pay Band 7 and above position, which includes, but is not limited to, Directors, Assistant Directors, District Engineering Administrators, District-level Engineers, Program Managers, Assistant Program Managers and Resident-level Engineers.

EXHIBIT 1

COST PROPOSAL BID FORM

COST PROPOSAL BID FORM

**Carolina Crossroads Phase 2 – Broad River Rd. at I-20
Interchange
Richland County**

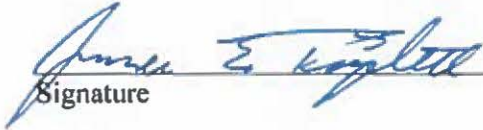
CONTRACTOR: Archer-United JV

ADDRESS: 11000 Regency Parkway, Suite 100, Cary, NC 27518

Provide full Project scope as described in Attachment A.

TOTAL COST TO COMPLETE (A) = \$ 127,000,000.00

No conditional or qualified Bids will be accepted, nor Bids with reservations, assumptions, or that are premised upon changes to the terms of the Contract, and all such Bids will be rejected.


Signature

08/03/2021

Date

James E. Triplett
Printed Name

EXHIBIT 2

SCHEDULE OF VALUES

**CAROLINA CROSSROADS PHASE 2
PROJECT ID P039719 - RICHLAND COUNTY
EXHIBIT 2 - SCHEDULE OF VALUES**

GRP	CODE	DESCRIPTION	COST	ITEM DESCRIPTION
10	9510301	Project Mobilization	\$ 11,500,000.00	Contractor, Subcontractors, Suppliers
20	9510303	Bonds / Insurance	\$ 2,500,000.00	Bonds & Insurance
30	9510500	Management & Coordination	\$ 11,000,000.00	Management, Scheduling, Survey, PR, Utility & Environmental Coordination
40	9511101	Design & Engineering	\$ 12,700,000.00	Design & Engineering & As-Builts
50	9510704	Right-Of-Way	\$ 2,000,000.00	Right-of-Way Services & Acquisitions
60	9510601	Quality Control	\$ 2,500,000.00	Quality Control, Vibration Monitoring, Settlement Monitoring
70	9510601	Quality Acceptance	\$ 6,000,000.00	Quality Acceptance Inspection & Testing
80	9510701	Utilities - Wet	\$ 4,500,000.00	Water/Sewer Relocations & Coordination
90	9510701	Utilities - Dry	\$ 1,200,000.00	Telecom Relocations & Coordination
100	9510700	Traffic Control	\$ 3,200,000.00	Constr. Signs, Barrels, Barricades, Detours, Temp. Pvmnt, Mrkgs, Signal Corrections, Etc.
110	9581500	Erosion Control	\$ 1,900,000.00	All Temporary & Permanent Erosion Control
120	9520102	Clearing & Grubbing	\$ 3,700,000.00	Clearing/Grubbing, Construction Access, Incidental Demolition
130	9571310	Permanent Walls	\$ 5,612,000.00	Retaining Walls
140	9570900	Noise Sound Walls	\$ 6,588,000.00	Noise Sound Walls
150	9520305	Earthwork	\$ 6,500,000.00	Unclassified, Borrow, Muck, Rock, Ground Improvements
160	9571402	Drainage	\$ 7,000,000.00	Pipe, Structures, Culverts, Repairs, Jack/Bore, Riprap, Flatwork, Curb/Gutter
170	9540300	Pavement	\$ 16,000,000.00	Fine Grading, GABC, CMB, Asphalt, Concrete, Milling
180	9560803	Lighting, Traffic Signals, ITS	\$ 7,500,000.00	Electrical, Lighting, Traffic Signals, ITS
190	9540001	Miscellaneous Roadway	\$ 4,500,000.00	Barrier, Pvmnt Mrkgs, Guardrail, Permanent & Overhead Signs, Sidewalk, Fence
200	9570201	Bridge Foundations	\$ 1,600,000.00	Foundations
210	9570201	Bridge Substructure	\$ 1,700,000.00	Substructure
220	9551400	Bridge Beams	\$ 3,400,000.00	Beams
230	9570251	Bridge Superstructure	\$ 3,300,000.00	Superstructure
240	9570300	Bridge Incidentals	\$ 600,000.00	Incidentals-Appr Slabs, Barrier/Transitions, Joints, Grinding, Grooving, Coatings, Etc.
CONTRACT VALUE			\$ 127,000,000.00	

Carolina Crossroads
Phase 2 - Broad River Road at I-20 Interchange
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date defined herein. The Effective Date is defined as the date signed by the Director of Alternative Delivery on behalf of South Carolina Department of Transportation.

Witnesses:

Marilyn E. Andolf
Maria A. Senito

Date: OCT 04 2021

Witnesses:

 ANTHONY SHAW
Mary Sue Camp

SOUTH CAROLINA DEPARTMENT
OF TRANSPORTATION

By: 

Chris Gaskins, P.E.
Director of Alternative Delivery

Recommended:



Jennifer Taylor
Contract Administrator

CONTRACTOR

By: James E. Triplett

Archer-United JV (James E. Triplett)

Its: Partner / Member

CERTIFICATION OF CONTRACTOR

I hereby certify that I am the duly authorized representative of CONTRACTOR and that neither I nor the above CONTRACTOR I here represent has:

employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONTRACTOR) to solicit or secure this Contract;

agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the Contract, or

paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONTRACTOR) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Contract except as here expressly stated (if any);

either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the submitted proposal.

By execution of this Agreement, CONTRACTOR certifies CONTRACTOR and all CONTRACTOR's consultants, sub-consultants, contractors, employees and agents will comply with South Carolina's Ethics, Government Accountability, and Campaign Reform Act of 1991, as amended. The following statutes require special attention: (a) Offering, giving, soliciting, or receiving anything of value to influence action of public employee - §8-13-790, 8-13-705, 8-13-720; (b) Recovery of kickbacks - §8-13-790, (c) Offering, soliciting or recovering money for advice or assistance of public official - §8-13-720, (d) Use or disclosure of confidential information - §8-13-725, (e) Persons hired to assist in the preparation of specifications or evaluation of bids - §8-13-1150, (f) Solicitation of state employees - §8-13-755, 8-13-760 and §8-13-725, (g) False Claims Act -§16-13-240. The State may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision.

I acknowledge that this certificate is to be furnished to SCDOT, the Federal Highway Administration, and the U. S. Department of Transportation, and is subject to applicable State and Federal laws, both criminal and civil.

I acknowledge that giving false, misleading, or incomplete information on this certification may subject me to prosecution under Section 16-9-10 of the South Carolina Code of Laws.

CONTRACTOR

Archer-United JV

By: 

Its: Partner/Member

Date: 9-30-21

CERTIFICATION OF DEPARTMENT

I hereby certify that I am the Director of Alternative Delivery for the South Carolina Department of Transportation (SCDOT) of the State of South Carolina and that the above CONTRACTOR or its representative has not been required, directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this agreement to:

- A. employ or retain, or agree to employ or retain, any firm or person, or
- A. pay, or agree to pay, to any firm, person, or organization, any fee, contributions, donations, or consideration of any kind, except as here expressly stated (if any).

I acknowledge that this certificate is to be furnished to the Federal Highway Administration, and U. S. Department of Transportation, and is subject to applicable State and Federal laws, both criminal and civil.

SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION

BY: 

TITLE: DIRECTOR OF ALTERNATIVE DELIVERY

Date: OCT 04 2021

DRUG-FREE WORKPLACE CERTIFICATION

In accordance with Section 44-107-30, South Carolina Code of Laws (1976), as amended, and as a condition precedent to the execution of this agreement, the undersigned, who is an authorized representative of the CONTRACTOR certifies on behalf of the CONTRACTOR that the PROPOSER will provide a drug-free workplace by:

- (1) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensations, possession, or use of a controlled substance is prohibited in the CONTRACTOR's workplace and specifying the actions that will be taken against employees for violations of the prohibition;
- (2) establishing a drug-free awareness program to inform employees about:
 - (a) the dangers of drug abuse in a workplace;
 - (b) the person's policy of maintaining a drug-free workplace;
 - (c) any available drug counseling, rehabilitation, and employee assistance programs; and
 - (d) the penalties that may be imposed upon employees for drug violations;
- (3) making it a requirement that each employee to be engaged in the performance of the agreement be given a copy of the statement required by item (1);
- (4) notifying the employee in the statement required by item (1) that, as a condition of employment of this agreement, the employee will:
 - (a) abide by the terms of the statement; and
 - (b) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after the conviction;
- (5) notifying the South Carolina Department of Transportation within ten days after receiving notice under item (4)(b) from an employee or otherwise receiving actual notice of the conviction;
- (6) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee convicted as required in Section 44-107-50; and
- (7) making a good faith effort to continue to maintain a drug-free workplace through implementation of items (1), (2), (3), (4), (5), and (6)

By execution of this Agreement CONTRACTOR certifies CONTRACTOR and all CONTRACTOR's consultants, sub-consultants, contractors, employees and agents will comply with all applicable provisions of the Drug-Free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.

CONTRACTOR:


(Signature)

COMMISSIONER EMPLOYEE INTEREST CERTIFICATION


As a condition precedent to the execution of this Agreement, the undersigned, who is an authorized representative of the CONTRACTOR/CONSULTANT certifies on behalf of the CONTRACTOR/CONSULTANT, that during the procurement and award of this Agreement, and as an ongoing obligation under this Agreement until the end of the contract period, CONTRACTOR/CONSULTANT represents and agrees to comply with the following provisions:

1. In accordance Section 23 of Act 40 of 2017 (now codified as Section 57-1-350(G) of the Code of Laws of South Carolina 1976, as amended):
 - a) No member of the SCDOT Commission has an interest, direct or indirect, in the proposal or bid submitted to SCDOT for this Project, during the member's term of appointment and for one year after the termination of the appointment.
 - b) No member of the SCDOT Commission will have an interest, direct or indirect, in any contract, franchise, privilege, or other benefit granted or awarded by the Department relating in any way to this Project (through subcontractors, consultants, vendor, or suppliers) during the member's term of appointment and for one year after the termination of the appointment.
2. In accordance with SCDOT Departmental Directive 45(a) regarding Post-employment Restrictions on Qualification-Based Procurements dated August 13, 2015 and amended June 2, 2017:

No current or former employee, who served in a management level position or above, may work on or invoice for services performed on this Project within 365 days after their last day of employment with SCDOT. For the purposes of this bright line rule, "management level position" is defined as any SCDOT Pay Band 7 and above position, which includes, but is not limited to, Directors, Assistant Directors, District Engineering Administrators, District-level Engineers, Program Managers, Assistant Program Managers and Resident-level Engineers.

CONTRACTOR/CONSULTANT hereby certifies that it and all of its consultants, sub-consultants, contractors, vendors, suppliers, employees and agents will comply with the above provisions.

CONTRACTOR/CONSULTANT

By: 
(Signature)

Print Name: James E. Triplett

Date: 9-30-21

Its: Partner/Member

September 8, 2021

Archer-United JV
11000 Regency Parkway, Suite 100
Cary, North Carolina 27518

NOTIFICATION OF AWARD

Contract No.: 4056790
Project No.: P039719
Work Type: Carolina Cross Roads Phase 2 – Broad River Road at I-20 Interchange

Dear Contractor:

This letter serves as the official notification of award for the above-referenced project based upon the cost proposal submitted on August 3, 2021, in the amount of **\$127,000,000.00** in response to the South Carolina Department of Transportation's (SCDOT) proposal request.

Subcontractor Request forms can be found on the SCDOT Extranet website under the Miscellaneous Construction tab. If required, please submit Sub1, Sub2, and Subreq3 to the Construction Manager for Mega Projects.

Also, SCDOT will need the following items in order to fully execute the Design-Build Contract:

- Schedule of Values – Agreement 111.C.1
- Insurance Requirements – Agreement V1.A
- Bonding Requirements – Agreement V1.B

Ensure all of the required items are returned to my office within **Twenty (20) days** from the date of this letter.

Please contact the Carolina Crossroads Owner Verification–Program Engineer Thad Brunson, at phone number 803-920-3507, in order to schedule the preconstruction conference as set forth in Section 108.2 of the 2007 Standard Specifications for Highway Construction.

Yours very truly,



David Rister, P.E.
Construction Manager for Mega Projects

cc: Thad Brunson, CCR Owner Verification-Program Engineer
GDR:de
File: MegaProj/GDR

South Carolina Department of Transportation Form No. 672A	Rev. 03-01-2016 PERFORMANCE AND INDEMNITY BOND	Date Bond Executed: OCT 04 2021
Principal: ARCHER-UNITED JV, CARY, NC		Bond Number: SU1172653 / 107429198
Surety: Arch Insurance Company / Travelers Casualty and Surety Company of America		
Penal Sum of Bond: \$127,000,000.00		Date of Contract: OCT 04 2021
Project S.C. File No.: 4056790, Proj. No. P039719		Contract Number: 18303

KNOW ALL MEN BY THESE PRESENTS, That we, the PRINCIPAL AND SURETY above named are held and firmly bound unto the South Carolina Department of Transportation, hereinafter called the Department, in the penal sum of the amount stated above which shall be equal to the full amount (100%) of the contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the Department, numbered and dated as shown above and hereto attached:

NOW, THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the Department, with or without notice to the surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Attest <u>Brendy C. Daniels</u> Corporate Secretary	FOR CORPORATE PRINCIPAL ARCHER-UNITED JV Corporation Name CARY, NC Business Address
In Presence of: Witness (2 required)	By: <u>Jenna E. Beckett</u> Title: <u>Partner / Member</u>
1. <u>[Signature]</u>	Affix Corporate Seal
2. <u>[Signature]</u>	

In Presence of: Witness (2 required)	SURETY/INSURER Arch Insurance Company / Travelers Casualty and Surety Company of America
1. <u>Kimberly Garcia</u> Kimberly Garcia	Surety/ Insurers Name Jersey City, NJ / Hartford, CT
2. <u>Mindy Proffitt</u> Mindy Proffitt	Business Address
	By: <u>Jennifer C. Hoehn</u> Title: <u>Jennifer C. Hoehn, Attorney-In-Fact</u>



South Carolina Department of Transportation Form No. 673	Rev. 03-01-2016	Date Bond Executed: OCT 04 2021
PAYMENT BOND		Bond Number: SU1172653 / 107429198
Principal: ARCHER-UNITED JV, CARY, NC		
Surety: Arch Insurance Company / Travelers Casualty and Surety Company of America		
Penal Sum of Bond: \$127,000,000.00		Date of Contract: OCT 04 2021
Project S.C. File No.: 4056790, Proj. No. P039719		Contract Number: 18303

KNOW ALL MEN BY THESE PRESENTS, That we, the PRINCIPAL AND SURETY above named are held and firmly bound unto the South Carolina Department of Transportation, hereinafter called the Department, in the penal sum of the amount stated above which shall be equal to the full amount (100%) of the contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the Department, numbered and dated as shown above and hereto attached:

NOW, THEREFORE, if the principal shall promptly make payment to all persons supplying labor and material, such being construed to include, but not limit to, that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment directly applicable to the contract, in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice by which modifications to the surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Attest <u><i>Sandy C. Smith</i></u> Corporate Secretary	FOR CORPORATE PRINCIPAL ARCHER-UNITED JV Corporation Name CARY, NC Business Address	
In Presence of: Witness (2 required)	By: <u><i>James E. Boyd</i></u>	Affix Corporate Seal
1. <u><i>[Signature]</i></u>	Title: <u><i>Partner / Member</i></u>	
2. <u><i>[Signature]</i></u>		

In Presence of: Witness (2 required)	SURETY/INSURER Arch Insurance Company / Travelers Casualty and Surety Company of America Surety/ Insurers Name Jersey City, NJ / Hartford, CT Business Address	
1. <u><i>Kimberly Garcia</i></u> Kimberly Garcia	By: <u><i>Jennifer C. Hoehn</i></u>	Affix Corporate Seal
2. <u><i>Mindy Proffitt</i></u> Mindy Proffitt	Title: <u><i>Jennifer C. Hoehn, Attorney-In-Fact</i></u>	



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated. Not valid for Note, Loan, Letter of Credit, Currency Rate, Interest Rate or Residential Value Guarantees.

POWER OF ATTORNEY

Know All Persons By These Presents:

That the Arch Insurance Company, a corporation organized and existing under the laws of the State of Missouri, having its principal administrative office in Jersey City, New Jersey (hereinafter referred to as the "Company") does hereby appoint:

Angela D. Ramsey, Donna K. Ashley, Gregory T. Wilkerson, J. David Pollack, Jr., Jacqueline Hampton, Jennifer C. Hoehn, John D. Leak III and William J. Quinn of Charlotte, NC (EACH)

its true and lawful Attorney(s) in-Fact, to make, execute, seal, and deliver from the date of issuance of this power for and on its behalf as surety, and as its act and deed: Any and all bonds, undertakings, recognizances and other surety obligations. This authority does not permit the same obligation to be split into two or more bonds in order to bring each such bond within the dollar limit of authority as set forth herein.

The execution of such bonds, undertakings, recognizances and other surety obligations in pursuance of these presents shall be as binding upon the said Company as fully and amply to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal administrative office in Jersey City, New Jersey.

This Power of Attorney is executed by authority of resolutions adopted by unanimous consent of the Board of Directors of the Company on December 11, 2020, true and accurate copies of which are hereinafter set forth and are hereby certified to by the undersigned Secretary as being in full force and effect:

"VOTED, That the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, or the Secretary shall have the power and authority to appoint agents and attorneys-in-fact, and to authorize them subject to the limitations set forth in their respective powers of attorney, to execute on behalf of the Company, and attach the seal of the Company thereto, bonds, undertakings, recognizances and other surety obligations obligatory in the nature thereof, and any such officers of the Company may appoint agents for acceptance of process."

This Power of Attorney is signed, sealed and certified by facsimile under and by authority of the following resolution adopted by the unanimous consent of the Board of Directors of the Company on December 11, 2020:

VOTED, That the signature of the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, and the signature of the Secretary, the seal of the Company, and certifications by the Secretary, may be affixed by facsimile on any power of attorney or bond executed pursuant to the resolution adopted by the Board of Directors on December 11, 2020, and any such power so executed, sealed and certified with respect to any bond or undertaking to which it is attached, shall continue to be valid and binding upon the Company. In Testimony Whereof, the Company has caused this instrument to be signed and its corporate seal to be affixed by their authorized officers, this 15th day of September, 2021

Attested and Certified

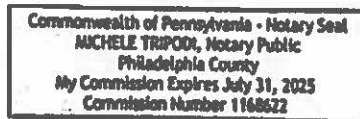
Regan A. Shulman, Secretary



Stephen C. Ruschak, Executive Vice President

STATE OF PENNSYLVANIA SS COUNTY OF PHILADELPHIA SS

I, Michele Tripodi, a Notary Public, do hereby certify that Regan A. Shulman and Richard Stock personally known to me to be the same persons whose names are respectively as Secretary and Executive Vice President of the Arch Insurance Company, a Corporation organized and existing under the laws of the State of Missouri, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they being thereunto duly authorized signed, sealed with the corporate seal and delivered the said instrument as the free and voluntary act of said corporation and as their own free and voluntary acts for the uses and purposes therein set forth.



Michele Tripodi, Notary Public My commission expires 07/31/2021

CERTIFICATION

I, Regan A. Shulman, Secretary of the Arch Insurance Company, do hereby certify that the attached Power of Attorney dated September 15, 2021 on behalf of the person(s) as listed above is a true and correct copy and that the same has been in full force and effect since the date thereof and is in full force and effect on the date of this certificate; and I do further certify that the said Richard Stock, who executed the Power of Attorney as Executive Vice President, was on the date of execution of the attached Power of Attorney the duly elected Executive Vice President of the Arch Insurance Company.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the Arch Insurance Company on this 15 day of OCT 04 2021

Regan A. Shulman, Secretary

This Power of Attorney limits the acts of those named therein to the bonds and undertakings specifically named therein and they have no authority to bind the Company except in the manner and to the extent herein stated.

PLEASE SEND ALL CLAIM INQUIRIES RELATING TO THIS BOND TO THE FOLLOWING ADDRESS:

Arch Insurance - Surety Division 3 Parkway, Suite 1500 Philadelphia, PA 19102



To verify the authenticity of this Power of Attorney, please contact Arch Insurance Company at SuretyAuthentic@archinsurance.com Please refer to the above named Attorney-in-Fact and the details of the bond to which the power is attached.

TRAVELERS

**Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company**

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Jennifer C Hoehn** of **CHARLOTTE** North Carolina, their true and lawful Attorney(s)-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this 21st day of April, 2021.



State of Connecticut

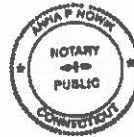
City of Hartford ss.

By: 
Robert L. Raney, Senior Vice President

On this the 21st day of April, 2021, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires the 30th day of June, 2026




Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary of each of the Companies, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this day of OCT 04 2021




Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.**



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
09/14/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Central, Inc. Chicago IL Office 200 East Randolph Chicago IL 60601 USA	CONTACT NAME: PHONE (A/C. No. Ext): (866) 283-7122 FAX (A/C. No.): (800) 363-0105		
	E-MAIL ADDRESS:		
INSURED Archer-United JV 929 West Adams Chicago IL 60607 USA	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: National Fire & Marine Ins Co		20079
	INSURER B: North American Capacity Ins Co		25038
	INSURER C: ACE Property & Casualty Insurance Co.		20699
	INSURER D: Arch Insurance Company		11150
	INSURER E:		
INSURER F:			

Holder Identifier :

COVERAGES **CERTIFICATE NUMBER: 570089141102** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. **Limits shown are as requested**

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
D	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER			41GPP8966300	02/07/2020	11/06/2024	EACH OCCURRENCE \$1,500,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$25,000 PERSONAL & ADV INJURY \$1,500,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMP/OP AGG \$4,000,000
D	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			41CAB8966401	02/07/2021	02/07/2022	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000 BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
A	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION			42XSF31021001 1st XS LIab (10m XS Prim)	02/07/2020	11/06/2024	EACH OCCURRENCE \$10,000,000 AGGREGATE
D	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	41WCI8966201	02/07/2021	02/07/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE-EA EMPLOYEE \$1,000,000 E.L. DISEASE-POLICY LIMIT \$1,000,000

Certificate No : 570089141102

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 RE: SCDOT Carolina Crossroads Phase 2, Broad River Road at I-20 Interchange, Richland County, Contract No.: 4056790; Project No.: P039719.
 Excess Liability policies are Occurrence-Based.
 See attached.

CERTIFICATE HOLDER**CANCELLATION**

South Carolina Department of Transportation Director of Construction P.O. Box 191 Columbus SC 29202-0191 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Aon Risk Services Central, Inc.</i>
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ADDITIONAL REMARKS SCHEDULE

AGENCY Aon Risk Services Central, Inc.		NAMED INSURED Archer-United JV	
POLICY NUMBER See Certificate Number: 570089141102			
CARRIER See Certificate Number: 570089141102	NAIC CODE	EFFECTIVE DATE	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER	
INSURER	
INSURER	
INSURER	

ADDITIONAL POLICIES If a policy below does not include limit information, refer to the corresponding policy on the ACORD certificate form for policy limits.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
	EXCESS LIABILITY							
B				EXS200110600 2nd XS LIab (15m XS 10m)	02/07/2020	11/06/2024	Each Occurrence	\$15,000,000
C				XCOG71783698001 3rd XS LIab (25m XS 25m)	02/07/2020	11/06/2024	Aggregate	\$25,000,000
							Each Occurrence	\$25,000,000



ADDITIONAL REMARKS SCHEDULE

AGENCY Aon Risk Services Central, Inc.		NAMED INSURED Archer-United JV	
POLICY NUMBER See Certificate Number: 570089141102			
CARRIER See Certificate Number: 570089141102	NAIC CODE	EFFECTIVE DATE	

ADDITIONAL REMARKS

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance**

Continuation

SCDOT is an Additional Insured pertaining to General Liability, Automobile Liability and Excess Liability with respects to liability arising out of the Named Insured's operations on the referenced project. Professional services for Architects, Engineers, Consultants, etc. are excluded.

This insurance will be Primary and Non-Contributory to the General Liability, Automobile Liability and Excess Liability a policies with respect to any other available insurance to the Additional Insureds for the negligence of the insured on the referenced project.

A waiver of Subrogation in favor of SCDOT, other additional insured parties, and their respective agents, officers, directors and employees are included on the General Liability, Automobile Liability, Excess Liability and workers' Compensation policies.

Excess Liability follows form to the underlying General Liability, Automobile Liability and Employers Liability policies.

Contractual Liability is included, subject to the terms, conditions, limitations and exclusions of the General Liability policy.

The General Liability policy includes the perils of (XCU) Explosion, Collapse and Underground.

General Liability SIR = \$500,000
Automobile Liability Deductible = \$100,000
Workers Compensation Deductible = \$500,000

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
ALL PARTIES WHERE REQUIRED BY A WRITTEN CONTRACT	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
ALL PARTIES WHERE REQUIRED BY A WRITTEN CONTRACT	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**DESIGNATED CONSTRUCTION PROJECT(S)
GENERAL AGGREGATE LIMIT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Construction Project(s):

APPLIES TO ALL CONSTRUCTION PROJECTS OF THE INSURED UNLESS OTHERWISE EXCLUDED

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage A, and for all medical expenses caused by accidents under Section I – Coverage C, which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
 - 1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
 - 2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage C regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
 - 3. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.
 - 4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.

- B.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage A, and for all medical expenses caused by accidents under Section I – Coverage C, which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and
 2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.
- C.** When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.
- D.** If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- E.** The provisions of Section III – Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

**AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM**

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: ARCHER-UNITED-JV

Endorsement Effective Date:

SCHEDULE

Name Of Person(s) Or Organization(s):

WHERE REQUIRED BY WRITTEN CONTRACT OR AGREEMENT. SUCH INSURANCE AS IS AFFORDED TO ADDITIONAL INSURED SHALL BE PRIMARY AND NON-CONTRIBUTORY WITH ANY OTHER INSURANCE AVAILABLE TO ADDITIONAL INSURED IF REQUIRED BY WRITTEN CONTRACT.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph A.1. of Section II – Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph D.2. of Section I – Covered Autos Coverages of the Auto Dealers Coverage Form.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLLUTION LIABILITY – BROADENED COVERAGE FOR COVERED AUTOS – BUSINESS AUTO, MOTOR CARRIER AND TRUCKERS COVERAGE FORMS

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. Liability Coverage is changed as follows:

1. Paragraph a. of the **Pollution Exclusion** applies only to liability assumed under a contract or agreement.
2. With respect to the coverage afforded by Paragraph A.1. above, Exclusion B.6. **Care, Custody Or Control** does not apply.

B. Changes In Definitions

For the purposes of this endorsement, Paragraph D. of the **Definitions** Section is replaced by the following:

- D. "Covered pollution cost or expense" means any cost or expense arising out of:
1. Any request, demand, order or statutory or regulatory requirement that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
 2. Any claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of "pollutants".

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
- b. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraphs a. and b. above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**NOTICE OF CANCELLATION – CERTIFICATE HOLDERS
(SPECIFIED DAYS)**

The person(s) or organization(s) listed or described in the Schedule below have requested that they receive written notice of cancellation when this policy is cancelled by us. We will mail or deliver to the Person(s) or Organization(s) listed or described in the Schedule a copy of the written notice of cancellation that we sent to you. If possible, such copies of the notice will be mailed at least 45 days, except for cancellation for non-payment of premium which will be mailed 10 days, prior to the effective date of the cancellation, to the address or addresses of certificate holders as provided by your broker or agent.

Schedule

Person(s) or Organization(s) including mailing address:

All certificate holders where written notice of the cancellation of this policy is required by written contract, permit or agreement with the Named Insured and whose names and addresses will be provided by the broker or agent listed in the Declarations Page of this policy for the purposes of complying with such request.

This notification of cancellation of the policy is intended as a courtesy only. Our failure to provide such notification to the person(s) or organization(s) shown in the Schedule will not extend any policy cancellation date nor impact or negate any cancellation of the policy. This endorsement does not entitle the person(s) or organization(s) listed or described in the Schedule above to any benefit, rights or protection under this policy.

Any provision of this endorsement that is in conflict with a statute or rule is hereby amended to conform to that statute or rule.

All other terms and conditions of this policy remain unchanged.
Endorsement Number:

Policy Number: 41GPP8966300

Named Insured: ARCHER-UNITED JV

This endorsement is effective on the inception date of this Policy unless otherwise stated herein:

Endorsement Effective Date: 02-07-20

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**NOTICE OF CANCELLATION – CERTIFICATE HOLDERS
(SPECIFIED DAYS)**

The person(s) or organization(s) listed or described in the Schedule below have requested that they receive written notice of cancellation when this policy is cancelled by us. We will mail or deliver to the Person(s) or Organization(s) listed or described in the Schedule a copy of the written notice of cancellation that we sent to you. If possible, such copies of the notice will be mailed at least **45** days, except for cancellation for non-payment of premium which will be mailed 10 days, prior to the effective date of the cancellation, to the address or addresses of certificate holders as provided by your broker or agent.

Schedule

Person(s) or Organization(s) including mailing address:

All certificate holders where written notice of the cancellation of this policy is required by written contract, permit or agreement with the Named Insured and whose names and addresses will be provided by the broker or agent listed in the Declarations Page of this policy for the purposes of complying with such request.

This notification of cancellation of the policy is intended as a courtesy only. Our failure to provide such notification to the person(s) or organization(s) shown in the Schedule will not extend any policy cancellation date nor impact or negate any cancellation of the policy. This endorsement does not entitle the person(s) or organization(s) listed or described in the Schedule above to any benefit, rights or protection under this policy.

Any provision of this endorsement that is in conflict with a statute or rule is hereby amended to conform to that statute or rule.

All other terms and conditions of this policy remain unchanged.
Endorsement Number:

Policy Number: 41CAB8966401

Named Insured: ARCHER-UNITED JV

This endorsement is effective on the inception date of this Policy unless otherwise stated herein:

Endorsement Effective Date: 02-07-21

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**NOTICE OF CANCELLATION – CERTIFICATE HOLDERS
(SPECIFIED DAYS)**

The person(s) or organization(s) listed or described in the Schedule below have requested that they receive written notice of cancellation when this policy is cancelled by us. We will mail or deliver to the Person(s) or Organization(s) listed or described in the Schedule a copy of the written notice of cancellation that we sent to you. If possible, such copies of the notice will be mailed at least 45 days, except for cancellation for non-payment of premium which will be mailed 10 days, prior to the effective date of the cancellation, to the address or addresses of certificate holders as provided by your broker or agent.

Schedule

Person(s) or Organization(s) including mailing address:

All certificate holders where written notice of the cancellation of this policy is required by written contract, permit or agreement with the Named Insured and whose names and addresses will be provided by the broker or agent listed in the Declarations Page of this policy for the purposes of complying with such request.

This notification of cancellation of the policy is intended as a courtesy only. Our failure to provide such notification to the person(s) or organization(s) shown in the Schedule will not extend any policy cancellation date nor impact or negate any cancellation of the policy. This endorsement does not entitle the person(s) or organization(s) listed or described in the Schedule above to any benefit, rights or protection under this policy.

Any provision of this endorsement that is in conflict with a statute or rule is hereby amended to conform to that statute or rule.

All other terms and conditions of this policy remain unchanged.

Endorsement Number:

Policy Number: 41WCI8966201

Named Insured: ARCHER-UNITED JV

This endorsement is effective on the inception date of this Policy unless otherwise stated herein:

Endorsement Effective Date: 02-07-21



INFRCON-01

MGOODWIN

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/8/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER License # 1000009384 Hub International Carolinas 1330 Lady Street Columbia, SC 29201	CONTACT NAME: Michelle Goodwin		
	PHONE (A/C, No, Ext):	FAX (A/C, No):	
E-MAIL ADDRESS: Michelle.Goodwin@hubinternational.com			
INSURED Infrastructure Consulting & Engineering, PLLC 1021 Briargate Circle Columbia, SC 29210	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Hartford Fire Insurance Company		19682
	INSURER B: Hartford Ins Co of the Midwest		37478
	INSURER C: Hartford Casualty Insurance Company		29424
	INSURER D: Hartford Insurance Company of SE		38261
	INSURER E: Travelers Casualty and Surety Company		19038
	INSURER F: Travelers Casualty Insurance Company of Americ		19046

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	X X	22UUNOL5136	9/6/2021	9/6/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY		22UENOL5164	9/6/2021	9/6/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
C	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000		22RHUOL5165	9/6/2021	9/6/2022	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A X	22WBOL6H1R	9/8/2021	9/6/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
E	Prof Liab		107504031	9/6/2021	9/6/2022	Ded \$100,000 10,000,000
F	Excess Umbrella		ZUP-16N90424-20-NF	9/6/2021	9/6/2022	10,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 RE: Carolina Crossroad Phase 2 - Broad River Rd at I-20 Interchange, Design-Build Project, Project ID P039719, Richland County

Owner: South Carolina Department of Transportation

Certificate Holder and Owner are shown as Additional Insured's regarding the General Liability coverage as required by written contract and subject to policy forms, conditions and exclusions.

SEE ATTACHED ACORD 101

CERTIFICATE HOLDER

CANCELLATION

Archer - United JV
 929 W. Adams Street
 Chicago, IL 60607

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

DUG



ADDITIONAL REMARKS SCHEDULE

AGENCY Hub International Carolinas		License # 1000009384	NAMED INSURED Infrastructure Consulting & Engineering, PLLC 1021 Briargate Circle Columbia, SC 29210
POLICY NUMBER SEE PAGE 1			
CARRIER SEE PAGE 1	NAIC CODE SEE P 1	EFFECTIVE DATE: SEE PAGE 1	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

Description of Operations/Locations/Vehicles:

A Blanket Waiver of Subrogation is included in favor of Certificate Holder and Owner regarding the General Liability and Workers' Compensation coverage as required by written contract and subject to policy terms, conditions and exclusions.

30 days notice is given in the event of cancellation for any reason other than non-payment, which is 10 days notice.

2nd Layer of Professional Liability coverage is with Berkshire Hathaway Insurance Company, Policy period of 9/6/21 to 9/6/22 with a limit of \$10,000,000.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF OUR RIGHT TO RECOVER
FROM OTHERS ENDORSEMENT**

Policy Number: 22 WB OL6H1R

Endorsement Number:

Effective Date: 09/06/2021 Effective hour is the same as stated on the Information Page of the policy.

Named Insured and Address: ICE OF CAROLINAS, PLLC
1021 BRIARGATE CIR
COLUMBIA SC 29210

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

SCHEDULE

Any person or organization for whom you are required by contract or agreement to obtain this waiver from us. Endorsement is not applicable in KY, NH, NJ or for any MO construction risk

Countersigned by _____

Authorized Representative



COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (2) The "bodily injury" or "property damage" occurs during the policy period; and

- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

e. Incidental Medical Malpractice

- (1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:

- (a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and

- (b) You are not engaged in the business or occupation of providing such services.

- (2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
 - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
 - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
 - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
 - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible;
 - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
 - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".
- However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.
- g. Aircraft, Auto Or Watercraft**
- "Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".
- This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.
- This exclusion does not apply to:
- (1) A watercraft while ashore on premises you own or rent;
 - (2) A watercraft you do not own that is:
 - (a) Less than 51 feet long; and
 - (b) Not being used to carry persons for a charge;
 - (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;

- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment"; or
- (6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors

working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" arising from the use of elevators.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at the job site.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

q. Employment-Related Practices

"Bodily injury" to:

- (1) A person arising out of any "employment-related practices"; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any "employment-related practices" are directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

r. Asbestos

- (1) "Bodily injury" or "property damage" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:
 - (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or

kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";

- (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
- (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

Damage To Premises Rented To You – Exception For Damage By Fire, Lightning Or Explosion

Exclusions c. through h. and j. through n. do not apply to damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III – Limits Of Insurance.

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" arising out of an offense committed by, at the direction or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement".

g. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services.

i. Infringement Of Intellectual Property Rights

"Personal and advertising injury" arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement", of:

- (1) Copyright;

- (2) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

- (3) Title of any literary or artistic work.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;

- (2) Designing or determining content of web sites for others; or

- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 17.a., b. and c. of "personal and advertising injury" under the Definitions Section.

For the purposes of this exclusion, placing an "advertisement" for or linking to others on your web site, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting.

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-Related

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

o. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

p. Internet Advertisements And Content Of Others

"Personal and advertising injury" arising out of:

- (1) An "advertisement" for others on your web site;
- (2) Placing a link to a web site of others on your web site;
- (3) Content, including information, sounds, text, graphics, or images from a web site of others displayed within a frame or border on your web site; or
- (4) Computer code, software or programming used to enable:
 - (a) Your web site; or
 - (b) The presentation or functionality of an "advertisement" or other content on your web site.

q. Right Of Privacy Created By Statute

"Personal and advertising injury" arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act.

r. Violation Of Anti-Trust law

"Personal and advertising injury" arising out of a violation of any anti-trust law.

s. Securities

"Personal and advertising injury" arising out of the fluctuation in price or value of any stocks, bonds or other securities.

t. Discrimination Or Humiliation

"Personal and advertising injury" arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

u. Employment-Related Practices

"Personal and advertising injury" to:

- (1) A person arising out of any "employment-related practices"; or

- (2) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any "employment-related practices" are directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

v. Asbestos

- (1) "Personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:
 - (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";
 - (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
 - (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

COVERAGE C MEDICAL PAYMENTS

1. Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
 - (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;provided that:
 - (1) The accident takes place in the "coverage territory" and during the policy period;
 - (2) The expenses are incurred and reported to us within three years of the date of the accident; and
 - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:
 - (1) First aid administered at the time of an accident;
 - (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
 - (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

- 1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:
 - a. All expenses we incur.
 - b. Up to \$1,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
 - c. The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

- e. All costs taxed against the insured in the "suit".
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

- 2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
 - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
 - b. This insurance applies to such liability assumed by the insured;
 - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
 - d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
 - e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
 - f. The indemnitee:
 - (1) Agrees in writing to:
 - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (c) Notify any other insurer whose coverage is available to the indemnitee; and
 - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (2) Provides us with written authorization to:
 - (a) Obtain records and other information related to the "suit"; and
 - (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee,

necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

a. Employees and Volunteer workers

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph (d) does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

(2) "Property damage" to property:

- (a) Owned, occupied or used by,
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will

have all your rights and duties under this Coverage Part.

e. Unnamed Subsidiary

Any subsidiary, and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of the Coverage Part.

The insurance afforded herein for any subsidiary not named in this Coverage Part as a named insured does not apply to injury or damage with respect to which an insured under this Coverage Part is also an insured under another policy or would be an insured under such policy but for its termination or the exhaustion of its limits of insurance.

3. Newly Acquired or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. Mobile Equipment

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The following person(s) or organization(s) are an additional insured when you have agreed, in a written contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement.

A person or organization is an additional insured under this provision only for that period of time required by the contract or agreement.

However, no such person or organization is an insured under this provision if such person or organization is included as an insured by an endorsement issued by us and made a part of this Coverage Part.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

- (b) Any express warranty unauthorized by you;
 - (c) Any physical or chemical change in the product made intentionally by the vendor;
 - (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
 - (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
 - (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
 - (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (i) The exceptions contained in Sub-paragraphs (d) or (f); or
 - (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
- (2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors of Equipment

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.
- (2) With respect to the insurance afforded to these additional insureds this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

c. Lessors of Land or Premises

Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.

With respect to the insurance afforded these additional insureds the following additional exclusions apply:

This insurance does not apply to:

- 1. Any "occurrence" which takes place after you cease to lease that land; or
- 2. Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers or Surveyors

Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In connection with your premises; or
- (2) In the performance of your ongoing operations performed by you or on your behalf.

With respect to the insurance afforded these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

- 1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- 2. Supervisory, inspection, architectural or engineering activities.

e. Permits Issued By State Or Political Subdivisions

Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

With respect to the insurance afforded these additional insureds, this insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In the performance of your ongoing operations;
- (2) In connection with your premises owned by or rented to you; or
- (3) In connection with "your work" and included within the "products-completed operations hazard", but only if
 - (a) The written contract or agreement requires you to provide such coverage to such additional insured; and
 - (b) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds under this provision is described in Section III – Limits Of Insurance.

How this insurance applies when other insurance is available to the additional insured is described in the Other Insurance Condition in Section IV – Commercial General Liability Conditions.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III – LIMITS OF INSURANCE

1. The Most We will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or

c. Persons or organizations making claims or bringing "suits".

2. General Aggregate Limit

The General Aggregate Limit is the most we will pay for the sum of:

- a. Medical expenses under Coverage C;
- b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
- c. Damages under Coverage B.

3. Products-Completed Operations Aggregate Limit

The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".

4. Personal and Advertising Injury Limit

Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.

5. Each Occurrence Limit

Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:

- a. Damages under Coverage A; and
- b. Medical expenses under Coverage C because of all "bodily injury" and "property damage" arising out of any one "occurrence".

6. Damage To Premises Rented To You Limit

Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

7. Medical Expense Limit

Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

8. How Limits Apply To Additional Insureds

If you have agreed in a written contract or written agreement that another person or organization be

added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

- a. The limits of insurance specified in the written contract or written agreement; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to Limits of Insurance shown in the Declarations and described in this Section.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insureds Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insureds Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs a. and b. apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

This duty applies separately to you and any additional insured.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or

that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability;

(5) Property Damage to Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion j. of Section I - Coverage A - Bodily Injury And Property Damage Liability;

(6) When You Are Added As An Additional Insured To Other Insurance

Any other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

Any other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this coverage part.

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement, or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

a. When You Accept This Policy

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and
- (3) We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business that exist at the inception date of this Coverage Part, we shall not deny coverage under this Coverage Part because of such failure.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer of Rights Of Recovery

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the

insured will bring "suit" or transfer those rights to us and help us enforce them.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper; or

b. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

- a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or
- b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

- a. Injury;
- b. Sickness; or
- c. Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
- c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in a. above;
 - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory or in a settlement we agree to.

7. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

8. "Employment-Related Practices" means:

- a. Refusal to employ a person;
- b. Termination of a person's employment; or
- c. Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at a person.

9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
- b. Your fulfilling the terms of the contract or agreement.

12. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while

rented to you or temporarily occupied by you with permission of the owner is subject to the Damage to Premises Rented To You Limit described in Section III – Limits of Insurance;

- b. A sidetrack agreement;
- c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.

However, Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.

13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

14. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";

- b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered; but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
 - e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
 - f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

 - (1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
 - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral, written or electronic publication of material that violates a person's right of privacy;
 - f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement";
 - g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement"; or
 - h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.
18. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
19. "Products-completed operations hazard":
- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

b. Does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

20. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

As used in this definition, computerized or electronically stored data, programs or software are not tangible property. Electronic data means information, facts or programs:

- a. Stored as or on;
- b. Created or used on; or
- c. Transmitted to or from;

computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

21. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

23. "Volunteer worker" means a person who

- a. Is not your "employee";
- b. Donates his or her work;
- c. Acts at the direction of and within the scope of duties determined by you; and
- d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

24. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- (2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

25. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and
- (2) The providing of or failure to provide warnings or instructions.