



CONTRACT DOCUMENT

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

REQUEST FOR PROPOSAL
DESIGN-BUILD CONSTRUCTION SERVICES
COOPER RIVER COUNTY PARK REVEMENT WATERSIDE
IMPROVEMENTS
1010 TIDEWATER
NORTH CHARLESTON, SC
2026-011

AGREEMENT

made as of the month,date,year

BETWEEN the Owner: Charleston County Park & Recreation Commission ("CCPRC")

and the Contractor:

CCPRC'S Project Number: #2026-011

Project: DESIGN BUILD CONSTRUCTION SERVICES COOPER RIVER COUNTY PARK
REVEMENT WATERSIDE IMPROVEMENTS

The Owner and Contractor agree as set forth below.

ARTICLE 1
THE CONTRACT SUM

1.1 The Owner agrees to pay the Contractor for the performance of the work for the Design-Build Construction Services Cooper River County Park Revetment Waterside Improvements. Project at the price of the *Not to exceed sum*, \$_____ Dollars in current funds, subject to additions and deductions for changes as may be agreed upon in writing.

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

The following documents are attached hereto and incorporated herein by reference; however, in the case of any ambiguities with attached documents, CCPRC's contract and Procurement Policy will apply.

Technical and Price Proposal awarded will be incorporated and made a part of this document.

1.2 Unit quantities are estimates only. Payment will be made on the basis of the units of work actually performed.

1.3 Progress payments will be based work actually performed on each task after award. The Owner shall pay the Contractor monthly progress payments within 30 days of receipt of approved Document/ Application and Certification of Payment, or accepted Payment Application Form by the Owner, according to the Contractor's schedule of values, less 10% retainage to be held until final payment. At a minimum, invoices shall contain the identity of the provider of the services, the date of the services, a description of the services, and any applicable taxes.

1.4 No revisions will be made without prior receipt of a written change order or directive from the Owner.

ARTICLE 2
CONTRACTOR'S RESPONSIBILITIES

The contractor must obtain and maintain a South Carolina state marine contractor's license.

The Contractor acknowledges that it has thoroughly examined and understands the requirements of Request for Proposal (RFP) No. 2026-011 Design-Build Construction Services Cooper River County Park Revetment Waterside Improvements issued by CCPRC.

The scope of work includes, but not limited to, the following as applicable; construction (including methodology, plans, sequencing, scheduling, and all necessary project coordination); building permits, SWPP compliance, cost estimates, construction documents, geotechnical analysis and testing, surveys, and close-out (including as-built surveys).

Project will include construction of approximately 700 linear feet of rock revetment for shore line stabilization, approximately 240 linear feet of Permatrak boardwalk from the highland area to a connection to the Grande Pier, approximately 20 linear of Permatrak boardwalk over a wetland area, waterline replacement for 1100 feet of 4" water service to the Marina Store that will be attached to new supports on the new boardwalk and the existing pier, as well as a new 6" dry pipe system that serves the fire protection of the existing transient dock area. The new dry pipe system will also be connected to the new and existing boardwalk and pier.

Contractor will make all final connections to the existing Marina Store and Marina potable water and fire protection system. This includes all associated work as described in the contract drawings and specifications, construction and construction administration services for Cooper River County Park Waterside Development.

The Contractor will coordinate with the Owner in scheduling their work as to minimize conflict with the work of others. The Contractor shall also anticipate coordination with other consultants and/or contractors whose work might rely on the Contractor's execution of this scope of work. Contractor and Owner shall coordinate any potential scheduling and access conflicts. Contractor shall note and advise the Owner of any such interference. Further, Contractors must always maintain access to the marina and designated parking during construction. The Contractor shall take all necessary precautions to properly avoid damaging the finished work of other trades, the Owner's property, including all protected trees, wildlife, and natural habitat and property of other contractors or park visitors. Similarly, the Contractor shall also minimize or avoid utility downtime, as to minimize disruption of CCPRC customer expectations.

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

The Contract is governed by the CCPRC Procurement Policy, which may be obtained by request. CCPRC's Procurement Policy shall prevail over any conflicting provisions of the contract, including the special or supplementary conditions of the contract and the general conditions of the contract.

Contractor is not authorized to commence work until agreement is executed by CCPRC, issues an executed Notice to Proceed.

2.1 CONTRACTOR'S WORK/SERVICES

2.1.1 The Contractor's work/services consist of all work performed by all employees and consultants as enumerated in this Agreement.

2.1.2 The Contractor's work/services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. The Contractor shall submit for the Owner's approval a schedule for the performance of the Contractor's services which may be adjusted as the Project proceeds and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule and approved by the Owner shall not, except for reasonable cause, be exceeded by the Contractor.

ARTICLE 3
SCOPE OF CONTRACTOR'S BASIC WORK/SERVICES

3.1 DEFINITION

3.1.1 The Contractor's Basic Work / Services consist of Design-Build Construction for Cooper River County Park Development, work/services described in this agreement and includes, but not limited to the following as applicable; construction (including methodology, plans, sequencing, scheduling, and all necessary project coordination); building permits, SWPP compliance, cost estimates, construction documents, geotechnical analysis and testing, surveys, and close-out (including as-built surveys). Project will include construction of approximately 700 linear feet of rock revetment for shore line stabilization, approximately 240 linear feet of Permatrak boardwalk from the highland area to a connection to the Grande Pier, approximately 20 linear of Permatrak boardwalk over a wetland area, waterline replacement for 1100 feet of 4" water service to the Marina Store that will be attached to new supports on the new boardwalk and the existing pier, as well as a new 6" dry pipe system that serves the fire protection of the existing transient dock area. The new dry pipe system will also be connected to the new and existing boardwalk and pier.

Contractor will make all final connections to the existing Marina Store and Marina potable water and fire protection system. This includes all associated work as described in the contract drawings and specifications, construction and construction administration services for Cooper River County Park Waterside Development.

3.2 SCHEMATIC DESIGN PHASE

3.2.1 The Contractor shall review and refine the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

3.2.2 The Contractor shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Subparagraph 5.2.1.

3.2.3 The Contractor shall review with the Owner alternative approaches to design and construction of the Project.

3.2.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, the Contractor shall prepare, for approval by the Owner, Master Plan and Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

3.3 DESIGN DEVELOPMENT PHASE

3.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule, or construction budget, the Contractor shall prepare, review and revise for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

3.4 CONSTRUCTION DOCUMENTS PHASE

3.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Contractor shall prepare, review, and revise, subject to Owner's approval, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project. The construction drawings and specifications shall comply with all applicable codes and standards which include following all Local, County, State and Federal codes and regulations, especially in regard to Building codes, Life Safety Codes and the American with Disabilities Act.

3.4.2 The Contractor shall identify requirements for any permits or documentation required by any governmental authority and shall act as Owner agent in filing documents and paying fees required for the approval of governmental authorities having jurisdiction over the Project.

3.5 CONSTRUCTION PHASE – ADMINISTRATION OF THE CONSTRUCTION CONTRACT

3.5.1 The Contractor responsibility during the Construction Phase under this Agreement commences with the award of the Contract for Construction and terminates upon completion of the Design Build Contractor obligation under the warranty period.

3.5.2 Duties, responsibilities and limitations of authority of the Contractor shall not be restricted, modified or extended without written agreement of the Owner and the Design Consultant with consent of the Contractor, with which consent shall not be unreasonably withheld.

3.5.3 The Design Consultant shall advise and consult with the Owner during construction, to ensure plans and specifications are followed, until final payment to the Contractor is paid. The Contractor shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written instrument.

3.5.4 The Design Consultant shall visit the site at intervals appropriate to the stage of construction or as otherwise agreed by the Owner and the Contractor in writing. The Design Consultant shall become generally familiar with the progress and quality of the Work completed and shall determine in general if the Work is being performed in a manner consistent with the Contract Documents. However, the Design Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Based on site observations, the Contractor shall keep the Owner informed of the progress and quality of the Work and shall use its best efforts to endeavor to guard the Owner against defects and deficiencies in the Work.

3.5.5 Communications by and with the Contractor shall be through the Design Build Consultant. Design Build Consultant shall work closely with other contractors and sub-contractors to promote good communication of all planning and construction coordination.

3.5.6 The Design Build Team shall advise the Owner if it discovers work which does not conform to the Contract Documents. Whenever the Design Build Consultant considers it necessary or advisable for implementation of the intent of the Contract Documents, the Design Build Consultant will advise the Owner if additional inspection or testing of the Work is required.

3.5.7 The Design and Engineering Consultants shall review and recommend approval or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Consultant's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the construction of the Owner or of separate contractors, while allowing sufficient time in the Professional's judgment to permit adequate review.

3.5.8 The Design Build Consultant acknowledges that the Owner is obligated to consider alternates proposed by contractors as being equal to those specified. It shall be the Design Build Consultant responsibility and already included in

contractor's basic services to evaluate and do whatever is necessary in meetings, reviews, modifications, etc. to fully exercise these considerations.

3.5.9 At the Owner's request, the Design Build Consultant shall provide supporting documentation and data for Change Orders and Construction Change Directives, if deemed necessary by the Owner, for the Owner's approval and execution in accordance with Article 4, and the CCPRC Procurement Policy.

3.5.10 The Design Build Consultant shall conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, shall receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract Documents and assembled by the Design Build Consultant, and shall recommend for payment upon compliance with the requirements of the Contract Documents.

3.5.11 At the completion of the project, the Design Build Team will review with Owner Construction As-Built documents and update any revisions made. The Design Build Consultant shall annotate CADD drawings to the as-built conditions and provide this service as a part of the basic compensation. The Design Build Team shall provide the Owner with files of entire bid set, including, but not limited to all drawings and specifications by the contractor and/ or any and all sub-consultants in digital form.

ARTICLE 4 **CHANGES IN CONTRACT**

4.1 Changes Requested by Owner. CCPRC may unilaterally, at any time, on written order, without notice to the surety, and without invalidating the Contract, make changes in the work herein contracted for. CCPRC shall notify the Contractor that it is considering such a change and Contractor shall provide with a proposed price and scheduling proposal for all costs and impacts arising from the changed work in writing within seven (7) calendar days of CCPRC's written notice. Thereafter, if the parties agree, CCPRC and Contractor shall execute a written change order which modifies this Agreement. In the absence of such an agreement, the parties shall proceed pursuant to Article 4.3. The agreed amount of payment and adjustment in Contract schedule, if any, in a written executed change order constitutes a full, complete, and final payment for all work arising from the change order. Contractor, in executing any such change order, waives any entitlement to additional compensation or extensions of time arising from the change.

4.2 Changes Requested by Contractor. Should Contractor find it necessary to request any changes in the scope of work or any time extensions during the course of construction, Contractor shall submit a written request which includes a pricing and a scheduling proposal to the Owner within seven (7) days of the event giving rise to the change request. If Owner is in agreement, Owner shall issue a written change order or may request additional information within seven (7) days of receipt of Contractor's request. All pricing and scheduling proposals are subject to independent verification and audit. Contractor agrees to make all records relating to any pricing or scheduling proposal available for CCPRC's inspection. Absent written approval of the Owner, through the execution of a written

change order, or issuance of a change directive, the Contractor shall not proceed with performing such additional work (unless CCPRC determines that such work is in the original scope of this contract). Contractor acknowledges that Owner's execution of a written change order or change directive under Article 4.3 is a condition precedent to any payment for work included in the Change Order or any adjustment in the Contractor's schedule. Contractor hereby waives any entitlement to additional compensation or extensions of time to the extent that Contractor performs any additional work without written approval of Owner.

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

4.4 Limits on Contract Adjustments: The following limitations shall apply to any change orders issued pursuant to Articles 4.1 and 4.2, or any construction change directives under Article 4.3. CCPRC's total liability for any changes under Article 3 shall not exceed the cumulative total of the following costs which are incurred in connection with the performance of a change order or change directive:

- (a) The Contractor's direct labor, costs and labor burden associated with performance of the work,
- (b) The direct costs of any subcontractor,
- (c) The direct costs of any materials, including applicable sales taxes,
- (d) Rental costs of any rental equipment,
- (e) Ownership costs of any owned equipment, and
- (f) Field and general overhead, direct profit, and profit above subcontractor cost shall be considered as an aggregate total and shall not exceed 10 % of the change order cost.

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

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

ARTICLE 5 **TIME**

5.1 The work to be performed by the Contractor under this Contract shall be Substantially Completed in accordance with the critical timeline by **August 31, 2027**.

The Contractor shall be required to (a) commence work under this contract within 10 calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than date indicated above. The stated substantial completion shall include final cleanup of the premises.

5.2 Substantial Completion; Substantial completion of the Work, or designated portion thereof, is when the construction is sufficiently complete, in accordance with the Contract Documents, so that CCPRC or separate contractors can occupy and utilize the Work for the use for which it is intended with all of the installations, parts and systems required by the Work hereunder operable and in accordance with the Contract Documents and where all such Work is complete, accessible, operable and usable by CCPRC for its full and unimpeded intended usage. Only minor or incidental corrective work under punch list items and final cleaning (if required) beyond cleaning needed for CCPRC's full use may remain for Final Completion. The team shall achieve Final Completion within thirty (30) days of Substantial Completion.

5.2.1 Upon Substantial Completion, the Owner shall review any list submitted to them by listing outstanding "punch list" items. Contractor shall prepare their own punch list to be submitted to Owner with appropriate values for each item. Owner shall document items on the Substantial Completion Certification Form.

5.3 The Contractor is required to submit a Construction Schedule covering commencement of construction through completion of the work on this project. The Contractor is required to submit

and periodically update the Construction Schedule on a monthly basis or, if specifically requested by the Owner, every two weeks. The Contractor agrees to furnish any and all information requested by the Owner for these periodic updates. Further, the Contractor agrees to perform their work in accordance with the various completion dates and milestones in the Construction Schedule.

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

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

5.6 Within seven (7) days after the date of this Agreement provide a schedule to accomplish the work including milestones and meeting dates, through the date of Substantial Completion of the Project. The Owner will review design milestones and attend construction progress meeting at the site, which will be scheduled by the Design Team Project Manager. The Design Team Project Manager shall preside over these meetings and shall prepare written minutes of the meetings for the Owner and for approval by the project engineer. In the event it appears at any such meeting that the Contractor will not meet any milestone dates set forth in the schedule, the Contractor expressly agrees that it will use its best efforts, including the employment of additional personnel, to see that the milestone date is met at no additional cost to Owner.

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

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

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

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

Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
10	7	6	6	9	14	14	17	11	8	6	10

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

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

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

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

- (a) The sum of \$350.00 for a daily rate per day, not as a penalty, but as liquidated damages to the Owner for each and every calendar day that the Contractor's performance extends beyond the time for Substantial Completion in the Contract for substantially completing the work, as extended by any proper change order.

ARTICLE 6 **PAYMENT SCHEDULE**

6.1 The Owner shall pay the Contractor monthly progress payments within 30 days of receipt of approved Document/ Application and Certification of Payment, or accepted Payment Application Form by the Owner, according to the Contractor's schedule of values, less 10% retainage to be held until final payment. No retainage is required to be held for design fees. At a minimum, invoices shall contain the identity of the provider of the services, the date of the services, a description of the services, and any applicable taxes.

6.2 The Contractor shall, before submission of the first Application for Payment, submit to the Owner a schedule of values of the various parts of the work aggregating the total sum of this Contract, made out in such detail as the Contractor and Owner may agree upon, and, if required, supported by such evidence as to its correctness as the Owner may direct. This schedule, when approved by the Owner, shall be used as a basis for Applications for Payment, unless it is found to be in error. In applying for payment, the Contractor shall submit a statement based upon this schedule. CCPRC may reduce or withhold any payment application which: a) overstates the percentage, b) contains any false information, c) misrepresents the status of payments to subcontractors or suppliers, d) is necessary to leave CCPRC in a secure financial condition to cover the costs of incomplete, unsatisfactory or delayed work, e) CCPRC has reasonable cause to believe a default is imminent, or g) is necessary to remedy any breach or failure of the Contractor to perform this agreement, in CCPRC's sole discretion.

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

- (a) Completion of the punch list;
- (b) Acceptance and occupancy of the project;
- (c) Submission of final Subcontractor/supplier lien releases;
- (d) Submission and approval of final invoice;
- (e) Submission of all product warranties and operating manuals;
- (f) Receipt of as-built drawings in AutoCAD format and PDF format; One (1) set prints, with One (1) USB flash drive with drawings saved to DWG file with pen settings and as a PLT file. All external references used to produce AutoCAD drawing(s) shall be included on the USB flash drive.
- (g) Successful Final Completion inspection by the Owner as provided in Article 6.5.
- (h) Satisfactory completion of all terms and conditions of this agreement.

6.4 Before the issuance of any monthly progress payments and/or final payment, the Contractor, if required by the Owner, shall submit evidence, including, but not limited to, waivers of lien, satisfactory to the Owner that all payrolls, material bills, and all known indebtedness connected with the Contractor's work have been satisfied. Contractor shall promptly pay all suppliers and subcontractors and shall indemnify and hold harmless CCPRC from any and all sources of claims arising from Contractor's failure to promptly pay its suppliers and subcontractors. Additionally, and to the fullest extent allowed by South Carolina Law, Contractor shall indemnify and hold

harmless CCPRC from any and all manner of claims (including reasonable attorney's fees) allegedly covered in whole or in part or arising from in whole or impart the

Contractor's negligence, failure, errors, omissions, tortuous conduct, breach of standards or customs or codes or any duties arising under this agreement.

Contractor shall provide list of all subconsultants and subcontractors.

6.5 Final Inspection: The Owner will make only two (2) such inspections to determine Final Completion.

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

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

ARTICLE 7 **PERFORMANCE AND PAYMENT BONDS**

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

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

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

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

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

ARTICLE 8 INDEMNITY

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

8.2 The Contractor agrees to indemnify the Owner against, and hold the Owner harmless from, any and all claims, demands, liabilities, losses, expenses, suits and actions (including attorneys' fees) for or on account of any injury to any person or any death at any time resulting from such injury, or any damage to any property, which may arise (or which may be alleged to have arisen) out of or in connection with the work covered by this Contract even though such injury, death or damage may be (or may be alleged to be) attributed in part to the negligence or other fault on the part of the Owner or his officers, agents, or employees. The Contractor specifically agrees to defend any and all suits, which may be brought against the Owner on account of any such injury, death or damage. The obligation of the Contractor's indemnifying and holding the Owner harmless shall not be enforceable if and only if it can be determined by judicial proceedings that the injury, death or damage complaint was attributable solely to the fault or negligence of the Owner or his officers, agents, or employees and not in any manner or in any part attributable to the Contractor. The Contractor agrees to reimburse the Owner for all sums which the Owner may pay or be compelled to pay in settlement of any claim hereunder, including any claims under the provisions of any Workmen's Compensation law or any plan for employee's benefits which the Owner may adopt. The Owner may withhold from any payment otherwise due pursuant to this Contract such amount or amounts which may be reasonably necessary to protect it against liability for any personal injury, death or property damage resulting from the performance of work hereunder.

8.3 **“Indemnification of Owner.** Except for expenses or liabilities arising from the negligence of the CCCPRC, the Contractor hereby expressly agrees to indemnify and hold the CCCPRC harmless against any and all expenses and liabilities arising out of the negligent performance, action or inaction of the Contractor in conduct of this agreement, as follows:

For matters other than those arising from the rendering or failure to render professional services, the Contractor expressly agrees to the extent that there is a causal relationship between its negligence, action or inaction, or the negligence, action or inaction of any of its employees or any person, firm or corporation directly or indirectly employed by the Contractor and any damage, liability, injury, loss or expense (whether in connection with bodily injury or death or property damage) that is suffered by the CCPRC and its employees or by any member of the public, to indemnify and save the CCPRC and its employees harmless against any and all liabilities, penalties, demands, claims, lawsuits, losses, damages, costs, and expenses arising out of the negligence, action or inaction of the Contractor, regardless of whether such liabilities, penalties, demands, claims, lawsuits, losses, damages, costs and expenses are caused in part by

the CCPRC. Such costs are to include without limitation, defense, settlement and reasonable attorney's fees incurred by the CCPRC and its employees. This promise to indemnify shall include, without limitation, bodily injuries or death occurring to the Contractor's employees and any person, directly or indirectly employed by the Contractor (including without limitation any employee of any subcontractor), the CCPRC's employees, the employees of any other independent contractors, or occurring to any member of the public. When the CCPRC submits notice, Contractor shall promptly defend any aforementioned action.

For matters arising out of the rendering or failure to render professional services, the Contractor will indemnify and save the CCPRC and its employees harmless from and against all liabilities, penalties, demands, claims, lawsuits, losses, damages, costs and expenses arising out of or resultant from any negligent act, error or omission of the Contractor in the rendering or failure to render professional services under this contract. Such costs are to include, without limitation, defense, settlement and reasonable attorneys' fees incurred by the CCPRC and its employees. This promise to indemnify shall include, without limitation, bodily injuries or death occurring to the Contractor's employees and any person, directly or indirectly employed by the Contractor (including without limitation any employee of any subcontractor), the CCPRC's employees, the employees of any other independent contractors, or occurring to any member of the public. When the CCPRC submits notice, the Contractor shall promptly defend any aforementioned action.

The limits of insurance required in this Agreement shall not limit the Contractor's obligations under this Article. The terms and conditions contained in this Article shall survive the termination of the Agreement or the suspension of the work hereunder."

ARTICLE 9 **INSURANCE**

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

9.2 Prior to the commencement of any work hereunder by the Contractor, the Contractor shall procure at their expense and maintain for the duration of this Contract such insurance as will protect both the Owner and the Contractor from any and all claims for personal injury, death, property damage, workmen's compensation or other claims arising from performance of the Contract for which insurance protection is available. The Contractor shall carry on the work at their own risk. Contractor shall obtain and secure Builders Risk coverage for the full amount of the project and specifically name CCPRC as a co-insured under the Builders Risk policy.

Contractor shall obtain and secure at their own expense Longshoreman insurance.

In case of any loss or damage occurring at the project site by fire, windstorm, or any other cause, to any equipment, tools, construction supplies, temporary structures, materials, or partially or wholly completed construction prior to final acceptance of the project by the Owner, the Contractor shall, at their own expense, repair or replace the same.

9.3 Insurance Requirements below for license agreement between South Carolina State Ports Authority (SCPA) and CCPRC

Private Contractor. Licensee shall require any private independent contractor or subcontractor performing work on the Property (a “**Private Contractor**”) to:

- a) Purchase and maintain in full force and effect commercial general liability insurance insuring such Private Contractor and its employees against any and all claims or demands for personal injury and property damages arising out of such Private Contractor’s use and operation of the Property, with a combined single limit for bodily injury and property damage liability of at least \$2,000,000 per occurrence.
- b) Purchase and maintain an umbrella or excess liability insurance policy with an annual aggregate of \$5,000,000;
- c) Purchase and maintain “all risk” property insurance covering all personal property of Private Contractor used at the Property, Port, or Terminal; and
- d) Purchase and maintain, at no expense to the SCPA, the policies of insurance sufficient to cover the work and standard risks associated with the work being performed associated with this Agreement, including adherence to all Laws and Regulations.

6.03 Policy Requirements. The insurance coverage required to be maintained by Licensee hereunder shall be primary and non-contributing with any insurance carried by the SCPA. Each insurance policy required to be maintained by Licensee, any Government Service Provider, and any Private Contractor performing work on behalf of Licensee shall: (i) be written by a company having an A.M. Best Company rating of “A” or better and a financial category of “VII” or better; and (ii) require not less than thirty (30) days prior written notice to the SCPA of any material change, impairment, cancellation or non-renewal of coverage.

6.04 Delivery of Certificates, Policies. Licensee shall deliver to the SCPA a certificate of insurance and copies of required endorsements evidencing the existence or renewal of such coverage prior to the Effective Date, and, with respect to insurance which its Government Service Providers and Private Contractors are required to carry, prior to commencement of any work at the Property, and prior to the expiration date of each policy. Licensee shall deliver a certified copy of each policy and endorsements to the SCPA upon reasonable request. If any policy provides for payment of a deductible by the insured, Licensee shall be liable for the full deductible amount. The limits of any insurance required by this Agreement shall not limit the liability of Licensee pursuant to this Agreement. If Licensee fails to procure and maintain any insurance required by this Agreement, or provide proof of policies of insurance for Government Service Providers or Private Independent Contracts required by this Agreement, within five (5) days of the SCPA providing written notice pursuant to Section 8.01(a), the SCPA may, but shall not be required to, procure and maintain the same at the expense of Licensee.

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

9.5 “Notwithstanding anything to the contrary expressed elsewhere in this agreement, the Contractor agrees that They is responsible for the cost of any rework resulting from any omission by, or error of, or failure of, the Contractor to perform its duties, responsibilities, or obligations under this agreement.”

ARTICLE 10 **TERMINATION**

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

10.2 In the event that the Contractor is defaulted, then the Contractor and its surety shall be liable to CCPRC for all moneys expended and all of the costs, losses, damages and extra expense, including all management, administrative and other overhead and other direct and indirect expenses (including attorneys' fees) incurred by the Owner incident to such completion of the Contractor's work The surety and/or the Contractor agrees to pay promptly to the Owner, on demand, the full amount of such damages, including costs of collection, attorneys' fees, and interest thereon at the prejudgment rate.

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

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

10.5 In addition to or in lieu of termination for default, CCPRC may supplement and/or assume responsibility for any portion of the incomplete work and deduct the cost of such work from the contract balance upon 7 (seven) days written notice to the Contractor.

ARTICLE 11 **DISPUTES**

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

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

ARTICLE 12 **MISCELLANEOUS PROVISIONS**

12.1 GOVERNING LAW

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

12.2 CONTRACTOR'S GENERAL DUTIES AND STATUS

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

12.3 SUPERVISION

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

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

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

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

12.4 CONTRACTOR'S WARRANTIES

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

- a) That all materials and equipment furnished under this Agreement will be new unless otherwise specified, and that all work will be of a good and workmanlike quality, free from faults and defects and in conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.
- b) If required by the Owner, the Contractor shall provide satisfactory evidence as to the kind and quality of materials and equipment.
- c) That the contractor holds a license, permit or other special license to perform the services included in this Agreement, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license.

12.5 CONTRACTOR'S GUARANTEE OF WORK

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

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

12.6 ASSIGNMENTS AND CONTRACTS

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

- a) A designation of the Work to be performed by contractors with their forces and at a minimum, must perform at least thirty percent of the total scope of the work;
- b) Names of the manufactures, products and the suppliers of principal items or systems of materials and equipment proposed for the Work;
- c) Names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the principal portions of the work.

12.7 SAFETY OF PERSONS AND PROPERTY

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

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

- a) All employees on the work and all other persons who may be affected thereby;
- b) All the work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor; and
- c) other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- d) Contractor shall be responsible for:
 - i. Maintenance and protection of Work until final completion and acceptance, including, but not limited to, the storage of materials and equipment, erection of temporary structures and provisions for drainage as necessary to protect Work from injury, damage or loss
 - ii. Any injury, damage, or loss to Work resulting from the action of the elements or any other cause, irrespective of fault or negligence, accepting only such injury, damage, or loss as is caused solely by the negligence of willful misconduct of CCPRC.
 - iii. Protection of its Work and materials and the Work and materials of its Subcontractors from damage or injury from the weather. Any portion of Work suffering injury, damage, or loss for which Contractor is responsible under 1, 2, or 3 above will be considered defective and shall be corrected or replaced without additional cost to CCPRC.

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

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

12.7.5 The Contractor shall comply with the Williams-Steiger Occupational Safety and Health Act of 1970. The Contractor has the specific responsibility to comply with Chapter XIII of the Occupational Safety and Health Act of 1970 entitled "Safety and Health Regulations for Construction" and published in the Federal Register, Volume 36, Saturday, April 17, 1971. The Contractor shall hold Owner

harmless against any and all claims that may arise because of failure on the part of the Contractor to comply with the Williams-Steiger Occupational Safety and Health Act of 1970 and the said "Safety and Health Regulations for Construction" issued pursuant thereto.

12.8 CLEANING UP

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

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

12.9 WAIVER

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

12.10 LAWS, PERMITS, FEES AND NOTICES

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

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

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

12.10.4 Contractor must deliver all proposed schedules regarding the Permitted Use in writing to SCPA for approval at least thirty (30) days in advance of the desired date of action. SCPA reserves the right in its sole and absolute discretion to approve as submitted, modify, or reject the proposed schedules, not to be reasonably withheld. SCPA will return the approved schedule with any modifications to the Licensee ("Permitted Use Schedule")

Sending Notices. Any notice, request, demand, approval or consent given or required to be given under this Agreement shall be in writing and directed to a Party at its address as set forth below:

South Carolina State Ports Authority
Attn: Edward "Butch" Weber
200 Ports Authority Drive
Mount Pleasant, SC 29464

With copy to:

South Carolina State Ports Authority
Attn: General Counsel
200 Ports Authority Drive
Mount Pleasant, SC 29462

12.11 NON-DISCRIMINATION

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

12.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

12.13 ARTISTIC EFFECT

12.13.1 The Contractor agrees that all work shall be done subject to the final approval of the Owner or the Owner's authorized agent, and that the Owner's decision in matters relating to artistic effect shall be final, if within the terms of the Contract Documents.

12.14 TEMPORARY SITE FACILITIES AND STORED MATERIALS

12.14.1 Temporary site facilities shall be coordinated with the Owner's project manager. Any storage facilities placed on site will be placed with the approval of the Owner's project superintendent or project manager. Materials stored on site must not be removed from the site without the written consent of the Owner's project superintendent or project manager. The Contractor shall obtain prior approval from the Owner for all materials stored off site. All materials stored off site must be stored in a bonded warehouse and properly insured.

12.15 TERMS

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

12.16 RECORD DRAWINGS

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

utilities within the project limits. Upon completion of construction, Contractor and/or subcontractor shall turn over to the Contractor the record set showing the buildings and all service thereto exactly as built and installed.

12.17 TESTS AND INSPECTION

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

12.18 This Agreement represents the entire and integrated agreement between CCPRC and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both CCPRC and the Contractor.

12.19 Nothing contained in this Agreement shall be deemed to create a contractual relationship with or cause of action in favor of a third party against CCPRC or the Contractor. The parties agree any disputes arising from this Agreement shall be resolved in a court of competent jurisdiction (non-jury trial) in Charleston, South Carolina. Contractor is not and has no authority to act as Owner's agent.

12.20 The Contractor covenants and warrants that all work performed under this Contract shall be performed in a skillful, workmanlike and good manner and in accordance with the customs and standards of the industry with the highest degree of professional care. All plans prepared by the Contractor and drawings shall be adequate, accurate, and fit for their intended purpose. The Contractor shall similarly be responsible for and bear all risk of all damages to persons or property that occurs as a consequence of its fault or negligence. The Contractor assumes all risk of loss and damage to all materials the Contractor provides under this Contract until delivery and acceptance of the entire work by CCPRC.

12.21 CCPRC may undertake or award other contracts for additional work and the Contractor shall fully cooperate with such other contractors or Contractors as CCPRC employs and carefully fits into its own work with such additional work as may be directed by CCPRC. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor.

12.22 Unless otherwise provided in this Agreement, the Contractor and Contractor's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including, but not limited to, asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

12.23 The Contractor shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Contractor's promotional and professional materials. The Contractor's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Contractor in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall designate professional credit for work being performed by the Contractor and the name of the firm shall be included on the construction sign and in the promotional materials for the Project.

12.24 SITE

12.24.1 Offerors or quoters are urged and expected to inspect the site where the work will be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award.

12.24.2 Failure to visit the project site will not disqualify an offeror; however, the offeror is required to comply with the terms and conditions of any resultant contract by reason of such failure. In no event will failure to inspect the site constitute grounds for a claim after award of the contract.

12.25 INTEGRITY OF UNIT PRICES

12.25.1 Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost.

12.26 CCPRC will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate CCPRC to exercise the option(s).

ARTICLE 13 **MODIFICATIONS**

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

ARTICLE 14 **PROMPT PAYMENT CLAUSE –CCPRC**

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

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

(3) Prior to receiving payment of each monthly estimate, the Contractor shall certify to CCPRC that the construction estimate is complete and that all subcontractors have been paid for work covered by previous estimates.

(4) Failure to comply with any of the above provisions shall result in one or more of the following sanctions:

- a. no further payments to the Contractor unless and until compliance is achieved;
- b. the Contractor being placed in default; and/or

c. the Contractor being declared delinquent

This Agreement entered into as of the day and year first written below:

AGREEMENT

Contractor

**Charleston County Park & Recreation
Commission**

Signature

Signature

Date

Date

Printed Name

Printed Name

Title

Title