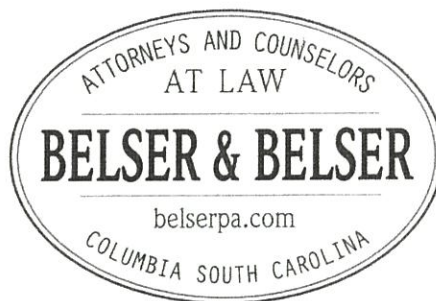


C. HEYWARD BELSER, SR. (1918-1994)
CLINCH H. BELSER, JR.
H. FREEMAN BELSER
MICHAEL J. POLK
WILLIAM C. DILLARD, JR.
CHARLES H. McDONALD
CRESTON W. BROWN
ROBERT YOUNG
CHARLES L. DIBBLE

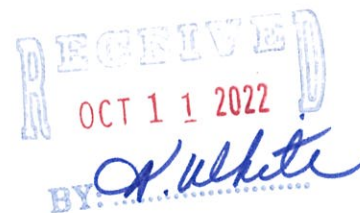


POST OFFICE BOX 96
COLUMBIA, SC 29202

TELEPHONE: 803-929-0096
FACSIMILE: 803-929-0196

OFFICE LOCATION:
1325 PARK STREET
SUITE 300
COLUMBIA, SC 29201

October 5, 2022



VIA E-MAIL AND U.S. MAIL

Board of Trustees of the District Five of Lexington and Richland Counties
Attn: Ms. Jan Hammond, Board Chair (jhammond@lexrich5.org)
1020 Dutch Fork Road
Irmo, SC 29063

Re: "Procurement Examination and Consulting Phase II Report" dated
September 19, 2022
Prepared by Jaramillo Accounting Group

Dear Ms. Hammond:

I serve as legal counsel for Quackenbush Architects + Planners, LLC (hereafter "Q+") and I am writing to the Board of Trustees of District Five of Lexington and Richland Counties (hereafter "LR5 Board" and "LR5") concerning the above referenced document that has been made public by LR5 and openly discussed in public by Board members (hereafter referred to as the "Preliminary Report"). LR5's release to the public of the confidential Preliminary Report was premature and ill-advised. LR5 has mischaracterized this document as a final procurement audit when that is not the case. The Preliminary Report does not contend to be a final procurement audit and there is no indication that the Preliminary Report, prepared by an accounting group from New Mexico with no apparent experience with South Carolina procurement issues, was conducted in accordance with established audit procedures for South Carolina School Districts (see "School District Audit Procedures" published by the Office of Audit & Certification, Division of Procurement Services of the South Carolina Fiscal Accountability Authority). Moreover, the Preliminary Report is, by its own admission, preliminary in nature and bears the watermark "Discussion Draft Confidential." These factors alone should have led LR5 to be more careful and exercise better judgment before publishing a preliminary report which appears not to have been intended for release to the public. LR5's haste in releasing this Preliminary Report and publicly touting its purported findings is troubling considering the Preliminary Report is replete with factual inaccuracies and erroneous conclusions as is explained further below.

October 5, 2022

Board of Trustees of the District Five of Lexington and Richland Counties

Attn: Ms. Jan Hammond, Board Chair

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LR5's Selection of Q+ for Design of the Addition to Chapin Middle School was Proper and In Compliance with LR5's Procurement Code

On Page 5 of the Preliminary Report, the consultant makes the incorrect assertion that the award of the design contract to Q+ for the addition to Chapin Middle School was in violation of LR5's procurement code. Specifically, the consultant contends that former Superintendent Heffner made a "sole source" award to Q+ in violation of LR5's procurement code regarding sole source procurements. The minutes of the LR5 Board meeting from September 26, 2016, demonstrate otherwise. By unanimous vote of all Board members present at this meeting, the Board approved the following motion:

The Board Authorize the Superintendent to engage the firm of Quackenbush Architects and Planners, the firm that designed the current facility, to finalize the design of the third wing of Chapin Middle School based upon its earlier work on the facility under prior agreement. This recommendation is a sole source procurement that is made subject to Section 1560.1 of the District's Procurement Code and S.C. Reg §19-445.2105(B). **The Chief Business Officer has made a written determination that based upon these circumstances there is only one source for the required service.**

(Emphasis added.) (A copy of the meeting minutes is enclosed herewith.)

The consultant makes no mention of LR5's process for sole source procurement being followed by the LR5 Superintendent or of the unanimous vote of the LR5 Board to approve the sole source procurement for design services on Chapin Middle School. Contrary to the erroneous assertion in the Preliminary Report, the minutes from this Board meeting reflect that the LR5 Superintendent followed the LR5 procurement code in seeking the Board's authorization and approval to award the design contract for the third wing of Chapin Middle School to Q+.

This error in the Preliminary Report is compounded by the apparent lack of understanding by the consultant of how architectural services are typically procured by South Carolina School Districts. The consultant appears to believe that architects are selected on the basis of competitive bidding. That is not the case. Under South Carolina law, architects are precluded from engaging in competitive bidding. See S.C. Code Ann. § 40-3-300. Instead, architects are typically selected from a qualifications-based selection process after which negotiation on a price and contract terms are conducted. See LR5 Procurement Code Section 3220. However, as set forth above, in this instance, a sole source procurement of services was permissible, and indeed advisable, since Q+ had done the design work for the initial phase of Chapin Middle School **which included schematic design work for the future addition**. The consultant's suggestion that selecting another architect for the design of the addition to Chapin Middle School may have been more advantageous to LR5 is pure speculation and does not reflect reality

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Board of Trustees of the District Five of Lexington and Richland Counties

Attn: Ms. Jan Hammond, Board Chair

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particularly considering the substantial work that Q+ had previously done on the design of the additional wing for Chapin Middle School.

There is No Evidence Whatsoever that Q+ Had a Competitive Advantage on the Piney Woods Elementary School Project Selection Process

On pages 5 and 6 of the Preliminary Report, the consultant makes the wildly speculative conclusion that Q+ had a "competitive advantage" on the award for design services for the Piney Woods Elementary School Project. The only support offered for this erroneous conclusion is apparently certain time entries gleaned from legal invoices submitted by the firm of Montgomery Willard, LLC who served as legal counsel for LR5 at the time¹. It appears that the consultant did not attempt to verify the accuracy of these time entries by contacting any of the persons who were alleged to have been participants on any such call. Doug Quackenbush has no recollection of participating in any such call and it is possible that his inclusion as a participant on the call was an error on the time entry. Moreover, the consultant provides no substantive information regarding the content of this purported conference call. It is quite possible, and indeed likely, that if any such call took place involving Doug Quackenbush any discussion regarding the RFQ was not substantive in nature and provided no possible advantage to Q+ regarding the RFP. The conclusion that any such call provided a competitive advantage to Q+ was reached without any apparent further investigation or attempt to ascertain from any of the participants on the call the substance of the discussion. Reaching such a conclusion based on such scant evidence calls into question the credibility of the consultant and the thoroughness of the purported review. While I cannot speak on the LR5 staff members and the consultant who were purportedly on this conference call, I am certainly qualified to offer my considered opinions regarding Doug Quackenbush and Mike Montgomery. Doug Quackenbush is a highly respected architect in South Carolina, and indeed throughout the United States, and is simply not the type of professional who would seek to gain any unfair advantage through impermissible discussions. Moreover, Mike Montgomery, a highly respected attorney with an impeccable reputation in the South Carolina legal community, would not participate in any process which provided an unfair advantage to Q+. In fact, as counsel for Q+, I negotiated the contract between LR5 and Q+ on the Piney Woods Elementary School Project with Mr. Montgomery and can assure you that LR5 was well represented by him throughout that process. Simply put, no favors or special consideration were extended to Q+ regarding the award of the design contract on the Piney Woods Elementary School Project and there is no credible evidence to the contrary.

¹ The decision by LR5 to release this confidential Preliminary Report to the public which is based in part on information contained in legal invoices to LR5 likely constitutes a waiver of the attorney-client privilege by LR5 at least with respect to such legal invoices.

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Board of Trustees of the District Five of Lexington and Richland Counties

Attn: Ms. Jan Hammond, Board Chair

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The Piney Woods Elementary School Project has received an unusual amount of attention from the LR5 Board and has been the source of claims of alleged ethics violations, fraudulent billing practices, and other similar type claims none of which have been proven true in any legitimate forum. It is fair to question whether the consultant who authored this Preliminary Report was tainted by the LR5 Board's fixation on this Project and whether this report was essentially intended to support the LR5 Board's claims and positions regarding this Project rather than be an independent "procurement audit."

Q+'s Charges for "Responses to Board Inquiries" were Appropriate and Allowed under the Contract with LR5

On paragraph 6 of the Preliminary Report, the consultant appears to question the legitimacy of two invoices from Q+ relating to "Responses to Board Inquiries" on the Piney Woods Elementary School Project. The consultant characterizes these invoices as "unusual" and again engages in unsupported speculation regarding the propriety of these invoices. First, the invoices were submitted to LR5 and paid without objection or question. That alone provides the presumption that the invoices were indeed appropriate. Second, these invoices were, in fact, authorized under Q+'s contract with LR5 so there is nothing "unusual" about them. The consultant is correct in pointing out that answering simple questions from an Owner and providing "oversight" (which would be correctly referred to as providing construction administration services) on a project is part of the Architect's Basic Services for which no additional compensation is warranted. However, in this case Q+ and its design consultants (i.e., civil and electrical engineering firms) were responding to more complicated inquiries from the LR5 Board regarding Piney Woods Elementary School which involved substantial time to investigate, review and respond. The contract in place between Q+ and LR5 authorizes Q+ to invoice for such time as Additional Services (see Articles 4.1.1, 4.1.2, 11.3 and 11.7 of the contract, copy enclosed). In addition, Q+ billed LR5 at the specified hourly rates in Article 11.7 of the contract.

The Personal Campaign Contributions to Candidates for LR5's Board were permissible and legal under applicable South Carolina Law

On page 7 of the Preliminary Report, the consultant concludes that certain campaign contributions made to current and former members of the LR5 Board by Doug Quackenbush may have been illegal. The relationship between private campaign contributions and a legitimate procurement audit is certainly questionable as campaign contributions are governed by the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991 rather than any applicable Procurement Code. Moreover, in this area, the consultant appears to be providing legal advice and making legal conclusions in areas where it is likely the consultant has little knowledge or qualifications (the consultant's disclaimer does not save the consultant from any consequences flowing from the unauthorized practice of law in South Carolina). One wonders how this information was provided to the consultant and by whom. Putting aside these valid

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Attn: Ms. Jan Hammond, Board Chair

Page 5

questions which, again, bring into question the true purpose of this purported audit and the independence of the consultant retained by LR5, there is nothing illegal about any of the campaign contributions.

The campaign contributions referenced in the Preliminary Report were made jointly by Doug Quackenbush and his wife, Cheryl Holland, in their individual capacities from their personal joint checking account. Doug Quackenbush and Cheryl Holland are both graduates of LR5 schools, and they have been longtime supporters of LR5's program and mission. Under South Carolina law, an individual is treated separately from any company in which the individual has ownership for purposes of campaign contributions. (See South Carolina Ethics Commission Ethics Advisory Opinions 094-020 and 095-005). Accordingly, the fact that certain of these candidates for the LR5 Board may have at one time or another voted to award a contract to Q+ does not mean that Doug Quackenbush could not make campaign contributions in his individual capacity. Notably, Q+, the entity that was awarded contracts from LR5, has never made a campaign contribution to any candidate running for election to the LR5 Board.

Moreover, in each instance, including the contribution made to you Chair Hammond, the contributions were made after solicitations to Doug Quackenbush **directly by the school board candidates**. To be clear, as there was nothing illegal about the campaign contributions, I do not contend that there was anything illegal regarding a candidate for school board soliciting a campaign contribution from Doug Quackenbush. However, as the consultant saw fit to raise this tangential issue in the Preliminary Report, it is important to provide the full context surrounding these campaign contributions.

Conclusion

In closing, Q+ has enjoyed its longstanding professional relationship with LR5 during which Q+ has provided exemplary, award-winning professional design services. However, given the current hostile tenor of the LR5 Board and the unusually high turnover with LR5 administration and staff, that relationship has been severely damaged and may be beyond repair at least as far as the current leadership and administration of LR5 goes. LR5's current leadership is in danger of creating an atmosphere and environment where no reasonable professional or contractor would want to do work. Furthermore, by hastily releasing this confidential Preliminary Report without vetting its accuracy, the LR5 Board has done a disservice to all concerned. The LR5 Board, administration and staff would be well advised to cease commenting on the Preliminary Report given its many flaws and to exercise more caution in releasing further information of this type to the public.

Sincerely,



Charles H. McDonald

October 5, 2022

Board of Trustees of the District Five of Lexington and Richland Counties

Attn: Ms. Jan Hammond, Board Chair

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Enclosures

cc: Dr. Akil Ross
Ward Bradley, Esq.
Quackenbush Architects + Planners, LLC



Minutes/September 26, 2016

The Board of Trustees of School District Five of Lexington and Richland Counties met at Ballentine Elementary School with the following members present:

Mr. Robert Gantt, Chairman
Mrs. Ellen Baumgardner, Vice Chairman
Mr. Larry Haltiwanger
Mrs. Jan Hammond
Ms. Beth Hutchison
Mr. Ed White
Dr. Stephen Hefner, District Superintendent

The following staff were in attendance:

Mr. Mark Bounds, Chief Information Officer
Dr. Michael Harris, Chief Student Services Officer
Dr. Allison Jacques, Chief Human Resources Officer
Dr. Christina Melton, Chief Instructional Officer
Mr. Len Richardson, Chief Finance Officer

Chairman Gantt called the meeting to order and gave welcoming remarks.

The Invocation was given by Beth Hutchison, Board of Trustees. The Pledge of Allegiance was led by Graham Thompson, a fifth grade student at Ballentine Elementary School.

The Board conducted the School Board Spotlight.

A welcome and brief overview of Ballentine Elementary School was given by Robin Bright, Principal.

During the Superintendent's Report, Len Richardson presented the Monthly Financial Reports (Exhibit B).

During the public participation, Kim Murphy spoke regarding the building plan and Dr. Glover Hopson spoke regarding the class size policy and student placement.

A = Absent
AB = Abstain
N = No
X = Yes
R = Recuse

SCHOOL DISTRICT FIVE
OF
LEXINGTON AND RICHLAND COUNTIES

Meeting of September 26, 2016

	B A U M G A R D N E R	G A N T T	H A L T I W A N G E R	H A M M O N D	H U T C H I S O N	L O V E L E S S	W H I T E
1. M. Baumgardner S. Haltiwanger Enter executive session to consider the following : a) selected employment items (Exhibit A) ; and b) update on active and pending litigation involving Lexington-Richland District Five	X	X	X	X	X	A	A
2. M. Baumgardner S. Haltiwanger Approve the agenda	X	X	X	X	X	A	X
3. M. Hutchison S. Hammond Approve the minutes of the September 12, 2016 board meeting	X	X	X	X	X	A	X
4. M. Haltiwanger S. Hammond Approve the selected employment items (Exhibit A)	X	X	X	X	X	A	X
5. M. Baumgardner S. Hutchison The Board authorize the Superintendent to engage the firm of Quackenbush Architects and Planners, the firm that designed the current facility, to finalize the design of the third wing of Chapin Middle School based upon its earlier work on the facility under prior agreement. This recommendation is a sole source procurement that is made subject to Section 1560.1 of the District's Procurement Code and S.C. Reg §19-445.2105(B). The Chief Business Officer has made a written determination that based upon these circumstances there is only one source for the required service	X	X	X	X	X	A	X
6. M. White S. Haltiwanger After reviewing Dr. Hefner's report on the District's progress, and hearing the Board members' comments this evening regarding Dr. Hefner's performance, I move that we conclude as a Board that Dr. Hefner receive a superior evaluation for the 2015-2016 school year. As a result of	X	X	X	No	X	A	X

A = Absent
AB = Abstain
N = No
X = Yes
R = Recuse

SCHOOL DISTRICT FIVE
OF
LEXINGTON AND RICHLAND COUNTIES

Meeting of September 26, 2016

	B A U M G A R D N E R	G A N T T	H A L T I W A N G E R	H A M M O N D	H U T C H I S O N	L O V E L E S S	W H I T E
Dr. Hefner's overall superior evaluation, I move that Dr. Hefner's contract with the District be extended by one year, or through June 30, 2020. I further move that we provide him with a four percent (4%) increase in his annual annuity beginning with the 2015-2016 school year evaluation (Exhibit C)							
7. M. Baumgardner S. White Adjourn at 8:22 p.m.	X	X	X	X	X	A	X

A = Absent
AB = Abstain
N = No
X = Yes
R = Recuse

AIA® Document B101™ - 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 18 day of December in the year 2018.

BETWEEN the Architect's client identified as the Owner:

School District Five of Lexington and Richland Counties
1020 Dutch Fork Road
Irmo, South Carolina 29063
803-476-8000

and the Architect:

Quackenbush Architects + Planners Limited Liability Company
1217 Hampton Street
Columbia, South Carolina 29201
803-771-2999

for the following Project:

New Elementary School 13
Amicks Ferry Road at Lake Tide Drive
Chapin, South Carolina

The Owner and Architect agree as follows.

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	SUPPLEMENTAL AND ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

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

§ 1.1.1 The Owner's program for the Project:

Reference Attachment A, Final Program for New Elementary School 13

§ 1.1.2 The Project's physical characteristics:

New +/- 105,000 square foot elementary school for grades pre-K through 5th grade, located on a 24 acre site off Amicks Ferry Road in Chapin, SC

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

\$24,000,000.00

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

Construction Documents - October 1, 2019

.2 Construction commencement date:

January 10, 2020

.3 Substantial Completion date or dates:

July 1, 2021

.4 Other milestone dates:

N/A

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

Construction Manager at Risk (CMR)

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

The owner wishes for the project to be designated to meet LEED Silver or Green Globes Two Green Golds Certification.

§ 1.1.6.1 [intentionally omitted]

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:

A. Len Richardson
Chief Finance & Operations Officer
1020 Dutch Fork Road
Irmo, South Carolina 29063

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

Dan Neal
Consultant to the Superintendent
1020 Dutch Fork Road
Irmo, South Carolina 29063

§ 1.1.9 The Owner shall retain the following consultants and contractors:

Contract Construction, Inc.
P.O. Box 269
Ballentine, South Carolina 29002

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:

P. Douglas Quackenbush AIA LEED AP
President
1217 Hampton Street
Columbia, SC 29201

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:

§ 1.1.11.1 The following Consultants are among those retained by the Architect to perform Basic Services:

.1 Structural Engineer:

Johnson & King Engineers
1223 Elmwood Ave.

Columbia, SC 29201

.2 Mechanical Engineer:

Swygert & Associates
1315 State Street
Cayce, SC 29033

.3 Electrical Engineer:

Sims Group
800 Columbiana Drive
Suite 208
Irmo, SC 29063

.4 Civil Engineer:

R.B. Todd Consulting Engineers
7436 Broad River Road
Suite 212
Irmo, SC 29063

.5 Other:

Perkins + Will
410 N. Michigan Avenue
Suite 1600
Chicago, IL 60611

Perkins + Will will be involved in the programming of the project which is being executed under a separate letter agreement. The Architect may also utilize Perkins + Will for schematic design assistance which will be within the Architect's responsibility hereunder.

§ 1.1.12 Other Initial Information on which the Agreement is based:

N/A

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall, when appropriate, adjust the terms of this Agreement accordingly.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide all professional services necessary for the complete design and construction documentation of the Project. The Architect agrees that the Basic Services Fee, as stated in Article 11, represents its compensation for its timely provision of all professional Basic Services (including those of its consulting structural, mechanical, electrical, plumbing, civil and other consulting engineers) necessary to completely design the Project and prepare Construction Documents that fully indicate the requirements for construction of the Work, whether or not those services are individually listed or referred to in this Agreement, the only exceptions being: (1) the cost of those services that are provided by third parties and that are expressly designated as being "Owner Responsibility" or "Owner-Provided," and (2) the cost of those engineering or consulting services that become necessary as a result of an Owner-directed change in Project scope affecting the Architect (and that are the subject of a written agreement for Unplanned Additional Services between the Owner and the Architect). The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement.

and represents that it has experience in the design and construction administration of projects of similar or like size, complexity, and nature as the Project.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services expeditiously. The Architect will assign to the Project only persons with requisite skill, knowledge, experience, and ability to perform to the standard of care of their respective professions. The Owner is relying upon these representations. Architect agrees to perform the obligations imposed upon it by documents that are incorporated in this Agreement by reference or by documents otherwise issued, created or promulgated by the Architect and agreed to by the Owner. Nothing in this Agreement shall be construed to limit those obligations.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.3.1 The Architect shall not change the designated representative or other key personnel proposed to and accepted by the Owner in awarding this Agreement without the consent of the Owner, which consent shall not be unreasonably withheld.

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

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than \$1,000,000.00 for each occurrence and \$2,000,000.00 in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than \$1,000,000.00 per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than \$500,000.00 each accident, \$500,000.00 each employee, and \$1,000,000.00 policy limit.

§ 2.5.6 Professional Liability: Architect and Consultants shall provide professional liability insurance, issued by an insurance carrier approved in advance by the Owner and authorized to provide such coverage in the State of South Carolina, to compensate Owner for all negligent acts, errors, and omissions by the Architect, his firm, his agents, his employees, and his Consultants arising out of this Agreement. The Architect and Consultants shall submit proof of such insurance with coverage amounts no less than:

Entity:	Amount:
Architect	\$2,000,000 aggregate / \$1,000,000 occurrence
Civil Engineer	\$2,000,000 aggregate / \$1,000,000 occurrence

Structural Engineer	\$2,000,000 aggregate / \$1,000,000 occurrence
Mechanical Engineer	\$2,000,000 aggregate / \$1,000,000 occurrence
Electrical Engineer	\$2,000,000 aggregate / \$1,000,000 occurrence
Plumbing Engineer	\$2,000,000 aggregate / \$1,000,000 occurrence

§ 2.5.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

§ 2.5.9 The Architect shall provide umbrella liability coverage insurance issued by an insurance carrier approved in advance by the Owner and authorized to provide such coverage in the State of South Carolina in an amount of not less than \$5,000,000 per occurrence.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect will provide all professional services necessary for the complete design and construction documentation of the Project. The Architect agrees that the Basic Services Fee, as stated in Article 11, represents its compensation for its timely provision of all professional Basic Services (including those of its consulting structural, mechanical, electrical, plumbing, civil and other consulting engineers) necessary to completely design the Project and prepare Construction Documents that fully indicate the requirements for construction of the Work, whether or not those services are individually listed or referred to in this Agreement, the only exceptions being: (1) the cost of those services that are provided by third parties and that are expressly designated as being "Owner Responsibility" or "Owner-Provided," and (2) the cost of those engineering or consulting services that become necessary as a result of an Owner-directed change in Project scope affecting the Architect (and that are the subject of a written agreement for Unplanned Additional Services between the Owner and the Architect). The Architect will make presentations to the Board of Trustees and (if requested by the Owner) to the public at the end of each design phase.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 [intentionally omitted]

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. In designing the Project, the Architect shall prepare design and

documents in accordance with applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project. The Architect shall prepare on behalf of the Owner, applications and supporting documentation for all design-related and land-use permits, variances and approvals required by state and local governmental authorities having jurisdiction over the Project. The Architect shall revise applications and supporting documentation as required to resolve comments received from such governmental authorities, in coordination and collaboration with such Owner consultants as may be necessary to respond to such requirements.

§ 3.1.7 The Architect shall prepare and distribute conference memoranda, meeting minutes, summaries of telephone conversations, documentation of site visits and inspection reports (with photographs) as required by the Owner to maintain a comprehensive record of the Project. The Project Number and Name shall be shown on all documents. This shall be formatted for use internally with other Owner staff and also for presentation to the Board of Trustees.

§ 3.1.8 The Architect will provide interior design for the selection of all building finishes specified by the Architect and colors required by the Project. This includes selecting interior furnishings, furniture or equipment at the Owners' request.

§ 3.1.9 The Architect will, upon Owner's request provide recommendations on specific issues of construction feasibility, actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation, and construction completion; the sequential phasing of components of construction to facilitate the orderly and timely completion of the Project with minimal disruption of the Owner's operations.

§ 3.1.10 As-Built Drawings

§ 3.1.10.1 Record Drawings: Architect shall review the Contractor's recorded changes which the Contractor shall prepare and submit as Record Drawings. Record Drawings are documents that show changes made during the construction project, including changes necessitated by Change Orders, and recorded by the Contractor on a conforming set.

§ 3.1.10.2 As-Built Drawings: No later than fifteen days following receipt by the Owner of final close-out documents and the final Contractor Certificate of Payment, the Architect shall incorporate the information on all Record Drawings and prepare one set of final As-Built Drawings for the Owner. The As-Built Drawings shall incorporate onto one set of drawings the Contractor's recorded changes from the Record Drawings, sketches, details, and clarifications. The Architect shall deliver the As-Built Drawings, one as a hard copy, one on a CD in PDF and the Revit/AutoCAD formats to the Owner at completion of construction, and it shall be a condition precedent to the Owner's approval of the Architect's final payment.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services. The Architect shall review the Owner's Standards which are identified as FACILITIES DESIGN STANDARDS for Architects-Engineers Design Builders and Construction Managers for School District 5 of Lexington and Richland Counties dated August 28, 2018 within sixty (60) days of execution of this Agreement and advise the Owner in writing of anything in the Owner's Standards to which the Architect has reasonable objection. Unless deviation from the Owner's Standards is agreed in writing, the Architect shall conform the Project's designs and specifications to the Owner's Standards.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project.

§ 3.2.4 Based on the Project requirements, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may, if requested by Owner, include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval. The review and approval of the Design Development Documents by the Owner shall not relieve the Architect or its consultants of their responsibility for compliance with the requirements of the South Carolina School Facilities Planning and Construction Guide, and applicable statutes, regulations and codes, or for design deficiencies, omissions or errors.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall indicate in detail the materials, systems and other requirements for the construction of the Work. Construction Documents shall incorporate the accepted resolution of all Owner comments on the Design Development Documents.

§ 3.4.2 The Architect shall prepare Construction Documents that conform to the laws, codes, ordinances, regulations, and other requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval. The review and approval of the Construction Documents by the Owner shall not relieve the Architect or its consultants of their responsibility for compliance with the requirements of the South Carolina Office of School Facilities. The Construction Documents shall incorporate the final resolution of all review comments from the Owner and other governmental authorities having jurisdiction over the Project.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2007, General Conditions of the Contract for Construction.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work, except as provided in Section 3.6.2.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Owner pays the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction to become familiar with the progress and quality of the portion of the Work completed, and to determine if the Work observed is being performed in a manner indicating that the Work will be in accordance with the Contract Documents. Site visits shall be made by representatives of the Architect and its consultants who are professionally licensed architects or engineers, and who are also knowledgeable of the Project requirements and competent in evaluating the trades in progress. The field observations made by the Architect and its consultants do not transfer the Contractor's responsibility to perform the Work in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall submit a written report to the Owner within one (1) week of each site visit, indicating the date and times of the visit, the persons making the visit, a general description of the Work observed and otherwise keep the Owner informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, (3) defects and deficiencies observed in the Work and, (4) any threats to achievement of the Project milestones for construction activities.

§ 3.6.2.2 The Architect shall report to the Owner known or observed deviations from the Contract Documents that impact the quality of the Work required by the Construction Documents. The Architect shall reject Work that does not conform to the Contract Documents, unless otherwise directed by the Owner. If the Architect does not reject non-conforming Work, the Architect shall demand in writing that the Contractor bring the non-conforming Work into compliance with the Contract Documents; and, if the Contractor's efforts to do so are not begun and completed expeditiously, the Architect shall report that failure to the Owner in writing, stating: (a) the problem; (b) the reasons for the actions taken by the Architect; (3) what, if any, response has been forthcoming from the Contractor; and (d) what actions by the Owner and/or Contractor are needed or expected. The Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor and advise the Owner of that interpretation. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness. Nothing in this Agreement shall make a decision of the Architect binding upon the Owner.

§ 3.6.2.4 Interpretations of the Architect shall be consistent with the requirements indicated in or reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When approved in writing by the Owner in advance, the Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 If the Contractor encounters conditions at the site which it believes are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Architect, upon request of the Owner, investigate such conditions and advise the Owner whether it considers the conditions to differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, and, if so, it will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, it shall so notify the Owner. The Architect's shall provide its reasoning to the Owner in writing.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates of payments in the manner set forth below, in AIA Document A133™-2009 (including, but not limited to Article 7), and in AIA Document A201™-2007, General Conditions of the Contract for Construction (including, but not limited to, Sections 9.4, 9.5, 9.6 and 9.7). The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken with reasonable promptness; and, in no case, more than fourteen days after Architect's receipt of the submittal.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, as necessary to ascertain their conformance with the requirements for the Work as indicated in the Contract Documents. Review of such submittals is not for the purpose of confirming dimensions or quantities in those submittals, except to the extent the Contractor has requested the assistance of the Architect to determine certain dimensions because those indicated in the Construction Documents conflict with existing field conditions or because the dimensions in the Construction Documents contain erroneous, inconsistent, or incomplete information or dimensions for which clarifications are needed and can be supplied by the Architect. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing to Contractor and Owner with promptness necessary to avoid unnecessary delay or cost to the Project, but in no case more than ten days after the request for information is received by the Architect. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect with Owner approval may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. As part of Basic Services, the Architect shall analyze written requests by Owner or Contractor for changes in the Work, including requests for adjustments to the Contract Sum or Contract Time, and shall report the results of its analysis in writing to the Owner within a reasonable period of time. No Change Order or Adjustment to Contract Sum or Contract Time shall be issued by the Architect without the specific written authorization of the Owner.

§ 3.6.5.2 The Architect shall maintain a complete set of Change Orders and documents incorporated into them.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion following the procedure outlined in the Contract between the Owner and the Contractor, including, but not limited to Section 9.8 in AIA Document A201™-2007;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor;
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents;
- .5 The Architect will not certify Substantial Completion and final completion unless inspection of Work completed pursuant to designs and/or specifications created by one of the Architect's Consultants is performed by a person licensed to practice in the discipline of the work being inspected; however Owner acknowledges that the punchlist preparation by the various disciplines may be performed by other non-licensed individuals in the immediate employ of the Architect and its consultants; and,
- .6 The Architect's issuance of a final Certificate for Payment is subject to the provisions of Section 7.2.2 of the AIA Document A133-2009 entered into between Owner and Contractor.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall advise the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.4.1 Upon final completion of construction, the Architect shall prepare and provide to the Owner electronic record drawings showing all significant changes to the work made during construction known to the Architect and submitted to the Architect by the Contractor no later than fifteen days following receipt by the Owner of final close-out documents and the final Contractor Certificate of Payment. Final payment to the Architect for project close out shall not be made until record drawings are received.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance. During the tenth (10th) month after Substantial Completion and in any case prior to the expiration of the Contractor's call-back period under the Contract Documents, the Architect shall visit the Project to review the Work and prepare a report to be issued to the Owner, at the Owner's direction, to the Contractor, indicating work to be corrected and warranty issues to be addressed by the Contractor. The Architect shall assist the Owner in securing corrective actions by the Contractor to correct all deficiencies including at least one (1) complete follow-up inspection and report at least ten (10) days prior to the expiration of the call-back period.

ARTICLE 4 INCLUDED ADDITIONAL SERVICES AND UNPLANNED ADDITIONAL SERVICES

§ 4.1 Included Additional Services

§ 4.1.1 "Included Additional Services" shall be defined as services required for the Project that are included in this Agreement or otherwise customarily furnished in accordance with generally accepted architectural practice for South Carolina public school construction projects, including but not limited to contract administration, cooperation with the Owner's consultants and warranty claim services. The Architect shall provide the Included Additional Services specifically designated in the table below as the Architect's responsibility.

Included Additional Services	Responsibility
§ 4.1.1.1 Programming	Architect under separate agreement with Perkins + Will
§ 4.1.1.2 Multiple preliminary designs	Architect
§ 4.1.1.3 Measured drawings	Not Provided by Architect
§ 4.1.1.4 Existing facilities surveys	Not Provided by Architect
§ 4.1.1.5 Site evaluation and planning	Architect
§ 4.1.1.6 Building Information Model management responsibilities	Architect
§ 4.1.1.7 Development of Building Information Models for post construction use	Not Provided by Architect
§ 4.1.1.8 Civil engineering	Architect
§ 4.1.1.9 Landscape design	Architect, but compensation outlined in Attachment B
§ 4.1.1.10 Architectural interior design	Architect

Included Additional Services	Responsibility
§ 4.1.1.11 Value analysis	Architect
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Not Provided by Architect
§ 4.1.1.13 Continuous On-site project representation	Not Provided by Architect
§ 4.1.1.14 Conformed documents for construction	Architect
§ 4.1.1.15 As-designed record drawings	Architect
§ 4.1.1.16 As-constructed record drawings	Architect
§ 4.1.1.17 Post-occupancy evaluation	Not Provided by Architect
§ 4.1.1.18 Facility support services	Not Provided by Architect
§ 4.1.1.19 Tenant-related services	Not Provided by Architect
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Architect
§ 4.1.1.21 Telecommunications/data design	Architect, but compensation outlined in Attachment B
§ 4.1.1.22 Security evaluation and planning	Not Provided by Architect
§ 4.1.1.23 Commissioning	Not Provided by Architect
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Only in Design by Architect. Any actual Certification to be an Additional Service
§ 4.1.1.25 Fast-track design services	Not Provided by Architect
§ 4.1.1.26 Multiple bid packages	Not Provided by Architect
§ 4.1.1.27 Historic preservation	Not Provided by Architect
§ 4.1.1.28 Furniture, furnishings, and equipment design	Architect, but compensation outlined in Attachment B
§ 4.1.1.29 Other services provided by specialty Consultants	Not Provided by Architect
§ 4.1.1.30 Other Supplemental Services	Not Provided by Architect

§ 4.1.2 Items marked "Architect" in § 4.1.1 are included in the scope of Basic Services and the compensation for them is included in the Basic Services compensation.

§ 4.1.3 [intentionally omitted]

§ 4.2 Architect's Unplanned Additional Services

Unplanned Additional Services are those services outside the scope of Basic Services and § 4.1.1 and required by post-Agreement developments adverse to the planned completion of the Project. The Architect may provide Unplanned Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Unplanned Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the Unplanned Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide Unplanned Additional Services until the Architect receives the Owner's written authorization.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the

Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Architect shall prepare designs and Construction Documents so that the Project can be built within the Owner's budget for the Cost of the Work as defined in Section 1.1.3.

§ 5.3 The Owner shall identify a representative authorized to receive and transmit information and notices on the Owner's behalf with respect to the Project. Owner may change the designated representative upon written notice to the Architect.

§ 5.4 When necessary for the Architect's performance of its services, the Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, deed restrictions, boundaries and contours of the site; locations, overall dimensions, and significant landscape features, including trees three inches in diameter or greater; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 [intentionally omitted]

§ 5.7 [intentionally omitted]

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

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials, where needed for performance of the Work, and where the need is not the result of the Architect's negligence or failure to perform.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests, where needed for performance of the Work, and where the need is not the result of the Architect's negligence or failure to perform.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service, provided, however, that nothing in this Agreement shall be construed as to require the Owner to determine the adequacy, accuracy, or sufficiency of the design, the Construction Documents, or the Architect's Services.

§ 5.12 The Owner shall endeavor to include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall endeavor to promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Architect shall perform in a manner consistent with its obligations as stated in this Agreement and the Contract for Construction. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

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

§ 5.15 [intentionally omitted]

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions.

§ 6.3 Estimates of the Cost of Work shall include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget.

§ 6.4 [intentionally omitted]

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal for reasons not related in whole or in part to the fault of the Architect, the Owner shall, in Owner's sole discretion

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work;
- .5 instruct the Architect to modify its design and the Construction Documents so the Cost of the Work will fall within the Owner's budget for the Cost of the Work or,
- .6 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner

shall compensate the Architect for the modifications as an Unplanned Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect hereby assigns to the Owner, without reservation, all copyrights in all Project-related documents, models, photographs, and other expression created by the Architect. Among those documents are certain "Instruments of Service," including the design drawings and the Construction Documents. The Owner's obligation to pay the Architect is expressly conditioned upon the Architect's obtaining a valid written comprehensive assignment of copyrights from its Consultants in terms identical to those that obligate the Architect to the Owner as expressed in this subsection, which copyrights the Architect, in turn, hereby assigns to the Owner. The Owner, in return, hereby grants the Architect and its Consultants a revocable, nonexclusive license to reproduce the documents for purposes relating directly to the Architect's performance of its obligations under this Agreement, for the Architect's archival records, and for the Architect's reproduction of drawings and photographs in the Architect's marketing materials. This nonexclusive license shall terminate automatically upon the occurrence of either a breach of this Agreement by the Architect or the accused commission by the Architect of a tort or a crime affecting the Owner or the Project or upon termination of this Agreement, whichever occurs first. This nonexclusive license is granted to the Architect alone and shall not be assigned by the Architect to any other person or entity, except that the non-exclusive license granted in this Agreement to the Architect for purposes of the Architect's performance hereunder may be sub-licensed to the Architect's Consultants (with the same limitations applicable to the Project only). Subject to the foregoing, this nonexclusive license shall terminate automatically upon an Architect's assignment of this nonexclusive license to another or its attempt to do so. Sections 10.8 and 10.8.1 do not apply to this Section 7.2.

§ 7.3 [intentionally omitted]

§ 7.3.1 To the extent liability arises from the misuse of the Instruments of Service by the Owner or another architect or engineer, the Architect shall not be responsible for that misuse. If the Owner subsequently reproduces Project-related documents or creates a derivative work based upon Project-related documents created by the Architect, the Owner shall (where permitted or required by law) remove or completely obliterate the original professional's seals, logos, and other indications on the documents of the identity of the Architect and its Consultants.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement.

§ 7.5 The provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 All disputes between the Owner, Architect, Architect's Consultants, Bidders, and Contractors shall be resolved in accordance with the Owner's Procurement Code, except that the time for limitations and repose of any claim to be asserted under the Procurement Code shall be concurrent with the applicable limitations and repose time for civil actions related to the same dispute under South Carolina law or under the Owner's Procurement Code whichever time shall be longest. Except in the instance where the appeal, claim, or dispute is between the Owner and the Architect, the Architect shall provide any interpretations or assistance required by the Owner in rendering a decision within the time frames stipulated in the Owner's Procurement Code.

§ 8.2 After exhausting the administrative process under the Owner's Procurement Code, Architect and the Architect's Consultants agree that judicial review made be had via appeal to the Court of Common Pleas for Lexington County South Carolina pursuant to the Owner's Procurement Code.

§ 8.3 Notwithstanding any other provision of this Agreement, the Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, and any suit, action or proceeding arising out of or relating to the Agreement shall be governed by the laws of the State of South Carolina.

§ 8.3.1 The scope of § 8.1.1 and § 8.2 shall not extend to any claims against the Architect for professional negligence, including any claims arising out of or relating to any errors and/or omissions of the Architect. All such claims shall be resolved through litigation in the Court of Common Pleas for Lexington County, South Carolina and shall further be subject to the requirements of S.C. Code Ann. § 15-36-100 relating to any such action against the Architect. Prior to the commencement of any such claim, a claim must be filed with the District's Chief Procurement Officer and the parties must engage in mandatory pre-suit mediation with a South Carolina Certified Mediator experienced in dealing with Architectural errors and omissions claims. This Paragraph applies only to professional negligence claims against the Architect. Every other claim involving this contract including any claim of any type against the Owner shall be resolved according to section 8.1.1.

§ 8.4 Architect and the Architect's Consultants agree that any act by the Owner regarding the Agreement is not a waiver of the Owner's sovereign immunity. Architect and the Architect's Consultants agree to participate as a party in a multi-party proceedings along with every other party deemed necessary by the Owner for the full and proper examination, settlement or judgement of each dispute, claim, contract controversy, or civil action, whether in mediation, proceedings under the Owner's Procurement Code, or any court of competent jurisdiction.

§ 8.5 The Architect and the Architect's Consultants and Owner waive Listed Damages for claims, disputes or other matters in question arising out of or relating to this Agreement. The Listed Damages are damages incurred for principal office expenses and overhead (including, but not limited to, the compensation of personnel stationed there, rent, utilities, and office equipment); losses of financing, business and reputation; and for loss of profit.

§ 8.6 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination.

§ 8.7 The terms of Article 8 of this Agreement shall be binding upon the Architect's Consultants and shall be incorporated into any agreement between the Architect and the Architect's Consultants.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give twenty-one (21) days' written notice to the Owner before suspending services. This notice shall detail the Architect's specific reason(s) for its intended termination or suspension and shall specify the means by which the Owner may cure Architect's stated reason(s) justifying termination or suspension and the reasons why the Owner is not justified in withholding payment. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension. The Architect shall file a claim, subject to Dispute Resolution if not negotiated, for any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall file a claim with the Owner pursuant to its Procurement Code for compensation for services satisfactorily performed prior to notice of such suspension, unless the same are negotiated. When the Project is resumed, the Architect shall file a claim, pursuant to Owner's Procurement Code for actual costs to remobilize to continue performance, unless the same are negotiated. The time schedules shall be equitably adjusted. Damages recoverable pursuant to this section are subject to the limitations contained in Section 8.5, above.

§ 9.3 If the Owner suspends the Project for more than 120 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 [intentionally omitted]

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause. Should the Owner terminate this Agreement for cause, but that cause is subsequently determined to be insufficient to support termination, the termination shall be deemed one of convenience.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services satisfactorily performed prior to termination, Reimbursable Expenses incurred, and Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to the Architect's disengagement from the Project(s) and for which the Architect is not otherwise compensated. Termination Expenses are subject to audit at the Owner's option, unless negotiated. Damages recoverable pursuant to this section are subject to the limitations contained in Section 8.5 above.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 Notwithstanding any other provision of this Agreement, the Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, and any suit, action or proceeding arising out of relating to the Agreement shall be governed by the laws of the State of South Carolina.

§ 10.2 [intentionally omitted].

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

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

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship between a third party and either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site, unless the hazardous materials or toxic substances were brought to the Project pursuant to the terms of the Contract Documents.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall

survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions.

§ 10.10 As used in this Agreement the term Contract for Construction includes all documents incorporated into the Agreement between the Owner and the Contractor.

§ 10.11 The term "Contractor" as used in this Agreement shall mean the Construction Manager with which the Owner contracts for the construction of the Project.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described in this Agreement, the Owner shall compensate the Architect as follows:

.1 Stipulated Sum:

One Million Four Hundred Thousand Dollars (\$1,400,000), plus Reimbursable Expenses, as defined in Section 11.8.

.2 [intentionally omitted]

.3 Other:

For services specified in Attachment B, a separate lump sum fee of Seventy-Two Thousand Seven Hundred Dollars (\$72,700).

§ 11.2 [intentionally omitted]

§ 11.3 For Unplanned Additional Services that may arise during the course of the Project the Owner shall compensate the Architect as follows:

Pursuant to the rates in Section 11.7, or as otherwise agreed by the Parties.

§ 11.4 Compensation for Unplanned Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Five percent (5%), or as otherwise agreed by the Parties.

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	Fifteen	percent (15	%)
Design Development Phase	Twenty	percent (20	%)
Construction Documents Phase	Forty	percent (40	%)
Procurement Phase	Five	percent (5	%)
Construction Phase	Eighteen	percent (18	%)
Upon certification of Final Completion	Two	percent (2	%)
Total Basic Compensation	one hundred	percent (100	%)

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed by the Architect in accordance with the Agreement whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for Unplanned Additional Services of the Architect and the Architect's Consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's Consultants' normal review practices.

Employee or Category	Rate (\$0.00)
Principal	\$250
Project Manager	\$200
Architect	\$150
Engineer	\$150
Interior Designer	\$120
Intern Architect	\$90

§ 11.8 Compensation for Reimbursable Expenses

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

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

One dollar (\$1.00)

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of Zero dollars and zero cents (\$0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 [intentionally omitted]

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Forty-Five (45) days after the invoice date shall bear interest at the rate of Five percent (5%) per annum.

§ 11.10.2.2 The Owner shall not impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding. Owner may, however, sequester Architect payments where the Owner has reasonable cause to hold the payment to the Architect pending resolution of a matter in which the Owner contends the Architect bears at least partial responsibility. In such cases the Owner shall not withhold any undisputed amount, and the Owner will provide a written statement of its reasonable cause to the Architect. Sequestered amounts may be released by the Architect's posting of reasonable security or a letter of credit, or otherwise ensuring that the Owner's financial interest in the disputed matter is secured and/or protected.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

§ 12.1 The Architect shall ensure that one set of any official documents containing original signatures, official stamps or other such notations of authenticity to include, but not be limited to, bid documents, project manuals, plans, drawings, specifications, Contract Documents, Change Orders or Change Directives, approval letters or documents required by regulatory authorities, warranties, proof of bid advertising, and documents required at Substantial and Final Completion shall be forwarded to the Owner for official files. All design documents and as-built documents shall be provided to the Owner in both PDF and Autocad file formats. Any documents determined to be missing from the submission of the file shall be supplied by the Architect within seven (7) calendar days of a request for same by the Owner, unless the Architect can demonstrate that the document(s) was previously given to the Owner, in which case the Architect shall be compensated for producing the document(s) as an Unplanned Additional Service.

§ 12.2 The undersigned Architect certifies that it will provide a "Drug-Free Workplace" as that term is defined in Section 44-107-30 of the SC Code of Laws.

§ 12.3 The Owner shall have the right to audit the books and records of the Architect to the extent that the books and records relate to the performance of this Agreement. Architect's books and records shall include all pricing data for Change Orders or other modifications to the Contract Cost. The Architect shall maintain said books and records for a period of three years from the date of final payment under this Agreement. This requirement shall also apply to any Consultant performing services under the Architect's direction.

§ 12.4 The following meeting schedule shall be considered part of Basic Services. Meetings beyond those identified hereunder shall be considered Unplanned Additional Services:

Schematic Design: Two meetings with Architect and Owner's Project Team

Design Development: Three meetings with Architect and Owner's Project Team

Construction Documents: Two meetings with Architect and Owner's Project Team

Construction Administration: 36 site visits by Architect

Twelve meetings of the Owner's Board of Trustees.

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



OWNER (Signature)

Dr. Christina Melton, Superintendent
(Printed name and title)


ARCHITECT (Signature)

P. Douglas Orackenbush AIA, President
(Printed name, title, and license number, if required)