**STATE OF SOUTH CAROLINA )**

 **)** **CONTRACTOR AGREEMENT**

**COUNTY OF HORRY )**

THIS AGREEMENT is made this \_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, by and between Horry County, a political subdivision of the State of South Carolina, whose Administrative Office is at 1301 Second Avenue, Conway, SC 29526 hereinafter called “OWNER” **\_\_\_\_\_\_\_\_\_\_\_\_\_** a South Carolina Corporation, hereinafter called the “CONTRACTOR” (each a “Party” and collectively with OWNER the “Parties”).

WITNESSETH, that the CONTRACTOR and the OWNER, for the consideration set forth below, hereby covenant and agree as follows:

Article 1. Scope of the Work.

The CONTRACTOR shall furnish all of the materials and perform all of the work (collectively the “Work”) to complete **Description & Bid #** located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(“Site”) shown and described under Contract Documents below.

Article 2. The Contract Price.

OWNER shall pay CONTRACTOR a maximum contract price of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_dollars and XX/100 **($XXX,XXX.XX**) for completion of the Work in accordance with the Contract Documents and as shown on the Bid Schedule, subject to additions and deductions pursuant to authorized change orders agreed to in writing by the Parties. Payments shall be made periodically as work progresses and is approved by OWNER as contemplated in Article 4 below.

Article 3. Time for Completion.

The Work to be performed under this Contract shall be commenced when OWNER issues a written notice to proceed with the Work (“Notice to Proceed”) and shall be substantially completed within \_\_\_\_\_\_\_\_days of the Notice to Proceed (“Time for Completion”). **Time is of the essence in performance of this agreement**. CONTRACTOR and OWNER recognize that time is of the essence and OWNER will suffer financial loss if the Work is not completed within the time specified with any extensions allowed by the Contract Documents. CONTRACTOR and OWNER also recognize the delays, expense, and difficulties in quantifying and proving in a legal proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (and not as penalty), CONTRACTOR shall pay OWNER \_\_\_\_\_\_\_\_\_dollars and no/100 ($XXX.xx) for each calendar day that expires after the completion date. CONTRACTOR also acknowledges that failing to complete the Work within the Time for Completion could result in a carry over into OWNER’s next fiscal year thereby triggering Termination due to Non-Appropriation as contemplated by Article 10 herein.

Article 4. Progress Payments.

OWNER shall make progress payments on account of the Contract Price on the basis of the CONTRACTOR’s application for payment in the manner and at such times as set forth in the General Conditions such amounts as required by the Contract Documents.

Article 5. OWNER and CONTRACTOR’s Representations.

In order to induce OWNER and CONTRACTOR to enter into this Agreement, CONTRACTOR and OWNER make the following representations:

1. OWNER has the lawful authority required under State law and County Ordinances to enter into and perform this Agreement.
2. OWNER shall not solicit any employee of the CONTRACTOR with an offer of employment for two years after the termination of the Contract, but this does not forbid the OWNER from hiring such employee if the employee responds to the OWNER’s solicitation made to the general public.
3. CONTRACTOR has all necessary licenses and consents required to enter into and fully perform the Work required by the Contract Documents and is in good standing in the State of South Carolina.
4. CONTRACTOR has examined and carefully studied the Contract Documents.
5. CONTRACTOR has visited the Site and become familiar with and is satisfied as

to the general, local and Site conditions that may affect cost, progress, and performance of the Work.

1. CONTRACTOR is familiar with and is satisfied as to all applicable, relevant and

appropriate federal, state, and local laws and regulations that may affect cost, progress, and performance of the Work.

1. CONTRACTOR has considered the information known to CONTRACTOR;

information commonly known to contractors doing business in Horry County, information and observations obtained from visits to the site, the Contract Documents, and any site related reports and drawings identified in the Contract Documents with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including any specific means, methods, techniques, sequences and procedures of construction expressly required by the Construction Documents; and (3) CONTRACTOR’S safety precautions and programs. Based on the information and observations, CONTRACTOR does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Time of Completion, and in accordance of other terms and conditions of the Contract Documents.

1. CONTRACTOR is aware of the general nature of any work that may be

performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents and does not require any additional information to ensure CONTRACTOR meets its obligations in the Contract Documents.

1. CONTRACTOR has given OWNER written notice of all conflicts, errors,

ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by OWNER is acceptable to CONTRACTOR.

1. The Contract Documents are sufficient to indicate and convey understanding of

all terms and conditions for performance and furnishing of the Work.

1. CONTRACTOR shall properly withhold from all wages, commissions, salaries, and fees paid by CONTRACTOR to third parties or employees, agents, or sub-contractors of CONTRACTOR, all amounts required by State or Federal law to be withheld for or on account of taxes, social security payments, or other withholdings mandated by law or regulation.
2. CONTRACTOR shall comply with all lawful demands made pursuant to the South Carolina Freedom of Information Act, S.C. Code § 30-4-10 et seq. or the Federal Freedom of Information Act, 5 U.S.C.S. § 552.
3. CONTRACTOR shall not solicit any employee of the County with an offer of employment for two years after the termination of the Contract, but this does not forbid the CONTRACTOR from hiring such employee if the employee responds to the CONTRACTOR’s solicitation made to the general public.

Article 6. Contract Documents.

The Contract Documents which comprise the entire Agreement between OWNER and CONTRACTOR consist of the following:

1. Section 00100 – Invitation to Bidders
2. Section 00200 – Instruction to Bidders
3. Section 00300 – Bid Forms (consisting of Non-collusion Affidavit of Prime Bidder, Bid Bond, Proposal of Contractor, Bid Schedule, and Comments to the Project)
4. Section 00400 – Contract Forms (consisting of Contract Agreement, Performance Bond, Payment Bond, Notice to Proceed, Application of Payment Form, and Change Order Form)
5. Section 00600 – Supplementary Conditions
6. Section 00700 General Construction Contract Terms and Conditions
7. Drawings prepared by or on behalf of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
8. Specifications prepared or issued by or on behalf of Horry County Engineers Office.
9. 0 Addenda:

No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Article 7. Indemnification.

The CONTRACTOR will indemnify and hold harmless the OWNER and its agents and employees from and against all claims, damages, losses and expenses, including attorney's fees arising out of or resulting from the performance of the Work provided that any such claims, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, injury to or destruction of tangible property, including the loss of use resulting therefrom, and is caused by any negligent or willful act or omission of the CONTRACTOR, and anyone directly or indirectly employed by it or anyone for whose acts any of them may be liable. In any and all claims against the OWNER or any of their agents or employees by an employee or subcontractor of the CONTRACTOR, and anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way to the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR under the workman’s compensation acts, disability benefit acts, or other employee benefit acts. The obligation of the CONTRACTOR under this paragraph shall not extend to the liability of the OWNER or its agents or employees arising out of reports, surveys, change orders, designs, or specifications that are un-attributable to the CONTRACTOR.

Article 8. Insurance.

CONTRACTOR represents that it has purchased and agrees that it will keep in force, for the duration of the performance of the work, or for such longer term as may be required by this Agreement, in a company or companies lawfully authorized to do business in the State of South Carolina, such insurance as will protect general liability and the OWNER from claims for loss or injury which might arise out of, or result from, CONTRACTOR’s operations under this project, whether such operations be by CONTRACTOR or by a subcontractor or its subcontractors. CONTRACTOR represents and agrees that such insurance is written for and shall be maintained in an amount not less than the limits of the liability specified in the Contract Documents or required by law, whichever coverage is greater. CONTRACTOR certifies that coverage written on a “claims made” form will be maintained without interruption from the commencement of work until the expiration of all applicable statutes of limitation.

CONTRACTOR shall have its insurer or agent file Certificates of Insurance, naming the OWNER as additional insured, in duplicate, prior to commencement of work, which shall contain a provision that coverages under the policies shall not be cancelled or allowed to expire or permit material changes until at least ten (10) days written notice of been given to additional insured.

Article 9. Independent Contractor Status

CONTRACTOR shall not, by entering into this Agreement, become a servant, agent, or employee of OWNER, but shall remain at all times an independent contractor to OWNER. This Agreement shall not be deemed to create any joint venture, partnership, or common enterprise between CONTRACTOR and OWNER, and the rights and obligations of the parties shall not be other than as expressly set forth herein.

Article 10. Termination for Non-Appropriation

Notwithstanding any other provision herein, the OWNER may terminate this Contract, in whole or in part, for non-appropriation of sufficient funds to complete or partially complete the Project in the following fiscal year after execution of this agreement, regardless of the source of such funds, and such termination shall be in accordance with the relative terms set forth in Article 11 below.

Article 11. Termination in General

1. If the termination is for the convenience of the OWNER, an equitable adjustment in the Contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services. The CONTRACTOR shall incur no further obligations in connection with the work so terminated, other than warranties and guarantees for completed work and installed equipment, and the CONTRACTOR shall stop work when such termination becomes effective. The CONTRACTOR shall also terminate outstanding orders and subcontracts for the affected work. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The OWNER may direct the CONTRACTOR to assign the CONTRACTOR 's right, title and interest under termination orders or subcontracts to the County or its designee. The CONTRACTOR shall transfer title and deliver to the County such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as the CONTRACTOR has in its possession or control. CONTRACTOR further agrees to provide or acquire, as may be necessary, any lien waivers or releases from CONTRACTOR or its subcontractors as may be required by OWNER.
2. If the termination is due to failure to fulfill the CONTRACTOR’s obligations, the OWNER may take over the work and prosecute the same to completion by Contract or otherwise. In such case, the CONTRACTOR shall be liable to OWNER for any additional cost occasioned to the OWNER thereby. If, after notice of termination for failure to fulfill the Contract obligations, it is determined that the CONTRACTOR had not so failed, the termination shall be deemed to have been affected for the convenience of the OWNER. In such event, adjustment in the Contract price shall be made as provided in Subsection 11.1 above.
3. The rights and remedies of the OWNER provided in this Article are in addition to any other rights and remedies provide by law or under this Contract.
4. Notwithstanding any other provision contained herein, any violation or breach of terms of this Contract on the part of the CONTRACTOR or their subcontractors may result in the suspension or termination of this Contract or such other action that may be necessary to enforce the rights of the parties of this Contract. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.
5. In order to Terminate this Agreement under this Article XI, the terminating Party must deliver thirty (30) days written notice to the non-terminating Party specifying the reason and provision within this Agreement justifying such termination.

Article 12. Notice to Parties

All notices to each party to this Contract, except routine notices of performance of the Work during the Agreement term, shall be in writing, and sent as follows:

To OWNER:

 Horry County

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Conway, SC 29526

 (Tel:\_\_\_\_\_\_\_; fax: \_\_\_\_\_\_\_\_)

with a copy to:

 Horry County Attorney

1301 Second Avenue

Conway, SC 29526

(Tel: 843-915-5270; fax: 843-915-6270)

To Provider:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Tel:\_\_\_\_\_\_\_; fax: \_\_\_\_\_\_\_\_)

Article 13. Assignment.

CONTRACTOR shall not assign, permit the assumption of or in any manner transfer any interest in this Agreement, or any part thereof, without the prior written consent of the OWNER. If CONTRACTOR assigns, permits the assumption of or in any manner attempts a transfer of its interest in this Agreement, OWNER, in its sole discretion, may declare this entire Agreement null and void.

Article 14. Jurisdiction and Venue.

CONTRACTOR agrees that jurisdiction over any dispute arising under or in relation to this Agreement shall be filed in the Court of Common Pleas in Conway, SC with South Carolina law governing without any reference to any conflict of laws provision and that any subcontract issued by CONTRACTOR shall contain this same provision.

Article 15. Compliance with EEOC and other State and Federal Laws.

CONTRACTOR shall comply with the provisions and affirmatively warrants that CONTRACTOR is currently in compliance with the following laws, and further warrants that during the term of this Contract, CONTRACTOR shall remain in compliance to the extent set forth within the respective statute or regulation:

Titles VI & VII of the Civil Rights Act of 1964;

Age Discrimination in Employment Act of 1967;

Title I of the Americans with Disabilities Act of 1990;

Equal Pay Act of 1963;

Fair Labor Standards Act of 1938;

Immigration Reform and Control Act of 1986;

South Carolina Payment of Wages Act, S.C. Code §§ 41-10-10 et seq.;

South Carolina Worker’s Compensation Act, S.C. Code §§ 42-1-10 et seq.;

South Carolina Illegal Immigration Reform Act, including without limitation Chapters 14

& 29, Title 8, and Chapter 8, Title 41, S.C. Code of Laws; and

Part 681, Title 16 of the Code of Federal Regulations, Sections 114 and 315 of the Fair

and Accurate Credit Transactions Act (FACTA) of 2003; the South Carolina Act 90 of 2008; Financial and Identity Theft Protection Act; and the Horry County Privacy / Identity Theft Policy.

CONTRACTOR, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONTRACTOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by CONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the County or aggrieved party deems appropriate.

Article 16. Force Majeure and Impossibility of Performance.

 Neither Party will be liable for any failure or delay in performing an obligation under this Agreement that is due to any of the following causes, to the extent beyond its reasonable control: acts of God, accident, riots, war, terrorist act, epidemic, pandemic, quarantine, civil commotion, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, generalized lack of availability of raw materials or energy.

For the avoidance of doubt, Force Majeure shall not include (a) financial distress nor the inability of either party to make a profit or avoid a financial loss, (b) changes in market prices or conditions, or (c) a party's financial inability to perform its obligations hereunder.

Article 17. Severability.

If any term or condition of this contract or the application thereof to any Party or circumstances is held invalid, this invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this contract are agreed to be severable.

Article 18. Merger, Waiver, and Amendment.

This Contract contains all the terms of all agreements, oral or written, between the parties, and is the only document containing all such terms. This Contract merges all prior contracts, agreements, and understandings between OWNER and CONTRACTOR concerning the Scope of Work described herein. The Scope of Work described in this Contract, and all other terms of this Contract, shall not be amended or varied except by a written instrument signed by a duly authorized signatory of OWNER and CONTRACTOR. Forbearance by OWNER from enforcing the strict terms of this Contract shall not be a waiver of any other term of this Contract, nor shall such forbearance entitle CONTRACTOR to rely upon such forbearance in the event of another similar breach by CONTRACTOR of the terms of this Contract. Any variance to the terms of this Contract shall be attached as an Exhibit hereto, and shall have effect as from the effective date thereof as set forth on such Exhibit.

**IN WITNESS WHEREOF**, the parties have executed this Contract in three (3) originals, each of which shall be deemed to be an original on the Effective Date first above written

Signed in the present of:

Witness: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Witness: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_­­­­­\_\_\_\_\_

**HORRY COUNTY**

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 (*Authorized Signature)*

By: By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_