



Design-Build Agreement Terms Sheet – August 15, 2022

Carolina Crossroads Phase 3 – Project ID P039720

DISCLAIMER

SCDOT provides information to the public under the following terms and conditions:

This SCDOT DB Agreement Template Terms Sheet (hereinafter “Term Sheet”) is intended to provide guidance and information only. It is not legally binding and is not to be relied upon by any party in place of the final language of the actual contract. The materials and information for this Term Sheet have been prepared by SCDOT to advise the public—specifically possible future proposers within the construction industry—of provisions under consideration for inclusion in contracts to govern future project. Various alternative provisions are still under consideration for either inclusion, deletion or alteration. Some of the information contained in this Term Sheet may be dated and may not reflect the most current contractual provisions.

SCDOT specifically disclaims the accuracy and completeness of the information in the Term Sheet from whatever source it is derived or compiled. SCDOT makes no representations, covenants, warranties or guarantees, either express or implied, to any proposer regarding the accuracy and completeness of the information contained within this Term Sheet. SCDOT has published this Term Sheet to give possible proposers preliminary information to enable it to make informed business decisions. This Term Sheet is expressly preliminary, and it is not intended to be a complete contract. The information contained within this Term Sheet represents SCDOT’s best guess as of the current time to the possible contractual provisions that will be included in the final contract. SCDOT does not intend for—and specifically warns against—any proposer to rely on the comprehensiveness of the information contained herein. This Term Sheet shall not be used as a substitute for reading or relieve any party of the duty to read the final contract.

The information contained in this Term Sheet is of a character that is unreasonable to use for technical, engineering, or scientific decisions relating to, necessary to make, or contained within a response to any future Request for Proposals. It is the responsibility of any proposer to conduct an independent investigation of the facts and circumstances necessary to submit a proposal. Any proposer that relies on the information contained within this Term Sheet does so at its own risk, and the proposer acknowledges that there is a substantial possibility of revisions to language presented herein. Proposers specifically and intentionally waive reliance upon the thoroughness and comprehensiveness of the Term Sheet, and shall hold harmless SCDOT, its officers, employees, consultants, agents, heirs, and assigns.

CONTRACT OVERVIEW	
DB Contractor & Date	The Contractor is to be determined. SCDOT currently anticipates awarding the DB contract in late 2023.
Contract Documents & Order of Precedence	<p>“Contract Documents” means all of the documents in Section 1.2 and are listed below in order from highest to lowest precedent:</p> <ul style="list-style-type: none"> (a) Change Orders and Agreement amendments (amendments to Technical Provisions and all exhibits and attachments are not included) (b) The Agreement that includes all exhibits and the executed originals of exhibits that are contracts except for Exhibit 2 (c) Contractor’s Proposal Commitments and approved ATCs as listed in Exhibit 2 (d) Technical Provisions amendments, and all exhibits and attachments to such amendments (e) Technical Provisions and all exhibits and attachments to the Technical Provisions (f) Special Provisions in publications and manuals to the extent incorporated by reference into the Technical Provisions (g) Publications and manuals to the extent incorporated by reference into the Technical Provisions, and; (h) RFC Documents.
Proposal Commitments	The Contractor will fully perform all of the obligations in the contract documents. Any Party that has information regarding a conflict, ambiguities, omissions or inconsistencies with the Contract Documents must inform the other party within 5 business days.
Project Information Package (PIP)	The Project Information Package (PIP) is provided to all Proposers for informational purposes only. The PIP is not mandatory or binding on any Party unless specifically addressed or referenced in the Contract Documents. SCDOT requires all Proposers, including Contractor, to acknowledge they did not rely on the PIP in a separate form.
Scope of Work	Includes all efforts to achieve Project Final Completion as set out in the Contract Documents. These efforts include: all administrative, design, engineering, , development, design, alteration, repairing, maintenance, modification and construction of the Project or any roadway, bridge, tunnel or other structure or improvement to real property, or demolition or excavation, support services, Utility Adjustment Work by Contractor at Utility Owners’ expense and/or coordinating Utility Adjustment Work performed by Utility Owners’ contractors, procurement, professional, manufacturing, supply, installation, construction, supervision, management, testing, verification, labor, materials, equipment, maintenance, documentation and other duties and services as required by the Contract Documents. This work includes all efforts the Contract Documents expressly require to be performed by subcontractors not affiliated with the Contractor.

	<p>The Contractor is responsible for all maintenance of existing and newly constructed elements within all right-of-way acquired for the project. All of the costs of maintenance is included in the Contract Price.</p> <p>The Contractor must comply, and require all Subcontractors to comply, with applicable Laws, applicable Safety Standards, and must perform, and cause all Subcontractors to perform, the Work in accordance with Good Industry Practice.</p>
Alternative Technical Concepts (ATCs)	<p>If the Contract Documents incorporate any ATCs and either: (a) Contractor does not comply with one or more SCDOT conditions for pre-approval for the ATC or (b) Contractor does not obtain the required third-party approval for the ATC, then Contractor shall comply with the requirements in the Contract Documents that would have applied in the absence of such ATC, including acquiring Contractor-Designated ROW necessary to comply with the Contract Documents, and such compliance shall be without any increase in the Contract Price, extension of the Completion Deadlines or any other Change Order.</p>
Notices to Proceed (NTPs)	<p>SCDOT anticipates issuance of two Notices to Proceed. NTP1 is anticipated to be issued concurrently with execution of the Contract. NTP2 will be issued when all conditions precedent for NTP2 are satisfied, and Contractor will be authorized to perform all Work.</p>
PRICE, SECURITY & PAYMENTS	
Contract Price	<p>The Contract Price includes all efforts described within the Scope of Work. Contract Price also includes the cost of obtaining Governmental Approvals that was met before the Substantial Completion Date, cost of compliance with and maintenance of the Governmental Approvals, Laws relating to the Work except to those responsibilities assumed by any Utility Owner, payment of any Taxes, or other fees or royalties, and compensation for all risks and contingencies assigned to Contractor. Contractor agrees these items are contained within the Contract Price.</p>
Payment Obligations & Progress Payment Limitations	<p>Contractor agrees the payment of all Work completed prior to the Issuance of NTP 2 is limited to NTP Work Effort. This payment also includes Contractor's costs of bonds and insurance before NTP 2. SCDOT will pay for non-NTP Work Effort after NTP 2 is issued. SCDOT is not required to pay for or review any Design Work before conditions precedent are met.</p> <p>SCDOT will pay Contractor once a month for the Work which was authorized by NTP 1. Contractor's Authorized Representatives and SCDOT will sign and draft a Draw Request that indicates the portions of it that have been approved and setting forth the proposed total payment amount, which shall be the approved value of the Work then completed minus progress payments that were previously made. Within a time period, that will be specified by SCDOT on a case-by-case basis, of SCDOT receiving the Draw Request and the related Draw Request Certificate, SCDOT will then review the request for consistency with the Draw Request package that was prepared at the most recent</p>

	Progress Meetings and conformity with all requirements of the Contract Documents.
Proposal, Performance, Payment & Warranty Bonds	Contractor shall provide to SCDOT performance and payment bonds to secure Contractor's obligations. The Performance Bond will be delivered on or before the Effective Date. SCDOT will release the performance bond and payment bond once Final Completion has been achieved provided, and Contractor provides proof there are no remaining possible claims such as providing lien waivers by subcontractors. Contractor will then deliver a Warranty Bond. If a Change Order has increased the Contract Price, SCDOT may require an increase in the amount of the performance and payment bond but will be corresponding and proportional.
Guaranty	Each guaranty assures Contractor's performance under the Contract Documents and must remain in full force and effect so long as Contractor has any obligations under the Contract Documents. Contractor is required to report to SCDOT on a quarterly basis during the Term, the Tangible Net Worth of Contractor and the Guarantors. Contractor will be allowed to substitute guaranties with SCDOT's approval.
Mobilization	The Contractor is entitled to payment for mobilization in installments in an amount equal to the bid price item for mobilization not to exceed 10% of the Contract Price.
Price Indexing / Cost Adjustment	SCDOT is deciding whether to add an Economic Price Adjustment provision to protect the Parties from fluctuations in the cost of labor, goods and other inputs to Work.
COMPLETION DEADLINES, SCHEDULE & DELAY	
Completion Deadlines	<p>Time is of the essence. Contractor commits to develop the Project in accordance with the time periods set forth in the Contract Documents.</p> <p>The deadline for Substantial Completion of the Project will be the date set forth in the Proposal (<i>which may be constrained in accordance with the RFP</i>). See requirements for Substantial Completion (below) for more details.</p> <p>The deadline for Final Completion is 180 days after Substantial Completion unless adjusted by Change Order pursuant to the Agreement.</p>
Schedule	The Contractor must perform the Work in accordance with an approved comprehensive cost and resource-loaded critical path schedule. The Project Baseline Schedule will be submitted with the Proposal and any changes must be approved by SCDOT as a condition to NTP2. The schedule will be updated monthly during the Work and used for payment, planning and monitoring progress of the Work. A recovery schedule to regain lost time is required if the Contractor falls behind schedule.

<p>Delay</p>	<p>Liquidated damages may be assessed for delays in meeting the deadlines for Substantial Completion and Final Completion. (See Liquidated Damages section below.)</p> <p>SCDOT has the right to terminate the Contract if Substantial Completion is delayed beyond 180 days after the Substantial Completion Deadline or Final Completion is delayed beyond 90 days after the Final Completion Deadline.</p> <p>An extended jobsite overhead rate per calendar day for compensable Delay Costs will be included in the Contract Documents and as per calculated below.</p> $D = A \times C / B$ <p>Where: A = Original Contract Amount B = Original Contract Time C = 7% D = Extended Jobsite Overhead rate per calendar day for compensable delays</p>
<p>Substantial Completion</p>	<p>SCDOT will issue a written Certificate of Substantial Completion when the Contractor has completed all major safety features, illumination, signs, ITS systems and signals are installed and are functional, no temporary traffic controls present except during low-volume traffic hours, traffic can move unimpeded through the Project at normal, posted speed, and the Work has been completed. SCDOT will issue a written Certificate of Substantial Completion at the date the stated conditions are met.</p>
<p>Final Completion</p>	<p>SCDOT will issue a Certificate of Final Completion when Contractor has satisfactorily provided or completed all Punch List items, the "As-Built Schedule," a complete set of Record Drawings has been provided, a complete, indexed set of all Proprietary Intellectual Property, all Utility Adjustment Work and all other work for any third parties, all things are removed from the Project ROW, Contractor has restored and repaired all damage or injury to Project, and Contractor has paid the entire amount of liquidated damages that are due to SCDOT.</p>
<p>CONTRACT RIGHTS & RESPONSIBILITIES</p>	
<p>Control of Work</p>	<p>Contractor must comply and supervise all Subcontractors' compliance with applicable Laws and Safety Standards. The Contractor must also perform and supervise the performance of the Work in accordance with Good Industry Practice.</p> <p>Contractor must complete all aspects of the Design Work. All Design Documents must be free from defects and follow Good Industry Practice, Contract Documents, Project Schedule, all relevant laws, requirements for Governmental Approvals, SCDOT-approved Project Management Plan, Safety Management Plan, and all other requirements.</p>

	<p>SCDPS, SCHP, and any relevant city and county authorities where the Project is planned will enforce all applicable Laws and can enter the Project and Project ROW at all times to enforce those Laws. Nothing in the Agreement will limit the police powers of any of the entities above. Contractor is responsible for the safety and security of the Project.</p>
<p>Prevailing Wages</p>	<p>Contractor and all Subcontractors are required to pay all workers at least the prevailing rates of wages pursuant to the Davis-Bacon Act, 40 U.S.C. § 3141 et seq., relevant federal regulations, and any relevant South Carolina statute.</p>
<p>Right of Way</p>	<p>SCDOT will perform Right of Way Services for parcels identified on SCDOT Right of Way Plans (Schematic ROW), Contractor Designated Right of Way (additional parcels needed by Contractor to deliver its plans), and Additional Right of Way. SCDOT will provide Contractor with right-of-way certifications for all parcels acquired for the design of the Project and will update them accordingly with an Addendum if necessary.</p> <p>Contractor is responsible for acquiring any Additional Areas (work staging areas leased by Contractor during construction). Contractor will provide SCDOT with a copy of any agreements, the location, and documentation of the Additional Areas. Contractor must submit a Right of Way Activity Plan within 45 days of Contract execution.</p> <p>SCDOT will pay the costs necessary to secure the Schematic ROW (Right of Way Services) identified on the SCDOT Right of Way Plans, Just Compensation to secure the parcels, and the cost of all commitments in the Right of Way instruments.</p> <p>Contractor is responsible for the cost of Contractor-Designated Right of Way and Additional Right of Way. This includes Right of Way Services performed by SCDOT to acquire Contractor-Designated Right of Way and Additional Right Way such as the cost of condemnation proceedings, Just Compensation, all governmental permits, and all other related costs. SCDOT and Contractor each will be responsible for 50% of the premium ROW costs for Contractor-Designated ROW.</p> <p>Contractor will not be entitled to schedule impacts, delays or extension of time to the Project caused by its acquisition of Additional Areas.</p> <p>SCDOT may notify Contractor of a revised projected date for delivery of access to the extent that SCDOT has not provided access to Project right of way on or prior to the date set forth on the Right of Way Certification. If there is a delay or failure to provide access, Contractor shall: (i) take immediate action to minimize any cost and time impact and shall work around such parcel until access can be provided, including rescheduling and re-sequencing the work to minimize or avoid any delay to the Project; and (ii) provide SCDOT written notice, within fifteen calendar days after receipt of such notice from the SCDOT or</p>

	<p>upon SCDOT's failure to meet the date specified on the Right of Way Certification whether the lack of access will result in a delay to Substantial Completion of the Project.</p> <p>Relief will be given for SCDOTs failure to provide access to any parcel within the Project ROW as established in the most recently approved Project Schedule which is based on the durations given in the Technical Provisions and the approved Alternative Technical Concepts. During the ATC process, SCDOT will provide contractors with estimated durations of Contractor-Designated ROW Parcels.</p>
Design & Construction	The DB Contractor is responsible for the design and construction of the Project in accordance with the Contract Documents.
Design Liability and Modification	<p>Contractor is responsible for providing accurate and complete duplicates of all interim, revised and final Design Documents, Plans and Construction Documents within 7 days of completed preparation. Contractor may modify the Schematic Design without SCDOT's prior written approval if the modifications meet all of the following requirements: meets the requirements of the Technical Provisions, requires no change to the NEPA Approval, are not a Design Exception or Design Variance and do not sway away from the design concepts that are in the Proposal.</p> <p>The DB Contractor assumes full responsibility and liability with respect to design of the Project, including correction of any errors, omissions, inconsistencies or other defects in the Schematic Design affecting constructability.</p>
Quality Management	<p>The Contractor is responsible for all quality assurance and quality control activities in accordance with an SCDOT approved Project Management Plan, Good Industry Practice and applicable law. Contractor must create the Project Management Plan and submit it to SCDOT where SCDOT will be able to disapprove or require changes be made in order to comply with Good Industry Practice and applicable law.</p>
Oversight	<p>SCDOT directly or through a designated third party will conduct Oversight to monitor compliance by Contractor with all FWHA and other federal agency requirements, the Contract Documents, and the Project Management Plan. Oversight includes monitoring and auditing Contractor, conducting reviews of Project documentation and files, conducting material tests, reviewing and commenting on Submittals, confirming compliance with DBE requirements, participating in meetings, and confirming Contractor's compliance with the Safety Management Plan.</p> <p>Contractor and all subcontractors must cooperate and assist with SCDOT Oversight activities. SCDOT and its Authorized Representatives will have the ability to access the Project at all times and will be given safe access to Contractor's Project offices during normal business hours.</p>

Standards	Contractor must complete all aspects of the Design Work. The Design Documents must be free from defects and follow Good Industry Practice, Contract Documents, Project Schedule, all laws, requirements for Governmental Approvals, SCDOT-approved Project Management Plan, Safety Management Plan, and all other requirements. Contractor may apply for Deviations from the Technical Provisions regarding the design or construction of the Project. A Deviation application must be in writing and specifically approved in writing by SCDOT before the Deviation may be used by Contractor.
Warranties	<p>In addition to other warranties mentioned elsewhere in the Contract Documents, Contractor warrants that all Work and the Project will be free from Defects. Contractor also warrants that the Work and the Project are free from unapproved deviations, changes, modifications, alterations or exceptions from the applicable Technical Provisions. Contractor warrants that the Project is fit for use in regard or the purpose, objective, function, use, and requirement that is detailed or inferred from the Contract Documents, that all of the materials and equipment used under the Contract Documents are of good quality and new when installed, and that all Work will meet all of the requirements of the Contract Documents. The Warranty will begin in effect when Final Completion is met and will remain in effect until three years after Final Completion. SCDOT and Contractor will walk through the Project and create a punch list of things that need correcting sometime prior to the expiration of the Warranty. SCDOT and Contractor will mutually agree within 7 days after Contractor receives notice from SCDOT specifying the failure of when and how Contractor will fix the Warranty failure if any Work by Contractor or failure of any Subcontractor requirement which Contractor is responsible to enforce does not satisfy a Warranty.</p> <p>For permits, Contractor is responsible for getting any required encroachment permits and required consents from anyone in connection with the performance of work.</p> <p>Contractor must pay SCDOT within 10 days for independent quality assurance or quality control costs. SCDOT may subtract the amount owes from any amount owed to Contractor.</p>
Clayton Act Assignment	The Contractor shall assign to SCDOT all right, title and interest in and to all claims and causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) arising from purchases of goods, services or materials pursuant to the Contract Documents or any Subcontract. This assignment shall become automatically effective when SCDOT tenders Final Payment to Contractor, without further documentation or acknowledgment by the Parties.
ENVIRONMENTAL & PERFORMANCE RISKS	
Permits & Approvals	SCDOT has obtained the following permits and Governmental Approvals as specified in the Contract Documents: NEPA Final

	<p>Environmental Impact Statement/Record of Decision and USACE Individual Permit (SAC-2015-01080).</p> <p>SCDOT has obtained NEPA Approval for the Project based on the Schematic Design. Contractor agrees it is aware of the NEPA Approval in the Technical Provision Attachments. Contractor takes the responsibility for and must obtain/maintain all Environmental Approvals, all reevaluations, amendments and supplements of the NEPA Approval and all other Governmental Approvals that are required. SCDOT must deliver to Contractor copies of all new or amended Governmental Approvals within 3 business days. Contractor bears the risk of delay, all risk of increased cost that come from any differences in designs, and the risk of any differences between the construction means and methods that were approved and what the Contractor performed. SCDOT will assist Contractor in obtaining the necessary Government Approvals under the Contract Documents upon request by Contractor.</p>
Environmental Compliance	<p>Contractor must accept all costs and expenses for complying with all Environmental Laws and maintain all Environmental Approvals, though SCDOT still maintains responsibility for payment and performance of all environmental obligations that are not delegated to Contractor.</p>
Interchange Modification Report (IMR) Review	<p>SCDOT is deciding whether to add a Relief Event for delays associated with a federal Interchange Modification (IMR) Review.</p>
CONTRACT CHANGES & COSTS OUTSIDE THE CONTRACT	
Change Orders	<p>A Change Order or Directive Letter is required for any increase to Price or time extension.</p> <p>SCDOT may issue a unilateral Change Order at any time.</p> <p>For each Request for Change Order, Contractor must prepare a scope of work, cost estimate, time impact analysis and other information.</p> <p>If the Contractor requests a time extension, SCDOT may require Contractor to provide two alternative Requests for Change Order, one that provides for a time extension and any permitted additional costs, and another that shows all Acceleration Costs associated with meeting the non-extended Completion Deadlines, as well as any permitted additional costs.</p> <p>Change Orders are subject to strict requirements (including notice & delivery).</p> <p>Any increase to the Price under any Change Order may not include: (i) the amount of any insurance available to the Contractor, (ii) any deductible or self-insured retention associated with such insurance, or (iii) the amount of any insurance coverage required under the Contract that is deemed to be self-insured by the Contractor.</p>

<p>Differing Site Conditions</p>	<p>Contractor is entitled to Change Order for Extra Work Costs resulting from the existence of Differing Site Conditions subject to the following conditions:</p> <ul style="list-style-type: none"> (a) Contractor shall notify SCDOT immediately upon encountering Differing Site Conditions and determining the appropriate action to be taken subject to concurrence by SCDOT (b) Contractor shall provide proof that a Differing Site Condition exists and that Contractor could not reasonably have worked around the Differing Site Condition so as to avoid additional cost or delay (c) Each Relief Event Notice and Relief Request relating to a Differing Site Condition must include a statement setting forth all relevant assumptions made by Contractor with respect to the condition of the affected area, justifying the basis for such assumptions, explaining exactly how the existing conditions differ from those assumptions, and stating the efforts Contractor undertook to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs. (d) Contractor shall not be entitled to additional compensation or Completion Deadline adjustment in connection with work stoppages in the affected area during the period of time Contractor investigates conditions in the affected area unless Contractor proves that a Differing Site Condition exists in an affected area. (e) Contractor shall not be entitled to any Extra Work Costs, Delay Costs or Completion Deadline adjustment for Differing Site Conditions in, on or under Contractor-Designated ROW, Replacement Utility Property Interests (except under certain other conditions applicable to the Contract Documents) or Contractor's Temporary Work Areas.
<p>Supply Chain Disruptions</p>	<p>The Contractor is entitled to a Change Order extending the Completion Deadlines for delays to the Critical Path resulting from unavailability of materials the result of Force Majeure events as described in the Contract Documents (see Force Majeure for more detail.)</p> <p>The Contractor shall only be entitled to a time extension for delays due to the Force Majeure events if such events (and the effects of such events) are beyond the control of the Contractor and are not due to (1) an act, omission, negligence, recklessness or intentional misconduct of or (2) breach of contract or Law or violation of any Governmental Approval by the Contractor, and further provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by the Contractor. The Contractor will not be entitled to any increase in the Price resulting from supply chain disruptions.</p>
<p>Deviations</p>	<p>The Contractor may apply for SCDOT approval of Deviations from applicable Technical Provisions regarding the design or construction of the Project. The Deviation approval process shall be as follows:</p> <ul style="list-style-type: none"> (a) All applications for Deviations shall be in writing.

	<p>(b) SCDOT will consider but has no obligation to approve, any such application for a Deviation. Contractor shall bear the burden of persuading SCDOT that the Deviation sought constitutes sound and safe engineering consistent with Good Industry Practice and achieves SCDOT’s applicable safety standards and criteria.</p> <p>(c) No Deviation shall be deemed approved or be effective unless and until stated in writing signed by SCDOT’s Authorized Representative.</p> <p>(d) SCDOT’s lack of issuance of an approval for any Deviation within ten (10) Business Days after Contractor applies is deemed to be a disapproval of such application.</p> <p>(e) SCDOT’s denial or disapproval of a requested Deviation shall be final and not subject to the Dispute Resolution Procedures.</p>
<p>Non-Conforming Work</p>	<p>SCDOT may direct Contractor to fix any Nonconforming Work that SCDOT may discover at the sole cost of the Contractor. SCDOT may recover up to 100% of the cost savings and the cost that might occur for the maintenance of such Nonconforming Work during the period of time of the Agreement if SCDOT accepts any Nonconforming Work.</p>
<p>SCDOT-Directed Changes</p>	<p>SCDOT may for any reason issue a Change Order without notice to any Surety to authorize or require changes in the Work or in terms and conditions of the technical Provisions. SCDOT may also issue a Change Order for any other event which will be treated as an SCDOT-Directed Change.</p> <p>SCDOT may also issue a Request for Change Proposal to Contractor. SCDOT and Contractor will discuss any Request for Change Proposal to define the proposed scope of the change within 5 business days after receipt, SCDOT and Contractor will discuss the estimated financial, schedule and other impacts 5 days after the scope consultation.</p>
<p>Hazardous Materials</p>	<p>Contractor is responsible for all Hazardous Materials Management including Governmental Approvals, contamination prevention, contamination remediation, cost minimization, and employing a sufficient number of trained employees to perform these tasks.</p> <p>Contractor and SCDOT will promptly notify all Parties if Hazardous Materials are encountered. Contractor will undertake remedial action to remediate the Hazardous Materials. SCDOT will pay the applicable Extra Work Costs directly attributable to the remediation of the Hazardous Materials so long as presence or release of Hazardous Materials is not attributable to the Contractor or subcontractor. These Extra Work Costs include expenses associated with containment, storage, treatment, transportation and disposal. Contractor may also receive a Deadline Extension. The rate for Extra Works Costs is either the same unit price under the Lead Subcontractor or the unit price SCDOT could obtain through competitive low bid from a qualified contractor if the Lead Subcontract does not state a unit price.</p>

	<p>SCDOT is not responsible for any Releases of Hazardous Materials by the Contractor, from any vehicle traveling within the Project Area unless operated by SCDOT; any expenses that could have been prevented if Contractor has exercised Good Industry Practice; any Administrative and overhead expenses associated with the Hazardous Materials remediation; any Hazardous Materials in or under any Contractor-Designated ROW or Contractor’s Temporary Work Area; and if Contractor fails to timely notify SCDOT before it takes remedial action.</p>
<p>Utilities & Utility Company Delay</p>	<p>Contractor is responsible for the completion and coordination of all Utility Adjustments necessary to timely deliver the Project and must comply with the Contract Documents.</p> <p>Contractor is responsible for preparing, negotiating, and entering instruction-specific, construction-detailed Utility Agreements with all Utility Companies. SCDOT agrees to cooperate, at SCDOT’s own cost, in pursuing Utility Agreements upon request by Contractor. Contractor will provide SCDOT with a complete copy of all Utility Agreements within 10 days of execution. Contractor is responsible for the terms and conditions of all Utility Agreements. Utility Agreements are subject to Order of Precedence in Section 1.2.</p> <p>Contractor shall be entitled to submit a Change Order Request for Delay Costs subject to the conditions below;</p> <ul style="list-style-type: none"> (i) SCDOTs failure to meet any time parameters for performance set forth in the Technical Provisions; in the Utility Agreement(s) to which it is party (ii) Utility Owner’s unreasonable refusal to approve a Utility Adjustment of its utility facility within the boundaries of the Project right of way (iii) Delays by Utility Owners under Utility Agreements (iv) Delays by Utility Owners under No Prior Rights Arrangements (v) Delays caused by Materially Inaccurate Utility Information with respect to underground utilities only (excluding Service Lines); and (vi) Delays directly attributable to any material modification to the terms and conditions of any Utility Standards or approved Relocation Sketches provided to Contractor that has a material impact on Contractor’s obligations under this Agreement. <p>Contractor is responsible for all costs incurred under clauses i, ii, iii, vi. above for the first 180 days of time granted for the Utility delay. After 180 days of time granted for Utility delay Contractor and SCDOT shall share the cost equally until 360 days; provided, Contractor demonstrates actual, direct, and documented costs incurred are solely and directly incurred under clauses i, ii, iii, vi. After 360 days of time granted for Utility delay, SCDOT shall bear the remaining costs; provided, Contractor demonstrates actual, direct, and documented</p>

	<p>costs incurred are solely and directly incurred under clause i, ii, iii, and iv. above.</p> <p>The burden of actual, direct, and documented costs incurred which are solely and directly attributable to the delays described in clauses v and vi, above, are those of the SCDOT.</p> <p>Contractor shall not be entitled to any Claim for Delay Costs due to a Change in Utility Adjustment Standards.</p>
Railroad	<p>Contractor will be responsible for all coordination, acquiring necessary approvals and rights of entry monitoring, review of submittals, and all other necessary efforts to coordinate the Work that affects any applicable Railroad. Contractor will include SCDOT in all correspondence regarding Railroad coordination.</p> <p>Contractor is responsible for the cost of Railroad coordination and any other cost for services provided by the Railroad or the Railroad’s Agent that exceeds the Preliminary Engineering and Construction Force Account Estimate that are provided in the Technical Provision Attachments. Contractor will not be entitled to any Extra Work Costs, Delay costs or extension to the Completion Deadlines relating to Railroad coordination.</p> <p>Contractor may be entitled to a Contract Change Request for actual, direct, and documented costs incurred solely and directly attributable to Railroad delays following notification of delays to the critical path reflected on the most recently agreed Project Baseline Schedule in excess of 90 days of delay. The 90 days may comprise consecutive impact periods. SCDOT shall share impact costs with Contractor on an equal basis for 91-180 days. After 180 days SCDOT will be responsible for cost of delays to the critical path reflected on the most recent agreed Project Baseline Schedule.</p> <p>Contractor will be solely responsible for any delays and costs caused by changes to the design impacting the Railroad if that change requires a revision to the Construction Agreement. The Contractor will be responsible for all costs and delays without entitlement to a Change Order Request for any changes to the Project affecting the Railroad after approval of the Construction Agreement has been obtained.</p> <p>SCDOT is in the process of developing a cost-sharing regime between SCDOT and the Contractor for the costs of Railroad flagging operations and Railroad Design Reviews to be included in the Contract.</p>
Relief Events & Force Majeure Event	<p>The Contractor is entitled to additional time for specified Relief Events, including Force Majeure Events, that materially and adversely affect Contractor’s obligations, provided such events are beyond the control of the Contractor and are not due to (1) an act, omission, negligence, recklessness or intentional misconduct of or (2) breach of contract or</p>

	<p>Law or violation of any Governmental Approval by the Contractor, and further provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by the Contractor.</p> <p>Relief Events include:</p> <ul style="list-style-type: none"> Breach of material covenants or obligations under Contract Documents SCDOT-Directed Change Safety Compliance Orders SCDOT-Caused Delay Force Majeure Event Utility Company Delay <ul style="list-style-type: none"> • Inaccurate Utility Information subject to the following exclusions: <ul style="list-style-type: none"> ○ Excluding Construction Work on any Contractor-Designated ROW; ○ Excluding Inaccurate Utility Information with respect to Service Lines; and ○ Excluding where the existence of a Utility in the correct location and/or size, or of a Utility Company's Prior Rights Documentation, as applicable, was known to Contractor as of the Setting Date, or would have become known to Contractor as of the Setting Date by undertaking a Reasonable Investigation with Utility Companies prior to the Setting Date, including by requesting and reviewing Utility plans provided by Utility Companies; <ul style="list-style-type: none"> Discovery of Hazardous Waste in Project ROW Sudden spill of Hazardous Waste by a third-party Discovery of archaeological, paleontological or cultural resources within the Project ROW Differing Site Conditions Discovery of any threatened or endangered species Change in Law Change in Utility Adjustment Standards Issuance of a temporary restraining order or injunction that prohibits the performance of any portion of the Work so long as the conduct giving rise to the injunctive relief is not the fault of the Contractor; Issuance of a rule, order, or directive from the United States Department of Homeland Security or equivalent state agency regarding a specific security threat that requires specific changes in Contractor's normal design, construction or maintenance procedures to comply; Any Necessary Schematic ROW Change. <p>The Force Majeure events are:</p> <ul style="list-style-type: none"> Acts of God or the public enemy;
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a change in law or regulation after the effective date directly and substantially affecting performance of the Project;

acts of war (including civil and revolutionary); invasion, armed conflict, violent act of foreign enemy, military or armed blockade, military or armed takeover of the Project or the Site;

Declaration or order from either the President of the United States and/or the Governor of the State of South Carolina that mandates or requires the evacuation of the project area;

acts of rebellion, terrorism, riot, insurrection, civil commotion or sabotage that causes direct physical damage to, or otherwise directly causes interruption to construction or direct losses during maintenance of the Project;

earthquakes, including all foreshocks and aftershocks, where such earthquakes include ground shaking, liquefaction, settlement, or ground movements that directly impact, and cause damage to, temporary or permanent works of the Project;

hurricanes and tornados caused by natural events that causes direct physical damage to, or otherwise directly causes interruption to construction or direct losses during maintenance of the Project;

extreme weather events, ice storms, snow, fires, floods, or landslides caused by natural events, sinkholes caused by natural events, in each case directly impacting the physical improvements of the Project or Design Builder's performance of the scope of the work provided that the damage caused by an event as set forth herein were not reasonably foreseeable and preventable by Design Builder's exercise of ordinary care, exercise of caution, due diligence or reasonable efforts, to abate, prevent, or otherwise mitigate the risk of such event;

explosions, nuclear explosions, including radioactive contamination that triggers Design Builder's obligations pertaining to hazardous materials hereunder and, in each case directly impacting the physical improvements of the Project or performance of the Design Builder's scope of work,

an extraordinary accident caused by a third party directly impacting the physical improvements of the Project or performance of the Design Builder's scope of work provided that the damage caused by said extraordinary accident as set forth herein were not reasonably foreseeable and preventable by Design Builder's exercise of ordinary care to abate, prevent, or otherwise mitigate the risk of such event;

unavailability or shortage of materials caused by any of the acts or events set forth herein whether it occurs within South Carolina or whether it occurs in the area where the materials are produced, manufactured, and/or mined;

Embargos directly affecting materials required to perform the Design Builder's scope of the work as reflected in the then-current project schedule;

	<p>quarantine or suspension by the President of the United States or the Governor of South Carolina, or other authority acting on behalf of or with the authority of the same, or declared epidemic or pandemic, in each case, directly affecting the Design Builder's performance of the scope of the work;</p> <p>declared state of emergency by the President of the United States or the Governor of the State of South Carolina or regional authority having jurisdiction over the Project or the Design Builder's performance of the scope of the work;</p> <p>strikes (both national or regional strikes) or other concerted acts of workman not arising out of or relating to Design Builder or any person or entity for which Design Builder is responsible;</p> <p>vehicle collisions or other accidental collisions which causes significant damage to items within the project limits such as the roadway, a bridge structure, noise wall, retaining wall or overhead sign structure of the Project.</p>
<p>Extra and Delay Costs for Relief Events</p>	<p>SCDOT will compensate Contractor for Extra Costs and Delay Costs directly attributable to occurrence of a Relief Event. To the extent that it is permitted by Law, SCDOT may compensate Contractor either as a lump sum payment, as progress payments invoiced as Work is completed, or through any combination of both. SCDOT will also pay for any Extra Work Costs and Delay Costs resulting from SCDOT-Directed Changes as progress payments invoiced as Work is completed. SCDOT will provide Contractor with a notice of the method chosen for above.</p> <p>Contractor is entitled to an extension of applicable Completion Deadlines due to any Relief Event by the period that the end of the Critical Path extends beyond the original Completion Deadline that is not concurrent with any other delay which is not cause by a Relief Event and Contractor cannot reasonably avoid though mitigation. Additionally, Contractor will be not excused form compliance with the Contract Documents or applicable Laws because of an occurrence with a Relief event, except temporary inability to comply due only and directly to the Relief Event. Although, Contractor is entitled to rely upon the occurrence of a Relief Event as a defense against a Contractor Default where the occurrence of the Relief Event causes such Contractor Default.</p> <p>The Contractor will be responsible for submitting necessary Relief Event Notices and Relief Event Requests per the prescribed requirements in the Contract.</p>
<p>Matters not Eligible for Change Orders</p>	<p>The Contractor is responsible for all risks not specifically accepted by SCDOT. Examples of specific exclusions are identified in the Contract.</p>
<p>BUSINESS RISKS</p>	
<p>Insurance</p>	<p>Insurance must be maintained for the duration of the Project. Contractor must obtain insurance coverage to protect Contractor's operations under the Contract. This coverage must also include all</p>

	<p>operations performed by Subcontractors or anyone directly or indirectly employed by them. Contractor must pay on time all premiums for all insurance required. Contractor is not allowed to be self-insured unless it is disclosed and approved by SCDOT. SCDOT may grant Contractor an interim written variance from the requirements of obtaining alternative insurance packages if required coverage is unavailable or is available only at commercially unreasonable rates without fault of the Contractor.</p>
Contractor Defaults	<p>Contractor is in material breach of Contract if:</p> <ul style="list-style-type: none"> • Contractor fails to begin authorized Work within 30 days after the issuance of NTP 1 or 2; • fails to satisfy all conditions to commencement of the Construction Work and commence the Construction Work with diligence and continuity; • Contractor fails to achieve Substantial Completion or Final Completion by the applicable Completion Deadline; • Contractor fails to perform Work in accordance with the Contract Documents; • Contractor refuses to remove, replace, or correct, rejected materials, nonconforming or unacceptable work; • Contractor suspends, ceases, stops, or Abandons the Work or fails to continuously and diligently prosecute the Work; or • Contractor fails to comply with applicable Governmental Approvals and Laws, and other conditions as defined by the Contract.
Cure of Contractor Defaults	<p>The Contractor has an opportunity to cure certain DB Contractor Defaults, as described in the Contract.</p>
SCDOT Remedies for Contractor Default	<p>SCDOT has the right to terminate this Agreement or a portion of it in the event of a material breach. A notice of termination effective either upon delivery or another date that is specified in the notice. SCDOT is not required to provide any further notice and does not waive or release Contractor from any obligations under the Contract Documents. SCDOT may deduct or withhold from payments to Contractor amounts owed by Contractor to SCDOT. SCDOT may pay such amounts or perform act as may then be required from Contractor under the Contract Documents or Subcontracts. Contractor and each Guarantor will be jointly and severally liable to SCDOT for all costs reasonably incurred by SCDOT or SCDOT's agent in completing the Work. SCDOT may withhold all or a portion of further payments to Contractor until SCDOT determines how much remains payable to Contractor and the amount payable by contractor to SCDOT.</p> <p>SCDOT may recover any and all damages available at Law on account of the occurrence of a Contractor Default. Contractor will owe any damages that add up after the occurrence of the Contract Default and the delivery of required notice.</p>
Contractors Right to Stop Work	<p>Contractor has the right to stop Work if SCDOT fails to make an undisputed payment within 15 Business Days after SCDOT's receipt of</p>

	<p>written notice of nonpayment from the Contractor. Nonpayment may be a Termination for Convenience if such nonpayment continues for more than 90 days upon written notice from the Contractor to SCDOT.</p>
<p>Suspension</p>	<p>SCDOT may order Contractor to suspend all or part of the Work required under the Contract Documents at any time and for any reason for a period of time convenient for SCDOT. This can be done by issuing a suspension order. Contractor is responsible for promptly complying with any suspension order that is issued by SCDOT and Contractor will resume work when they have received notice from SCDOT. A suspension for convenience is a SCDOT-Directed Change. SCDOT cannot issue a Suspension for more than 48 consecutive hours and only a total of 96 hours prior to Final Completion.</p>
<p>Termination</p>	<p>SCDOT may terminate this Agreement and the performance of the Work by Contractor, either in its entirety or only a portion, if SCDOT determines termination is in SCDOT's best interest. Termination is effective upon SCDOT's delivery of Notice of Termination or Notice of Partial Termination for Convenience. These notices must specify the extent of the termination and the effective date. Any termination by SCDOT that exceeds SCDOT's termination rights will be deemed a Termination for Convenience for the purpose of determining the amount of Termination Compensation due.</p> <p>SCDOT will owe Termination Compensation to Contractor in an amount that is equal to the sum of several factors if SCDOT chooses to use a Termination for Convenience. Contractor is not entitled to any compensation in excess of the value of the Work performed plus its settlement costs.</p> <p>SCDOT may make partial payments for costs incurred by Contractor in connection with the terminated portion of this Agreement.</p>
<p>Liquidated Damages</p>	<p><u>Delays:</u> Contractor shall be liable for and pay to SCDOT Liquidated Damages with respect to any failure to achieve Substantial Completion or Final Completion of the Project by the applicable Completion Deadline, as the same may be extended pursuant to this Agreement (per a defined cost / day for Delay Costs – see 'Delay' for more details).</p> <p><u>Lane Closures:</u> Contractor shall be liable for and pay to SCDOT Liquidated Damages for full or partial lane closures that are not permitted by the Contract Documents.</p> <p><u>DBE Committals:</u> Contractor will be liable to SCDOT for Liquidated Damages should the Contractor replace or substitute for a Committed DBE without SCDOT's prior written approval, Contractor will also be liable for Liquidated Damages if SCDOT determines following Substantial Completion that Contractor did not exercise Good Faith Efforts to meet the DBE Goals for Professional Services and Construction. Liquidated Damages associated with DBE Committals are under evaluation by SCDOT.</p>

<p>Indemnification</p>	<p>Contractor must defend, release, protect, indemnify and hold harmless the indemnified Parties from and against any and all Claims, causes of action, suits, judgements, investigations, legal or administrative proceedings, demands and Losses in each case if asserted by any third-party that results from: the breach or alleged breach of any of the contract documents by an contractor related entity, the failure or alleged failure by any Contractor-Related Entity to comply with the Governmental Approvals, any applicable environmental laws or other Laws, any patent or copyright infringement or other improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions in performance of the work, and more as provided in the Contract. Contractor’s indemnity obligation will not extend to any third-party Loss if the cause was either the negligence, reckless or intentional misconduct, bad faith or fraud of the indemnified Party, SCDOT’s material breach of any of the material obligations under the Contract Documents, an indemnified party’s material breach of any Laws or Governmental Approvals, or an unsafe requirement that is spelled out in the prescriptive design or prescriptive construction specifications of the Technical Provisions. Contractor agrees and is completely aware that they have the obligation to perform the Work in accordance with the Contract Documents and those parties that have been indemnified are fully within their rights to rely on Contractor’s performance of this obligation.</p>
<p>Project Funding</p>	<p>SCDOT guarantees that it has the amount necessary to pay for the Work contracted for and will obtain any additional funding to pay for the costs that exceed the funds already designated to pay for the Work.</p>
<p>Project Specific Dispute Resolution</p>	<p>The Parties agree that any dispute arising out of, relating to, or are in connection with this Agreement that are not resolved by partnering will be resolved according to the Project Specific Dispute Resolution Procedures. The Project Specific Dispute Resolution Procedures and its step-by-step processes include that any Party bringing a Dispute will bear the burden of proving that there is a dispute, that all Resolutions of Disputes are final, binding, conclusive and enforceable, and that the Issue Resolution Ladder and mediation process are administrative procedures and remedies, and if the Contractor fails to comply with the process, it will be a bar against the Claim or Dispute. As a condition to the right to bring a Dispute to mediation, arbitration or litigation, the Party bringing the Dispute will attempt first to informally resolve the Dispute directly with the other party to the dispute.</p> <p>The Issue Resolution Ladder Process is broken up into three levels of review, thus being the first level of review is the Project Level with a 7-day time limit, second of review is through the Project Manager with a 14-day time limit, and the third level of review is from the Executive Officer with an issue dependent time limit. If the Dispute cannot be handled within the corresponding time limit for each level, the Dispute will be passed onto the next higher level in the procedure for collaboration. If SCDOT and Contractor succeed in resolving a Dispute</p>

	<p>using the Issue Resolution Ladder, the Parties will memorialize the resolution in writing and promptly perform their respective obligations in accordance with the resolution outcome. Though, if the Parties do not resolve the Dispute using the Issues Resolution Ladder within the applicable time periods that are for each level, then either Party will have 15 days from the conclusion of the Ladder to bring the Dispute to mandatory mediation.</p>
<p>Records and Documentation</p>	<p>Contractor must transmit all submittals to SCDOT through SCDOT’s electronic document management system for the project (ProjectWise Document Management system, PWDM).</p> <p>Contractor must also maintain all project records and documents on its own electronic data management system in accordance with applicable retention requirements.</p> <p>Contractor agrees all records, documents, drawings, plans, specifications and other materials in SCDOT’s possession are subject to the provisions of the South Carolina Freedom of Information Act. , Contractor is responsible for specifically and conspicuously designating that information by placing “CONFIDENTIAL” in the center header of each such page affected if Contractor believes information or materials submitted to SCDOT constitutes trade secrets, proprietary information or other information that is excepted from disclosure.</p> <p>Contractor may be required to purchase additional software as required for the Project.</p>
<p>Detailed Pricing Documents (DPDs)</p>	<p>The Detailed Pricing Documents (“DPDs”) will be made up of the cost, unit pricing, price quote and other documentary information used in preparation of the Contract Price. DPDs will clearly detail how each cost or price has been determined and will show or price elements in sufficient detail as is enough to enable SCDOT to understand how Contractor calculated the Contract Price. Also, DPDs must itemize the estimated costs or price of performing the Work separated into usual and customary items and cost or price categories to present a detailed estimate of costs and price. DPDs will additionally include all assumptions made in determining the scope of the Work and calculating the Contract Price and any adjustments to the Contract Price under this Agreement.</p> <p>Contractor must prior to execution of this Agreement deliver to SCDOT one copy of all DPDs along with a detailed index and catalogue of the DPDs. The DPDs and index and catalogue after contract execution will be locked in a fireproof cabinet supplied by Contractor and located in SCDOT’s project office with the key held only by Contractor. DPDs and index and catalogue pertaining to the Work will be held in the cabinet or otherwise maintained until 180 days have elapsed from the earlier of Project Final Completion or termination of this Agreement, all warranty terms have expired, all Claim or Disputes regarding the Work have been</p>

	<p>settled, and the Final Payment has been made and has been accepted. The DPDs will be available during business hours for joint review by Contractor and SCDOT. The DPDs are and will always be the property of Contractor and will be considered to be in Contractor's possession subject to SCDOT's right to review the DPDs at any time during normal business hours. SCDOT may at any time conduct a review of the DPDs to determine whether they are complete. Contractor will provide the requested data within 3 business days after delivery of SCDOT's request for that data if SCDOT determines that any data is missing.</p>
<p>DBE Provisions; Subcontractors</p>	<p>Contractor will use Good Faith Efforts to achieve the DBE Goals for the Project, which are calculated in relation to the portion of the Total Contract Price allocated to the components of the Work. SCDOT holds the right to audit all documentation in relation to DBE participation in the Project.</p> <p>For the Work, SCDOT shall require a 12.1% DBE Committal (0.2% Professional Services and 11.9% Construction Work).</p> <p>Contractor must hire and utilize Subcontractors that are licensed, qualified, experienced and capable to conduct the Work that they are hired perform. Contractor must submit a complete and accurate payroll to SCDOT of all Work done by every Subcontractor no later than the 15th of every month. SCDOT may withhold \$2,500 per missing or inaccurate payroll from each subsequent progress payment until Contractor fulfills the requirement. Contractor must provide SCDOT a Subcontractor's information within 5 days after the execution of a Subcontract.</p>
<p>Key Personnel</p>	<p>Contractor agrees SCDOT's award of this Agreement to Contractor was based, in part, on the qualifications and experience of the Key Personnel and Contractor's commitment that such Key Personnel are available to undertake and perform the Work.</p> <p>Contractor represents, warrants and covenants that all Key Personnel are available for and will perform the roles identified for them in the Proposal, and Contractor shall not replace or permit replacement of any individual filling a Key Personnel position without SCDOT's prior written approval.</p> <p>SCDOT may withhold a percentage of progress payments or Monthly Disbursements (as applicable) owing to Contractor if Contractor does not fill vacated Key Personnel positions within certain deadlines after the positions are vacated, regardless of reason.</p>
<p>Assignment</p>	<p>SCDOT may transfer and assign all or any portion of its rights, title and interests in and to the Contract Documents without Contractor's consent, to any other public agency or public entity as permitted by Law, provided that the successor or assignee has assumed all of SCDOT's obligations, duties and liabilities under the Contract Documents.</p>

	<p>Contractor shall not voluntarily or involuntarily sell, assign, convey, transfer, pledge, mortgage or otherwise encumber Contractor's interest in and to the Contract Documents or any portion thereof without SCDOT's prior approval, except to any entity that is under the same ultimate management control as Contractor.</p>
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