NOTICE TO VENDORS:

The following revisions, additions, and clarifications are hereby made part of the Contract Documents for the above-referenced project and shall be taken into account in the preparation of all Responders and executioners of all Work. Responders shall acknowledge receipt of the Addendum in their response.

A. The County of Greenville (the “Owner”) will utilize the following contract documents for the Projects described in the RFP:

1. **CMAR Agreement for the Greenville County Administration Building Project:**

2. **Construction Agreement for the Phase 1A Site Package, University Ridge Redevelopment Project:**
   - Modified AIA A104 (2017 Ed.) (“A104”).

B. The modifications to the contract documents will include, but not be limited to, the following:

1. Any provision requiring the Owner to indemnify any party shall either be stricken or modified such that the Owner shall not agree to any indemnity obligation.

2. The dispute resolution procedure for both Projects will be litigation, tried without a jury, in Greenville County.

3. Any reference to initial decision maker shall be deleted.

4. Daily liquidated damages, in an amount specified in a Guaranteed Maximum Price (GMP) Amendment, will be assessed for each day of delay in achieving Substantial Completion of the Work beyond the Contract Time.
5. The Construction Manager shall competitively solicit all subcontracts and other work appropriate for competitive selection but is free to use qualification factors other than price of work to select construction Subcontractors that will deliver the greatest value to the Owner, provided such factors are in accordance with the terms and conditions of the RFP and Applicable Laws.

6. Other Preconstruction Services as defined in § 3.1.14 of the A133 shall include:

§ 3.1.14.1 The Construction Manager shall assist the Owner and Architect in expediting the development of the final Drawings and Specifications by furnishing recommendations to the Owner and Architect for alternatives to construction means and methods of performing the Work as well as substitution of materials or equipment required for the Work. The purpose of value engineering is to assist in achieving all of the Owner’s objectives for the Project, including the schedule, the budget, functional performance and aesthetic goals. Factors that the Construction Manager shall consider in making such recommendations include site use, selection of building materials and systems, availability of labor, methods of construction and other similar items benefitting from evaluation prior to the completion of the Drawings and Specifications. Particular attention shall be given to alternatives for materials, equipment and systems, possible economies and identification of options that will maximize the benefits that the Owner will derive from the completion of the Work. When requested by Owner, the Construction Manager: (1) prepare a specific analysis of the cost-effectiveness and performance capabilities of any building system or component under consideration or specified for the Work and provide other relevant information; and (2) make recommendations on field logistics and any other studies that are required to complete the Work successfully. The Construction Manager acknowledges that it will not rely on any value engineering proposals unless approved in writing by the Owner. The Owner is under no obligation to accept any pending or future value engineering proposal submitted by the Construction Manager. The Construction Manager may render opinions, advice and recommendations to the Owner and the Architect as value engineering to help reduce the overall Cost of the Work. By doing so, the Construction Manager has not assumed any of the duties or obligations of the Owner or Architect. The final decision as to the use of any value engineering opinions, advice or recommendations supplied by the Construction Manager is, and remains, the right and responsibility of the Owner and Architect, respectively. The Construction Manager makes no guarantees or warranties regarding its value engineering opinions, advice or recommendations except those required by the Contract Documents and Applicable Laws.
§ 3.1.14.2 At intervals appropriate to the progress of the Project and established by the Owner or Architect, the Construction Manager shall meet with the Owner and the Architect, and the Owner’s and the Architect’s other design consultants to coordinate the Contract Documents, including for the purpose of a construction feasibility and coordination analysis, identifying conflicts, missing information or gaps in the planned scope of Work and determining appropriate corrective action to ensure the full scope of intended Work is performed efficiently and economically.

§ 3.1.14.3 In performing its Preconstruction Phase services, including participating in design reviews and making value engineering suggestions, the Construction Manager shall not be deemed to have assumed any design responsibility of the Architect or of the Owner’s other design consultants.

7. § 3.2.4 of the A133 is amended as follows:

§ 3.2.4 Contingency shall be included only as a single, separate line shown in both the statement of the proposed Guaranteed Maximum Price provided pursuant to preceding Section 3.2.3, and in the schedule of values provided in accordance with Sections 3.2.10 and 11.1.5, shall not exceed the amount agreed upon by the Owner and the Construction Manager set forth in the GMP Amendment, and shall be for the Construction Manager’s use to cover unforeseen costs considered reimbursable as the Cost of the Work that result from: (a) errors by the Construction Manager in estimating time or money, (b) items omitted by the Construction Manager in the formulation of the Guaranteed Maximum Price, (c) costs to the extent the sum of the subcontract costs exceed the sum of the subcontract costs in the Guaranteed Maximum Price, and (d) other events or circumstances not foreseen by the Construction Manager that are not otherwise accounted for in the GMP, but that are not the basis of a Change Order, if approved by the Owner in writing. Notwithstanding the foregoing, reimbursement from the contingency shall not be made for: (i) any losses or expenses for which the Construction Manager would have been indemnified or compensated by bonds or insurance, but for the failure of the Construction Manager to procure and maintain bonds or insurance in accordance with the requirements of the Contract; (ii) costs which arise out of the Construction Manager’s intentional misconduct; (iii) costs which arise out of disputes with employees of the Construction Manager or any Subcontractor or Sub-subcontractor working on the Project or with any union representing such employees; (iv) costs not otherwise subject to inclusion in a cost category of the Guaranteed Maximum Price; (v) liquidated damages; (vi) sums which are otherwise properly chargeable to the contingency to the extent (A) such sums are reasonably chargeable to a Subcontractor or other responsible person or entity, or (B) the Construction Manager failed to notify the Owner or its insurance carrier, if applicable, of the event which results in the claim to the contingency resulting in coverage disclaimer.
8. § 3.2.6 of the A133 is amended as follows:

§ 3.2.6 The Construction Manager’s Guaranteed Maximum Price proposal shall constitute a "firm offer" by the Construction Manager and available for acceptance by the Owner for the period specified in the proposal but in any event not less than thirty (30) days after receipt by the Owner. If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Owner and Construction Manager shall execute a GMP Amendment the Owner and Construction Manager shall execute the GMP Amendment amending this Agreement, in substantially the form attached hereto as Exhibit A, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. However, for the avoidance of doubt, the Owner may, at its sole discretion and based upon its sole judgment, (a) indicate its acceptance of the Construction Manager’s Guaranteed Maximum Price proposal; (b) reject the Construction Manager’s Guaranteed Maximum Price proposal; (c) terminate the Project; or (d) obtain bids from other contractors and proceed to construct the Project using a party or parties other than the Construction Manager.

9. § 3.2.10 is added to the A133, as follows:

§ 3.2.10 The Construction Manager shall prepare a schedule of values consistent with its statement of the proposed Guaranteed Maximum Price pursuant to Section 3.2.3.7 for the Owner’s and Architect’s approval, which shall be attached as an exhibit to the GMP Amendment prior to execution thereof. It is the Owner’s intent that the proposed Guaranteed Maximum Price be based, to the extent reasonably practicable, on hard bids, such that subcontracts and supply agreements will be bought at the bid amounts on which the Guaranteed Maximum Price is based. However, if thereafter there remain subcontracts or supply agreements to be "bought out", as the Construction Manager finalizes agreements with Subcontractors and suppliers, all "buy-out" savings (i.e. difference between amounts shown in the schedule of values attached to the GMP Amendment for an item of Work, services, materials or equipment and the amount for which the Construction Manager obtains a binding commitment from a Subcontractor or supplier to supply or furnish such item) ("Buy-Out Savings") shall be transferred to the contingency line item within the Schedule of Values. References hereto to "Schedule of Values" mean the most recent version approved by the Owner.
10. § 4.1.7 is added to the A133, as follows:

§ 4.1.7 Direct Purchase Materials. The Construction Manager acknowledges and agrees that the Owner may elect to directly purchase certain materials from vendors and provide the same to the Construction Manager for the Construction Manager’s incorporation into the Project. The Owner’s election in this regard may be the result of certain tax advantages or for the purpose of other discounts or deductions, including those in kind. Before placing orders for material and equipment that are anticipated, in good faith to exceed the pre-tax purchase price of $5,000 (including categories of items for which the ultimate aggregate purchase price is expected to exceed $5,000) the Construction Manager shall inform the Owner in writing of the various sources from which the materials or equipment may be purchased and the purchase price thereof and afford the Owner twenty-one (21) days if the proposed vendor has not been "pre-approved" in writing by the Owner, and nine (9) business days if the proposed vendor has been "pre-approved" in writing by the Owner, after the Owner receives such written information, within which to issue a direct purchase order to the Owner’s vendor of choice for the item or items to be purchased at the Owner’s election (such materials and equipment that the Owner elects, in its sole discretion, to procure directly from vendors referred to herein as "Direct Purchase Materials"). The following provisions shall apply to such Direct Purchase Materials: (a) the Construction Manager shall prepare and provide to the Owner a purchase order in the form provided by or reasonably acceptable to the Owner containing the name and address of the material supplier, a list of required items, the quantity needed, the price of the materials and the Owner’s Consumer Certificate of Exemption number, and other information required by the Owner; (b) the Owner shall issue a purchase order directly to the material supplier for such materials; (c) the Owner shall issue its exemption certificate; (d) the materials shall be delivered to the Owner at the Project site and title to the materials shall be transferred directly from the material supplier to the Owner; (e) the Construction Manager shall be responsible for all matters relating to the receipt of the materials, including verifying correct quantities, inspection and acceptance of the materials at the time of delivery; (f) the Owner shall be billed directly by the material supplier; (g) the Owner shall pay the material supplier directly; and (h) the Owner shall bear all risk of loss or damage to the materials from the time of purchase and prior to their installation into the Project. Title to the materials purchased directly by the Owner shall vest in the Owner at the time the materials are delivered to the Project site. The Guaranteed Maximum Price shall, by Change Order or Construction Change Directive, be reduced by the cost of such Direct Purchase Materials, including sales tax thereon; provided, however, the cost of such Direct Purchase Materials shall be considered a Cost of the Work for purposes of the calculation of the Construction Manager’s Fee. For the avoidance of doubt, the Construction Manager shall be entitled to Construction Manager’s Fee on the cost of Direct Purchase Materials but not
on the tax saved. To the extent permitted by Applicable Laws, the Construction Manager shall be responsible for coordinating and receiving delivery of, inspecting, accepting delivery of, handling, safeguarding, and installing Direct Purchase Materials to the same extent as if the Construction Manager itself had procured such Direct Purchase Materials. The Construction Manager shall cooperate with the Owner and shall assist the Owner with any other processes necessary for the Owner to take full advantage of any available tax advantages, discounts or deductions associated with the purchase of materials.

11. § 6.1.7 of the A133 states as follows:

§ 6.1.7 Other: The Construction Manager’s "general conditions costs" for the Construction Manager’s supervisory and administrative personnel (collectively, "General Conditions Costs"), which are included in the Cost of the Work, shall be a lump sum, which lump amount shall be drawn in equal monthly installments over the duration of the Project. A schedule of the items included in the General Conditions Costs is attached to this Agreement as Exhibit F. The Construction Manager shall provide an updated draft of such schedule with the actual Dollar values associated with the listed categories of General Conditions Costs with the Construction Manager’s Guaranteed Maximum Price Proposal and, if agreed upon by the Owner, such schedule shall be attached as an exhibit to the GMP Amendment.

For Change Order or Construction Change Directive Work there shall be no increase in the Construction Manager’s General Conditions Costs unless, as of the date of Substantial Completion of the Work, Change Orders and Construction Change Directives have resulted in an extension of the Contract Time.

There shall be no reduction in the Construction Manager’s General Conditions Costs for changes to the Work, unless there is a reduction in the Contract Time. In the event of a change to the Work resulting in a reduction in the Contract Time, the General Conditions Costs shall be reduced by one (1) full monthly installment of General Conditions Costs for each full month that the Contract Time is reduced and by an appropriately prorated portion of a monthly installment for each partial month by which the Contract Time is reduced.

12. § 7.2.2 of the A133 has been deleted.

13. § 7.5.4 of the A133 has been deleted.
14. Retainage will be withheld as follows:

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

Unless otherwise specified by Applicable Laws, once the entire Work is fifty percent (50%) complete, and provided that the Construction Manager is not in default, retainage withheld on Applications for Payment submitted thereafter may be reduced from ten percent (10%) to five percent (5%) with the Owner’s prior written consent, such that retainage remaining withheld at the time of Substantial Completion equals seven and one-half percent (7.5%) of the Contract Sum.

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

The Owner may continue withholding as retainage, through Final Completion of the entire work, (a) an amount equal to two hundred percent (200%) of the cost to correct and complete the Work, including items on the Punch List per Section 9.8.4 of the A201-2017, as determined by the Owner, and (b) other amounts the Owner is entitled to withhold.

15. § 11.1.9 of the A133 has been deleted.

16. § 13.2.3 of the A133 has been deleted.

17. The follow Other provisions have been added to § 14.5 to the A133:

§ 14.5.1 Other Representations and Warranties. The Construction Manager represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents) as an inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, the termination of this Agreement or the Contract, and Final Completion of the Work: (a) that it is authorized to do business in the State in which the Project is located and it is, and to the best of its knowledge after reasonable inquiry, its Subcontractors are, properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the Project; (b) that its execution of this Agreement and its performance hereof is within its duly-authorized power; and (c) that it possesses a high level of experience and expertise in the business administration, construction and superintendence of projects of the size and nature of the Work and will perform the Work with care, skill and diligence.
§ 14.5.2 **Interpretation.** The failure of a Party to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of Contract, or to exercise any right therein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance. In the Contract, unless otherwise expressly provided, the singular shall include the plural, the plural the singular, and the use of any gender shall include all genders. Unless expressly provided otherwise, in the Contract Documents, the term "including" is not limiting, and the terms "hereof," "herein," "hereunder" and similar terms in the Contract Documents refer to the Contract Documents as a whole and not to any particular provision of the Contract Documents. Each Party, together with their respective legal counsel, has contributed substantially to the preparation of the Contract, and, as such, the Contract shall not be interpreted more favorably against one Party than the other solely upon the basis of which Party actually drafted the Contract. Headings are for convenience only and shall not be used for interpretation of the language in the Contract.

§ 14.5.3 **Sovereign Immunity.** No indemnification provision in the Contract Documents shall act to waive the Owner’s sovereign immunity or impose any liability that would be restricted by sovereign immunity in a non-contractual arrangement. Furthermore, the Owner shall not waive any right it may have to assert sovereign immunity against any claim asserted against, or that could be asserted against, the Owner related to the Project for which the Construction Manager has an indemnification obligation under the Contract. This provision shall survive the termination of this Agreement.

§ 14.5.4 **Non-Appropriation.** Notwithstanding anything in the Contract Documents to the contrary, this Contract is subject to cancellation by the County without damages or further obligation if funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period or appropriated year.

§ 14.5.5 **No Commissions.** The Construction Manager warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the Construction Manager to solicit or secure this Agreement, and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Construction Manager, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. The Construction Manager further expressly warrants and certifies that neither it nor any of its employees or associates has directly or indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in conjunction with bidding for, being awarded, or performing this Contract. For the breach or violation of this provision, the Owner shall have
the right to terminate this Agreement without liability and, at its discretion, to
deduct from any fees due the Construction Manager, or otherwise recover, the
full amount of such fee, commission, percentage, gift, or consideration.

§ 14.5.6 Records Retention. The Construction Manager shall:
.1 Keep and maintain public records required by the Owner to perform the Construction Manager’s services;
.2 Upon request from the Owner’s custodian of public records, provide the Owner with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the lesser of actual out-of-pocket costs or amounts permitted by Applicable Laws;
.3 Ensure that public records that are exempt or confidential and exempt from the public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of the Contract and following completion of the Contract if the Construction Manager does not transfer the records to the Owner;
.4 Upon completion of the Contract, transfer at no cost to the Owner all public records in possession of the Construction Manager or keep and maintain public records required by the Construction Manager to perform its services. If the Construction Manager transfers all public records to the Owner upon completion of the Contract, the Construction Manager shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Construction Manager keeps and maintains public records upon completion of the Contract, the Construction Manager shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Owner, upon request from the Owner’s custodian of public records, in a format that is compatible with the information technology systems of the Owner.
.5 If the Construction Manager fails to provide the public records to the Owner within a reasonable time, it may be subject to penalties under Applicable Laws.

§ 14.5.7 No Conflicts of Interest. The Construction Manager represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder or under any Contract with the Owner. The Construction Manager further represents that no persons having any such interest shall be employed to perform those services.

§ 14.5.8 Non-discrimination. The Construction Manager shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age or physical handicap. The Construction Manager shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during
employment, without regard to their race, color, religion, sex, national origin, age or physical handicap. Such action shall include, but not be limited to, the following: (i) employment, upgrading, demotion or transfer; (ii) recruitment or recruitment advertising; (iii) layoff or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training, including apprenticeship. The Construction Manager shall post in conspicuous places, available to employees and applicants for employment notices setting forth the terms of this Equal Employment Opportunity/Nondiscrimination Clause and stating that all qualified candidates will receive consideration for employment without regard to race, color, religion, sex, national origin, age or physical handicap.

§ 14.5.9 MWBE Utilization. For purposes of this Section, "MWBE" refers to a business that is at least 51% owned by and whose daily operations are managed by individuals that are American ethnic minority group members and/ or women and are United States citizens or legal resident aliens. The Construction Manager shall comply with the Owner’s current MWBE and policies and procedures provided by the Owner to the Construction Manager in writing to the extent applicable to the Contract or the Project. Without limiting the foregoing, the Construction Manager shall use commercially reasonable efforts to meet the MWBE participation target equal to ten percent (10%) of the Contract Sum. Additionally, the Construction Manager shall provide to the Owner a written MWBE report with the Project’s close-out documents. The MWBE Report shall list the name of each MWBE firm, the scope of each MWBE firm’s work, the total amount paid to each MWBE firm, and the percentage of the Contract Sum paid to each MWBE firm.

§ 14.5.10 Policies and Procedures. The Construction Manager shall at all times comply, and the Construction Manager shall ensure that all of the Work at all times complies, with the Owner’s policies and procedures. While at any or on any of the Owner’s premises, the Construction Manager’s and Subcontractors’ employees, personnel, agents, shall comply with all lawful and reasonable requests, standard rules, and regulations of the Owner communicated to the Construction Manager regarding personal and professional conduct, including any security or privacy requirements, and shall otherwise conduct themselves in a businesslike manner. The Construction Manager shall not act (nor permit any omission) or provide Work in a manner which would be disruptive to the Owner, or which would jeopardize the health or safety of any other person. The Construction Manager shall not engage in any disruptive behavior or other verbal or physical conduct that interferes with any person’s ability to work in at the Owner’s premises or with any person providing services of any kind to, for, or on behalf of the Owner, whether such person is an employee, a contractor, or a volunteer.
§ 3.2.2 of the A201 has been amended, and §§ 3.2.2.1 to 3.2.2.4 added, as follows:

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the GMP Amendment by the Contractor is a representation that the Contractor has visited and inspected the site, become familiar with local conditions under which the Work is to be performed, correlated personal observations with requirements of the Contract Documents, and evaluated and satisfied itself as to the condition and limitations under which the Work is to be performed, including: (a) the location, condition, layout and nature of the Project site and surrounding areas, including conditions bearing upon ingress to and egress from the Project site, delivery, handling and storage of materials, disposal of waste, availability of water and electric power, ground water table or similar physical conditions of the ground, the character, quality and quantity of surface and sub-surface conditions and materials to be encountered, and the character of equipment and facilities needed prior to and during the execution of the Work; (b) generally prevailing climatic conditions, (c) anticipated labor supply and costs, (d) availability and cost of materials, tools and equipment, and (e) all other matters which can in any way affect the Work or the cost thereof under this Contract. The Contractor shall locate prior to performing any Work all utility lines, telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, and shall perform the Work in such a manner so as to avoid damaging any such lines, cables, and pipes. The Owner shall not be required to make any adjustment in either the Guaranteed Maximum Price or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section 3.2.1.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work: (a) carefully study and compare the various Contract Documents relative to that portion of the Work with the other Contract Documents and with information provided or otherwise reasonably available to the Contractor, including information available to or discovered by the Contractor in the course of overseeing or performing improvements to the Project site under separate agreement, (b) take field measurements of any existing conditions related to that portion of the Work, including existing structures, (c) confirm the accuracy of all grades, elevations, dimensions, and locations given on any Drawings and Specifications, and (d) in all cases of interconnection of its Work with existing or other work, verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor’s failure to so verify such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without additional cost to the Owner. Further, figures on Drawings take precedence over measurements by scale, and scaling is done at
the Contractor’s own risk. The Contractor shall promptly notify the Owner and Architect in writing of any errors, inconsistencies or omissions, including omissions from the Drawings and Specifications of figures that are necessary to a clear understanding of the Work, that are discovered by or made known to the Contractor as a request for information in such form as the Owner or Architect may require. If the Contractor discovers (or fails to discover because of the Contractor’s inattention to, or willful disregard of, the Contract Documents) any errors, inconsistencies, omissions, or discrepancies in the Contract Documents and proceeds with ordering of materials or construction of the Work without obtaining necessary clarification or instruction from the Architect and Owner, the Contractor shall assume full responsibility for such performance and shall bear all costs of correcting and resulting errors, inconsistencies, omissions, or discrepancies in the Work without adjustment of the Guaranteed Maximum Price or the Contract Time.

§ 3.2.2.1 The Owner shall not be responsible for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to existing underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems (collectively, “Underground Facilities”) at or contiguous to the Project site. The Contractor shall have full responsibility for: (a) reviewing and checking all such information and data; (b) locating all Underground Facilities; (c) coordination of the Work with the owners of such Underground Facilities during construction; and (d) the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work. If an Underground Facility is uncovered or revealed at or contiguous to the Project site which was not previously identified and accounted for by the Contractor, the Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency that threatens imminent damage to property or injury or death to person), identify the owner of such Underground Facility and give written notice to that owner and to the Owner and the Architect. If the Construction Manager has performed its obligations in the Contract Documents, including reviewing the Geotechnical Reports and other reports, tests, and drawings regarding Underground Facilities at or contiguous to the Project site and nevertheless encounters an Underground Facility that was not shown on any such reports and was not observable or discoverable through reasonable commercial means, then Construction Manager, as its sole remedy, may request to use the Contractor’s contingency for costs incurred in locating, relocating, or protecting or repairing Underground Facilities in accordance with the provisions of Section 3.2.4 of the Agreement.
§ 3.2.2.2 The Contractor shall be responsible for laying out the site Work, shall protect and preserve reference points and property monuments, and shall make no changes or relocations without the prior written approval of the Owner and the Architect. The Contractor shall report to the Owner and the Architect whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

§ 3.2.2.3 All grade lines, levels and bench marks shall be established and maintained by the Contractor. The Contractor shall establish bench marks in no less than two widely separated locations. Bench marks established by others shall be verified and may be used for the Work but shall be maintained in correct position, and if moved or damaged, shall be replaced by a registered civil engineer or land surveyor at the expense of the Contractor. The Contractor shall submit certification by civil engineer for established building corners and finish floor elevations prior to commencing placement of the slab on grade.

§ 3.2.2.4 The Contractor shall be responsible for assuring that fill on the Site shall consist of well to moderately-well graded soils consistent with the Drawings and Specifications and acceptable to the Architect, consisting of sands, silts, non-plastic clays and gravel and shall be free from detrimental quantities of debris, muck, peat, roots, grass, leaves, humus, sewage and other organic material, clods, lumps, balls of clay, rocks, trees, stumps, branches, twigs, limbs, trash, refuse, development debris, non-plastic soils and frozen materials (collectively, "Unsuitable Materials") in accordance with the Architect’s instructions. The Contractor shall remove all Unsuitable Materials and deposit them in areas specified by the Owner. No Unsuitable Material shall be located within the boundary of a building pad or on pond banks that abut or are adjacent to a building pad. The Contractor shall compact all fill areas within the Project site as necessary in order to comply with the structural requirements set forth in the Drawings and Specifications. The Contractor shall abide by recommendations in the Geotechnical Report unless otherwise specified in the civil Drawings for the Project or instructed in writing by the Architect.

19. § 3.7.4 of the A201 is amended as follows:

§ 3.7.4 Concealed or Unknown Conditions
If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents and are not the Contractor’s responsibility to identify and address under 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 and are not the Contractor’s responsibility to identify and address under the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than five (5) business days after first observance of the conditions. The Owner and/or Architect will promptly investigate such conditions. If the Contractor believes such conditions differ materially and are not the Contractor’s responsibility to identify and address under the Contract Documents and cause an increase or decrease in the Contractor’s cost of, or time required for, performance of any part of the Work, the Contractor shall submit a PCO, ROM and COR in accordance with Section 7.5. If the Contractor fails to perform the obligations of Section 3.7.4, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. Notwithstanding the foregoing or any other provision of the Contract Documents, the Contractor assumes full responsibility for the condition of the Project site based on having performed work on and around the site under a separate agreement for purposes that include preparation of the site for the Work of this Contract, and hereby expressly waives and disclaims any right or claim to adjustment of the Contract Sum or Contract Time by virtue of conditions at the site that might otherwise be deemed concealed or unknown conditions.

20. § 15.1.7 of the A201 is amended as follows:

**§ 15.1.7 Waiver of Claims for Consequential Damages**

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

1. damages incurred by the Owner for rental expenses, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
2. damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either Party’s termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. Additionally and notwithstanding anything to the contrary herein, the Parties expressly acknowledge and agree that this waiver of claims for consequential damages does not apply to any damages, liabilities, costs or expenses (i) proximately caused by either Party’s...
fraud, gross negligence or willful misconduct, (ii) covered by insurance required of the Contractor, or (iii) arising out of or resulting from construction defects, including losses of use, or to (iv) third party claims for which the Contractor has an indemnification obligation under the Contract.

21. Additions, deletions and other edits to the A133 and A201 may also be made to similar provisions of the A104.

C. Proposers should state whether they except to any of the foregoing contract document forms or modifications to said forms.

END OF ADDENDUM