

## **SUPPLEMENTARY CONDITIONS**

### **Supplementary Conditions**

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract between Owner and Design/Builder, **(EJCDC D-700, 2009 Edition)** and other provisions of the Contract Documents as indicated below. All provisions, which are not so amended or supplemented, remain in full force and effect.

The terms used in these Supplementary Conditions will have the meanings indicated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings indicated below, which are applicable to both the singular and plural thereof.

The Article and Paragraph numbering is the same as that used in the General Conditions, superseded by SC.

#### **SC-1.01.A.1.**

Delete paragraph 1.01.A.1 in its entirety.

#### **SC-1.01.A.2.**

Amend paragraph 1.01.A.2 so that it reads as follows:

2. *Agreement.* The written instrument which is evidence of the agreement between the Owner and Design/Builder covering the Work, also referred to as the “Design/Build Agreement” and the “Modified Agreement Between the Owner and Design/Builder on the Basis of a Stipulated Price.”

#### **SC-1.01.A.8.**

Amend paragraph 1.01.A.8 by deleting the words “...Request for...” and replace them with the word “Design/Builder’s.”

#### **SC-1.01.A.15.**

Delete paragraph 1.01.A.15 in its entirety and insert the following in its place:

15. *Design/Builder:* Branch Highways, Inc., a Virginia corporation.

#### **SC-1.01.A.28.**

Delete paragraph 1.01.A.28 in its entirety and insert the following in its place:

28. *Owner*: Town of Christiansburg, Virginia, a political subdivision of the Commonwealth of Virginia.

**SC-1.01.A.34.**

Amend paragraph 1.01.A.34 by deleting the words "...in response to the Request for Proposals . . ."

**SC-1.01.A.36.**

Delete paragraph 1.01.A.36 in its entirety.

**SC-1.01.A.47.**

Amend the second sentence in paragraph 1.01.A.47 so that paragraph 1.01.A.47 reads as follows:

47. *Work*: The entire design and construction or the various separately identifiable parts thereof required to be performed or furnished under the Contract Documents. Work includes and is the result of performing or furnishing all Design Professional Services and Construction specified, required, or indicated by the Contract Documents.

**SC-1.01.A.48.**

Amend paragraph 1.01.A.48 to add the words ", if appropriate," after the word "will" in the second sentence so that paragraph 1.01.A.48 reads as follows:

48. *Work Change Directive*: A written directive to Design/Builder, issued on or after the Effective Date of the Agreement and signed by Owner ordering an addition, deletion or revision in the Work, or responding to differing site conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will, if appropriate, be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

**SC-1.01.A.49**

Add the following after paragraph 1.01.A.48:

49. *Additional definitions*: The following terms have the meanings indicated when used in the Contract Documents:

*Adequate channel*: A channel with a defined bed and banks, or an

otherwise limited flow area (in the context of a stream restoration) that will convey the designated frequency storm event without unintentionally overtopping the channel banks or causing erosive damage to the channel bed or banks.

*Existing Conditions:* The approximate land cover and associated stormwater runoff conditions present as shown on the Existing Conditions Map.

*Future Conditions:* The expected land cover and associated stormwater runoff conditions based upon planned development and future land uses, in accordance with the Town of Christiansburg Future Land Use Map and the Future Conditions Map.

*Plans:* Any design or construction drawing, profile, or as-built; planting list; calculations, or reports related to the Project. Plans will include, but are not limited to, those documents prepared for or submitted to any federal or state agency for permit acquisitions, modifications, or terminations. The term “Plans” may be used interchangeably in some instances with “Drawings.”

*Predevelopment Conditions:* The approximate land cover and associated stormwater runoff conditions that were present when the Diamond Hills stormwater management basin design was approved in 1995. These conditions are depicted on the Predevelopment Conditions Map.

#### **SC-2.01.A.**

Delete paragraph 2.01.A in its entirety and insert the following in its place:

- A. Prior to commencement of construction, Design Builder shall deliver to Owner such Bonds or Irrevocable Letters of Credit as Design/Builder may be required to furnish in accordance with Paragraph 5.01.A.

#### **SC-2.02.**

Delete the third sentence in paragraph 2.02 in its entirety.

#### **SC-2.03.A.**

Amend the second sentence in paragraph 2.03.A so that paragraph 2.03.A reads as follows:

- A. Design/Builder shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on

which the Contract Times commence to run without Owner's prior written consent.

#### **SC-2.06.A**

Amend paragraph 2.06.A (prior to paragraph 2.06.A.1) by adding a new second sentence and revising the current second sentence, so that paragraph 2.06A reads as follows:

A. At least ten days before submission of the first Application for Payment (unless otherwise provided in the Contract Documents), Design/Builder will arrange a conference attended by Design/Builder, Owner and others as appropriate to review for acceptability the schedules submitted in accordance with Paragraph 2.04.B. Following the conference, Owner shall have ten days to accept the schedules or convey to Design/Builder any written comments. If no written comments are received by the Design/Builder within such ten-day period, the schedules shall be deemed accepted. If written comments are received by Design/Builder within such ten-day period, Design/Builder shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Design/Builder until acceptable schedules are submitted to Owner.

#### **SC-3.02.**

Amend 3.02, *Reference Standards*, by adding the following new paragraph immediately after paragraph 3.02.A.2:

3. Design/Builder shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, Owner shall not be responsible for monitoring Design/Builder's compliance with any Laws or Regulations.

#### **SC-3.05.**

Delete 3.05, *Reuse of Documents*, in its entirety and insert the following in its place:

##### *3.05 Ownership and Reuse of Documents*

- A. Ownership of Contract Documents. One reproducible copy each of the Drawings, Specifications, tracings, construction plans, specifications, maps, as-builts, and record drawings prepared or obtained under the terms of the Contract shall be delivered to and become the property of the Owner. Basic survey notes and sketches, charts, computations and other data shall be made available upon reasonable request to the Owner. However, such documents are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project. Any reuse or any continued use after any termination without written verification or adaptation by

Design/Builder for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Design/Builder and, to the fullest extent permitted by Laws or Regulations, Owner shall indemnify and hold harmless Design/Builder and Subcontractors from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Should Owner desire such verification or adaptation from Design/Builder, Design/Builder shall be entitled to compensation at rates to be agreed upon by Owner and Design/Builder.

- B. Right to Inspect Contract Documents. Any authorized representative of the Owner shall, at all reasonable times upon one business day's advance written notice to Design/Builder, have a right to inspect and examine the Drawings, Specifications and other Contract Documents at Design/Builder's office during the period of their preparation provided that Owner does not unreasonably interfere with Design/Builder's work.
- C. Right to Inspect Design/Builder's Records. The Design/Builder agrees that the Owner, and any approving federal or state agency, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Design\Builder which are directly pertinent to the Work with respect to this Project for the purpose of making audits, examinations, and excerpts, but only as appropriate in connection with the Work performed on a reimbursable cost basis, issuance of Change Orders (other than all or a portion of Change Orders issued on a lump sum basis), and the resolution of disputes, and such records shall be maintained by Design/Builder for at least three years after Owner has made final payment to Design/Builder.

**SC-3.06.A.**

Delete the first sentence of paragraph 3.06.A so that paragraph 3.06.A reads as follows:

- A. Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

**SC-3.06.B.**

Amend the first sentence of paragraph 3.06.B so that paragraph 3.06.B reads as follows:

- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that unless notification of errors is given within 60 days, the receiving party shall be deemed to have accepted the data thus

transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

**SC-4.01.B.**

Delete paragraph 4.01.B in its entirety.

**SC-4.03.A.**

Amend paragraph 4.03.A so that paragraph 4.03.A reads as follows:

- A. Design/Builder shall be responsible for laying out the Work and shall protect and preserve any existing reference points and property monuments on the Site, and shall make no changes or relocations without the prior written approval of Owner. Design/Builder shall report to Owner whenever (i) it discovers that any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and (ii) if Design/Builder or anyone performing work on its behalf lost or destroyed reference points or property monuments. Design/Builder shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel. In the event the Owner or any person acting on its behalf or under its control is responsible for the loss, destruction, or misplacement of a reference point or property monument, then the Design/Builder shall be allowed an adjustment in the Contract Price for reasonable costs associated with the replacement or relocation thereof.

**SC-4.04.C.**

Amend the last sentence of paragraph 4.04.C to delete “either party” and insert “Design/Builder” so that paragraph 4.04.C reads as follows:

- C. Design/Builder shall not be required to resume Construction in connection with such Hazardous Environmental Condition or in any such affected area until after Owner has obtained any required permits related thereto and delivered to Design/Builder written notice (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Construction, or (ii) specifying any special conditions under which such Construction may be resumed safely. If Owner and Design/Builder cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Construction stoppage or such special conditions under which Construction is agreed to be resumed by Design/Builder, Design/Builder may make a Claim therefor as provided in Article 9.

**SC-4.04.D.**

Delete paragraph 4.04.D in its entirety and insert the following in its place:

- D. If after receipt of such special written notice Design/Builder does not agree to resume Construction based on a reasonable belief it is unsafe, or does not agree to resume such Construction under such special conditions, then Owner may order such portion of the Work that is related to such Hazardous Environmental Condition to be deleted from the Work, with the Contract Price and/or Contract Time to be adjusted accordingly. If Owner and Design/Builder cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the Work, then Design/Builder may make a Claim therefor as provided in Article 9. Owner may also have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

**SC-5.01.A.**

Delete paragraph 5.01.A in its entirety and insert the following in its place:

- A. Design/Builder shall furnish performance and payment Bonds and other Bonds as required by the Agreement, each in a form approved by Owner as security for the faithful performance of Design/Builder's obligations under the Contract Documents. Design/Builder shall also provide an Erosion and Sedimentation Control Bond in an amount acceptable to the Owner. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents.

**SC-5.03.B.**

Delete paragraph 5.03.B in its entirety.

**SC-5.03.E.**

Amend paragraph 5.03.E to delete the word "granted" and add "or otherwise" so that paragraph 5.03.E reads as follows:

- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Design/Builder's liability under the indemnities to Owner and others or otherwise in the Contract Documents.

**SC-5.04.**

Delete 5.04, *Design/Builder's Insurance* in its entirety and replace it with the following:

*5.04 Design/Builder's Insurance*

- A. Design/Builder shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth

below which may arise out of or result from Design/Builder's performance of the Work and Design/Builder's other obligations under the Contract Documents, whether it is to be performed by Design/Builder, any Subcontractor or Supplier or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. Claims under workers' compensation, disability benefits and other similar employee benefit acts;
2. Claims based on the provision of professional services, including but not limited to the design services performed by Design/Builder, to be insured under a professional liability insurance policy or endorsement;
3. Claims for damages because of bodily injury, occupational sickness or disease, or death of Design/Builder's employees;
4. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Design/Builder's employees;
5. Claims for damages insured by reasonably available personal injury liability coverage which are sustained (i) by any person as a result of an offense directly or indirectly related to the employment of such person by Design/Builder, or (ii) by any other person for any other reason;
6. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom;
7. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle .

B. The policies of insurance required by paragraph 5.04.A shall:

1. With respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.7 inclusive, be written on an occurrence basis, include as additional insureds Owner and Owner's officers, agents, and employees and any other persons or entities indicated in the Contract Documents (subject to any customary exclusion in respect of professional liability), all of whom shall be listed as additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
2. Include at least the specific coverages and be written for not less than the limits of liability provided in the Contract Documents or required by Laws or Regulations, whichever is greater;

3. Include contractual liability insurance covering Design/Builder's indemnity obligations under Paragraphs 6.11 and 6.21;
  4. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days' prior written notice has been given to Owner and each other additional insured indicated in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Design/Builder pursuant to Paragraph 5.03 will so provide);
  5. Remain in effect at least until final payment and at all times thereafter when Design/Builder may be correcting, removing or replacing defective Construction in accordance with Paragraphs 12.06 and 12.07; and
  6. Include completed operations coverage:
    - a. Such insurance shall remain in effect for two years after final payment.
    - b. Design/Builder shall furnish Owner and each other additional insured indicated in the Contract Documents to whom a certificate of insurance has been issued evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.
- C. The limits of liability for the insurance required hereunder shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:
1. Workers' Compensation, and related coverages under Paragraph 5.04:
 

a. State:	Statutory
b. Applicable Federal (e.g., Longshoreman's):	Statutory
c. Employer's Liability:	\$500,000
  2. Design/Builder's General Liability which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Design/Builder:
 

a. General Aggregate	\$2,000,000
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- b. Products - Completed Operations Aggregate \$2,000,000
  - c. Personal and Advertising Injury \$1,000,000
  - d. Each Occurrence (Bodily Injury and Property Damage) \$1,000,000
  - e. Property Damage liability insurance will provide Explosion, Collapse, and Under-ground coverages where applicable.
  - f. Excess/Umbrella Liability (Minimum Single Limit) \$2,000,000
- 3. Automobile Liability :
  - a. Bodily Injury:
    - Each person \$1,000,000
    - Each Accident \$1,000,000
  - b. Property Damage:
    - Each Accident \$1,000,000
  - c. Combined single Limit of \$1,000,000
- 4. The Contractual Liability coverage shall provide coverage for not less than the following amounts:
  - a. Bodily Injury:
    - Each Accident \$1,000,000
    - Annual Aggregate \$1,000,000
  - b. Property Damage:
    - Each Accident \$500,000
    - Annual Aggregate \$500,000
- 5. The Professional Liability coverage required hereunder shall provide coverage for not less than the following amounts:
  - a. Per Claim \$1,000,000
  - b. General Aggregate \$2,000,000

D. The general liability insurance shall include the following coverages:

1. Comprehensive Form
  2. Premises - Operations
  3. Collapse Hazard
  4. Underground Hazards
  5. Products/Completed Operations Hazard
  6. Contractual Liability Insurance
  7. Broad Form Property Damage, including Completed Operations
  8. Independent Contractors (Contractor's Protective Liability)
  9. Personal Injury (all insuring agreements), deleting the exclusion
- E. Design/Builder's Worker's Compensation Insurance is required by federal, state, and municipal laws for the protection of all Design/Builder's employees working on or in connection with the project, including broad form all states and voluntary compensation coverages and employer's liability coverage. Employer's liability shall be \$100,000 minimum.
- F. The Design/Builder shall require his insurance agent to certify on the insurance certificate that the insurance coverage specified by these supplementary conditions is fully in effect, both in scope and amount. If insurance coverage is affected with more than one company, the individual certificates shall identify the items of insurance which the individual companies cover. The insurance certificate shall contain a provision that coverage afforded under the policies will not be canceled or materially changed unless at least 30 days prior written notice has been given to the Owner.
- G. All insurance shall be written by insurance companies licensed to do business in the Commonwealth of Virginia.
- H. The Design/Builder shall provide the Owner with copies of all required insurance certificates.
- I. The Owner, its officers, agents, and employees shall be listed as Additional Insureds on the General Liability, Excess Liability Insurance and Automobile Policies.

**SC-5.06.D.**

Amend paragraph 5.06.D to delete the words “within the limits of such amounts” from the second sentence so that paragraph 5.06.D reads as follows:

- D. Owner shall not be responsible for purchasing and maintaining any property insurance to protect the interests of Design/Builder, Subcontractors, Suppliers, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Design/Builder, Subcontractor, or others

suffering any such loss and if any of them wishes property insurance coverage each may purchase and maintain it at the purchaser's own expense.

**SC-5.07.**

Delete 5.07, *Waiver of Rights*, in its entirety.

**SC-5.10.A.**

Delete 5.10.A in its entirety.

**SC-6.01.B.6.**

Delete paragraph 6.01.B.6 in its entirety and replace it with the following:

6. Furnish the preliminary design documents to and review them with Owner within the times indicated in the schedules described in Paragraph 2.06; and

**SC-6.02.B.**

Amend paragraph 6.02.B to add the words “acceptable to owner” so that paragraph 6.02.B reads as follows:

- B. At all times during the progress of Construction, the Design/Builder shall assign a competent resident superintendent acceptable to Owner who shall not be replaced without written notice to Owner except under extraordinary circumstances.

**SC-6.03.B.**

Amend paragraph 6.03.B to add the word “prior” so that paragraph 6.03.B reads as follows:

- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Construction at the Site shall be performed during regular working hours, and Design/Builder will not permit overtime work or the performance of Construction on a Saturday, Sunday, or any legal holiday without Owner's prior written consent (which will not be unreasonably withheld).

**SC-6.05.A.2.**

Amend paragraph 6.05.A.2 to delete the word “or” at the end of the sentence so that paragraph 6.05.A.2 reads as follows:

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 11.02. Such adjustments may only be made by a Change Order.

**SC-6.06.E.**

Amend paragraph 6.06.E to add the words “applicable to the Project” to the second sentence so that paragraph 6.06.E reads as follows:

- E. All Work performed for Design/Builder by a Subcontractor or Supplier will be pursuant to an appropriate Design Subagreement or Construction Subagreement between Design/Builder and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance applicable to the Project, the agreement between the Design/Builder and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Design/Builder, Owner's Consultant, and all other loss payees (and their officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Design/Builder will obtain the same.

**SC-6.07.C.**

Delete 6.07.C, in its entirety.

**SC-6.08.A.**

Amend paragraph 6.08.A so that paragraph 6.08.A reads as follows:

- A. Design/Builder shall obtain and pay for all necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Work. Owner shall make reasonable efforts to assist Design/Builder, when necessary, in obtaining such permits, licenses and approvals at no cost to Owner. Design/Builder shall pay all governmental charges and inspection fees necessary for the performance of the Work.

**SC-6.09.C.**

Amend paragraph 6.09.C so that paragraph 6.09.C reads as follows:

- C. Changes in Laws or Regulations occurring after the Effective Date having an effect on the cost or time of performance will, if appropriate, be the subject of a change in Contract Price or Contract Times.

**SC-6.12.A.**

Amend the last sentence of paragraph 6.12.A so that paragraph 6.12.A reads as follows:

- A. Design/Builder shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders and Work Change Directives in good order and annotated to show all changes made during performance of the Work. These record documents together with all approved Submittals will be available to Owner for reference. Upon completion of the Work, these record documents and Submittals will be delivered to Owner, who shall have rights in the record documents as set forth in Paragraph 3.05 above.

**SC-6.13.C.**

Delete the second sentence of paragraph 6.13.C so that paragraph 6.13.C reads as follows:

- C. Design/Builder shall comply with the applicable requirements of Owner's safety programs made known to Design/Builder by Owner, if any.

**SC-6.13.F.**

Amend paragraph 6.13.F so that paragraph 6.13.F reads as follows:

- F. Design/Builder's duties and responsibilities for safety and for protection of the construction shall continue until such time as all the Work is final and completed and Owner has issued a notice to Design/Builder in accordance with Paragraph 13.08.B that the Work is final and acceptable.

**SC-8.01.**

Add the following at the end of paragraph 8.01, General:

- 8. Furnish the Site including acquiring all necessary stormwater, drainage, and/or public utility easements for the Work. Owner shall perform any required public utility inspections;
- 9. Notify the public of any planned water system interruption or street closures; and

10. Review Submittals subject to Owner review pursuant to Paragraph 6.17.A.

**SC-9.01.A.**

Amend paragraph 9.01.A so that paragraph 9.01.A reads as follows:

*9.01 Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work within the general scope of the Contract by a Change Order or a Work Change Directive. Upon receipt of any such document, Design/Builder shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided). A change in the Contract Price or the Contract Times shall be accomplished only by a Written Amendment, a written Change Order, or a written Work Change Directive.

**SC-9.04.A.**

Amend the first sentence in 9.04.A so that it reads as follows:

- A. Owner and Design/Builder shall execute appropriate Change Orders otherwise in accordance with the Contract Documents covering:
1. Changes in the Work which are (i) ordered by Owner pursuant to Paragraph 9.01, (ii) required because of acceptance of defective Construction under Paragraph 12.08 or Owner's correction of defective Work under Paragraph 12.09 or (iii) agreed to by the parties; and
  2. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive.

**SC-9.05.A.**

Amend paragraph 9.05.A so that it reads as follows:

*9.05 Notice to Sureties*

- A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Design/Builder's

responsibility. Design/Builder shall adjust the amount of each applicable Bond to reflect the effect of any such change.

**SC-10.01.A.5.**

Amend paragraph 10.01.A.5 to delete the word “attorneys” so that paragraph 10.01.A.5 reads as follows:

5. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, and accountants) employed for services specifically related to the Work.

**SC-12.03.C.**

Amend paragraph 12.03.C so that paragraph 12.03.C reads as follows:

C. If any Construction (or the construction work of others) that is required to be inspected, tested, or approved is covered by Design/Builder without written concurrence of Owner, then Design/Builder shall, if requested by Owner, uncover such Construction for observation.

**SC-12.09.B.**

Amend paragraph 12.09.B so that it reads as follows:

B. In exercising the rights and remedies under this Paragraph 12.09 Owner shall proceed expeditiously. In connection with such corrective and remedial action, Owner may exclude Design/Builder from all or part of the Site, take possession of all or part of the Construction, and suspend Design/Builder's services related thereto, and incorporate in the Construction all materials for which Owner has paid Design/Builder. Design/Builder shall allow Owner, Owner's Consultant, Owner's representatives, agents, employees, and other design/builders or contractors access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

**SC-12.09.C.**

Amend paragraph 12.09.C so that it reads as follows:

C. All costs, losses, and damages (included but not limited to fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs and all costs of repair or replacement of work of others) incurred or sustained by Owner in exercising such rights and remedies under this Paragraph 12.09 will be charged against Design/Builder and a Change Order will, as appropriate, be issued incorporating the necessary revisions in the Contract Documents, and Owner will, as appropriate, be entitled to an appropriate decrease in the Contract Price.

**SC-13.00.**

Amend Article 13 to add a new paragraph, 13.00, immediately before paragraph 13.01 to read as follows:

13.00 *Agreement Controls.* In the event of a conflict regarding progress payments between the provisions of this Article 13 and the Modified Agreement between Owner And Design/Builder On The Basis Of A Stipulated Price (“Agreement”), the Agreement shall govern.

**SC-13.02.**

Amend 13.02, Application for Progress Payment, to add two new paragraphs immediately after 13.02.C to read as follows:

D. Progress payments shall conform to the requirements specified in the Agreement, except as specified in this Article 13 as to requirements not covered in the Agreement.

**SC-13.06.A.4.**

Delete paragraph 13.06.A.4 in its entirety.

**SC-13.08.A.3.**

Amend paragraph 13.08.A.3 to reads as follows:

3. In lieu of such releases or waivers of Liens specified in Paragraph 13.08.A.2 and if approved by Owner, Design/Builder may furnish receipts or releases in full and an affidavit of Design/Builder that: (i) the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and (ii) all payrolls, material and equipment bills and other indebtedness connected with the Work for which Owner might in any way be responsible, or which in any way might result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Owner may, in its sole discretion, elect to accept from Design/Builder a Bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

**SC-13.10.A.**

Amend paragraph 13.10.A.1 to read as follows:

A. The making and acceptance of final payment will constitute:

1. A waiver of all Claims by Owner against Design/Builder, except Claims arising from unsettled Liens, from defective design or Construction, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Design/Builder's continuing obligations under the Contract Documents; and

**SC-14.01.**

Amend 14.01, Owner May Suspend Work, to add a new paragraph, 14.01.B, immediately after 14.01.A to read as follows:

*14.01 Owner May Suspend Work*

- A. Owner may suspend Work due to unsafe Work conducted by Design/Builder which is confirmed by subsequent inspection by the governing safety agency (State, Federal, or local). In the event the Work is suspended due to unsafe Work, Design/Builder shall not be allowed any adjustment in Contract Price or extension of Contract Time attributed to this delay.

**SC-14.03.B.**

Delete 14.03.B in its entirety and replace it with the following:

- B. Upon receipt of a notice of termination for convenience, Design/Builder shall as soon as practicable, in accordance with instructions from Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this Paragraph 14.03.B, provided that all such nondisputed amounts due shall be paid by the Owner to Design/Builder in timely fashion in accordance with the Contract Documents:
  1. Cease operations as specified in the notice;
  2. Place no further orders and enter into no further subcontracts for materials, labor, services, or facilities except as necessary to complete continued portions of the Contract;
  3. Terminate all subcontracts and orders to the extent they relate to the Work terminated;
  4. Proceed to complete the performance of Work not terminated; and
  5. Take actions that may be necessary, or that Owner may reasonably direct, for the protection and preservation of the terminated Work.

**SC-14.04.A.**

Amend paragraph 14.04.A to reads as follows:

- A. If, through no act or fault of Design/Builder, the Work is suspended for a period of more than 90 days by Owner or under an order of court or other public authority, or Owner fails to act on any Application for Payment properly submitted in accordance with the Contract Documents within thirty days after it is submitted or Owner fails for thirty days to pay Design/Builder any sum finally determined to be due, then Design/Builder may, upon seven days' written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Agreement and recover from Owner payment on the same terms as provided in Paragraph 14.03.A. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if Owner has failed for 30 days to pay Design/Builder any sum finally determined to be due, Design/Builder may upon seven days' written notice to Owner stop the Work until payment is made of all such amounts due Design/Builder, including interest thereon. The provisions of this Paragraph 14.04.A are not intended to preclude Design/Builder from making Claim under Article 9 for an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Design/Builder's stopping Work as permitted by this paragraph.

**SC-16.05.A.**

Delete 16.05.A in its entirety and replace it with the following:

- A. By virtue of entering into this agreement the Owner and Design/Builder submit to a court of competent jurisdiction in Montgomery County, Virginia, and further agree that this agreement is controlled by the laws of the Commonwealth of Virginia and that all claims, disputes, and other matters shall only be decided by such a court according to the laws of the Commonwealth of Virginia. The rights and remedies of the parties provided in this Section are in addition to any other rights and remedies provided by law or under this agreement and a party may pursue any and all such rights and remedies against the other as it deems appropriate.

**SC-16.06 through 16.13.**

Immediately after 16.05.A, add the following paragraphs:

**16.06 *Subcontractors***

- A. No portion of the work shall be subcontracted without prior consent of the Owner, which consent shall not be withheld unreasonably; provided, however, that any subcontractor shall be deemed to have the Owner's consent if the Owner fails to respond within 15 days of notification by Design/Builder. The Design/Builder will remain fully liable and responsible for all work done by any subcontractor and assure compliance with all requirements of the contract. The Design/Builder shall be fully responsible to the Owner for all acts and

omissions of all succeeding tiers of subcontractors or agents performing or furnishing any of the work just as the Design/Builder is responsible for its own acts and omissions.

#### *16.07 Non-Discrimination*

A. During the performance of this agreement, the Design/Builder agrees as follows:

1. The Design/Builder will not discriminate against any subcontractor, employee, or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by State law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Design/Builder. The Design/Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. The Design/Builder, in all solicitations or advertisements for employees placed by or on behalf of the Design/Builder, will state that such Design/Builder is an equal employment opportunity employer.
3. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
4. The Design/Builder will include the provisions of the foregoing subsections A (1, 2, and 3) in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or Design/Builder.

#### *16.08 Drug Free Workplace*

A. During the performance of this agreement, the Design/Builder agrees to:

1. Provide a drug-free workplace for the Design/Builder's employees;
2. Post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Design/Builder's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and
3. State in all solicitations or advertisements for employees placed by or on behalf of the Design/Builder that the Design/Builder maintains a

drug-free workplace; and include the provisions of the foregoing clauses in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or Design/Builder.

4. For the purpose of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to Design/Builder, the employees of who are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the agreement.

#### *16.09 Unauthorized Aliens*

- A. The Design/Builder does not, and shall not during the performance of the contract for goods and services in the Commonwealth of Virginia; knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

#### *16.10 Debarment Status*

- A. By signing this agreement the Design/Builder certifies that it is not currently debarred from submitting proposals on contracts by any agency of the Commonwealth of Virginia or any local government entity within the Commonwealth of Virginia, nor is it an agent of any person or entity that is currently debarred from submitting proposals on contracts by any agency of the Commonwealth of Virginia or any local government entity within the Commonwealth of Virginia.

#### *16.12 Proprietary Information*

- A. Trade secrets or proprietary information submitted by Design\Builder shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Design/Builder must invoke the protection of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary and otherwise comply with all requirements for exemption from disclosure.

#### *16.13 Authority to Transact Business in the Commonwealth*

- A. By endorsement on this agreement the Design/Builder certifies that it is authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise provided in the Code of Virginia, as amended.

**End of Section**