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MODIFIED AGREEMENT
BETWEEN OWNER AND DESIGN/BUILDER
ON THE BASIS OF A STIPULATED PRICE

Prepared by



Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
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This Agreement has been prepared for use with the Standard General Conditions of the Contract Between Owner and Design/Builder (EJCDC D-700, 2009 Edition). Their provisions are interrelated and a change in one may necessitate a change in the other. The instructions and comments contained in the Guide to Use of EJCDC Design/Build Documents (EJCDC D-001, 2009 Edition), including guides to preparation of the Request for Proposal, the Proposal Form, and Supplementary Conditions, are also carefully interrelated with the wording of this Agreement.

Note to User

Before entering into this Agreement, it is recommended that the parties determine if applicable Laws and Regulations prohibit or require alterations in the contemplated contractual arrangements and the assignments of responsibilities for a design/build project. Check competitive bidding, contractor licensing, design professional licensing, and professional practice Laws and Regulations, among others.

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**MODIFIED AGREEMENT
BETWEEN OWNER AND DESIGN/BUILDER
ON THE BASIS OF A STIPULATED PRICE**

THIS AGREEMENT is by and between the Town of Christiansburg, Virginia, a political subdivision of the Commonwealth of Virginia ("Owner") and Branch Highways, Inc., a Virginia corporation, ("Design/Builder").

In consideration of the mutual covenants and obligations contained herein, Owner and Design/Builder agree as follows:

ARTICLE 1 - WORK

1.01. Design/Builder shall complete all design and construction services, and provide all material, equipment, tools, and labor, necessary to complete the Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

A. Phase I. Diamond Hills Stream Mitigation and Stormwater Management Facility design and construction, generally consisting of the following:

1. Phase Ia. Design/Builder shall design and construct a stream restoration project within the Diamond Hills Drainage Basin ("Diamond Hills Stream Restoration, a/k/a Diamond Hills Park Stream Restoration") as specified, described, and indicated in the Contract Documents and approved as to final construction by all necessary federal, state, and local authorities, including, without limitation, the United States Army Corp of Engineers, the Virginia Department of Environmental Quality, and the Town of Christiansburg. Phase Ia Work shall include providing professionally stamped design drawings and specifications, construction, construction administration, inspections, permit acquisition, and permit monitoring services as necessary and providing all materials, equipment, and labor required to complete the Work.

2. Phase Ib. Design/Builder shall provide an Overall Stormwater Management Plan for the Diamond Hills Drainage Basin ("Plan"). The Plan will include all calculations to determine predevelopment, existing, and future development runoff rates within the Diamond Hills Drainage Basin. The Plan will incorporate the Diamond Hills Stream Restoration as described herein and will determine if additional stormwater management facilities are necessary to meet required runoff rates. The Plan will not address regulatory water quality requirements unless required by a regulatory permitting agency. The Plan shall be submitted to the necessary federal, state and local authorities for review and approval prior to Phase Ic.

3. Phase Ic. Design/Builder shall design and construct an upstream stormwater management facility within the Diamond Hills Drainage Basin ("Stormwater Management Facility") as specified, described, and indicated in the Contract Documents and approved as to final construction by all permitting authorities, the Town of Christiansburg and the Virginia Department of Conservation and Recreation. Phase Ic Work shall include providing

professionally stamped design drawings and specifications, as-built drawings, construction, construction administration, construction fill monitoring and testing, inspections, and permit acquisition as necessary, hauling of borrow material, and all materials, equipment, and labor required to complete the Work. The design shall be based on the design data and recommendations included in the Overall Stormwater Management Plan provided in Phase Ib.

B. Phase II. Independence Boulevard Culvert Replacement.

Design/Builder shall design and construct a culvert replacement project within the Diamond Hills Drainage Basin ("Channel Improvements at Independence Boulevard") as described and indicated in the Contract Documents and approved for final construction by the United States Army Corp of Engineers, the Virginia Department of Environmental Quality, and the Virginia Department of Conservation and Recreation including providing professionally stamped design drawings and specifications, subsurface investigation and engineering, construction, construction administration, inspections, material testing, geotechnical design and testing, permit acquisition, and permit monitoring services. The culvert replacement Work includes the Alternate Add-On Remove and Replace Waterline and the Alternate Add-On Asphalt Paving as set forth in Design/Builder's solicited proposal, "Channel Improvements at Independence Boulevard," Exhibit E.

C. Phase III. Post-construction Monitoring.

Design/Builder shall perform and meet all monitoring and other regulatory permit obligations at no cost to Owner for the length of time required by the permits. Design/Builder shall provide to Owner electronic and hard copies of all monitoring documentation at the time such documentation is submitted to regulatory authorities. Design/Builder shall also provide Owner with a Schedule for the monitoring period when it becomes available.

ARTICLE 2 - THE PROJECT

2.01. The Project, of which the Work under the Contract Documents may be the whole or only a part, is generally described as follows:

The Project, "Diamond Hills Drainage Basin Stormwater Improvements," generally consists of the following:

Phase I, Diamond Hills Stream Restoration, as described in Design/Builder's PPEA Unsolicited Proposal entitled, "Diamond Hills Stream Restoration," dated October 13, 2010, includes the restoration of an unnamed perennial stream, a tributary of Crab Creek, within the Diamond Hills Park development, located on property owned by the Town of Christiansburg south of Independence Boulevard and west of Franklin Street. The restoration of the tributary is designed to alleviate various impacts associated with the existing stream including degraded aquatic habitat, flooding, channel incision, bank erosion and instability, sedimentation, fixed grade controls such as utility lines, and inadequate vegetated buffers. This phase also includes the construction of an upstream Stormwater Management Facility draining to the unnamed tributary of Crab Creek to improve drainage and alleviate potential flooding issues.

Phase II, Channel Improvements at Independence Boulevard, as described in Design/Builder's PPEA Solicited Proposal entitled, "Channel Improvements at Independence Boulevard," dated September 9, 2011, includes the replacement of three 90 feet long, 72 inch corrugated metal culverts under Independence Boulevard with a 8' by 25' (approximately) structural arch culvert for a length of 90 feet.

The new culvert should improve the overall watershed and reduce the flooding effects of large storms due to the additional capacity of the new culvert.

Phase III, Post-construction monitoring shall be conducted at the Stream Restoration Site as required by permitting authorities.

ARTICLE 3 - CONTRACT TIMES

3.01. *Time of the Essence*

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

3.02. *Date of Commencement and Contract Period*

- A. The Work shall commence immediately upon Design/Builder's receipt of the executed Contract Documents, unless the parties mutually agree otherwise in writing. The Work set forth in the Contract Documents is to be completed according to the Project Progress Schedule and no later than 18 months after the Effective Date set forth herein (Contract Period) except for any Phase III Work which is not able to be completed within such Contract Period unless the parties mutually agree otherwise in writing.

3.03. *Completion Dates*

- A. Substantial Completion Dates. The Design/Builder shall substantially complete the Work as set forth in the Project Progress Schedule.
- B. Interim Milestone Dates. Interim Milestones and/or Substantial Completion of identified portions of the Work shall be achieved by the dates specified in the Project Progress Schedule.
- C. Final Completion. Final completion of the Work, and any part thereof, shall be achieved as expeditiously as reasonably practicable, but in no event, later than sixty (60) days after Substantial Completion of the Work or designated part of the Work (the last day of such sixty (60) day period being referred to as the "Final Completion Date."
- D. Adjustments. The scheduled completion dates set forth herein may be subject to adjustment in accordance with the General Conditions of the Contract. Such adjustments shall also include an extension of the Contract time for any part of the Work in the event a permit or permitting agency requires a later completion date for such Work.

3.04. *Liquidated Damages (applicable to Phase II Work only)*

- A. Design/Builder and Owner recognize that time is of the essence as stated in Paragraph 3.01 above, and that Owner will suffer financial loss if the Phase II Work is not completed within the times specified in Paragraph 3.02.A above, plus any extensions thereof allowed in accordance with the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal, arbitration, or similar proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Design/Builder agree that as liquidated damages for delay (but not as a penalty), Design/Builder shall pay Owner \$250.00 for each day that expires after the time specified in Paragraph 3.03.A

above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Design/Builder shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Design/Builder shall pay Owner \$250.00 for each day that expires after the time specified in Paragraph 3.03.C for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 4 - CONTRACT PRICE

4.01. Owner shall pay Design/Builder for completion of the Work in accordance with the Contract Documents as set forth below:

- A. Phase Ia, Diamond Hills Stream Restoration, a Lump Sum in the total amount of \$0.00 (No Dollars and 00/100).
- B. Phase Ib, Overall Stormwater Management Plan, a Lump Sum in the total amount of \$15,000.00 (Fifteen Thousand Dollars and 00/100).
- C. Phase Ic, Stormwater Management Facility, a Lump Sum in the total amount of \$82,500.00 (Eighty Two Thousand, Five Hundred Dollars and 00/100).
- D. Phase II, Independence Boulevard Culvert Replacement, a Lump Sum in the amount of \$367,888.00 (Three Hundred Sixty-Seven Thousand Eight Hundred and Eighty-Eight Dollars and 00/100).
- E. Phase III, Post-construction Monitoring, a Lump Sum in the amount of \$0.00 (No Dollars and 00/100).

ARTICLE 5 - PAYMENT PROCEDURES

5.01. Design/Builder shall submit and Owner will process Applications for Payment in accordance with Article 13 of the General Conditions.

- A. *Progress Payments; Retainage:* Owner shall make progress payments on account of the Contract Price on the basis of Design/Builder's Applications for Payment which are to be submitted on or about the 15th day of each month during performance of the Work. All such payments will be measured by the Schedule of Values established in Paragraph 2.06.A.3 of the General Conditions. The amount of retainage with respect to progress payments for Phase Ic and Phase II Work will be 5%.
- B. *Final Payment.* Upon final completion and acceptance of each Phase of the Work in accordance with paragraph 13.08 of the General Conditions, Owner shall pay the remainder of the Contract Price associated with such Phase, including any retainage.

ARTICLE 6 - INTEREST

6.01. All moneys not paid when due as provided in Article 13 of the General Conditions shall bear interest at the rate of 1 percent per annum.

ARTICLE 7 - DESIGN/BUILDER'S REPRESENTATIONS

7.01. To induce Owner to enter into this Agreement, Design/Builder makes the following representations:

- A. Design/Builder has examined and carefully studied the Contract Documents and the other related data, but excluding the documents described in paragraph 8.01.K.
- B. Design/Builder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Design/Builder is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Design/Builder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified or made available by Owner and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified or made available by Owner.
- E. Design/Builder is aware of the general nature of work to be performed by Owner and others, if any, at the Site that relates to the Work as indicated in the Contract Documents.
- F. Design/Builder has considered the information known to Design/Builder; information commonly known to design/builders doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Design/Builder, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Design/Builder's safety precautions and programs.
- G. Based on the information and observations referred to above, Design/Builder does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for it to enter into this Contract for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- H. Design/Builder has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Design/Builder has discovered in the Contract Documents, and the written resolution thereof by Owner is acceptable to Design/Builder.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - CONTRACT DOCUMENTS

8.01. The Contract Documents consist of the following:

- A. The Comprehensive Agreement with Exhibits A through J, which includes therein this Modified Agreement, the Standard General Conditions, and Supplementary Conditions.
- B. United States Army Corp of Engineer Regulatory Permit, identified as Exhibit 1.
- C. Conceptual Documents including Diamond Hills Stream Restoration, Concept Plan, Christiansburg, Virginia, dated August 23, 2010 prepared by Balzar and Associates, Inc., Exhibit 2.
- D. Preliminary Construction Specifications entitled Stream Restoration Design Report and Specifications, Diamond Hills Park, Christiansburg, Virginia dated June 17, 2011 prepared by Balzar and Associates, Inc., PJ: B1000031.00, Exhibit 3.
- E. Preliminary Diamond Hills Park Stream Restoration Drawings, dated June 17, 2011, prepared by Balzar and Associates, Inc., Exhibit 4.
- F. Diamond Hills Park Stream Restoration Project, Predevelopment Conditions Map, prepared by the Town of Christiansburg Engineering Department, dated June 29, 2012, Exhibit 5.
- G. Diamond Hills Park Stream Restoration Project, Existing Conditions Map, dated June 29, 2012, Exhibit 6.
- H. Diamond Hills Park Stream Restoration Project, Future Conditions Map, dated November 14, 2012, Exhibit 7.
- I. Future Development Table dated November 14, 2012, Exhibit 8.
- J. Design/Builder's Contractor's License, Exhibit 9.
- K. The following, which may be delivered, prepared, or issued after the Effective Date of this Agreement and are not attached hereto:
 - 1. Notice to Proceed;
 - 2. All Work Change Directives, and Change Orders amending, modifying or supplementing the Contract Documents pursuant to paragraph 3.04.A of the General Conditions;
 - 3. Specifications as defined in Paragraph 1.01.A.40 of the General Conditions;
 - 4. Drawings as defined in Paragraph 1.01.A.18 of the General Conditions;
 - 5. Payment & Performance Bond or Irrevocable Letter of Credit, Erosion and Sediment Control Bond;
 - 6. Virginia Department of Environmental Quality Permit.
 - 7. Other Regulatory Permits, if any.

- 8.02. The documents listed in Paragraph 8.01 above are attached to this Agreement (except as expressly noted otherwise above).
- 8.03. There are no Contract Documents other than those listed above in this Article 8.
- 8.04. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 9 - MISCELLANEOUS

- 9.01. The Standard General Conditions of the Contract Between Owner and Design/Builder are referred to herein as the General Conditions.
- 9.02. Terms used in this Agreement will have the meanings indicated in the General Conditions.
- 9.03. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.04. Owner and Design/Builder each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.05. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Design/Builder, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

ARTICLE 10 – DESIGN AND CONSTRUCTION PLAN REQUIREMENTS; ACCESS TO CONSTRUCTION SITE

In addition to other requirements or provisions that may be set forth in the Contract Documents, the parties agree as follows:

- 10.01. For Project Phases I and II, Design/Builder shall prepare complete working plans and specifications. Design/Builder shall make 35%, 90%, and 100% progress review submittals of design drawings and specifications to Owner in accordance with the General Conditions and Project Progress Schedule. All plans and as-builts submitted for review shall show all existing and proposed utility easements. Owner shall provide documentation of Owner's existing utility easements. Design/Builder shall also provide control and benchmarks during preparation of the as-builts so that control consistent with the overall Project site is established.
- 10.02 The Work shall be designed and constructed to provide for peak flow rate attenuation for the entire Diamond Hills Drainage Basin depicted on the Diamond Hills Park Stream Restoration Project Future Conditions Map prepared by the Town of Christiansburg Engineering Department

dated November 14, 2012 ("Future Conditions Map") and accounting for the planned future developments listed on the Future Development Table dated November 14, 2012. The peak flow rate for future conditions shall be equal to or less than predevelopment conditions for the drainage shed as depicted on the Diamond Hills Park Stream Restoration Project Predevelopment Conditions Map prepared by the Town of Christiansburg Engineering Department dated June 29, 2012, ("Predevelopment Conditions Map") using the confluence with Crab Creek as the point of analysis.

- 10.03 The Work shall be designed and constructed to meet the flooding criteria of the current Virginia Stormwater Management Program VAR-10 permit for current and future development depicted on the Future Conditions Map.
- 10.04 The Work of Phase 1a shall be designed and constructed to provide adequate channels as appropriate in the context of a restored stream, which are self-maintaining, accounting for existing conditions as depicted on the Diamond Hills Stream Restoration Project Existing Conditions Map prepared by the Town of Christiansburg Engineering Department dated June 29, 2012 ("Existing Conditions Map") and future conditions as depicted on the Future Conditions Map. Design/Builder shall not be responsible for any channel improvements between the Stormwater Management Facility and the Independence Boulevard Culvert Replacement sites.
- 10.05 Design/Builder is responsible for, and the Work includes, all surveying, engineering, and drafting services for plats, easements, or restrictive covenants associated with the Project.
- 10.06 Design/Builder shall be responsible for any adjustment, alteration, protection, or replacement of Owner's utility facilities necessitated by the design and/or construction requirements of the Work.
- 10.07 Owner is responsible for acquiring the site for the Stormwater Management Facility.
- 10.08 Access to Owner's and other non-governmental utility easements shall not be unreasonably obstructed during the Work.
- 10.09 Any adjustment, alteration, protection or replacement of utilities or infrastructure owned by third parties, shall be the responsibility of the Design/Builder with the consent of such third party. Such consent shall be obtained prior to Work being undertaken.
- 10.10 Owner shall be responsible for any proposed trail and associated bridge construction other than grading. However, Design/Builder acknowledges that trail sites are required as part of the design for the stream restoration and stormwater management facility sites. Design/Builder shall be responsible for grading to subgrade the trails to be included in the Project. The trail subgrades shall link together with trail easements and subgrades as determined by Owner.
- 10.11 Plans/drawings shall reflect the future trails constructed of asphalt at grades, alignments, widths, and locations as determined and acceptable to Owner.
- 10.12 Design/Builder shall design and test the stability of any proposed channels for the following parameters:
 - A. Hydraulics – Design/Builder shall model the post-design discharge elevations associated

with the bank full at 2, 10, 50, and 100-year flood events. Design/Builder shall compare pre-and post-flood elevations to determine if adjustments need to be made to the design to avoid off site flooding of adjacent properties.

B. Sediment Transport Analysis – Design/Builder shall conduct a sediment transport competency analysis that will assist in determining channel dimensions required to transport the existing bedload materials. Incipient motion calculations shall be performed to determine moveable particle diameters as functions of boundary shear for the threshold of motion. This analysis will be used to determine if the channel will experience unacceptable levels of scour or deposition during flows equal to and greater than the channel forming discharge.

C. Channel Stabilization and Habitat Structures – Using the hydraulics and sediment transport methodologies described above, Design/Builder shall determine and compare post-design shear stresses within the channels to ensure that channel dimensions and associated channel stabilization and habitat structures will remain stable for flows up to the 10-year discharge.

- 10.13 All Plans and permit applications shall be reviewed within 15 days and accepted by Owner prior to submission to regulatory agencies. No response from Owner with regard to Owner's review following the 15 day time period, shall be deemed an acceptance of the Plans or permit applications.
- 10.14 Design/Builder shall provide Owner electronic and hard copies of all design plans, including CAD files and HEC-RAS models.
- 10.15 Owner shall review all plan submissions within 15 days of submittal. When a Plan is rejected, Owner shall provide written comments detailing the reasons the Plans were not accepted. No response from Owner shall be deemed an acceptance of the Plans.
- 10.16 Design/Builder shall provide mutually acceptable signage to mark the perimeters of the stream restoration area to be protected by a restrictive covenant. The sign size, quantity, location, mounting, and design shall be reviewed and accepted by the Owner prior to placement.
- 10.17 Design/Builder shall provide a floodplain analysis based on as-built conditions for the Stream Restoration site where the plantings and grading alter the elevations of Owner's property within the 100-year flood zone of Crab Creek. Design/Builder is responsible for FEMA coordination/map amendments if required.
- 10.18 Design/Builder is responsible for meeting all permit requirements of all applicable regulatory agencies.
- 10.19 Design/Builder shall provide deed research, survey services, and deed recordation associated with the Project as part of the Work.
- 10.20 All HEC analyses shall include Manning values for riparian areas based on initial planting completion, conditions at the end of monitoring period, and at mature height. The analyses shall include densities and anticipated low branch heights of proposed vegetative plantings.

- 10.21 Owner may reject an intended planting species if Owner determines that the planting species is not compatible with residential communities.
- 10.22 All Submittals, including, but not limited to, Plan review are subject to review by Owner for compliance with applicable ordinances. Design/Builder is responsible for complying with all applicable laws, regulations, and ordinances and assumes any costs to resolve any non-compatible design and construction elements.
- 10.23 All Designs, Drawings, Plans, etc., are subject to review by Owner for safety concerns. No deepwater habitats or other design features that present inherent danger to citizens or users of the future park site can be constructed without appropriate levels of safety factored into the design that are acceptable to Owner.
- 10.24 For any Plans approved for construction, Design/Builder shall provide a narrative report providing assurances that the Plans as constructed will provide the intended result with regard to the morphological characteristics of the channel, proposed reaches, reference reaches, and any applicable gauged reaches. The narrative will also include a complete assessment of sediment and bedload quantity and capacity assessment. Acceptance by Owner does not provide assurance of the adequacy of the design nor a validation of the design.
- 10.25 Design/Builder shall address waste soil/rock locations in Plans.
- 10.26. Design/Builder shall participate in all public information meetings.
- 10.27 Design/Builder shall provide a permanent gravel access road from Owner's right-of-way adjacent to C&S Door to the Stream Restoration site. Any potential wetlands impacted from the gravel access road shall be mitigated by Design/Builder as required by the permitting authorities and shall be considered part of the Phase I Work. Construction access shall be limited to Scattergood Drive unless otherwise approved by Owner.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, Owner and Design/Builder have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Design/Builder. All portions of the Contract Documents have been signed, initialed or identified by Owner and Design/Builder.

This Agreement will be effective on 6 Dec 2012 (which is the Effective Date of the Agreement).

OWNER:

Town of Christiansburg, Virginia

By: [Signature]

[CORPORATE SEAL]

Attest: [Signature]

DESIGN/BUILDER:

Branch Highways, Inc.

By: [Signature]

[CORPORATE SEAL]

Attest: [Signature]

Designated Representative:

Name: Barry D. Helms

Title: Town Manager

Address: 100 East Main Street,
Christiansburg, VA 24073

Phone: (540) 382-6128

Facsimile: (540) 382-7338

Designated Representative:

Name: Michael P. Higgins

Title: Branch-Vice President of
Operations

Address: P.O. Box 40004, Roanoke, VA
24022

Phone: (540) 982-1678

Facsimile: (540) 982-4216

**Engineers Joint Documents Committee
Design and Construction Related Documents
Instructions and License Agreement**

Instructions

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3. If you modify the document, you must follow the instructions in the License Agreement about notification.
4. Also note the instruction in the License Agreement about the EJCDC copyright.

License Agreement

You should carefully read the following terms and conditions before using this document. Commencement of use of this document indicates your acceptance of these terms and conditions. If you do not agree to them, you should promptly return the materials to the vendor, and your money will be refunded.

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3. Copy **EJCDC Design and Construction Related Documents** into any machine readable or printed form for backup or modification purposes in support of your use of **EJCDC Design and Construction Related Documents**.

You agree that you will:

1. Reproduce and include EJCDC's copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program. All proprietary rights in **EJCDC Design and Construction Related Documents** are and shall remain the property of EJCDC.
2. Not represent that any of the contract documents you generate from **EJCDC Design and Construction Related Documents** are EJCDC documents unless (i) the document text is used without alteration or (ii) all additions and changes to, and deletions from, the text are clearly shown.

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If you transfer possession of any copy, modification or merged portion of EJCDC Design and Construction Related Documents to another party, your license is automatically terminated.

Term:

The license is effective until terminated. You may terminate it at any time by destroying **EJCDC Design and Construction Related Documents** altogether with all copies, modifications and merged portions in any form. It will also terminate upon conditions set forth elsewhere

in this Agreement or if you fail to comply with any term or condition of this Agreement. You agree upon such termination to destroy **EJCDC Design and Construction Related Documents** along with all copies, modifications and merged portions in any form.

Limited Warranty:

EJCDC warrants the CDs and diskettes on which **EJCDC Design and Construction Related Documents** is furnished to be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of delivery to you as evidenced by a copy of your receipt.

There is no other warranty of any kind, either expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state.

EJCDC does not warrant that the functions contained in **EJCDC Design and Construction Related Documents** will meet your requirements or that the operation of **EJCDC Design and Construction Related Documents** will be uninterrupted or error free.

Limitations of Remedies:

EJCDC's entire liability and your exclusive remedy shall be:

1. the replacement of any document not meeting EJCDC's "Limited Warranty" which is returned to EJCDC's selling agent with a copy of your receipt, or
2. if EJCDC's selling agent is unable to deliver a replacement CD or diskette which is free of defects in materials and workmanship, you may terminate this Agreement by returning EJCDC Document and your money will be refunded.

In no event will EJCDC be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use **EJCDC Design and Construction Related Documents** even if EJCDC has been advised of the possibility of such damages, or for any claim by any other party.

Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.

General:

You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement. Any attempt otherwise to sublicense, assign, or transfer any of the rights, duties, or obligations hereunder is void.

This Agreement shall be governed by the laws of the State of Virginia. Should you have any questions concerning this Agreement, you may contact EJCDC by writing to:

Arthur Schwartz, Esq.
General Counsel
National Society of Professional Engineers
1420 King Street
Alexandria, VA 22314

Phone: (703) 684-2845
Fax: (703) 836-4875
e-mail: aschwartz@nspe.org

You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions. You further agree that it is the complete and exclusive statement of the agreement between us which supersedes any proposal or prior agreement, oral or written, and any other communications between us relating to the subject matter of this agreement.