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

Prepared by

EJCDC 

**ENGINEERS JOINT CONTRACT
DOCUMENTS COMMITTEE**

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

THIS AGREEMENT is by and between NEW RIVER RESOURCE AUTHORITY, a public body politic and corporate organized pursuant to the Virginia Water and Waste Authorities Act ("Owner") and THOMPSON & LITTON, INC., a Virginia corporation ("Design/Builder").

Owner and Design/Builder hereby agree as follows:

ARTICLE 1 - WORK

- 1.01. Design/Builder shall provide and complete all design, professional, drawings, specifications, construction administration, resident project representation, and other construction services appropriate and necessary to design and construct the Phase II Area D Expansion and Partial Closure No. 3 for the New River Resource Authority Regional Solid Waste Facility as permitted under Permit Number 548 issued from the Virginia Department of Environmental Quality and as shown in the plans entitled "Area D Expansion (Phase II) and Partial Closure No. 3". The Work for the Phase II Area D Expansion will encompass approximately 16.15 acres and generally consist of the following elements: fine grading the base grade in preparation of the liner system, landfill liner system including the 6" of screened soil base, liner anchor trench, cell berms, leachate collection system, gravel perimeter access road and crossover road, and ditching. The Work for the Partial Closure No 3 will encompass approximately 6.0 acres and generally consist of the following elements: fine grading the intermediate grade, gas transmission layer, cap system, cap anchor trench, tack-on berms, and cap drainage system.

ARTICLE 2 - THE PROJECT

- 2.01. The Project is generally described as follows: Phase II Area D Expansion and Partial Closure No. 3.

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. *Days to Achieve Substantial Completion and Completion of All Work for Final Payment*

- A. Design\Builder shall achieve Substantial Completion of the Work within 240 calendar days, after the date when the Contract Times commence to run as provided in Paragraph 2.02 of the General Conditions, and the Design\Builder shall complete all Work and satisfy all of Design\Builder's obligations and requirements under the Contract Documents including, without limitation, Paragraph 13.08 of the General Conditions, within 330 calendar days after the date when the Contract Times commence to run.

ARTICLE 4 - CONTRACT PRICE

- 4.01. Owner shall pay Design/Builder for satisfactory completion of the Work in accordance with the Contract Documents an amount equal to the sum set forth in Paragraph 4.01.A below, to be paid in progress payments:

A. For all Work, a Lump Sum of \$3,963,993.00 (Three Million Nine Hundred Sixty-Three Thousand Nine Hundred Ninety-Three 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* Owner shall make progress payments on account of the Contract Price on the basis of Design/Builder's Applications for Payment in accordance with the Contract Documents.

B. *Retainage:* The amount of retainage with respect to progress payments will be 5%.

C. *Final Payment.* Upon final completion and acceptance of the Work in accordance with the Contract Documents, including, without limitation, paragraph 13.08 of the General Conditions, Owner shall pay the remainder of the Contract Price.

ARTICLE 6 - INTEREST

- 6.01. All moneys not paid when due as provided in the Contract Documents shall bear interest at the rate of 12 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.

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 or that Design/Builder deemed necessary; and, (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified or made available by Owner or that Design/Builder deemed necessary.
- E. Design/Builder is aware of the general nature of work to be performed by others 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, and other information and documentation deemed necessary by Design/Builder 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. Design/Builder shall be solely responsible for determining the degree to which Design/Builder utilizes and relies upon such information in performing its services hereunder.
- 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. This Agreement
- B. Performance Bond
- C. Payment Bond

D. Modified Standard General Conditions of the Contract Between Owner and Design/Builder

E. Supplementary Conditions

F. 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; and
4. Drawings as defined in Paragraph 1.01.A.18 of the General Conditions.

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. 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 February 19, 2021 (which is the Effective Date of the Agreement).

Owner:

NEW RIVER RESOURCE AUTHORITY

Signature: 

By: Joseph R. Levine, P.E.

Title: Executive Director

Design/Builder:

THOMPSON & LITTON, INC.

Signature:  

By: Gregory H. Hurst, P.E.

Title: President

License No. and State: 3869 Virginia

Address for giving notices:

7100 Cloyd's Mountain Road

Post Office Box 1246

Dublin, VA 24084

Address for giving notices:

726 Auburn Avenue

Radford, VA 24141

Authorized Project Representative:

Joseph R. Levine, P.E.

Title: Executive Director

Phone Number: (540) 674-1677

Facsimile Number: (540) 674-1431

Authorized Project Representative:

Brian G. Tew

Title: Director of Business Development

Phone Number: (540) 633-1897

Facsimile Number: (540) 633-1896