

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The Article and Paragraph numbering is the same as that used in the General Conditions, superseded by SC.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.14.

Delete paragraph 1.01.A.14 in its entirety and insert the following in its place:

14. *Contract Times*: The numbers of days or the dates stated in the Agreement to (i) achieve Substantial Completion, and (ii) complete all of the Work and satisfy all of Design\Builder's obligations and requirements under the Contract Documents including, without limitation, the requirements for final payment in accordance with Paragraph 13.08.

SC-1.01.A.18.

Amend paragraph 1.01.A.18 to change the word "approved" to "accepted" so that paragraph 1.01.A.18 reads as follows:

18. *Drawings*: Those portions of the Contract Documents prepared by or for Design/Builder and accepted by Owner consisting of drawings, diagrams, illustrations, schedules and other data which show the scope, extent, and character of the Work.

SC-1.01.A.34.

Delete paragraph 1.01.A.34 in its entirety.

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 change the word “will” to “may” 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 may 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-2.01.A.

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

- A. When Design/Builder delivers the executed Agreements to Owner, Design Builder shall have 21 days to deliver to Owner such Bonds as Design/Builder may be required to furnish in accordance with Paragraph 5.01.A.

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-2.04.A.

Amend the last sentence in paragraph 2.04.A so that paragraph 2.04.A reads as follows:

- A. Design/Builder's Review of Conceptual Documents: Before undertaking the Work, Design/Builder shall carefully study and compare those Conceptual Documents prepared by Owner and check and verify pertinent figures therein and all applicable field measurements. Design/Builder shall promptly report in writing to Owner any conflict, error, ambiguity, or discrepancy which Design/Builder may discover and shall obtain a written interpretation or clarification from Owner before proceeding with any Work affected thereby; however, Design/Builder shall not be liable to Owner for failure to report any conflict, error, ambiguity, or discrepancy in the Conceptual Documents unless such failure is due to Design/Builder's negligence.

SC-2.04.B.

Amend paragraph 2.04.B so that paragraph 2.04.B reads as follows:

- B. Preliminary Schedules: Within 10 days after commencement of the Contract Times (unless otherwise specified in the Contract Documents), Design/Builder shall submit the following to Owner for its timely review and acceptance:
1. A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
 2. A preliminary schedule of Submittals which will list each required Submittal and the times for submitting, reviewing and processing each Submittal;
 3. A preliminary Schedule of Values for all of the Work which will include quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments under the Contract Documents for satisfactory performance of the Work. Such prices may include an appropriate amount of overhead and profit applicable to each item of Work as accepted by Owner; and
 4. A preliminary cash flow projection estimating that portion of the Contract Price to be due during each month of performance.

SC-2.06.

Delete 2.06, *Initial Acceptance of Schedules*, in its entirety and insert the following in its place:

2.06 Initial Acceptance of Schedules

- 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. 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 the acceptable schedules are submitted to and accepted by Owner.

1. The progress schedule will be acceptable to Owner if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance of the progress schedule will not impose on Owner responsibility for the progress schedule, for sequencing, scheduling or progress of the Work nor interfere with nor relieve Design/Builder from Design/Builder's full responsibility therefor.
2. Design/Builder's schedule of Submittals will be acceptable to Owner if it provides a workable arrangement for reviewing and processing the required Submittals.

SC-3.02.

Amend 3.02, *Reference Standards*, by adding the following new paragraphs 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.
4. If Design/Builder performs any Work knowing or if Design/Builder has reason to know or reasonably should have knowledge that such Work is contrary to Laws or Regulations, Design/Builder shall bear and pay for all claims, costs, losses, and damages (including but not limited to all fees and charges incurred by Owner for engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.
5. Changes in Laws or Regulations occurring after the Effective Date of the Agreement having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times as determined by Owner. If Design/Builder and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any Owner's determination regarding such adjustment, Design/Owner may submit a Claim therefor as provided in Paragraph 9.03.

SC-3.03.

Delete 3.03, *Resolving Discrepancies*, in its entirety and insert the following in its place:

3.03 *Resolving Discrepancies*

- A. In the event of a discrepancy between the Conceptual Documents on the one hand or Drawings or Specifications on the other hand, the Conceptual Documents will control except when Owner has accepted a Submittal pursuant to Paragraph 6.17.B. Design/Builder will note, where possible, when Drawings or Specifications vary from the Conceptual Documents.

SC-3.04.A.1.

Amend paragraph 3.04.A.1 to change the word “approval” to “acceptance” so that paragraph 3.04.A.1 reads as follows:

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:
 - 1. Owner's acceptance of required Submittals (pursuant to Paragraph 6.17.B);

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 request to the Owner without restriction or limitation on their use. To the extent Owner is authorized by law to do so, Owner agrees to waive any claims Owner may have arising out of unauthorized changes to Design/Builder’s documents except where Design/Builder prepared such changes.
- B. Right to Inspect Contract Documents. Any authorized representative of the Owner shall, at all reasonable times, 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.
- 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 and such records shall be maintained by Design/Builder for at least three years after Owner has made final payment to Design/Builder.

- D. Any reuse of the contract documents other than for their intended purpose by the Owner will be at the Owner's sole risk and without liability or legal exposure to the Design/Builder.

SC-3.06.A.

Amend paragraph 3.06.A to add “, and Design/Builder will advise each Owner representative of such limitation” to the second sentence so that paragraph 3.06.A reads as follows:

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner to Design/Builder or Design/Builder to Owner that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party, and Design/Builder will advise each Owner representative of such limitation. 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 180 days, the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 180-day acceptance period will be corrected by the transferring party.

SC-4.01.A.

Amend paragraph 4.01.A to add “with Owner's consent” to the second sentence so that paragraph 4.01.A reads as follows:

- A. Owner shall furnish the Site. Owner shall notify Design/Builder of any encumbrances or restrictions not of general application but specifically related to use of the Site which Design/Builder will have to comply in performing the Work. Unless otherwise provided in the Contract Documents, with Owner's consent, Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Design/Builder and Owner are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract

Price or the Contract Times as a result of any delay in Owner's furnishing the Site, Design/Builder may make a Claim therefor as provided in Article 9.

SC-4.01.B.

Delete paragraph 4.01.B in its entirety.

SC-4.03.A.

Amend the first sentence of 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 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.

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 and reduce the Contract Price and/or Contract Time 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 either party 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 as provided by the Design/Builder's Subcontractor performing the construction, each in an amount at least equal to the cost of construction as security for the faithful performance and payment of all Design/Builder's obligations to furnish, provide and pay for Work and related materials under the Contract Documents. 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.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; and,

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.8 inclusive, be written on an occurrence basis, include as additional insureds Owner and Owner's officers, agents, and employees as well as any of Design/Builder's design or construction subcontractors 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 overages 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 | \$1,000,000 |
| b. Products - Completed
Operations Aggregate | \$1,000,000 |
| 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) | \$10,000,000 |

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 \$3,000,000
- b. General Aggregate \$6,000,000

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-5.09.A.

Amend paragraph 5.09.A to add the words “if a party should reasonably be aware of such failure” to the end of the third sentence so that paragraph 5.09.A reads as follows:

- A. If, after the Effective Date, either Owner or Design/Builder has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of their not complying with the Contract Documents, the objecting party shall so notify the other party in writing within ten days after receipt of the certificates (or other evidence requested) required by Paragraph 2.04.C. Owner and Design/Builder shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage if a party reasonably should be aware of such failure. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was supposed to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

SC-6.01.B.2.

Delete paragraph 6.01.B.2 in its entirety and replace it with the following:

2. Provide or obtain from others additional reports, data, or services of the types provided in Paragraph 8.01.A.6.a-g.;

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.A.

Amend paragraph 6.02.B to change the work “inspect” to “observe” so that paragraph 6.02.B reads as follows:

- A. Design/Builder shall supervise, observe, and direct the Construction competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to provide the Construction in accordance with the Contract Documents. Design/Builder shall be solely responsible for the means, methods, techniques, sequences, and procedures of Construction. Design/Builder shall be responsible to see that the completed Construction complies fully with the Contract Documents and shall keep Owner advised as to the quality and progress of the Construction.

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.

Delete 6.07, Patent Fees and Royalties, in its entirety and replace it with the following:

6.07 Patent Fees and Royalties

- A. Design/Builder shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others.

SC-6.08.A.

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

- A. Design/Builder shall obtain 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. Design/Builder shall pay all charges of utility owners for connections for providing permanent service to the Work, and Owner shall pay all charges of such utility owners for capital costs related thereto. Owner shall be responsible for all regulatory permit fees.

SC-6.09.B.

Amend the first sentence in paragraph 6.09.B to delete the words “knowing or having reason to know that it is” so that paragraph 6.09.B reads as follows:

- B. If Design/Builder performs any Work contrary to Laws or Regulations, Design/Builder shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work

SC-6.09.C.

Amend paragraph 6.09.C to delete the words “not known on” and add “occurring after” 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 may be the subject of a change in Contract Price or Contract Times.

SC-6.11.A.3

Delete paragraph 6.11.A.3 in its entirety.

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 retain ownership rights in the record documents as set forth in Paragraph 3.05 above.

SC-6.13.A.

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

- A. Design/Builder shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Design/Builder shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
1. All persons on the Site or who may be affected by the Work;
 2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation, or replacement in the course of construction.

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, 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-6.15.A.

Amend paragraph 6.15.A to add the words “completion, maintenance, and” so that paragraph 6.15.A reads as follows:

- A. Design/Builder shall be responsible for completion, maintenance, and coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to, or exchanged between or among employers at the Site in accordance with Laws or Regulations.

SC-6.16.A.

Amend paragraph 6.16.A to change the word “will” to “may” in the last sentence so that paragraph 6.16.A reads as follows:

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Design/Builder is obligated to act to prevent threatened damage, injury or loss. Design/Builder shall give Owner prompt written notice if Design/Builder believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If a change in the Contract Documents is required because of the action taken by Design/Builder in response to such an emergency, a Work Change Directive or Change Order may be issued.

SC-6.17.

Delete 6.17, Submittals, in its entirety and replace it with the following:

6.17 Submittals

- A. Owner will review Submittals in accordance with the schedule of required Submittals accepted by Owner as required by Paragraph 2.06.A. Owner's review will be for the purpose of determining if the items covered by the Submittals will, after installation or incorporation in the construction, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Owner's review and any acceptance will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and acceptance of a separate item as such will not indicate approval of the assembly in which the item functions. Acceptance of Submittals including, without limitation, Drawings and Specifications by any official, employee or agent of the Owner shall constitute only acknowledgment of review of said drawings and specifications and shall not relieve or excuse the Design\Builder from responsibility for any errors, omissions or conflicts in the Submittals, and no fee or compensation will be paid to the Design\Builder for the cost of rectifying any work required on account of such errors or omissions.
- B. Owner's review and acceptance of Submittals shall not relieve Design/Builder from responsibility for any variation from the requirements of the Contract Documents unless Design/Builder has in a separate written communication at the time of submission specifically made Owner aware of each such variation and Owner has given written acknowledgement and acceptance of such variation.

- C. Construction shall not occur prior to Owner's review and acceptance of any required Submittal. Any construction prior to Owner's review and acceptance of any required Submittal will be at the sole risk of Design/Builder.

SC-6.20.A.

Delete paragraph 6.20.A in its entirety and replace it with the following:

- A. Design/Builder warrants and guarantees to Owner that the Work, including all Construction, materials and equipment, is of a good and workmanlike quality, is in accordance with the Contract Documents, will not be defective and is adequate for and will accomplish the purposes intended.

SC-6.20.C.5.

Amend paragraph 6.20.C.5 to change the word "approval" to "acceptance" so that paragraph 6.16.C.5 reads as follows:

- 5. Any review and acceptance of a Submittal;

SC-7.01.A.2

Delete 7.01.A.2 in its entirety.

SC-7.02.B

Amend paragraph 7.02.B to add the following " , or its Owner's Consultant or other agent," so that paragraph 7.02.B reads as follows:

- B. Unless otherwise provided in the Supplementary Conditions, Owner, or its Owner's Consultant or other agent, shall have sole authority and responsibility in respect of such coordination.

SC-8.01.

Delete 8.01, General, in its entirety and replace it with the following:

8.01 *General*

- A. Owner shall do the following in a timely manner so as not to delay the services of Design/Builder:
 - 1. Make payments to Design/Builder promptly when and to the extent they are due as provided in Paragraph 13.03 and 13.08;
 - 2. Furnish the Site as set forth in Paragraph 4.01.A;

3. Furnish to Design/Builder, as required for performance of Design/Builder's Services the following , all of which Design/Builder may use and rely upon in performing services under this Agreement:
 - a. Environmental assessment and impact statements;
 - b. Property, boundary, easement, right-of-way, topographic, and utility surveys;
 - c. Property descriptions;
 - d. Zoning, deed, and other land use restrictions;
 - e. Engineering surveys. to establish reference points for design and construction which in Owner's judgment are necessary to enable Design/Builder to proceed with the Work;
 - f. Assistance to Design/Builder in filing documents required to obtain necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Project; and
 - g. Permits, licenses, and approvals of government authorities, if any, that Owner is specifically required to obtain by the Contract Documents; and
 - h. Identify all reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site, all drawings known to owner of physical conditions relating to existing surface or subsurface structures at the Site, and any information or data known to Owner concerning underground facilities at the Site.
4. Review Submittals subject to Owner review pursuant to Paragraph 6.17.A; and
5. Provide written information known to Owner relating to the presence of materials and substances at the Site which could create a Hazardous Environmental Condition.

SC-8.08.

Add a new paragraph 8.08, *Owner-Furnished Items*, immediately after paragraph 8.07 as follows:

8.08 *Owner-Furnished Items*

Owner shall be responsible for providing the following materials: 60 Mil HDPE Liner; 16 oz./SY Geotextile; 8 oz./SY Geotextile; 40 Mil LLDE Liner; 200 Mil Geocomposite; Rain cover including Ballasts; VDOT # 8 Non-Calcareous Stone and VDOT #57 Non-Calcareous

Stone. Design/Builder's Subcontractor performing the construction shall be responsible for coordinating with the Owner to ensure an adequate supply of material.

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. Accordingly, no course of conduct or dealings between the parties, no expressed or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alterations or additions to the Work shall be the basis of any claim for an increase in any amount due under the Contract Documents or a change in any time period provided for in the Contract Documents.

SC-9.03.A.

Delete 9.03.A in its entirety and replace it with the following:

- A. *Notice:* If Owner and Design/Builder are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Times or both or other occurrence for which the Contract Documents provide that such adjustment(s) may be made, a Claim may be made therefor. Written notice stating the nature, amount, and extent of each Claim, shall be submitted promptly and in no event more than 15 calendar days after the start of the occurrence or event giving rise to the Claim. The notice required herein is a condition precedent to the assertion of any claim by Design/Builder. Design/Builder's failure to submit written notice of or the amount and extent of each such Claim to Owner within the time and in the manner specified herein shall be deemed to be and shall constitute a waiver by Design/Builder of any and all claims or disputes of any kind against Owner for such matters and shall be an absolute bar to any future claim or suit by Design/Builder against Owner for damages or any remedy or relief of any kind based upon such occurrence or event. The right of Owner to receive written notice of claims hereunder may not be waived or modified by Owner except in writing signed by Owner, and Design/Builder shall not rely on any purported waiver of this written notice by verbal instructions or other conduct of Owner.

SC-9.03.B.

Delete 9.03.B in its entirety and replace it with the following:

- B. *Documentation*: Substantiating documentation shall be submitted by the Design/Builder within 30 days after delivery of the notice required by Paragraph 9.03.A. Each Claim shall be accompanied by Design/Builder's written statement that the adjustment claimed is the entire adjustment to which the Design/Builder believes it is entitled as a result of said event. In reviewing the Claim, Owner may request any additional information or documentation from the Design/Builder or other parties and may utilize appropriate assistance from other sources. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph. Design/Builder shall attach to each Application for Payment a schedule of outstanding and unresolved Design/Builder Claims. By attaching and submitting such schedule with its Application for Payment, Design/Builder shall be deemed to have certified that the only outstanding and unresolved Claims of which it has notice at the time of the Application for Payment are those identified in the schedule attached to its Application for Payment. Owner shall rely upon Design/Builder's schedule of outstanding and unresolved Claims as inclusive of any and all Claims Design/Builder is then on notice of, and Design/Builder's acceptance of payment in response to an Application for Payment shall constitute a waiver and release of any and all Claims not identified in Design/Builder's schedule of outstanding and unresolved Claims accompanying such Application for Payment.

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.

Amend paragraph 10.01.A to change the word “shall” to “may” in the last sentence so that paragraph 10.01.A reads as follows:

10.01 *Cost of the Work*

- A. Costs Included: The term Cost of the Work means the sum of all costs necessarily incurred and paid by Design/Builder in the proper performance of the Work. When the value of Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Design/Builder will be only those additional or incremental costs required because of the change of the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, and shall not include any of the costs itemized in Paragraph 10.01.B, and may include only the following items:

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-10.03.C.

Delete paragraph 10.03.C in its entirety and replace it with the following:

- C. Owner may make an adjustment in the Contract Price in accordance with Article 9 if:
1. the quantity of any item of Unit Price Work performed by Design/Builder varies by more than 15 percent above or below the estimated quantity. Any equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity of such item indicated in the Contract Documents;
 2. there is no corresponding adjustment with respect to any other item of Work.

If Design/Builder believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense and the parties are unable to agree as to the amount of any such increase, Design/Builder may submit a Claim in accordance with Article 9.

SC-11.02.

Delete 11.02, Change of Contract Times, in its entirety and replace it with the following:

11.02 *Change of Contract Times*

- A. The Contract Times (or Milestones) may only be changed by a Change Order. Any Claim for an adjustment of the Contract Times (or Milestones) shall be based on written notice pursuant to Paragraph 9.03.A.
- B. *Delays Beyond Design/Builder's Control:* Where Design/Builder is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of Design/Builder, the Contract Times (or Milestones) may be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 11.02.A. Delays beyond the control of Design/Builder shall include, but not be limited to, acts or neglect by Owner, governmental agencies, acts or neglect of utility owners or other Design\Builders performing other construction work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God. Design/Builder acknowledges and agrees that adjustments in the Contract Times will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by Design/Builder; (ii) could not be limited or avoided by the Design/Builder's timely notice to Owner of the delay or reasonable likelihood that a delay will occur; and (iii) is of a duration not less than two days.
- C. If Owner or utility owners performing other work for Owner or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Design/Builder may be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Design/Builder's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design/Builder's ability to complete the Work within the Contract Times.
- D. If Design/Builder is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Design/Builder, then Design/Builder may be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Design/Builder's ability to complete the Work within the Contract Times. Such an adjustment shall be Design/Builder's sole and exclusive remedy for the delays described in this Paragraph 11.02.C. Time extensions due to weather delay shall not entitle Contractor to any claim, compensation, or recovery for extended overhead.

- E. Owner and Owner's Consultant shall not be liable to Design/Builder for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Design/Builder on or in connection with any other project or anticipated project.
- F. Design/Builder shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Design/Builder. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Design/Builder.

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-12.04.B.

Amend paragraph 12.04.B to change the word "shall" to "may" in the third sentence so that paragraph 12.04.B reads as follows:

- B. If Owner considers it necessary or advisable that covered Construction be observed by Owner or inspected or tested by others, Design/Builder, at Owner's request, shall uncover, expose or otherwise make available for observation, inspection or testing as Owner may require, that portion of the Construction in question, furnishing all necessary labor, material and equipment. If it is found that such Construction is defective, Design/Builder shall pay all costs and damages caused by or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction, (including but not limited to all 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); and Owner shall be entitled to an appropriate decrease in the Contract Price., and, if the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Article 9. If, however, such Construction is not found to be defective, Design/Builder may be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Design/Builder may make a Claim therefor as provided in Article 9.

SC-12.06.

Delete 12.06, Correction or Removal of Defective Construction, in its entirety and replace it with the following:

12.06 *Correction or Removal of Defective Construction*

- A. Owner will have authority to disapprove or reject defective Construction and will have authority to require special inspection or testing of the Construction whether or not the Construction is fabricated, installed or completed. Promptly after receipt of notice, Design/Builder shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective. If required by Owner, Design/Builder shall promptly, as directed, either correct all defective Construction, whether or not fabricated, installed or completed, or, if the Construction has been rejected by Owner, remove it from the Site and Replace it with non-defective Construction. Design/Builder shall bear and pay all direct, indirect, and consequential costs, claims, losses, and damages of such correction or removal (including but not limited to all fees and charges of Owner, engineers, architects, attorneys and other professionals and all court, arbitration, or other dispute resolution costs) arising out of or relating to such correction or removal (including, but not limited to all costs of repair or replacement of work of others.
- B. When correcting defective Work under the terms of this Paragraph 12.06 or Paragraph 12.07, Design/Builder shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- C. At any time during the progress of the Work and up to the date of final acceptance, Owner shall have the right to reject any work which does not conform to the requirements of the Contract Documents, even though such work has been previously inspected and paid for. Any omissions or failure on the part of Owner to disapprove or reject any Work or materials at the time of inspection shall not be construed as an acceptance of any defective work or materials.

SC-12.07.A.

Amend paragraph 12.07.A so that paragraph 12.07.A reads as follows:

12.07 *Correction Period*

- A. If within one year after the date Design\Builder shall finally complete all Work and satisfy all of Design\Builder's obligations and requirements under the Contract Documents including, without limitation, Substantial Completion of the entire Work or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or warranty required by the Contract Documents or by any specific provision of the Contract Documents, any Construction is found to be defective or not adequate for the purpose for which it was intended,

Design/Builder shall promptly, without cost to Owner and in accordance with Owner's written instructions, (i) correct such defective Construction, or, if it has been rejected by Owner, remove it from the Site and replace it with Construction that is not defective, and (ii) satisfactorily correct or remove and replace any damage to other Construction or the work of others resulting therefrom. If Design/Builder does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Construction corrected or the rejected Construction removed and replaced, and all costs, losses, and damages caused by or resulting from such removal and replacement (including but not limited to all 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) will be paid by Design/Builder.

SC-12.09.A

Amend paragraph 12.09.A to change “a reasonable time” to “one hundred twenty (120) days: in the first sentence so that paragraph 12.09.A reads as follows:

- A. If Design/Builder fails within one hundred twenty (120) days after written notice from Owner to correct defective Construction or to remove and replace rejected Construction as required by Owner in accordance with Paragraphs 12.06.A or 12.07.A, or if Design/Builder fails to perform the Construction in accordance with the Contract Documents, or if Design/Builder fails to comply with any other provision of the Contract Documents, Owner may, after seven days' written notice to Design/Builder, correct and remedy any such deficiency.

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 be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price. Such costs, losses, and damages will include, but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Design/Builder's defective Work and the Owner's expenses and compensation for any additional engineering or other services to Owner made necessary by Design/Builder's default, neglect, or failure.

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 (“Form of Agreement”), the Form of Agreement shall govern.

SC-13.01.A.

Delete paragraph 13.01.A in its entirety:

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 Form of Agreement, except as specified in this Article 13 as to requirements not covered in the Form of Agreement.
- E. Each Application for Payment shall be accompanied by (In accordance with Paragraph 9.03) a current schedule of outstanding and unresolved Design/Builder Claims including, without limitation, a schedule of outstanding and unresolved Design/Builder Claims. By attaching and submitting such schedule with its Application for Payment, Design/Builder shall be deemed to have certified that the only outstanding and unresolved Claims of which it has notice at the time of the Application for Payment are those identified in the schedule attached to its Application for Payment.

SC-13.03.B.

Amend 13.03.B to add three new paragraphs immediately after 13.03.B.7 to read as follows:

- 8. Design/Builder has failed to make payment to subcontractors or suppliers or for labor; or
- 9. Design/Builder has failed to make acceptable submittals in accordance with accepted schedules; or
- 10. Any liquidated damages have been incurred by Design/Builder.

SC-13.06.A.4.

Amend paragraph 13.06.A.4 to read as follows:

4. No use or occupancy of part of the Construction will be accomplished prior to compliance with providing satisfactory property insurance for the area being used or occupied.

SC-13.08.A.3.

Amend paragraph 13.08.A.3 to read 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 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
 2. A waiver of all Claims by Design/Builder against Owner other than those previously properly made in writing under the Contract Documents and still unsettled.

SC-14.01.

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

14.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 days by notice in writing to Design/Builder which will fix the date on which Work will be resumed. Design/Builder shall resume the Work on the date so fixed. Design/Builder may be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Design/Builder makes a Claim therefor as provided in Article 9.
- B. Should Owner suspend Work due to repeated unsafe Work conducted by Design/Builder which is confirmed by subsequent inspection by the governing safety agency (State, Federal, or local), 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 immediately, 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 15.03.B:
 - 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 direct, for the protection and preservation of the terminated Work.

SC-14.04.A.

Amend paragraph 14.04.A to read 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 by Owner 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 by Owner 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-15.01.

Amend 15.01, Methods and Procedures, to add a new paragraph, 15.01.B, immediately after 15.01.A to read as follows:

- B. Owner and Design/Builder agree that they shall first submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("disputes"), to mediation.

SC-16.05.A.

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

- A. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located. By virtue of entering into this agreement the successful Design/Builder submits itself to a court of competent jurisdiction in Pulaski County, Virginia, and further agrees 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 Owner provided in this Section are in addition to any other rights and remedies provided by law or under this agreement and the Owner may pursue any and all such rights and remedies against the Design/Builder as it deems appropriate.

SC-16.06 through 16.22.

Immediately after 16.05.A, add the following paragraphs:

16.06 *Acceptance of Bids/Proposals*

- A. Unless otherwise specified, all bids/proposals submitted shall be valid for a minimum period of 60 calendar days following the date established for receiving bids/proposals. At the end of the 60 calendar days, the bid/proposal may be withdrawn at the written request

of the bidder/proposer. If the bid/proposal is not withdrawn at that time, it remains in effect until an award is made or the solicitation is cancelled.

16.07 Anti-Discrimination

A.

1. During the performance of this Agreement, the Design/Builder agrees as follows:
 - a. The Design/Builder will not discriminate against any 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.
 - b. 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 opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
2. The Design/Builder will include the provisions of 1 above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

16.08 Antitrust

- A. By entering into this Agreement, the Design/Builder conveys, sells, assigns, and transfers to the Owner all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Owner under said contract.

16.09 Assignment of Contract

- A. This Agreement shall not be assignable by the Design/Builder in whole or in part without the written consent of the Owner.

16.10 Availability of Funds

- A. It is understood and agreed between the parties herein that the Owner shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Agreement.

16.11 *Bid/Proposal Pricing*

- A. Invoices must be itemized and will be paid at the unit price in the bid/proposal. The Owner will not accept or pay for additional line items such as freight, shipping and handling, delivery, downtime, equipment, lost time due to inclement weather or any other charges additional to the unit prices quoted in the bid/proposal.

16.12 *Changes to the Agreement*

- A. Changes can be made to the contract in any of the following ways:
 - 1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 - 2. The Owner may order changes within the general scope of the Agreement at any time by written notice to the Design/Builder. Changes within the scope of the Agreement include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Design/Builder shall comply with the notice upon receipt. The Design/Builder shall be compensated for any additional costs incurred as the result of such order and shall give the Owner a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the Agreement, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Owner's right to audit the contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Design/Builder shall present the Owner with all vouchers and records of expenses incurred and savings realized. The Owner shall have the right to audit the records of the Design/Builder as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Owner within thirty (30) days from the date of receipt of the written order from the Owner. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this Agreement or, if there is none, in accordance with the disputes provisions of the VPPA. Neither the existence of a claim nor a dispute resolution process, litigation, or any other provision of this Agreement shall excuse the Design/Builder from promptly complying with the changes ordered by the Owner or with the performance of the contract generally.

16.13 *Claims*

- A. Contractual claims, whether for money or other relief, shall be submitted in writing to the New River Resource Authority, Executive Director's Office, 7100 Cloyd's Mountain Road, Dublin Virginia 24084, no later than sixty (60) days after final payment; however, written notice of the Design/Builder's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude this Agreement from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pending claims shall not delay payment of amounts agreed due in the final payment. Design/Builder may not institute legal action prior to receipt of the Executive Director's decision on a claim, unless that office fails to render such decision within thirty (30) days. Failure of the Owner to render a decision within thirty (30) days shall not result in the Design/Builder being award the relief claimed or in any other relief or penalty. The sole remedy for the Owner's failure to render a decision within thirty (30) days shall be the contractor's right to institute immediate legal action. The decision of the Executive Director shall be final and conclusive unless the contractor, within six (6) months of the date of the final decision of the claim, institutes legal action as provided in the Code of Virginia.

16.14 *Debarment Status*

- A. Design/Builder certifies that they are not currently debarred by the Owner or the Commonwealth of Virginia from submitting bids/proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

16.15 *Default*

- A. In case of failure to deliver goods or services in accordance with the Agreement terms and conditions, the Owner, after due oral or written notice, may procure them from other sources and hold the Design/Builder responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Owner may have. In addition, the Owner reserves the right to cancel any orders placed that are not delivered by the date specified in the Agreement.

16.16 *Drug-Free Workplace*

- A. During the performance of this Agreement, the Design/Builder agrees to (i) provide a drug-free workplace for the Design/Builder's employees; (ii) 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 contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv)

include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, “*drug-free workplace*” means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom 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.

16.17 *Immigration Reform and Control Act of 1986*

- A. Design/Builder certifies that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

16.18 *Mandatory use of New River Resource Authority Form and Terms and Conditions*

- A. Failure to submit a bid/proposal on the official New River Resource Authority form provided for that purpose shall be a cause for rejection of the bid/proposal. Modification of or additions to any portion of the Invitation to Bid/Invitation for Proposal may be cause for rejection of the proposal; however, the New River Resource Authority reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid/proposal as nonresponsive. As a precondition to its acceptance, the New River Resource Authority may, in its sole discretion, request that the bidder/proposer withdraw or modify nonresponsive portions of a bid/proposal which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.

16.19 *Payment*

A. To Design/Builder

1. Invoices for items ordered, delivered and accepted shall be submitted by the Design/Builder directly to the payment address shown in the Agreement. All invoices shall show the Owner contract number and/or purchase order number, if any; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
2. Any payment terms requiring payment in less than 45 days will be regarded as requiring payment 45 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 45 days, however.
3. All goods or services provided under this Agreement, that are to be paid for with public funds, shall be billed by the Design/Builder at the prices set forth herein.
4. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

B. To Subcontractors

1. Design/Builder is hereby obligated:
 - a. To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Owner for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
2. To notify the Owner and the subcontractor(s), in writing, of the Design/Builder's intention to withhold payment and the reason.
 - a. The Design/Builder is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the Design/Builder that remain unpaid seven (7) days following receipt of payment from the Design/Builder, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Owner.

16.20 *Precedence of Terms*

- A. The following General Terms and Conditions: ANTI-DISCRIMINATION, ANTITRUST, APPLICABLE LAWS AND COURTS, CLARIFICATION OF TERMS, DEBARMENT STATUS, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, MANDATORY USE OF AUTHORITY FORM AND TERMS AND CONDITIONS, AND PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions set forth in a solicitation, the Special Terms and Conditions shall apply.

16.21 *Taxes*

- A. Sales to the New River Resource Authority are normally exempt from State sales tax. State sales and use tax certificates of exemption will be issued upon request. Deliveries against this contract shall be free of Federal excise and transportation taxes.

16.22 *Testing and Inspection*

- A. The New River Resource Authority reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

End of Section