

**James River Water Authority  
Board of Directors Meeting  
181 Clubhouse Way  
Zion Crossroads, Virginia  
May 3, 2016  
10:30 A.M.**

***Regular Business Meeting of the James River Water Authority Board of Directors***

**I. Call to Order**

**II. Adoption of Agenda**

**III. Items from the Public**

**IV. Approval of Minutes of Preceding Meeting**

- a. March 30, 2016 – Special Meeting
- b. April 5, 2016 – Regular Meeting

**V. Financial Report**

**VI. Discussion/Information Items**

- a. Discussion – Construction Management Proposals and Review Process

**VII. Action Items**

- a. Action– Colonial Pipeline Encroachment Agreement
- b. Action – Purchase & Sale Agreement for Hammond Property
- c. Action – Comprehensive Agreement
- d. Action – Wetlands Credits Purchase Agreement

**A. Consent Agenda**

**B. Closed Meeting**

**C. Adjournment**

***The James River Water Authority Board of Directors reserves the right to amend and/or change the Agenda the day of the meeting.***

BY ORDER OF:  
GOODMAN B. DUKE, CHAIRMAN  
BOARD OF DIRECTORS  
JAMES RIVER WATER AUTHORITY

**JAMES RIVER WATER AUTHORITY  
BOARD OF DIRECTORS  
SPRING CREEK SPORTS CLUB  
181 CLUBHOUSE WAY  
ZION CROSSROADS, VIRGINIA  
MARCH 30, 2016  
3:00 P.M.**

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**Present:** Goodman B. Duke (Chairman), Joe Chesser (Treasurer), D.D. Watson, Mark Dunning, Steven M. Nichols, and Christian R. Goodwin

**Others Present:** Brendan Hefty, Hefty & Wiley, P.C. (Legal Counsel); Steve Johnson, Troutman Sanders (Bond Counsel); Sean Ekiert, Raymond James (Financial Advisor)

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**CALL TO ORDER**

Chairman Duke called the meeting of the James River Water Authority (JRWA) Board of Directors to order at 3:00 p.m. Mr. Nichols led the Board in the Pledge of Allegiance.

**ADOPTION OF AGENDA**

On the motion of Mr. Watson, seconded by Mr. Dunning, which carried by a vote of 6-0, the Board approved the agenda.

**READING AND APPROVAL OF MINUTES OF PRECEDING MEETINGS**

No minutes were presented for approval.

**FINANCIAL REPORT**

Two bills were submitted for payment: \$103 from Valley Publishing (public notices); and \$34,065.09 for Faulconer Construction Company. On the motion of Mr. Nichols seconded by Mr. Watson, which carried by a vote of 6-0, the Board voted unanimously to approve payment.

**DISCUSSION/INFORMATION ITEMS**

**Discussion – Debt Issuance Consideration**

Mr. Steve Johnson briefed the Board on the documents included in the Board packet for consideration. Mr. Johnson stated that the anticipated rate for issuance should be between 3.25-3.5%, and that May 3 is the final date for pricing. The debt reserve fund will need to be fully funded (approximately \$500,000) by sale closing on May 25. The issuance is structured such that the Board would cash fund the reserve, but if sufficient funds exist in the issuance for the project and the reserve fund, the Board may elect to debt-fund the reserve fund. Mr. Watson asked about penalties for early repayment. Mr. Ekiert responded that the Virginia Resources Authority (VRA) would still retain full administrative fees, and that most entities considering early repayment do not do so until about 10 years into the issuance for

financial feasibility reasons. Mr. Watson and Mr. Dunning questioned the sufficiency of the amount in the issuance documents, and Mr. Nichols responded that projected costs were based on the GMP when the initial parcel was used. Mr. Goodwin stated that Timmons and Faulconer believe the soils and conditions should be materially comparable. Mr. Nichols stated that efforts to gain access to the property were ongoing and compliant with legal requirements. Mr. Hefty advised that the Board discuss the property acquisition in closed session.

**CLOSED MEETING**

On the motion of Mr. Watson seconded by Mr. Chesser, which carried by a vote of 6-0, the Board voted to enter Closed Session at 3:30 p.m. for the purpose of discussing the following:

1. In accordance with §2.2-3711.A.3 VA Code Ann., for the purpose of discussion of the acquisition of property, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body, specifically related to the pump station parcel.

**RESUMPTION OF REGULAR SESSION**

On the motion of Mr. Goodwin seconded by Mr. Watson, which carried by a vote of 6-0, the Board voted to return to regular session at 4:14 p.m.

**RESOLUTION - CERTIFICATION OF CLOSED SESSION**

On the motion of Mr. Goodwin, seconded by Mr. Nichols, which carried by a vote of 6-0, the Board voted to adopt the following resolution:

**WHEREAS**, the James River Water Authority Board of Directors has convened a Closed Meeting pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

**WHEREAS**, §2.2-3712.D of the Code of Virginia requires a certification by the James River Water Authority Board of Directors that such closed meeting was conducted in conformity with the Virginia Law.

**NOW, THEREFORE BE IT RESOLVED** that the James River Water Authority Board of Directors does hereby certify that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting was heard, discussed or considered by the James River Water Authority Board of Directors.

**NAME**

Joe Chesser  
D.D. Watson

**VOTE**

Yes/Aye  
Yes/Aye

Mark Dunning  
Christian R. Goodwin  
Steven M. Nichols  
Goodman B. Duke

Yes/Aye  
Yes/Aye  
Yes/Aye  
Yes/Aye

**ACTION ITEMS**

**Bond Resolution**

Mr. Nichols motioned to approve the bond resolution and the motion was seconded by Mr. Chesser. Mr. Chesser asked where the funds are retained and how the JRWA would be able to access them. Mr. Ekiert responded that funds were requisitioned as pay applications were received. General discussion of project funds ensued. The Chairman called for a vote, and the motion passed 6-0.

**OTHER ITEMS**

Mr. Watson motioned to allow Mr. Nichols to negotiate with affected property owners for access to perform engineering, testing, and surveying on the pump station and initial routing parcels. Mr. Dunning seconded the motion, which passed 6-0. Mr. Hefty agreed to draft updated letters to parcel owners.

**ADJOURNMENT**

On the motion of Mr. Goodwin, seconded by Mr. Watson, which carried by a vote of 6-0, the Board voted to adjourn the meeting at 4:30 p.m.

BY ORDER OF:

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GOODMAN B. DUKE, CHAIRMAN  
BOARD OF DIRECTORS  
JAMES RIVER WATER AUTHORITY

**JAMES RIVER WATER AUTHORITY  
BOARD OF DIRECTORS  
SPRING CREEK SPORTS CLUB  
181 CLUBHOUSE WAY  
ZION CROSSROADS, VIRGINIA  
APRIL 5, 2016  
10:30 A.M.**

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**Present:** Goodman B. Duke (Chairman), D.D. Watson, Mark Dunning, Steven M. Nichols, and Christian R. Goodwin

**Others:** Mr. Brendan Hefty, Legal Counsel (Hefty, Wiley, and Gore)

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**CALL TO ORDER**

Chairman Duke called the meeting of the James River Water Authority (JRWA) Board of Directors to order at 10:30 a.m. Mr. Nichols led the Board in the Pledge of Allegiance.

**ADOPTION OF AGENDA**

On the motion of Mr. Goodwin, seconded by Mr. Nichols, which carried by a vote of 5-0, the Board approved the agenda.

**READING AND APPROVAL OF MINUTES OF PRECEDING MEETINGS**

On the motion of Mr. Goodwin, seconded by Mr. Watson, which carried by a vote of 5-0, the Board approved the minutes of the March 1, 2016, meeting.

**FINANCIAL REPORT**

Mr. Nichols stated that the Authority had a balance of \$282,012.05. Two bills were presented for payment:

- MBP, engineering review; \$455.00
- Valley Publishing, publication; \$103.00

On the motion of Mr. Watson, seconded by Mr. Dunning, which carried by a vote of 5-0, the Board approved payment for the aforementioned bills.

**DISCUSSION/INFORMATION ITEMS**

**Update – Review of Schedule**

Mr. Joe Hines of Timmons Engineering reviewed the timeline and wetlands credit purchase. Timmons is evaluating contracts to purchase these credits, which should cost \$5,000-10,000. Some additional

credits may be purchased on a contingency basis; these may be sold back if unused. Mr. Dunning asked about construction windows from an environmental standpoint. Mr. Hines responded that there are annual cycles during which the river can be accessed, and that river work would likely be performed in 2017 assuming a start date this year.

**Update – Project Timeline**

This update was included in the first discussion item.

**Update – Construction Start Goal**

This update was included in the first discussion item.

**ACTION ITEMS**

**Public Hearing / Resolution – Approving Public Purpose Uses and Authorizing Acquisition of Necessary Property By Eminent Domain**

Mr. Goodwin reviewed the rules for public hearings. The public hearing was opened.

Ms. Susie Morris, a lifelong resident of the County, spoke about the project. In her opinion, there should have been more public involvement in Fluvanna and she is not in favor of the location or the way elected officials in Fluvanna have treated the project. She stated that the site is the likely location of Native American artifacts and/or remains, and that it has great importance to the County’s beauty and heritage. She stated that she did not dispute the value of obtaining the water.

Ms. Barbara Seay relinquished her three minutes to Ms. Morris.

Ms. Morris continued, stated her general opposition to the effort, and her concern that those who have moved to Fluvanna have pushed aside the concerns of native residents.

With no others wishing to speak, the public hearing was closed.

Mr. Hefty reviewed the resolution and its necessity if eminent domain is to be used. He stated that the Authority is required to offer fair market value to owners in the case of eminent domain, and stated that the resolution approves the project as a public use for which the property would be necessary.

Mr. Nichols requested a short recess. The meeting was called back to order at 11:13 a.m.

On the motion of Mr. Watson, seconded by Mr. Nichols, which passed by a vote of 5-0, the resolution of public purpose and eminent domain authorization was approved.

**CLOSED MEETING**

On the motion of Mr. Goodwin, seconded by Mr. Watson, which carried by a vote of 5-0, the Board voted to enter Closed Session at 11:14 a.m. for the purpose of discussing the following:

1. In accordance with §2.2-3711.A.3 VA Code Ann., for the purpose of discussion of the acquisition of property, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body, specifically related to the pump station parcel.

**RESUMPTION OF REGULAR SESSION**

On the motion of Mr. Goodwin seconded by Mr. Nichols, which carried by a vote of 5-0, the Board voted to return to regular session at 12:08 p.m.

**RESOLUTION - CERTIFICATION OF CLOSED SESSION**

On the motion of Mr. Goodwin, seconded by Mr. Watson, which carried by a vote of 5-0, the Board voted to adopt the following resolution:

**WHEREAS**, the James River Water Authority Board of Directors has convened a Closed Meeting pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

**WHEREAS**, §2.2-3712.D of the Code of Virginia requires a certification by the James River Water Authority Board of Directors that such closed meeting was conducted in conformity with the Virginia Law.

**NOW, THEREFORE BE IT RESOLVED** that the James River Water Authority Board of Directors does hereby certify that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting was heard, discussed or considered by the James River Water Authority Board of Directors.

<u>NAME</u>	<u>VOTE</u>
Joe Chesser	(absent)
D.D. Watson	Yes/Aye
Mark Dunning	Yes/Aye
Christian R. Goodwin	Yes/Aye
Steven M. Nichols	Yes/Aye
Goodman B. Duke	Yes/Aye

**OTHER ITEMS**

As there was an issue with the recording device following the recess, the resolution roll call vote was performed again for the recording.

Mr. Nichols motioned to allow Timmons and Faulconer to proceed with necessary due diligence on the new pump station and revised routing parcels. Mr. Watson seconded the motion, which passed by a vote of 5-0.

**ADJOURNMENT**

On the motion of Mr. Goodwin, seconded by Mr. Watson, which carried by a vote of 5-0, the Board voted to adjourn the meeting at 12:12 p.m.

BY ORDER OF:

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GOODMAN B. DUKE, CHAIRMAN  
BOARD OF DIRECTORS  
JAMES RIVER WATER AUTHORITY

DRAFT



**ROW-F02**  
**Colonial Pipeline Company**  
**Encroachment Agreement**

Colonial Pipeline Company  
425 Duncan Store Rd.  
Columbia, VA 23038

Encroachment No.: 903-2015 JRWP-A  
Date: 09-16-2015  
Encroaching Party:

James River Water Authority  
James River Water Project

Attn: \_\_\_\_\_

Re: Encroachment Agreement –  
Crossing #1 CPC Loc. 903, Tract No. 026, Map 5VA059, Line No. 03&04, Station  
No. (03-6070+11) (04-6072+84) in Fluvanna County, state of Virginia.

Colonial Pipeline Company grants the James River Water Authority permission to install (1) 24-  
inch Water Line crossing encroaching upon Colonial's 32' AND 36'-inch petroleum  
products pipeline(s) as approved by Colonial's field representative, subject to the following conditions:

1. Notify State utilities protection center, in accordance with local, State and Federal laws. Colonial will not inspect or approve any work, until a locate notice (Dial 811) has been issued. Notify Tim Mullins by cell phone at 434-996-7115 at least two (2) working days prior to any construction, subsequent maintenance, or repair, so that Colonial may provide a representative on the site. If he cannot be reached, then notify Richard Harris at 434-391-4230.
2. No excavation or construction is permitted over Colonial's pipeline(s) or within its right of way without a Colonial representative being present. The location of the pipeline(s) shall be identified prior to the beginning of any mechanical excavation work. If the location of the pipeline(s) is not known, only hand excavation will be allowed. Based on circumstances at the encroachment site, Colonial's representative has the authority to determine the extent of hand excavation required. However, absent special permission from Colonial's Representative, no mechanized ditching or excavation shall be allowed within five (5) feet of the extremities of the pipelines. **IN ANY EVENT, ALL EXCAVATION WITHIN TWO (2) FEET OF THE PIPELINE(S) MUST BE ACCOMPLISHED BY HAND.** Where hand excavation is required, the encroaching party must provide adequate manpower to perform that work. Subgrading, grading, and placement of fill over Colonial's pipeline(s) will require the approval of Colonial's field representative as to method and extent.

3. Full access must be maintained to the pipeline(s) at all times. Stockpiling of fill, including spoil, or topsoil over the pipeline(s), is not permitted, unless approved by the Colonial representative.
4. Underground utilities (i.e. storm drains, water lines, telephone, electric, etc.) may cross the easement, providing they maintain a minimum vertical clearance of twenty four (24) inches, except where horizontal directional drilling methods are used, then sixty (60) inches will be required over or under Colonial's pipeline(s), and cross at as near a perpendicular angle as practical. Septic drain fields and or sewage drains used for percolation are not permissible inside the pipeline easement. All utility crossings of Colonial's pipeline(s) and respective easements must be constructed of galvanized steel, ductile iron double wrapped with poly wrap, reinforced concrete, or schedule 80 PVC for the entire width of the right of way being crossed.
5. Blasting within the immediate vicinity of Colonial's right of way shall be conditionally allowed. The contractor, planning blasting within 200 feet (61 m) of a pipeline or when scaled distance values at the pipeline are less than 50, must give advance notification of proposed blasting and submit a completed blasting plan (Form 3005), to be approved by Colonial, prior to the commencement of any blasting operations. A Colonial inspector is required to be on site to observe all drilling, loading, and blasting operations. The contractor shall provide in-progress seismic readings and blasting reports. All blasting operations must meet the requirements of the Occupational Health and Safety regulations contained in CFR Title 29, Part 1926, Subpart U – Blasting and Use of Explosives.
6. Any erosion control measures required for your development including temporary diversion dikes, sediment traps, silt fences, gravel outlets, and emergency spillways that may influence or contribute to the degradation of Colonial's right of way will require the approval of Colonial's field representative as to equipment and method. Under no circumstances shall water be impounded on the pipeline(s) right of way.
7. Upon request of the encroaching party, landowner or their agents, Colonial will determine the approximate location of its pipeline(s) and right of way limits; however, in doing so, Colonial makes no warranty as to the accuracy of the locations and measurements given. Colonial also cannot provide assurance that its permanent line markers are positioned directly over its pipeline(s).
8. Original vegetation on Colonial's right of way shall not be disturbed except in areas of approved construction and approved equipment crossings. Highly visible plastic fence or other approved temporary barricade will be required at contractor's expense along Colonial's easement boundaries if Colonial's field representative deems it necessary; to ensure that contractor traffic does not travel over the pipeline(s).
9. Permanent structures are not permitted on the right of way. Manholes, junction boxes, valve boxes, fire hydrants, service meters, storm drain inlets, and utility poles are considered permanent structures. No fences or temporary structures shall be allowed in the right of way without the express approval of Colonial's representative. Temporary structures include such items as signs, trailers, temporary power poles, etc.

10. Heavy equipment shall not be permitted to operate over the pipeline(s) unless earth padding has been provided to protect the pipeline from vibrating. Temporary equipment crossings over the pipeline(s) are permitted with six (6) vertical feet of cover over the pipeline(s) at selected locations as approved by Colonial's field representative. Depth of pipe as determined by test holes will determine amount of temporary fill required. Colored sheets of plastic shall be placed under the temporary fill at original grade so that original grade will not be disturbed when temporary fill is removed. No equipment or vehicles may be parked on the right of way. No material may be stored on the right of way.
11. The encroaching party acknowledges that Colonial's pipelines utilize impressed electrical current ("cathodic protection") for the protection of the steel. Only Colonial personnel will correct any loss of this protection caused by the encroaching party. The cost to correct this damage will be paid by the encroaching party. Further, encroaching party recognizes there may be some risk of damage to your facilities because they are in close proximity to said cathodic protection system and, therefore, any damages to encroaching party's facilities resulting from Colonial's impressed electric current shall be encroaching party's responsibility.
12. Only low growing ornamental type shrubbery with a maximum expected height of four (4) feet shall be allowed within the right of way. In addition, no pipeline marker shall be obscured from public view.
13. Relocation or removal of Colonial's pipeline markers shall not be permitted without the approval of a Colonial representative. Pipeline markers made unusable or damaged shall be repaired or replaced at the encroaching party's expense.
14. Parallel occupancy of the pipeline's easement with road right of way, or utilities is not permitted. Crossing shall be as near as a perpendicular angle to the easement as practical.
15. All proposed roadways, driveways and parking areas should maintain a minimum of four feet (4') from top of pipe to top road surface and three (3) feet minimum vertical cover in open drainage or road ditches. Colonial's Engineering may increase these minimum requirements as determined by a stress analysis of the pipe, and other variable conditions and factors. Colonial may consider concrete protection slabs, per Colonial's specifications as an option, to be installed to protect the pipeline(s).
16. Any and all pipeline(s) within the proposed road, parking, or railway area, will be excavated and visually inspected, with the possible reapplication of pipeline coatings applied, by a Colonial contractor, at the full expense of the encroaching party. Colonial requires that the pipeline coating system be evaluated for suitability of service in relation to the proposed encroachment. Should Colonial deem that the coating system is insufficient due to increased soil stresses or other factors, Colonial will, at the developer's expense, upgrade the pipeline coating to accommodate the proposed encroachment. Colonial will backfill the inspected area to its standard, and will not be held responsible for compaction. (NOTE: A Pipeline Accommodation Agreement for reimbursement to Colonial shall be executed between Colonial and the encroaching party prior to such adjustment.)

17. Cover above the pipeline(s) shall be a minimum of four (4) feet, and in general a maximum of six (6) feet, unless approved by the Right of Way Coordinator.
18. The burning of trash, debris, etc. shall not be permitted within Colonial's right of way.
19. Should any damage occur to the herein permitted encroachment, as a result of Colonial exercising any of its rights at any time, Colonial will not be responsible for said damage; and any expense or monetary cost involved in the repair of said damages will be borne by owners of said damaged encroachment.
20. To the extent permitted by law, the encroaching party agrees to defend and hold Colonial Pipeline Company harmless from all loss, cost, or other expense, including personal property and bodily injuries, whether occurring to it or to Colonial, or the respective employees, agents and servants of either, or to third parties, which are proximately caused by or arise from the installation, maintenance, or repair of the herein permitted works, with the exception of claims due to the sole negligence of Colonial Pipeline Company. Nothing contained in this paragraph shall be construed as a waiver of the James River Water Authority's sovereign immunity.
21. This approval is granted only to the extent of and with no actual or implied diminishment of Colonial's rights and interests and without either express or implied warranty.
22. Fences shall be constructed with gates sufficiently large enough to allow Colonial's personnel and equipment the right of ingress and egress. Fence posts shall be installed at least five (5) feet to the side of any pipeline, with the approval of the field representative.
23. If the approximate location of the pipeline(s) is required, steel prod bars, shovels, and electrical sending devices may be used by Colonial's field personnel only. It should be noted that these methods are only approximate and can be misleading. The exact location of the pipeline(s) can best be found with test pitting.
24. If test pitting is required to determine the exact location, and elevation, of the pipeline(s), the Encroaching party agrees to notify the undersigned at least two (2) working days in advance, so that he may provide a Colonial field representative to be at the site. This representative must be present during the test pitting for the protection of the pipeline(s), and for the common verification of its location. All costs for this test pitting, and for the Colonial representative, will be borne by the encroaching party. Any engineering based on Colonial or other design criteria stemming from the amount or location of this test pit data is the responsibility of the encroaching party.
25. Colonial reserves the right to open, cut, excavate and dig across the proposed road, railway, sidewalks, avenues, utility lines, or any other encroachment herein granted by this agreement, and in any such event, Colonial shall not be liable for the restoration of same, or the payment of any damages to the encroaching party.
26. Excavation or grading which might result in erosion or which could render the right of way inaccessible shall not be permitted unless the encroaching party agrees to restore the area and provide protection to Colonial's pipeline(s). Any erosion control measures within the right of

way including diversion dikes, sediment traps, silt fences, gravel outlets, and emergency spillways will require approval of the Colonial representative, as to equipment and method.

27. If construction on the aforementioned project is not initiated within one calendar year of the date of this letter of agreement, then Colonial Pipeline shall have the right to reconsider the conditions and privileges herein granted, and have full right to alter same, dependant upon current protocol.
28. The encroaching party agrees that all work on Colonial's right of way shall be performed in a Workmanlike manner and in compliance with all applicable government and industry standards and codes.
29. Upon failure of the encroaching party, owner or his agents to comply with any of the Terms of this Agreement and the failure is not corrected within sixty (60) days of receipt of written notice, Colonial will provide Encroaching Party with advance written notice of any intent to revoke this Agreement in its entirety, prevent same from continuing any activity in violation of the terms of this Agreement or its rights under its easements and prior agreements and make any necessary repairs or adjustments to its pipeline(s) or right of way with its own or contract forces at the expense of the party requesting the encroachment.
30. Colonial Pipeline Company will have the option of installing video surveillance camera(s) to provide continuous monitoring of its facilities.
31. Notwithstanding anything to the contrary in this Agreement, Encroaching Party is not allowed to perform the encroaching activities contemplated hereunder without first paying Colonial for any Accommodation Work necessary to be performed by Colonial to protect its pipeline(s) and rights of way from those encroaching activities. Additionally, if such Accommodation Work is required, the encroaching activities will not be initiated until said Accommodation Work is completed. Said Accommodation Work and estimate therefore should have been outlined in detail in previous correspondence to Encroaching Party. If such previous correspondence has not been received, Encroaching Party is required to request same.
32. Should your project be ongoing in close proximity to Colonial's pipeline(s) for an extended period of time, it will be necessary for a Colonial representative to be on-site for a significant duration. Accordingly, since such extended inspection time is outside the scope of Colonial's normal operations, you will be billed for that representative's time. Colonial's policy is to bill for any inspection time in excess of a total of 10 hours (cumulative for that project) and for any evening, weekend or holiday time.
33. This agreement approves only the work specified above all utility encroachments will need to be approved by the local inspector for Colonial Pipeline Company.
34. The following special conditions shall apply, and be required for this project.

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Please signify acceptance of the above conditions by a proper official in the space provided below, and return to the Right of Way Coordinator's office. Colonial Pipeline will notify you to proceed with your project upon receipt of the signed original.

Sincerely,

\_\_\_\_\_  
Colonial Pipeline Representative

Encroachment No.: 2015 JRWP

ACCEPTED AND AGREED TO THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2016.

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(company)

BY: \_\_\_\_\_  
(name, typed or printed)

TITLE: \_\_\_\_\_  
(typed or printed)

Original: Right of Way Department

**CONTRACT TO PURCHASE AND SELL REAL ESTATE**

**THIS CONTRACT TO PURCHASE AND SELL REAL ESTATE** made and entered into this \_\_\_\_\_ day of May, 2016, by and between **WILLIAM R. HAMMOND**, whose address is 415 Gillums Ridge Road, Charlottesville, Virginia, 22903 (“**SELLER**”) and **THE JAMES RIVER WATER AUTHORITY**, a political subdivision of the Commonwealth of Virginia (“**BUYER**”).

**WITNESSETH:**

**WHEREAS**, Seller is the owner of a parcel of land consisting of 24.5 acres in the County of Fluvanna, Virginia and further designated as Tax Parcel# 61-A-4, located at 615 Tepee Town Road, Fluvanna, Virginia (“Parcel”); and

**WHEREAS**, Seller acquired the Parcel by deed from David S. Haney Sr, and David S. Haney, Jr., dated July 24, 2014, and recorded at the Clerk's Office of the Circuit Court of Fluvanna County, Virginia, in Deed Book 223, Page 825; and

**WHEREAS**, the Seller desires to sell and the Buyer desires to buy approximately 2.1 acre portion of the Parcel, (the “Property”) for use as a site for a raw water pump station (“Project”) under the mutually agreeable terms and conditions contained herein;

**NOW, THEREFORE**, for and in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the Seller agrees to sell and the Buyer agrees to buy the Property as further described in Paragraph 1 below in accordance with the following terms and conditions.

**1. Property**

A. The Seller agrees to sell and the Buyer agrees to buy the following described real estate, with any improvements thereon, and with all appurtenances thereunto pertaining, to wit:

*a 2.1+/- acre portion of Tax Parcel# 61-A-4 as more fully described in Exhibit A attached hereto.*

**2. Purchase Price**

A. The purchase price for the real estate is Fifty Five Thousand Dollars and 00/100 (\$55,000.00) (“Purchase Price”), payable to seller at Closing, as described in Paragraph 5, in cash, or by wired funds.

B. On payment of the Purchase Price at Closing on the Property, Seller agrees to

convey the Property to Buyer by good and sufficient general warranty deed.

### **3. Study Period**

A. On the date that Seller and Buyer execute this Contract, Seller shall grant and extend to Buyer a forty five (45) study period ("Study Period") in order that Buyer can study the Property prior to Closing.

B. During the Study Period, Buyer shall have the right, at its own risk, cost and expense and at any date or dates prior to the end of the Study Period, to enter, or cause its agents or representatives to enter, upon the Property for the purpose of making surveys or other tests, test borings, inspections, investigations and/or studies of the Property and a Phase One environmental study to indicate that no substantial remediation to the Property is needed. During the Study Period, Buyer shall obtain at its own cost a physical survey of the Property and a Title Binder for the Property from a Title Insurance Company. Buyer may apply for permits and approvals with respect to the Property as Buyer shall deem necessary for the use and development of the Property. Any damage to the Property that occurs as a result of the above mentioned studies and surveys shall be restored as close as reasonably feasible to original condition by the Buyer. To the extent available each party shall furnish to the other at the other's request, such engineering or surveys as each party has in its possession relating to the Property. It is expressly agreed that with respect to any third party studies, reports or data furnished by either party to the other, such information is furnished for each other's convenience and neither party makes any representations or warranties with respect to the accuracy or completeness of any third party reports or studies furnished to such other party.

C. During the Study Period, Buyer shall have the right to terminate this Agreement if, as a result of inspections or other investigations, Buyer determines in its sole discretion, not to purchase the Property. In the event Buyer elects to terminate this Agreement pursuant to this paragraph, Buyer shall give written notice to Seller of such election prior to the expiration of the Study Period.

D. At no time during the Study Period will Seller cause or suffer any new liens to be recorded against the title to the Property.

E. Except as otherwise expressly set forth in this Contract, during the Study Period, Seller will cause no new improvements or construction to be made on or to the Property without the prior written consent of the Buyer.

### **4. Title**

A. As a condition to Closing, title to the Property at Closing shall be good of record and in fact, fully merchantable, insurable and conveyed to Buyer by general warranty deed subject only to the Permitted Exceptions (as hereinafter defined). The term "Permitted Exceptions" shall mean (i) the lien of real estate taxes not yet due and payable; (ii) all matters revealed in the Title Commitment obtained by Buyer prior to Closing or of record as

of such date (excluding mortgage, deeds of trust or other monetary liens encumbering the Property) and approved or deemed approved by Buyer; (iii) all matters not disclosed because an accurate survey or inspection of the Property was not performed but which matters would be shown by an accurate survey or an inspection of the Property, including, but not limited to, easements, encroachments, overlaps, riparian rights, and boundary disputes, if any; (iv) all building, zoning, and other state, county or federal laws, codes and regulations (whether existing or proposed) affecting the Property; (v) any existing general utility easements serving the Property; and (vi) any matters agreed to in writing between Seller and Buyer.

B. Prior to expiration of the Study Period, Buyer shall obtain a binding commitment from a title insurance company to issue an ALTA title policy covering the Property (the "Title Commitment"), together with true copies of all documents evidencing matters of record shown as exceptions to title thereon. Buyer shall have the right to object, in its sole and absolute discretion, to any exceptions contained in the Title Commitment by giving written notice thereof to Seller stating the matters to which Buyer objects and the reasons therefor. If Buyer disapproves of any matter affecting title, Seller shall endeavor to cure or remove such exceptions and the date of Closing shall be extended until such exceptions are cured. Buyer shall have the right to waive any one or more of such title defects that Seller has not elected to cure or remove. In all events any monetary liens, judgments, or delinquencies shall be paid out of Seller's proceeds of sale at Closing. Notwithstanding anything to the contrary stated herein above in this paragraph, mortgages/deeds of trust against the Property shall not be deemed to be a title objection provided they are paid in full by Seller out of the Purchase Price.

## **5. Closing**

Provided Buyer does not first terminate this Contract in accordance with the provisions of this Contract, Seller and Buyer agree to proceed to full and final Closing on the Property, on a date selected by Buyer and approved by Seller in its reasonable discretion which date shall occur on the date which is not later than thirty (30) days following the last day of the Study Period or its extension. The time and date for Closing may be accelerated or extended by agreement of the Buyer and Seller in writing. Closing shall take place at the offices of the Buyer or at its designated Title Company.

## **6. Seller's Representations, Warranties and Covenants**

In order to induce Buyer to enter into this Contract and to consummate the transactions contemplated hereby, Seller represents and warrants to, and covenants with Buyer as follows:

A. Seller is the owner of the Property and has the right to sell the Property.

B. The execution, delivery and performance of this Contract and the consummation of the transactions contemplated hereby have been duly and validly authorized by all requisite actions of Seller (none of which actions have been modified or rescinded, and all of which actions are in full force and effect).

C. To the best of Seller's knowledge, and except as otherwise disclosed to Buyer. Seller has not received any notice that it is in violation or default under any Contract with any third party, or under any judgment, order, decree, rule or regulation of any court, arbitrator, administrative agency or other governmental authority to which it may be subject, which violation or default will, in any one case or in the aggregate, adversely affect the ownership or operation of the Property or Seller's ability to consummate the transactions contemplated hereby. The execution, delivery and performance of this Contract and the consummation of the transactions contemplated hereby will not to the best of Seller's knowledge (a) violate any law or any order of any court or governmental authority with proper jurisdiction; (b) result in a breach or default under any service contract, equipment lease or other binding commitment of Seller or any provision of the organizational documents of Seller; or (c) result in any encumbrance, other than a Permitted Exception, against the Property.

D. Seller has access to the Property from Route 624 and will provide to Buyer sufficient proof of such access.

E. There are no tenants are in possession of the Property by virtue of leases now in effect.

F. There are no actions, suits, proceedings or claims affecting any part of the Property or affecting Seller with respect to the ownership, occupancy, use or operation of any part of the Property or to the best of Seller's knowledge, pending or threatened in or before any court, agency, commission, or board.

G. Seller has received no written notice that the Property is in violation of applicable environmental, health, fire, safety or planning or zoning laws or ordinances.

H. No petition in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, or petition seeking reorganization or arrangement or other action under Federal or State bankruptcy laws is, or to the best of Seller's knowledge, pending or threatened against or contemplated by Seller.

I. To the best of Seller's knowledge the Property (including land, surface and subsurface soil, surface water, ground water, and improvements) does not contain any substantial amounts of waste or debris or contain any material contamination which would constitute a violation of any law or regulation including: (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder; (c) any substance the presence of which on the Property is prohibited by any law similar to those set forth in this subparagraph including similar laws of the Commonwealth of Virginia; and (d) any toxic or hazardous substances or materials, whether products or wastes, including, without limitation, asbestos or PCB's. (All of the foregoing are collectively referred to herein as "Hazardous Materials").

J. Seller shall not file any plans, plats or any other documents or materials with any governmental authority in connection with any of Seller's obligations under this Contract or in any other respect with regard to the Property unless Seller has first obtained Buyer's prior written approval of such plans, plats and/or other documents and materials in each instance.

K. Seller shall promptly advise Buyer in writing of any facts of which Seller becomes aware indicating the inaccuracy of any of the representations or warranties of Seller contained in this Contract and shall promptly give to Buyer copies of any written notices which Seller receives relating to the Property.

## **7. Buyer's Representations, Warranties and Covenants**

In order to induce Seller to enter into this Contract and to consummate the transactions contemplated hereby, Buyer represents and warrants to, and covenants with, Seller as follows:

A. Buyer is a water authority organized under Chapter 51: Virginia Water and Waste Authorities Act of Title 15.2 of the Code of Virginia and is authorized to conduct the business in which it is now engaged.

B. The execution, delivery and performance of this Contract and the consummation of the transactions contemplated hereby have been duly and validly authorized by all requisite actions of Buyer (none of which actions have been modified or rescinded, and all of which actions are in full force and effect). This Contract constitutes a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms.

C. The execution, delivery and performance of this Contract and the consummation of the transactions contemplated hereby by Buyer will not (i) violate any law or any order of any court or governmental authority with proper jurisdiction; (ii) result in a breach or default under any contract or other binding commitment of Buyer or any provision of the organizational documents of Buyer; or (iii) require any consent or approval or vote that has not been taken or given, or at the time of the transaction involved, shall not have been taken or given.

D. There are no actions, suits, arbitrations, proceedings, governmental investigations or other proceedings that are pending against Buyer that adversely and materially affect its right to enter into or perform this Contract.

## **8. Closing Costs**

A. Seller shall pay for the cost of preparation of the deed of conveyance and for the release of any deeds of trust or other monetary liens encumbering the Property, and for the Virginia grantor's tax on the deed of conveyance. In addition, Seller shall be obligated to pay for all legal fees for attorneys representing Seller who have been retained by Seller.

B. Buyer shall be obligated to pay all title insurance premiums, costs for survey ordered by Buyer, all costs of its due diligence inspections and any escrow fees as well as all legal fees for attorneys representing Buyer, who have been retained by Buyer.

**9. Payment of Liens on the Property**

Any deeds of trust, judgments, delinquent taxes or other monetary liens or charges against the Property shall be paid out of Seller's proceeds at Closing.

**10. Risk of Loss**

Risk of loss shall be with Seller until Closing or termination of this Contract from the Effective Date.

**11. Possession**

Seller shall deliver sole and exclusive possession of the Property to Buyer upon Closing, free of tenancies.

**12. Deliveries at Closing**

A. Seller's Deliveries. At Closing, Seller shall provide the following original documents, each executed and acknowledged (as appropriate):

- (1) A general warranty deed to the Property in recordable form, conveying the Property to Buyer subject only to the Permitted Exceptions and other matters subsequently approved by Buyer as provided in Paragraph 4 "Title" and elsewhere herein;
- (2) An affidavit certifying that Seller is not a "foreign person" within the meaning of Section 1445(f) (3) of the Internal Revenue Code;
- (3) A certificate of Seller updating the representations and warranties of Seller set forth in this Contract through Closing, which certificate shall state that there has been no material change in said representations and warranties; and
- (4) Such other documents as are required to be delivered by Seller pursuant to this Contract.

B. Buyer's Deliveries. At Closing Buyer shall deliver the following items or original documents, each executed and acknowledged (as appropriate), as the case may be:

- (1) The balance of the yet to be paid Purchase Price;

- (2) Closing Statement; and
- (3) Such other documents as are required by this Contract.

**13. Brokerage**

The parties hereto warrant and represent to each other that there are no real estate commissions or finder's fees payable with respect to this Contract or the consummation of the transaction contemplated herein.

**14. Conditions Precedent to Closing of Buyer**

The obligation of Buyer to proceed to Closing on the Property shall be subject to the following conditions and contingencies (all or any of which may be waived, in whole or in part, by the Buyer):

- A. That the representations and warranties of Seller as contained in Paragraph 6 and elsewhere in this Contract shall be substantially true and accurate in all material respects as of Closing.
- B. That the Buyer shall have obtained ingress and egress access easements from adjacent property owners giving Buyer the right to access Route 624 from the Property.
- C. That title to the Property shall be as described in Paragraph 4 of this Contract.
- D. That Seller shall have performed all covenants herein contained.

Buyer may void this Contract if any one or more of the above contingencies and/or conditions set forth herein are not satisfied to Buyer's satisfaction.

**15. Termination, Default and Remedies**

- A. If:
  - (i) Any of the representations and warranties made by the Seller in Paragraph 6 shall be inaccurate or incorrect;
  - (ii) The Seller shall fail to perform any of the covenants or agreements to be performed by it under this Contract on or before the Date of Closing; or
  - (iii) Any of the conditions precedent to Buyer's obligations hereunder have not been satisfied,

then, in any such event, the Buyer shall have the right to terminate this Contract by giving written notice to the Seller, and neither party shall have any further liability to the other under

this Contract. If the Buyer would have the right to terminate this Contract by reasons of an event described in clauses (i) or (ii) immediately above, the Buyer, in lieu of terminating this Contract, shall have the right to pursue the remedy of specific performance, or exercise such other rights and remedies as are available under the laws of the Commonwealth of Virginia.

## **16. Notices**

Any notice required or permitted to be given under this Contract shall be deemed to be given when (i) hand-delivered by personal delivery or (ii) one (1) business day after pickup by United Parcel Service or Federal Express or (iii) when received by confirmed facsimile transmission or registered or certified mail (return receipt requested, first-class postage prepaid), in either case addressed to the parties as follows:

If to Seller to:

William R. Hammond  
415 Gillums Ridge Road,  
Charlottesville, Virginia, 22903

If to Buyer to:

*JAMES RIVER WATER AUTHORITY (JRWA)*  
c/o County of Fluvanna  
Attn: Steve Nichols, County Administrator  
132 Main Street, P.O. Box 540  
Palmyra, Virginia, 22963

or in each case to such other address as either party may from time to time designate.

## **17. Disclaimer of Warranties**

Except for the general warranty of title and the warranties specifically set forth in this Contract, Seller specifically disclaims any warranty, guaranty or representation, oral or written, past or present, express or implied, relating to the Property. It is understood that the Property is being conveyed to Buyer at Closing in "As Is" "Where Is" condition without any warranties or representations of any kind or nature whatsoever.

## **18. Miscellaneous Provisions**

A. Binding Effect. This Contract shall, be binding upon and inure to the benefit of the parties hereto, and their respective heirs, devisees, personal representatives, successors and permitted assigns.

B. Waiver, Modification. Except for issues concerning title, all of which Buyer

must have addressed prior to the commencement of the Purchase of the Property. failure by the parties to insist upon or enforce any of their rights hereto shall not constitute a waiver thereof.

C. Assignment. This Contract may not be assigned without the prior written consent of the other party.

D. Governing Law. This Contract shall be governed by and construed under the laws of the Commonwealth of Virginia, without regard to principles of conflicts of law.

E. Headings. The paragraph headings are herein used for convenience of reference only and shall not be deemed to vary the content of this Contract or the covenants, agreements, representations and warranties herein set forth or the scope of any paragraph.

F. Counterparts. If this Contract shall be executed in two or more counterpart originals, each counterpart original shall be for all purposes considered an original of this Contract.

G. Partial Invalidity. If any provision of this Contract shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, all of which other provisions shall remain in full force and effect; and it is the intention of all the parties hereto that if any provision of this Contract is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

H. Entire Contract. This Contract, together with the other writings signed by the parties and incorporated by reference and together with any instruments to be executed and delivered under this Contract, constitutes the entire Contract between the parties with respect to the purchase and sale of the Property and supersedes all prior oral and written understandings. Amendments to this Contract shall not be effective unless in writing and signed by the parties hereto.

I. Holidays, etc. Whenever the last day for the performance of any act required by either Seller or Buyer under this Contract shall fall upon a Saturday, Sunday, or legal holiday, the date for the performance of any such act shall be extended to the next succeeding business day which is not a Saturday, Sunday or legal holiday.

J. Counsel Fees. If any action is brought by either party against the other party, the prevailing party shall be entitled to recover from the other party reasonable attorney's fees, costs and expense incurred in connection with the prosecution or defense of such action.

K. Effective Date. The Effective Date of this Contract shall be the date that a fully signed original of this Contract is executed by Buyer and delivered to and signed by Seller.

**IN WITNESS WHEREOF**, Seller and Buyer have caused this Contract to be executed

as of the dates indicated below.

**SELLER:**

**WILLIAM R. HAMMOND**

By: \_\_\_\_\_  
William R. Hammond

Date: \_\_\_\_\_

**BUYER:**

**JAMES RIVER WATER AUTHORITY**

By: \_\_\_\_\_  
Goodman B. Duke, Chairman

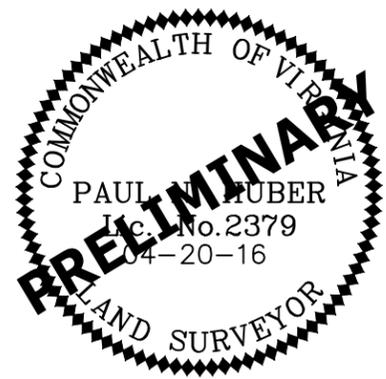
Date: \_\_\_\_\_

Approved as to form: \_\_\_\_\_  
JRWA legal counsel

CSX RAILROAD  
FORMARLY  
THE CHESAPEAKE AND OHIO  
RAILROAD COMPANY  
D.B. 32 PG. 349

POINT OF FORK FARM, L.P.  
D.B. 273 PG. 269  
TM 53-A-62C

WILLIAM R. HAMMOND  
D.B. 922 PG. 484  
TM 61-A-4



NOTES:

1. THIS PLAT IS BASED ON A FIELD SURVEY CONDUCTED BY TIMMONS GROUP ON APRIL 20, 2016.
2. HORIZONTAL DATUM IS BASED ON NAD83 (NA2011), VIRGINIA STATE GRID, SOUTH ZONE. DATUM ESTABLISHED THROUGH LEICA SmartNet.
3. THE 2.1± ACRE PARCEL DEPICTED HEREON IS A PORTION OF FLUVANNA COUNTY TAX MAP PARCEL 61-A-4 IN THE NAME OF WILLIAM R. HAMMOND.

**PRELIMINARY**

This survey was prepared without the benefit of a title binder and may therefore not show all existing easements or other pertinent facts which may affect the property.

PLAT SHOWING  
**2.1± ACRES OF LAND LYING ON THE NORTH  
LINE OF THE JAMES RIVER AND WEST OF  
ITS JUNCTION WITH THE RIVANNA RIVER**

FORK UNION DISTRICT  
FLUVANNA COUNTY, VIRGINIA

DATE: APRIL 20, 2016	SCALE: 1" = 200'
SHEET 1 OF 1	J.N.:33927
DRAWN BY: MLH	CHECK BY: PNH

● = IRON SET



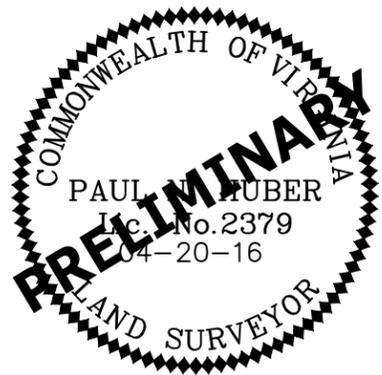
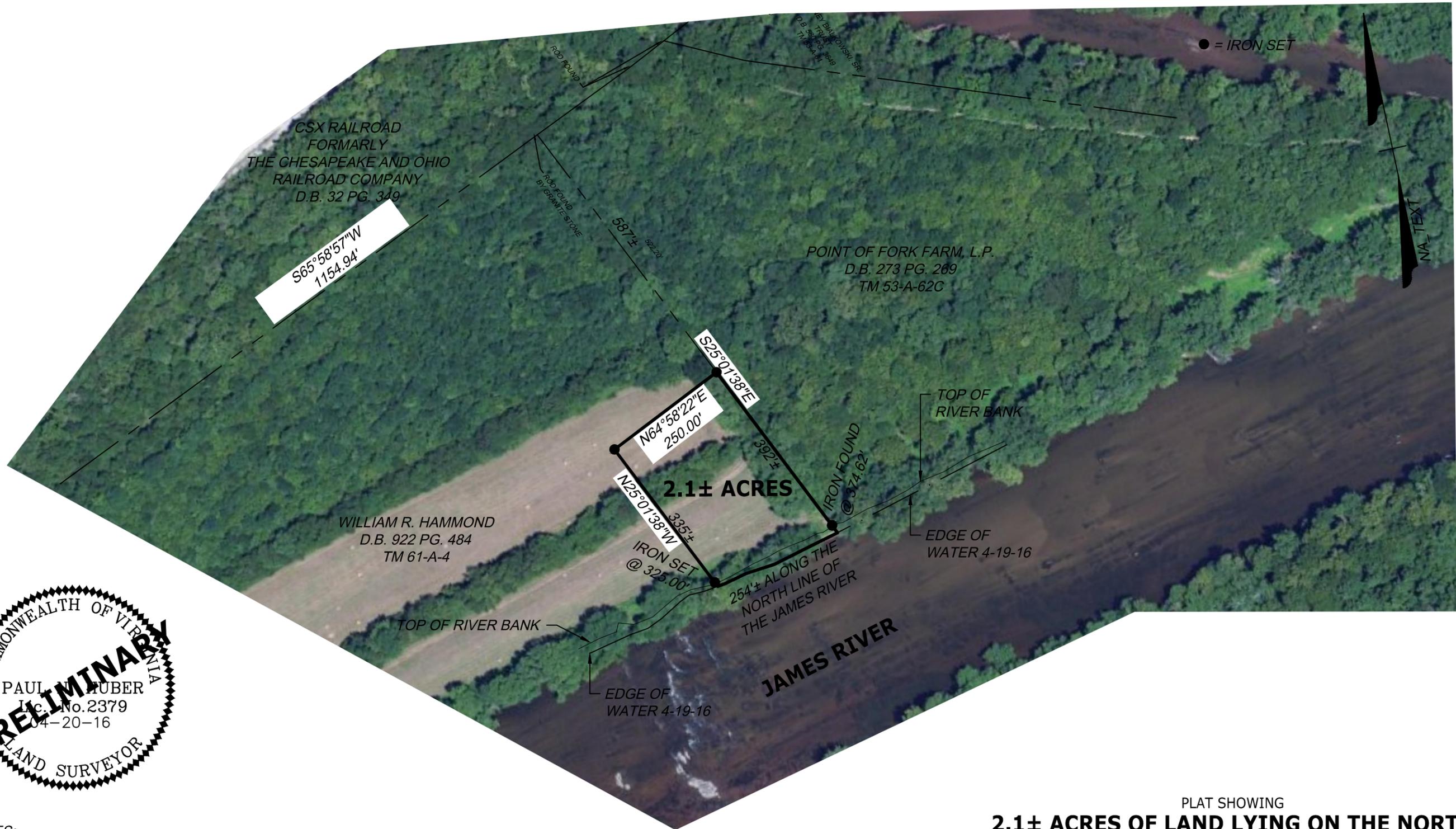
Y:\904\33927-James\_River\_Water\DWG\33927V-REVISED-INTAKE-PLAT.dwg | Plotted on 4/20/2016 2:26 PM | by Michael Harris

THIS DRAWING PREPARED AT THE  
CORPORATE OFFICE  
1001 Boulders Parkway, Suite 300 | Richmond, VA 23225  
TEL: 804.200.6500 FAX: 804.560.1016 www.timmons.com

YOUR VISION ACHIEVED THROUGH OURS.

**TIMMONS GROUP**

L:\201\33927 - James River Water Project\DWG\Resources\Survey\paul\h33927V-REVISED-INTAKE-PLAT.dwg | Plotted on 4/21/2016 10:55 AM | by James Carter



**NOTES:**

1. THIS PLAT IS BASED ON A FIELD SURVEY CONDUCTED BY TIMMONS GROUP ON APRIL 20, 2016.
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 FLUVANNA COUNTY, VIRGINIA

DATE: APRIL 20, 2016	SCALE: 1" = 200'
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 1001 Boulders Parkway, Suite 300 | Richmond, VA 23225  
 TEL: 804.200.6500 FAX: 804.560.1016 www.timmons.com

YOUR VISION ACHIEVED THROUGH OURS.

**TIMMONS GROUP**

**COMPREHENSIVE AGREEMENT**

between

**JAMES RIVER WATER AUTHORITY**

and

**FAULCONER CONSTRUCTION COMPANY, INC.**

for

**DESIGN AND CONSTRUCTION OF RAW WATER INTAKE AND PUMP  
STATION AND RAW WATER PIPELINE**

**May \_\_, 2016**

## TABLE OF CONTENTS

ARTICLE	PAGE NUMBER
1. INCORPORATION OF RECITALS.....	3
2. CONTRACT DOCUMENTS.....	3
3. DEFINITIONS .....	3
4. GENERAL SCOPE .....	4
5. INTERPRETATION; INTENT AND INCORPORATION.....	7
6. OWNERSHIP OF WORK PRODUCT .....	8
7. CONTRACT PRICE .....	8
8. PAYMENT .....	8
9. CONTRACT TIME.....	10
10. STOP WORK AND TERMINATION FOR CAUSE.....	11
11. TERMINATION FOR CONVENIENCE.....	12
12. PAYMENT BONDS, PERFORMANCE BONDS, AND OTHER SECURITY .....	12
13. INSURANCE.....	13
14. REPRESENTATIONS AND WARRANTIES .....	14
15. RESOLUTION OF DISPUTES, CLAIMS AND OTHER MATTERS.....	16
16. NOTICES.....	16
17. SUCCESSORS AND ASSIGNS .....	17
18. TIME OF THE ESSENCE.....	17
19. INDEPENDENT CONTRACTOR.....	18
20. NO WAIVER.....	18
21. COOPERATION .....	18
22. COUNTERPARTS .....	18
23. ENTIRE AGREEMENT AND ORDER OF PRECEDENCE.....	18
24. GOVERNING LAW/CHOICE OF FORUM.....	19
25. ANNUAL APPROPRIATION; FILING WITH AUDITOR OF PUBLIC ACCOUNTS .....	19
26. FINANCIAL STATEMENTS.....	19
27. CONDITIONS PRECEDENT AND SUBSEQUENT TO AGREEMENT'S EFFECTIVENESS.....	19
28. MISCELLANEOUS .....	19
29. EXHIBITS .....	19

## **COMPREHENSIVE AGREEMENT**

This Comprehensive Agreement (“Agreement”) is made and entered into as of May \_\_\_, 2016, by and between the James River Water Authority, a political subdivision of the Commonwealth of Virginia (“JRWA” or “Owner”), and Faulconer Construction Company, Inc., a Virginia corporation (“Faulconer” or “Design-Builder”). The Owner and the Design-Builder are referred to individually as a “Party” and collectively as the “Parties.”

### **Recitals**

1. On February 4, 2014, the Owner adopted “Public-Private Education Facilities and Infrastructure Act of 2002 – Guidelines,” establishing procedures for the development of public facilities through public-private partnerships (“Implementing Procedures”), which procedures satisfy the requirements of the Public-Private Education Facilities and Infrastructure Act of 2002 (Title 56, Chapter 22.1 of the Code of Virginia of 1950, as amended), hereinafter referred to as the “PPEA”.
2. On February 12, 2014, the Owner received an Unsolicited PPEA Proposal from Faulconer, attached hereto as Exhibit B (“Proposal”), in connection with the Design and Construction of a Raw Water Intake and Pump Station and Raw Water Pipeline to terminate in the vicinity of the Colonial Pipeline Easement and State Route 6 having the project title James River Water Supply Project (“Project”).
3. On March 7, 2014, the Owner published a notice of receipt of Faulconer’s Proposal and invited for consideration competing proposals, to be submitted to the Owner on or before May 10, 2014.
4. On May 9, 2014 Owner received one (1) competing PPEA proposal for consideration and also received Faulconer's Modification to Faulconer's Proposal, attached hereto as Exhibit C ("Modified Proposal").
5. On September 12, 2014, Faulconer submitted Faulconer's Detailed Stage Submission to Faulconer's Proposal, attached hereto as Exhibit D ("Detailed Stage Proposal").
6. On October 14, 2014, the Owner determined that it would be advantageous to proceed with the Project using procedures for competitive negotiation, rather than sealed, competitive bids, given the probable scope, complexity and urgency of the Project; the merits of risk-sharing and the potential for added value; and the economic benefit from the Project that might otherwise not be available.
7. On November 4, 2014 the Owner held a public hearing on the proposals and subsequently determined to proceed to the detailed phase review and negotiate an interim and/or comprehensive agreement with Faulconer.
8. On March 31, 2015, the Parties entered into an Interim Agreement, attached hereto as Exhibit E (“Interim Agreement”), for the provision of all design and

engineering services necessary to develop 85% of the system design for the pump station and pipeline and 100% of the design for the intake structure, attached hereto as Exhibit H (“Plans and Specifications”).

9. On           , 2016, Faulconer submitted its final Guaranteed Maximum Price Proposal (“GMP Proposal”) to the Owner attached hereto as Exhibit F.

10. Based upon Faulconer’s performance under the Interim Agreement, including but not limited to the GMP Proposal to complete the design and construction of the Project, the Parties have negotiated this Agreement consistent with the PPEA, other applicable law, the Implementing Procedures, Faulconer’s Proposal, Modified Proposal and Detailed Proposal, and discussions between representatives of the Owner and Faulconer.

11. The Parties acknowledge and agree this Agreement and the General Conditions of the Contract will function as the Contract for purposes of the Project.

12. Faulconer has executed Appendix A, James River Water Authority’s Standard Terms and Conditions and agrees hereto to be bound by those Standard Terms and Conditions.

13. Having considered this Agreement and other information, the Owner has determined that the Project to be designed and constructed pursuant to this Agreement serves the public purpose of the PPEA under the criteria of Section 56-575.4(C) of the Code, and posted this Agreement for public inspection in accordance with the PPEA and Implementing Procedures.

[agreement continues on following page]

## Agreements

**NOW THEREFORE**, for and in consideration of the mutual promises, conditions and covenants herein set forth, the Parties agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are true and correct and are incorporated herein by reference.
2. **Contract Documents.** The Contract Documents are comprised of the following:
  - a. This Agreement executed by the Owner and the Design-Builder including all exhibits and attachments and the General Conditions of Contract.
3. **Definitions.** The following definitions apply to this Agreement. Capitalized terms not defined in this Article 3 or elsewhere in this Agreement shall have the meanings as defined in the General Conditions of Contract.
  - a. “Contract” means this Agreement and the exhibits attached hereto, including the General Conditions of Contract.
  - b. “Contract Documents” means those documents listed in Article 2 of this Agreement.
  - c. “Contract Price” means the amount that the Owner will be obligated to pay the Design-Builder as stated at Article 7 of this Agreement, but subject to the limit of the Guaranteed Maximum Price, and is subject to upward or downward adjustment pursuant only to the Contract.
  - d. “Contract Time” or “Contract Times” has the meaning ascribed by Article 9 hereof, as may be adjusted pursuant to the Contract Documents.
  - e. “Date of Commencement” means the date described in Article 9.a. herein.
  - f. “Design-Professional” means the qualified, licensed design professional who is not an employee of the Design-Builder, but is retained by the Design-Builder, or employed or retained by anyone under contract with the Design-Builder, to furnish design services required under the Contract Documents. The engineers designated in the Proposal are the Timmons Group. In the event PPEA Contractor desires to change Design Professionals, approval must be obtained from Owner in writing, which approval may not be unreasonably withheld.
  - g. “Final Completion of the Work”, “Final Completion” or “final completion” means the date on which all Work is complete and accepted by the Owner in accordance with the Contract Documents, including but not limited to, any items identified in the punch list in accordance with Article 44 of the General Conditions.

- h. “General Conditions of Contract” or “General Conditions” means the General Conditions of Contract which is attached hereto as **Exhibit A**.
  - i. “Project” means the design, permitting and performance of the work as contemplated by the Contract Documents. “Project” includes both the entirety of the Project or a part thereof and may occur both on and outside of the Site.
  - j. “Project Schedule” means that schedule attached hereto as part of **Exhibit G**, as it may be adjusted pursuant to the Contract Documents.
  - k. “Substantial Completion of the Work,” “Substantial Completion,” or “substantial completion,” means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that the Owner can use the Project or a portion thereof for its intended purposes, and which will require, at minimum, approval by all governing authorities with jurisdiction over the Project or such portion thereof, issuance of a certificate of occupancy, and testing of all systems with operational results satisfactory to the Owner. The Owner at its sole discretion may, after obtaining the necessary approvals and certificates, take Beneficial Occupancy at this time or choose to wait to occupy until Final Completion is achieved.
  - l. “Work” means all the Design-Builder’s design, construction, permitting and related services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.
4. **General Scope.**
- a. JRWA and Faulconer agree that the Project shall be designed and constructed by Faulconer for the benefit of the JRWA and its successors or assigns, if any, in accordance with the Contract Documents. Faulconer shall perform, provide or cause to be provided all design, permitting, construction, material, equipment, services and labor, necessary for the development of the turn-key Project. Faulconer shall be responsible for obtaining all necessary federal, state, and local permits and approvals, conducting negotiations and entering access agreements with private landowners or other entities if necessary, and performing the Project in compliance with all applicable federal, state, and local laws and regulations and the Contract Documents.
  - b. Pursuant to the terms, plans, and specifications of the Contract Documents, Faulconer shall design and build the James River Raw Water Project, a comprehensive turn-key raw water utility infrastructure system that will provide: 1) a raw water intake capable of receiving 12.0 MGD located in the James River; 2) a raw water pump station with two pumps

each capable of delivering 3.0 MGD with structure sized to accommodate an ultimate capacity of 12.0 MGD with four pumps; 3) a raw water distribution system capable of transporting to Route 6 in Fluvanna County, Virginia with the capacity to transport 12.0 MGD to Route 6. The major components of the project more specifically include:

- i. 12 MGD Raw Water Intake: \$X,XXX,XXX
  - a) Install cofferdam within James River;
  - b) Cast-in-place concrete with half barrel stainless steel wedgewire intake screens rated for a total capacity of 12 MGD;
  - c) Air burst cleaning manifold;
  - d) 30" ductile iron (DI) intake pipe to pump station wet well.
  - e) Clearing, erosion control, and restoration measures as required by the Soil Erosion and Sediment Control Regulations;
  
- ii. Raw Water Pump Station per JRWP Project 1 - Plan Set B: \$X,XXX,XXX
  - a) Minor improvements to existing access road to raw water pump station site. Improvements will allow a two-wheel-drive vehicle to access the site during normal weather conditions;
  - b) Site preparation and erosion control according to the Virginia Soil Erosion and Sediment Control Regulations;
  - c) Excavation, shoring and backfill necessary for construction of cast-in-place concrete wet well;
  - d) Cast-in-place concrete wetwell;
  - e) Elevated pump room above the wet well, to include the pumps, discharge manifold, electrical gear;
  - f) Elevated generator alcove adjacent to the pump room
  - g) Exhaust fans and louvers provided for the pump room
  - h) Quantity two (2) multi stage vertical turbine pumps connected to a common discharge manifold;
  - i) One Surge relief valve on the discharge manifold;
  - j) Flow meter;
  - k) Exposed exterior valves and piping will be insulated and heat traced to prevent freezing;
  - l) Emergency pump connection to permit the use of a portable pump in the event of an equipment failure;
  - m) Equipment will provide variable speed control of pumps, alternation of lead and lag pumps and duplex operation (with provisions for future triplex or quadplex pump operation);
  - n) On-site generator for emergency backup power during power outages;
  - o) Equipment for monitoring turbidity, flow, level and

- pressure;
  - p) Alarms to monitor high water, low water, power outages, generator and pumps;
  - q) Telemetry transmitted via radio to provide remote monitoring of the intake and pump station at the WTP and provides start/stop signals to pump control panel.
- iii. 24" Raw Water Main: \$X,XXX,XXX
- a) 24" Raw Water Main from the raw water pump station to Rte. 6 in Fluvanna County, Virginia;
  - b) Clearing, erosion control, traffic control, and restoration measures as required, by the Virginia Department of Transportation and the Soil Erosion and Sediment Control Regulations;
  - c) Open cut and patch secondary roads, without closing roads due to schools bus and safety vehicle traffic;
  - d) Complete one (1) crossing under Colonial Pipeline facilities, the crossings have to be approved by Columbia Gas before any work is done, and Contractor is responsible for any Columbia personnel that are required and for coordinating with the gas company for the crossings;
  - e) Creek crossings to be performed as open-cut diversions, all permits must be approved before any work is started;
  - f) All submittals for the Work must be submitted for review by the Authority or its agent;
  - g) The appropriate bedding for the water main is dependent on geotechnical information;
  - h) Trenches shall be backfilled to 95% standard proctor under roadways and within the pavement prism. All other areas will be backfilled to a minimum of 85% standard proctor.
  - i) Pipe trenches under roads with open cut installation will be backfilled with stone and compacted to 95% standard proctor. As an alternative, Contractor may backfill with flowable fill.
  - j) Pipe trenches in shoulders of State/County routes will be backfilled with previously excavated material and compacted to 95% proctor.
  - k) All work shall be done in compliance with VDOT requirements.
- c. Permits and Regulations - The Project shall be designed, constructed, and completed in accordance with all applicable laws, standards, regulations, and permits, including, but not necessarily limited to, the Virginia Department of Health (VDH) Water Works Regulations, VDH permits, the Virginia Department of Transportation (VDOT) requirements and permits, the Soil Erosion and Sediment Control Regulations and permits, the

Virginia Uniformed Building Code and building permits, Fluvanna County Community Development requirements and permits.

- d. Obtaining Approvals - Faulconer is responsible for completion of the Work and obtaining the approvals of all permitting agencies for the Project. Obtaining such approvals may require providing testing data, operations manuals, training manuals, maintenance manuals, as-built drawings, and certifications of completion as required by each agency's requirements and permit. The Owner is responsible for obtaining all permits and permit revisions related to withdrawal of water from the James River, pipeline crossing at the Rivanna River, and historic resources. Training for Crews - Faulconer shall provide preconstruction training for the superintendents, foreman, and senior technicians (e.g. pipe installers) to review installation techniques for the major components of the Project such as pipes, valves, and monitoring systems. If specialized installation crews will be used from the manufacturer for certain equipment then that equipment need not be covered in the training.
- e. Public Interaction – Faulconer shall maintain a website that will post weekly the progress of the project on a weekly basis including the expected work to be completed in the next two week period. Faulconer shall notify property owners through telephone calls, notices (mailed and/or hand-delivered) that work will be commenced on their property or within the immediate area. Faulconer shall meet with property owners if questions, concerns, or issues arise during construction and shall address such items to the satisfaction of the property owner and Owner. Faulconer shall return any disturbed property to the same or better condition that it was prior to being disturbed.

5. **Interpretation; Intent and Incorporation.**

- a. The Contract Documents are intended to permit the Parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for an amount not to exceed the Guaranteed Maximum Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the order of precedence among Contract Documents shall be as provided in Article 24 hereof.
- b. In accordance with Article 24 hereof and as more fully provided thereby, the Contract Documents form the entire agreement between Owner and Design-Builder. No oral representations or other agreements have been made by the Parties except as specifically stated in the Contract Documents.

6. **Ownership of Work Product.**

- a. **Work Product.** Any reports, studies, photographs, negatives, electronic media (e.g. calculations, memoranda, CAD files such as .dwg files) or other documents prepared by Design-Builder, or on behalf of the Design-Builder by the Design Professional or other consultant, sub-consultant, or subcontractor in the performance of its Obligations shall be remitted to the Owner by the PPEA Contractor, without demand therefore and upon final payment of all services rendered and signing appropriate data transfer agreements, upon the earliest of (i) completion of its Obligation or (ii) termination, cancellation or expiration of this Interim Agreement. Design-Builder shall not use, willingly allow or cause to have such materials used for any purpose other than performance of the Obligations without the prior written consent of the Owner. The Owner shall own the intellectual property rights to all materials produced under this Interim Agreement. Should the Owner transfer the plans to another design professional, that design professional shall adhere to all requirements of Virginia Department of Professional and Occupational Regulation (DPOR) for use of said documents. It is the responsibility of the Design-Builder to make this clause or similar clause that achieves the same a part of any contract with the Design Professional or other consultant, sub-consultant, or subcontractor that are employed to perform on this project.

7. **Contract Price.**

- a. **Contract Price and Guaranteed Maximum Price.** The Owner shall pay the Design-Builder in accordance with Article 8 hereof and the General Conditions the “Contract Price,” which sum shall not exceed \_\_\_\_\_ Dollars (\$) (the “Guaranteed Maximum Price” or “GMP”). The GMP is deemed to include all sales, use, consumer and other taxes imposed by law or any governmental authority. In no event shall the Owner be required to pay the Design-Builder more than the GMP. The Design-Builder shall be wholly responsible to complete the Project at no compensation above the GMP, subject to any adjustments in the GMP made as a result of Changes made in accordance with this Agreement.

8. **Payment.**

- a. **Progress Payments**
- i. The Design-Builder shall submit to the Owner on the first (1<sup>st</sup>) day of each month the Design-Builder’s Application for Payment (as such term is used in the General Conditions of Contract) in accordance with Article 36 of the General Conditions of Contract, for Work performed during the immediately prior month.

- ii. The Owner shall make payment for Work properly performed in accordance with the Contract Documents within thirty (30) days after the Owner's receipt of each properly submitted and accurate Application for Payment in accordance with the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld for Work that was not satisfactorily completed or otherwise properly withheld under Article 36 of the General Conditions of Contract.
- b. **Retainage on Progress Payments**
- i. The Owner will retain five percent (5%) of the amount of each Application for Payment. The Design-Builder shall include or cause to be included retainage provisions in all subcontracts at the rate set forth herein.
  - ii. Upon Substantial Completion of the entire Work, the Owner shall release to the Design-Builder all retained amounts relating, as applicable, to the entire Work, less an amount not to exceed 150% of the reasonable value of all remaining or incomplete items of Work or any defective Work or any portion of the Work that has not been performed in accordance with the Contract Documents as noted in the Certificate of Substantial Completion.
- c. **Final Payment.** The Design-Builder shall submit its Final Application for Payment to the Owner in accordance with Article 36 of the General Conditions of Contract. If the Owner finds that all portions of the Work including any punch list items identified by the Owner or the Design-Builder have been completed in accordance with the provisions of the Contract Documents, the Owner shall make payment on the Design-Builder's properly submitted and accurate Final Application for Payment within sixty (60) days after the Owner's receipt of the Final Application for Payment, provided that the Design-Builder has satisfied the requirements for final payment set forth in Article 36 of the General Conditions of Contract.
- d. **Interest.** Payments due and unpaid by the Owner to the Design-Builder, whether progress payments or final payment, shall bear interest commencing thirty (30) days after payment is due at a rate of one-half of one percent ( $\frac{1}{2}\%$ ) per annum.
- e. **Lender Requirements.** In the event that the Owner obtains a loan or other financial assistance from a third party in connection with the financing of the Project, the Design-Builder shall comply with all conditions established by such lender or other financial source in connection with Applications for Payment under this Agreement. The Owner shall use its best efforts to insure that any such conditions are

reasonable in light of the nature and complexity of the Project and are at no additional cost and expense of any material amount to the Design-Builder.

9. **Contract Time.**

a. **Date of Commencement.** The Work shall commence at the time set forth in the Owner's written notice to proceed ("Date of Commencement") unless the Parties mutually agree otherwise in writing.

b. **Substantial Completion and Final Completion.**

i. Substantial Completion of all Work shall be achieved no later than                     , 20    ("Scheduled Substantial Completion Date"), time being of the essence.

ii. Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable, but in no event later than 30 days after Substantial Completion is achieved, time being of the essence.

iii. **Liquidated Damages.** The Design-Builder and the Owner recognize that time is of the essence with respect to all dates set forth in the Contract, including but not limited to those in this Article 9 and any Milestone Dates, and that the Owner will suffer financial loss if the Work is not completed within the time specified in the Contract including any specified Milestone Dates, plus any time extension(s) allowed pursuant to the Contract. The Design-Builder and the Owner further recognize the difficulty of proving actual loss to the Owner in the event of a failure to achieve Substantial Completion in accordance with the date established in the Contract. Accordingly, instead of requiring such proof, the Design-Builder acknowledges that the rate of the liquidated damages set forth herein is reasonable and does not constitute a penalty. The Design-Builder agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, the Design-Builder shall pay on demand to the Owner Two Thousand and no/100 Dollars (\$1,250.00) per day as step one liquidated damages for each day that Substantial Completion extends beyond the Scheduled Substantial Completion Date. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by the Owner which are occasioned by any delay in achieving Substantial Completion. The Design-Builder hereby waives any defenses that the liquidated damages are a penalty or do not bear a reasonable relation to the actual damages. Once the

Work is Substantially Complete, the accrual of step one liquidated damages shall stop and Design-Builder shall have thirty (30) calendar days in which to achieve Final Completion of the Work. If Final Completion of the Work is not achieved by the 30th day after Substantial Completion has been achieved, and if no extension of such time period has been granted by the Owner as required by this Agreement, then Design-Builder shall owe the Owner the additional amount of step 2 liquidated damages of \$500 for each and every consecutive calendar day thereafter that Final Completion of the Work is not achieved.

- c. TIME IS OF THE ESSENCE in achieving the Substantial Completion and Final Completion of Work dates for the Project.
- d. The Owner and Design-Builder shall use their best efforts to maintain the Project Schedule, which can be modified by mutual written agreement of the Parties as circumstances warrant and consistent with the Contract as set forth in the General Conditions, keeping in mind the importance of achieving the Substantial Completion dates for the Project. Design-Builder shall include in the Project Schedule sufficient allowance of time for permitting, reviews, and government approvals.

10. **Termination for Cause and Right to Stop Work.**

- a. **The Owner's Right to Stop Work or Terminate for Cause.**
  - i. At any time and without cause, the Owner may suspend the Work or any portion thereof for a period of not more than ninety (90) consecutive days by notice in writing to the Design-Builder which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. The Design-Builder shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if the Design-Builder makes a Claim therefor. Provided, however, if the Owner suspends Work or any portion thereof due to its reasonable judgment that the Design-Builder has or is violating the Contract or any requirement thereof, including but not limited to violations of any Legal Requirements related to jobsite safety, then the Design-Builder shall not receive any adjustment in the Contract Price or extension of the Contract Times, even if it is determined that no violation actually existed.
  - ii. If the Design-Builder fails to (i) provide or cause to be provided a sufficient number of skilled workers; (ii) supply the materials or equipment required by the Contract; (iii) comply with applicable Legal Requirements; (iv) timely pay, without cause, Design Consultants or Subcontractors; (v) prosecute the Work with

promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted; or (vi) perform material obligations under the Contract Documents, or if the Design-Builder (i) becomes insolvent; (ii) makes a general assignment for the benefit of its creditors; (iii) commences or consents to any action seeking reorganization, liquidation or dissolution under any law relating to bankruptcy or relief of debtors; or (iv) commences or consents to any action seeking appointment of a receiver or trustee for itself or its assets; or fails to comply with the requirements of Article 41 of the General Conditions, then the Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the right to terminate this Agreement for cause as provided in Article 41 of the General Conditions.

b. **The Design-Builder's Right to Stop Work or Terminate for Cause.**

- i. The Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop work or terminate for cause as provided in Article 40 of the General Conditions.
- ii. Notwithstanding the foregoing, the Design-Builder shall not stop work because of any dispute with the Owner about all or any portion of any amount for which the Design-Builder has submitted an Application for Payment as long as the Owner pays to the Design-Builder such portion of any Application for Payment about which there is no dispute.

11. **Termination for Convenience.** The Owner may, for its convenience and without cause, elect to terminate the Contract in accordance with Article 42 of the General Conditions.

12. **Payment Bonds, Performance Bonds, and Other Security.**

- a. The Design-Builder contractor will maintain a surety bond in an amount not less than the total amount payable to the Design-Builder for the term of the Contract. The bond will be issued by a company licensed to issue surety bonds in the Commonwealth of Virginia and has an A. M. Best rating of A- or better.
- b. All bonds shall be executed by a corporate surety or corporate sureties that are reasonably acceptable to the Owner, duly authorized to do business in the Commonwealth of Virginia, meet the requirements of Section 2.2-4337 of the Virginia Code and are executed in a form acceptable to the Owner. The Design-Builder shall cooperate with the Owner to fulfill any reasonable requirements in connection with the financing for the Project

with respect to the form of performance and payment bonds provided hereunder.

- c. The Design-Builder shall also furnish any cash escrow, funds, cashier's checks, certified checks, or letters of credit required for the issuance of any earth-disturbing or other permit and any bonds or security required by any other governmental authority.

13. **Insurance.**

- a. The Design-Builder will maintain insurance policies naming the James River Water Authority as an additional insured as provided in Article 11 of the General Conditions. The insurer must have an A. M. Best rating of A- or better. The insurer must list the City of Petersburg as the Owner as an additional insured. The endorsement must be issued by the insurance company. A notation on the certificate of insurance is not sufficient.
- b. The Design-Builder will maintain builders risk coverage on a replacement cost basis for the duration of the Contract. The required coverage will be the full replacement cost of the building and/or structures being built under this contract, which the parties agree shall be the same as the Guaranteed Maximum Price. The City of Petersburg as the Owner will be listed as an insured under this policy to protect any property owned at the construction site. Coverage is to be with a company licensed to conduct business in the Commonwealth of Virginia and have an A. M. Best rating of A- or better.
- c. With all policies listed above, the insurer or agent of the insurer must issue a certificate of insurance to show evidence of coverage and provide copies of applicable policies along with applicable endorsements, including but not limited to additional insured endorsements. All wording limiting the insurer responsibility to notify the Owner of any cancellation or non-renewal of the coverage must be removed. All policies must also be consistent with the requirements set forth in Article 5 of the General Conditions of Contract.
  - i. The Design-Builder shall be responsible for the filing and settling of claims and liaison with insurance adjusters.
  - ii. The Design-Builder shall send proofs of coverage to the Owner..
  - iii. The Owner and the Design-Builder intend that the policies of insurance purchased in accordance with this Contract will protect the Owner, the Design-Builder, Design Consultants, Subcontractors and all other individuals or entities so identified herein as loss payees (and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each of them) in such policies and will provide primary coverage for all

losses and damages caused by the perils or causes of loss covered thereby.

- d. The Owner reserves the right, but not the obligation, to review and revise any insurance requirement, including but not limited to limits, sub-limits, deductibles, self-insured retentions, coverages and endorsements based upon any material adverse change in insurance market conditions after the date of this Agreement affecting the availability or affordability of coverage, or changes in the scope of work/specifications affecting the applicability of coverage, and the costs of any such change shall be an adjustment to the compensation payable to the Design-Builder. Additionally, the Owner reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein and to reject any insurer providing coverage due to its poor financial condition or failure to operate legally.
- h. In addition to providing the Owner with copies of any and all certificates of insurance as described herein, the Design-Builder also shall provide copies of all applicable additional insured endorsements and copies of the policies of insurance. Failure to provide these materials promptly as required or requested shall be a basis for the Owner to proceed with a termination for cause.

14. **Representations and Warranties.**

- a. The Owner hereby represents and warrants to the Design-Builder as follows:
  - i. The Owner is a water authority duly chartered and operating under Title 15.2, Chapter 51 of the Code of Virginia and has full power, right and authority to execute, deliver and perform its obligations under, in accordance with and subject to the terms and conditions of this Agreement.
  - ii. Each person executing this Agreement on behalf of the Owner is duly authorized to execute each such document on behalf of the Owner.
  - iii. Neither the execution and delivery by the Owner of this Agreement and any other documents executed concurrently herewith to which the Owner is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or violation of any other agreements or instruments to which it is a party or by which it is bound.
  - iv. There is no action, suit, proceeding, investigation or litigation pending and served on the Owner as of the date of this Agreement

which challenges the Owner's authority to execute, deliver or perform, or the validity or enforceability of this Agreement and the other related documents to which the Owner is a party, or which challenges the authority of the Owner official executing this Agreement or the other related documents, and the Owner has disclosed to the Design-Builder any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Owner is aware.

b. The Design-Builder hereby represents and warrants to the Owner as follows:

- i. The Design-Builder represents that Faulconer Construction Company, Inc., does business in Virginia as Faulconer Construction Company, Inc., and in signing this Agreement, has full power and authority to bind itself to the terms thereof.
- ii. The Design-Builder has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under this Agreement and the other related documents to which the Design-Builder is a party.
- iii. Each person executing this Agreement or any other related document on behalf of the Design-Builder has been or will at such time be duly authorized to execute each such document on behalf of the Design-Builder.
- iv. Neither the execution and delivery by the Design-Builder of this Agreement and the other related documents to which the Design-Builder is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or a violation of the governing instruments of the Design-Builder or any other agreements or instruments to which it is a party or by which it is bound.
- v. There is no action, suit, proceedings, investigation or litigation pending and served on the Design-Builder which challenges the Design-Builder's authority to execute, deliver or perform, or the validity or enforceability of this Agreement and the other related documents to which the Design-Builder is a party, or which challenges the authority of the Design-Builder official executing this Agreement or the other related documents; and the Design-Builder has disclosed to the Owner any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Design-Builder is aware.

- vi. The Design-Builder is in material compliance with all laws, regulations and ordinances applicable to the Design-Builder or its activities in connection with this Agreement and the other related documents.
- vii. The Design-Builder is a financially viable and capable entity and fully able to perform its obligations under this Agreement.

15. **Resolution of Disputes, Claims and Other Matters.** Disputes, claims and other matters in question between the Parties under the Contract shall be resolved as follows:

- a. The Parties agree to cooperate to achieve the objectives of this Agreement and to use reasonable and good faith efforts to resolve all disputes and disagreements that may arise hereunder.
- b. The general claims process is set forth in Article 47 of the General Conditions of Contract. Contractual claims or disputes by Design-Builder against the Owner, whether for money or other relief, except for claims or disputes exempted by law from the procedure set forth herein, shall be submitted in writing no later than sixty (60) days after final payment; provided, however, that Design-Builder shall give the Owner written notice of its intention to file a claim or dispute within fourteen (14) days after the occurrence upon which the claim or dispute shall be based. Any written notice of Design-Builder's intention to file such a claim or dispute shall state the facts and/or issues relating to the claim in sufficient detail to identify the claim, together with its character and scope. Whether or not Design-Builder files such written notice, Design-Builder shall proceed with the work as directed. If Design-Builder fails to make its claim or dispute, or fails to give notice of its intention to do so as provided under the Contract Documents, then such claim or dispute shall be deemed forfeited.

16. **Notices.** All notices and demands by any party to any other shall be given in writing and sent by a nationally recognized overnight courier or by United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To the Owner:

James River Water Authority  
c/o Fluvanna County Administrator  
132 Main Street  
P.O. Box 540  
Palmyra, VA 22963

With a copy to: County Administrator  
1 Woolfolk Avenue  
P.O. Box 160  
Louisa, Virginia 23093

And: Brendan Scott Hefty, Esq.  
Hefty Wiley & Gore, P.C.  
100 W. Franklin Street, Suite 300  
Richmond, VA 23220  
Brendan@heftywiley.com

To the Design-Builder: Falconer Construction Company, Inc.  
Ed Stelter, LEED AP, DBIA  
Design-Build Principal  
2496 Old Ivy Road  
Charlottesville, VA 22903

With copies to: Falconer Construction Company, Inc.  
Pete Morris, Senior Project Manager  
Design-Build Principal  
2496 Old Ivy Road  
Charlottesville, VA 22903

Any party may, upon prior notice to the others, specify a different address for the giving of notice. Notices shall be effective one (1) day after sending if sent by overnight courier or three (3) days after sending if sent by certified mail, return receipt requested.

17. **Successors and Assigns.** Except as expressly otherwise provided, all of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. The Contract may not be assigned without the prior written consent of the Parties to this Agreement. Notwithstanding the foregoing, if financing is obtained for the Project, the Owner may assign the Contract to a third party, as needed, consistent with the financing. The Contract may also be assigned to a mortgagee(s)/trustee(s) of deed(s) of trust of the fee or leasehold interest in the Site or portions of them. The Design-Builder hereby consents to collateral assignment of the Contract in favor of such mortgagee(s)/trustee(s) of deed(s) of trust, in a form reasonably satisfactory to such mortgagee(s)/trustee(s), provided that no such assignment shall release the Owner from its obligations to the Design-Builder under the Contract.
18. **Time of the Essence.** The time to complete the Project is of the essence of the Contract. The Design-Builder shall proceed expeditiously with adequate forces

and make diligent efforts to perform all portions of the Work in accordance with the Project Schedule, and the Design-Builder shall achieve Substantial Completion of the Work and Final Completion of the Work within the completion times specified in this Agreement and the Project Schedule. The Owner will cooperate reasonably with the Design-Builder's efforts to keep the Project on schedule.

19. **Independent Contractor.** It is expressly understood and agreed by the Parties hereto that the Design-Builder, in performing its obligations under the Contract, shall be deemed an independent contractor and not an agent, employee or partner of the Owner.
20. **No Waiver.** The failure of the Owner or the Design-Builder to insist upon the strict performance of any provisions of the Contract, the failure of the Owner or the Design-Builder to exercise any right, option or remedy hereby reserved, or the existence of any course of performance hereunder shall not be construed as a waiver of any provision hereof or of any such right, option or remedy or as a waiver for the future of any such provision, right, option or remedy or as a waiver of a subsequent breach thereof. The consent or approval by the Owner of any act by the Design-Builder requiring the Owner's consent or approval shall not be construed to waive or render unnecessary the requirement for the Owner's consent or approval of any subsequent similar act by the Design-Builder. No provision of the Contract shall be deemed to have been waived unless such waiver shall be in writing signed by the Party to be charged. Further, any approvals required by the Owner shall likewise be in writing.
21. **Cooperation.** The Parties agree to cooperate to achieve the objectives of the Contract and to use reasonable and good faith efforts to resolve all disputes and disagreements that may arise hereunder. Each Party agrees to designate representatives with the authority to make decisions binding upon such Party (subject in the case of the Owner to those matters requiring an appropriate vote of its governing body) so as to not unduly delay the Project Schedule.
22. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but both of such counterparts together shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for the other counterpart.
23. **Entire Agreement and Order of Precedence.** This Agreement, including any other Contract Documents, and the Exhibits attached hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions and understandings between the Design-Builder and the Owner concerning the Project, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. No alteration, amendment, change or addition to the Contract shall be binding upon the Design-Builder or the Owner unless reduced to writing in a

formal amendment signed by each Party. The Design-Builder's Proposal, Modified Proposal, Detailed Stage Proposal and GMP Proposal, attached hereto as **Exhibit B**, **Exhibit C**, **Exhibit D** and **Exhibit F**, respectively, are attached for purposes of providing details concerning the requirements of this Agreement. In the event of any conflict or inconsistency between or among the meaning of any provision of the Contract Documents, the language in this Agreement shall take priority, followed by the General Conditions.

24. **Governing Law/Choice of Forum.** This Agreement and the Contract shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia. The Parties agree, and submit, to sole and exclusive jurisdiction and venue in either of the following courts: the General District or Circuit Courts of Louisa County, Virginia, or the General District or Circuit Courts of Fluvanna County, Virginia; for resolution of any and all claims, causes of action or disputes between Vendor and the Authority. Design-Builder agrees hereby to waive any jurisdictional or venue defenses related to any such action brought in such courts, and further agrees to not remove or file any such action in Federal Court.
25. **Annual Appropriation; Filing With Auditor of Public Accounts.** The financial obligations of the Owner contained in the Contract are subject to annual appropriation. Within thirty (30) days after the date of this Agreement, the Owner shall submit a copy of the Contract to the Auditor of Public Accounts, to the extent required by Section 56-575.9(F) or Section 56-575.18 of the Code of Virginia.
26. **Financial Statements.** Both members of the joint venture comprising the Design-Builder agree to provide the Owner with copies of complete and current financial statements for the Design-Builder on an annual basis. The financial statements provided need not be audited, but if the Design-Builder does have the financial statements audited, they shall supplement their initial submission of unaudited financial statements for the year concerned with copies of audited statements within thirty (30) days after they become available. The Design-Builder hereby designates such financial statements as confidential proprietary information exempt from release under the Virginia Freedom of Information Act, and the Owner agrees with that designation.
27. **Conditions Precedent and Subsequent to Agreement's Effectiveness.** It shall be a condition precedent to this Agreement's effectiveness that: (i) it first be approved by the James River Water Authority board; and (ii) Owner shall have obtained financing and all required governmental permits and approvals for the Project.
28. **Miscellaneous.** During the term of this Contract, Faulconer agrees as follows:
  - A. Pursuant to Virginia Code § 2.2-4311.1, Faulconer does not, and shall not during the performance of this Contract for goods and services in the

Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

- B. Pursuant to Virginia Code § 2.2-4311.2, Faulconer shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia (1950), as amended, or as otherwise provided by law. Faulconer shall not allow its existence to lapse or its certificate of authority to be revoked or cancelled at any time during the term of this contract. County may void this Contract if Faulconer fails to remain in compliance with the provisions of this section.
  
- C. Pursuant to Virginia Code § 2.2-4311:
  - (i) Faulconer will not discriminate against any subcontractor, employee, or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of its business. Faulconer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  
  - (ii) Faulconer, in all solicitations or advertisements for employees placed by or on behalf of Faulconer, will state that Faulconer is an equal employment opportunity employer.
  
  - (iii) Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
  
  - (iv) Faulconer will include the provisions of the foregoing paragraphs 1, 2, and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor.
  
- D. Pursuant to Virginia Code § 2.2-4354:
  - (i) Within seven (7) days after receipt of amounts paid to Faulconer by the Owner:
    - a) Faulconer will pay subcontractor, if any, for the proportionate share of the total payment received from the Owner attributable to the work performed by subcontractor under the Contract; or
  
    - b) Notify the Owner and subcontractor, if any, of Faulconer's

intention to withhold all or a part of subcontractor's payment with the reason for nonpayment.

- (ii) Faulconer shall provide its federal employer identification number to the County.
- (iii) Faulconer shall pay interest to the subcontractor, if any, on all amounts owed to subcontractor that remain unpaid after seven (7) days following receipt by Faulconer of payment from the Owner for work performed by subcontractor under the Contract, except for amounts withheld as allowed in section 1(b) above.
- (iv) Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one (1) percent per month.
- (v) Faulconer shall include in each of its subcontracts a provision requiring each subcontractor to include the same payment and interest requirements as set forth herein with respect to each lower-tier subcontractor, if any.
- (vi) Faulconer's obligation to pay an interest charge to a subcontractor pursuant to this section shall not be construed to be an obligation of the Owner.

29. **Exhibits.** The following exhibits are hereby deemed to be part of this Agreement:

- Exhibit A:** General Conditions of Contract between Owner and Design-Builder
- Exhibit B:** Design-Builder's Conceptual Proposal, dated February 12, 2014
- Exhibit C:** Design-Builder's Modified Proposal, dated May 9, 2014
- Exhibit D:** Design-Builder's Detailed Stage Proposal, dated September 12, 2014
- Exhibit E:** Interim Agreement dated March 31, 2015
- Exhibit F:** Design-Builder's GMP Proposal
- Exhibit G:** Project Schedule
- Exhibit H:** Plans and Specifications

**IN WITNESS WHEREOF**, the Parties have executed this Comprehensive Agreement as of the day and year first above written.

**JAMES RIVER WATER AUTHORITY**

By: \_\_\_\_\_  
Name: Goodman B. Duke  
Title: Chairman

Approved as to form:

\_\_\_\_\_  
Brendan Scott Hefty, counsel

**FAULCONER CONSTRUCTION  
COMPANY, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT A  
GENERAL CONDITIONS OF CONTRACT  
BETWEEN  
DESIGN-BUILDER AND OWNER

TABLE OF CONTENTS

1.	<a href="#"><u>DEFINITIONS</u></a> .....	3
2.	<a href="#"><u>CONTRACT DOCUMENTS</u></a> .....	8
3.	<a href="#"><u>LAWS AND REGULATIONS</u></a> .....	9
4.	<a href="#"><u>NONDISCRIMINATION</u></a> .....	12
5.	<a href="#"><u>PROHIBITION OF ALCOHOL AND OTHER DRUGS</u></a> .....	13
6.	<a href="#"><u>TIME FOR COMPLETION</u></a> .....	13
7.	<a href="#"><u>CONDITIONS AT SITE</u></a> .....	15
8.	<a href="#"><u>CONTRACT SECURITY</u></a> .....	16
9.	<a href="#"><u>SUBCONTRACTS</u></a> .....	16
10.	<a href="#"><u>SEPARATE CONTRACTS</u></a> .....	17
11.	<a href="#"><u>CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE</u></a> .....	18
12.	<a href="#"><u>"ALL RISK" BUILDER'S RISK INSURANCE</u></a> .....	19
13.	<a href="#"><u>TAXES, FEES AND ASSESSMENTS</u></a> .....	20
14.	<a href="#"><u>PATENTS</u></a> .....	20
15.	<a href="#"><u>ARCHITECT/ENGINEER'S STATUS</u></a> .....	20
16.	<a href="#"><u>INSPECTION</u></a> .....	21
17.	<a href="#"><u>SUPERINTENDENCE BY CONTRACTOR</u></a> .....	25
18.	<a href="#"><u>CONSTRUCTION SUPERVISION, METHODS, AND PROCEDURES</u></a> .....	25
19.	<a href="#"><u>SCHEDULE OF THE WORK</u></a> .....	26
20.	<a href="#"><u>SCHEDULE OF VALUES AND CERTIFICATE FOR PAYMENT</u></a> .....	30
21.	<a href="#"><u>ACCESS TO WORK</u></a> .....	32
22.	<a href="#"><u>SURVEYS AND LAYOUT</u></a> .....	32
23.	<a href="#"><u>PLANS AND SPECIFICATIONS</u></a> .....	32
24.	<a href="#"><u>SUBMITTALS</u></a> .....	33
25.	<a href="#"><u>FEES, SERVICES AND FACILITIES</u></a> .....	34
26.	<a href="#"><u>EQUALS</u></a> .....	34
27.	<a href="#"><u>AVAILABILITY OF MATERIALS</u></a> .....	35

<u>28.</u>	<u>CONTRACTOR'S TITLE TO MATERIALS</u> .....	35
<u>29.</u>	<u>STANDARDS FOR MATERIALS INSTALLATION &amp; WORKMANSHIP</u> .....	36
<u>30.</u>	<u>WARRANTY OF MATERIALS AND WORKMANSHIP</u> .....	37
<u>31.</u>	<u>USE OF SITE AND REMOVAL OF DEBRIS</u> .....	37
<u>32.</u>	<u>TEMPORARY ROADS</u> .....	39
<u>33.</u>	<u>SIGNS</u> .....	39
<u>34.</u>	<u>PROTECTION OF PERSONS AND PROPERTY</u> .....	39
<u>35.</u>	<u>CLIMATIC CONDITIONS</u> .....	40
<u>36.</u>	<u>PAYMENTS TO CONTRACTOR</u> .....	40
<u>37.</u>	<u>PAYMENTS BY CONTRACTOR (§2.2-4354, Code of Virginia)</u> .....	46
<u>38.</u>	<u>CHANGES IN THE WORK</u> .....	47
<u>39.</u>	<u>EXTRAS</u> .....	56
<u>40.</u>	<u>CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT</u> .....	56
<u>41.</u>	<u>OWNER'S RIGHT TO TERMINATE THE CONTRACT FOR CAUSE</u> .....	57
<u>42.</u>	<u>TERMINATION BY OWNER FOR CONVENIENCE</u> .....	58
<u>43.</u>	<u>DAMAGES FOR DELAYS; EXTENSION OF TIME</u> .....	59
<u>44.</u>	<u>INSPECTION FOR SUBSTANTIAL COMPLETION &amp; FINAL COMPLETION</u> .....	63
<u>45.</u>	<u>GUARANTEE OF WORK</u> .....	64
<u>46.</u>	<u>ASSIGNMENTS</u> .....	67
<u>47.</u>	<u>CONTRACTUAL DISPUTES (§2.2-4363, Code of Virginia)</u> .....	67
<u>48.</u>	<u>ASBESTOS – NOT APPLICABLE</u> .....	69
<u>49.</u>	<u>TRAINING, OPERATION AND MAINTENANCE OF EQUIPMENT</u> .....	69
<u>50.</u>	<u>PROJECT MEETINGS</u> .....	69

## 1. DEFINITIONS

Whenever used in these General Conditions of the Design Build Contract ("General Conditions") or in the Contract Documents, the following terms have the meanings indicated, which are applicable to both the singular and plural and the male and female gender thereof:

**Architect, Engineer, Architect/Engineer, or A/E:** The term used to designate the duly Virginia licensed persons or entities designated by the Design-Build Contractor to perform and provide the Architectural and Engineering design and related services in connection with the Work.

**Beneficial Occupancy:** The condition after Substantial Completion but prior to Final Completion of the Project at which time the Project, or portion thereof, is sufficiently complete and systems operational such that the Owner could, after obtaining necessary approvals and certificates, occupy and utilize the space for its intended use. Guarantees and warranties applicable to that portion of the Work begin on the date the Owner accepts the Project, or a portion thereof, for such Beneficial Occupancy, unless otherwise specified in the Supplemental General Conditions or by separate agreement.

**Change Order:** A document issued on or after the effective date of the Contract which is agreed to by the Contractor and approved by the Owner, and which authorizes an addition, deletion, or revision in the Work, including any adjustment in the Contract Price and/or the Contract Completion Date. The term Change Order shall also include written orders to proceed issued pursuant to Section 38(a)(3). A Change Order, once signed by all parties, is incorporated into and becomes a part of the Contract.

**Code of Virginia:** 1950 Code of Virginia as amended. Sections of the Code referred to herein are noted by § xx-xx.

**Construction:** The term used to include new construction, reconstruction, renovation, restoration, major repair, demolition, and all similar work upon buildings and ancillary facilities, including any draining, dredging, excavation, grading or similar work upon real property.

**Contract:** The Contract between Owner and Design-Build Contractor is hereinafter referred to as the Contract.

**Contract Completion Date:** The date by which the Work must be Substantially Complete. The Contract Completion Date is customarily established in the Notice to Proceed, based on the Time for Completion. In some instances, however, the Contract contains a mandatory Contract Completion Date, which shall be stated in the Request for Proposal.

**Contract Documents:** The Contract Documents are those listed in the Comprehensive Agreement between Owner (James River Water Authority) and Design-Build Contractor (Faulconer Construction Company) signed by the Owner and the Contractor and any documents expressly incorporated therein, all modifications including addenda, and subsequent Change Orders.

**Contract Price:** The total compensation payable to the Contractor for performing the Work, subject to modification by Change Order.

**Contractor or Design-Build Contractor:** The person or entity with whom the Owner has entered into a contract to do the Work.

**Date of Commencement:** the date as indicated in the written Notice to Proceed, the receipt of the earliest Building Permit, or a date mutually agreed to between the Owner and Contractor in writing, whichever is the latest.

**Day(s):** Calendar day(s) unless otherwise noted.

**Defective:** An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, deficient, does not conform to the Contract Documents or does not meet the requirements of inspections, standards, tests or approvals required by the Contract Documents, or Work that has been damaged prior to the final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion or Beneficial Occupancy).

**Design-Build Proposal:** The Proposal submitted by the Design-Build Contractor, on February 12, 2014, including the Modified Proposal submitted on May 9, 2014 and the Detailed Stage Proposal submitted on September 12, 2014, setting forth the scope of the services proposed, design concepts, performance standards, pricing options, and other conditions of the Work to be performed.

**Drawing:** A page or sheet of the Plans which presents a graphic representation, usually drawn to scale, showing the technical information, design, location, and dimensions of various elements of the Work. The graphic representations include, but are not limited to, plan views, elevations, transverse, and longitudinal sections, large and small scale sections and details, isometrics, diagrams, schedules, tables and/or pictures.

**Emergency:** Any unforeseen situation, combination of circumstances, or a resulting state that poses imminent danger to health, life or property.

**Field Order:** A written order issued by the A/E which clarifies or explains the plans or specifications, or any portion or detail thereof, without changing the design, the Contract Price, the Time for Completion, or the Contract Completion Date.

**Final Completion Date:** The date of the Owner's acceptance of the Work from the Contractor upon confirmation from the Contractor that the Work is totally complete in accordance with Section 44(b).

**Final Payment:** The final payment that the Contractor receives pursuant to the applicable provisions of Section 36, except in the event no final payment is made due to termination of the Contract under either Sections 41 or 42. In the event of a termination for cause under Section 41, the Final Payment shall be when the termination became effective. In the event of a termination for convenience under Section 42, the Final Payment shall be either the payment of compensation for termination that the Contractor receives according to the provisions of Subsection 42, or the Owner's determination that no compensation for termination is due the Contractor under Subsection 42, as the case may be.

**Float:** The excess time included in a construction schedule to accommodate such items as inclement weather and associated delays, equipment failures, and other such unscheduled events. It is the contingency time associated with a path or chain of activities and represents the amount of time by which the early finish date of an activity may be delayed without impacting the critical path and delaying the overall completion of the Project. Any difference in time between the Contractor's approved early completion date and the Contract Completion Date shall be considered a part of the Project float.

**Float, Free:** The time (in days) by which an activity may be delayed or lengthened without impacting upon the start day of any activity following in the chain.

**Float, Total:** The difference (in days) between the maximum time available within which to perform an activity and the duration of an activity. It represents the time by which an activity may be delayed or lengthened without impacting the Time for Completion or the Contract Completion Date.

**Notice:** All written notices, including demands, instructions, claims, approvals and disapprovals, required or authorized under the Contract Documents. Any written notice by either party to the Contract shall be sufficiently given by any one or combination of the following, whichever shall first occur: (1) delivered by hand to the last known business address of the person to whom the notice is due; (2) delivered by hand to the person's authorized agent, representative or officer wherever they may be found; (3) enclosed in a postage prepaid envelope addressed to such last known business address and delivered to a United States Postal Service official or mailbox; or (4) email. Notice is effective upon such delivery. All notices to the Owner should be directed to the Project Manager. All notices shall be titled as to their purpose in the subject line (i.e. "notice," "demand," "claim," "instruction," "approval," and "disapproval"). The notice must be dated and should clearly state whether the notice is one required under the contract documents.

**Notice to Proceed:** A written notice given by the Owner to the Contractor (with a copy to A/E) fixing the date on which the Contract time will commence for the Contractor to begin the prosecution of the Work in accordance with the requirements of the Contract Documents. The Notice to Proceed will customarily identify a Contract Completion Date.

**Owner:** The public body with whom the Contractor has entered into a contractual agreement and for whom the Work or services is to be provided.

**Person:** This term includes any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.

**Plans:** The term used to describe the group or set of project-specific drawings prepared by the Design Build Contractor's A/E and acceptable to the Owner which describe the proposed Work in sufficient detail and provide sufficient information for the Building Official, Virginia Department of Health, Soil Erosion, and Sediment Control Officials, and James River Water Authority, to determine code compliance and for the Contractor to perform the Work and which are included in the Contract Documents.

**Project:** The term used instead of the specific or proper assigned title of the entire undertaking which includes, but is not limited to, the "Work" described by the Contract Documents, including any specific Phases or Sub-phases of such Work.

**Project Inspector:** One or more persons employed or contracted by the Owner to inspect the Work for the Owner and/or to document and maintain records of activities at the Site to the extent required by the Owner. The Owner shall notify the Contractor in writing of the appointment of such Project Inspector(s). The scope of the Project Inspector's authority with respect to the Contractor is limited to that indicated in Section 16 and as supplemented by the Owner in writing to the Project Inspector and to the Contractor.

**Project Manager:** The Project Manager as used herein shall be the Owner's designated representative on the Project. The Project Manager shall be the person through whom the Owner generally conveys written decisions and notices. All notices due the Owner and all information required to be conveyed to the Owner shall be conveyed to the Project Manager. The scope of the Project Manager's authority is limited to that authorized by the Owner, who shall provide written information to the Contractor at the Preconstruction meeting defining those limits. Upon receipt of such information, the Contractor shall be on notice that it cannot rely on any decisions of the Project Manager outside the scope of his authority. Nothing herein shall be construed to prevent the Owner from issuing any notice directly to the Contractor. The Owner may change the Project Manager from time to time and may, in the event that the Project Manager is absent, disabled or

otherwise temporarily unable to fulfill his duties, appoint an interim Project Manager.

**Provide:** Shall mean furnish and install ready for its intended use.

**Schedule of Values:** The schedule prepared by the Contractor and acceptable to the Owner which indicates the value of that portion of the Contract Price to be paid for each trade or major component of the Work.

**Site:** Shall mean the location at which the Work is performed or is to be performed.

**Specifications:** That part of the Contract Documents prepared by the Design-Build Contractor's A/E and acceptable to the Owner which contain the written design parameters and the technical descriptions of materials, equipment, construction systems, standards, and workmanship which describe the proposed Work in sufficient detail and provide sufficient information for the Building Official, Virginia Department of Health, Soil Erosion, and Sediment Control Officers, and Louisa County Water Authority personnel, to determine code compliance and for the Contractor to perform the Work. (The General Conditions, any Supplemental General Conditions, various bidding information and instructions, and blank copies of various forms to be used during the execution of the Work are usually bound with the Specifications.)

**Subcontractor:** A person having a direct contract with Contractor or with any other Subcontractor for the performance of the Work. Subcontractor includes any person who provides on-site labor but does not include any person who only furnishes or supplies materials for the Project.

**Submittals:** All shop, fabrications, setting and installation drawings, diagrams, illustrations, schedules, samples, and other data required by the Contract Documents which are specifically prepared by or for the Contractor to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by the Contractor to illustrate material or equipment conformance of some portion of the Work with the requirements of the Contract Documents.

**Substantial Completion or Substantially Complete:** The condition when the Owner agrees that the Work, or a specific portion thereof is sufficiently complete, in accordance with the Contract Documents, so that it can be utilized by the Owner for the purposes for which it was intended. The Owner at its sole discretion may, after obtaining the necessary approvals and certificates, take Beneficial Occupancy at this time or choose to wait to occupy until after Final Completion is achieved.

**Supplemental General Conditions:** That part of the Contract Documents which amends or supplements the General Conditions.

**Supplier:** A manufacturer, fabricator, distributor, materialman or vendor who provides material for the Project but does not provide on-site labor.

**Time for Completion:** The number of consecutive calendar days following the Date of Commencement which the Contractor has to substantially complete all Work required by the Contract.

**Underground Facilities:** All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which are or have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems, or water.

**Work:** The services performed under this Contract including, but not limited to, furnishing labor, and furnishing and incorporating materials and equipment into the construction. The Work also includes the entire completed construction, or the various separately identifiable parts thereof, required to be provided under the Contract Documents or which may reasonably be expected to be provided as part of a complete, code compliant, and functioning system for those systems depicted in the plans and specifications and described in the project description of the Design Build Contract.

## **2. CONTRACT DOCUMENTS**

- (a) The Comprehensive Agreement between Owner and Contractor lists the Contract Documents. The Contract Documents shall also include the Workers' Compensation Certificate of Coverage, the Performance Bond, the Labor and Material Payment Bond, the Schedule of Values and Certificate for Payment, the Affidavit of Payments of Claims, the Contractor's Certificate of Substantial Completion, and the Contractor's Certificate of Completion, which are forms incorporated in these Design-Build General Conditions by reference and made a part hereof. They must be used by the Contractor for their respective purposes.
- (b) All time limits stated in the Contract Documents, including but not limited to the Time for Completion of the Work, are of the essence of the Contract.
- (c) The Contract between Owner and Design-Build Contractor shall be signed by the Owner and the Design Build Contractor in as many original counterparts as may be mutually agreed upon, each of which shall be considered an original.

- (d) To the extent required under the scope of the Design Build Contracts, the Virginia Department of Transportation "Road & Bridge Specifications", current edition, and Virginia Department of Transportation "Road Design Standards", current edition, are included by reference and shall be used by the Contractor's A/E as the referenced standards for design of the roads, parking areas, sidewalks, curbs, and other site work.
- (e) Deleted.
- (f) Anything called for by one of the Contract Documents and not called for by the others shall be of like effect as if required or called for by all, except that a provision clearly designed to negate or alter a provision contained in one or more of the other Contract Documents shall have the intended effect. In the event of conflicts among the Contract Documents, the Contract Documents shall take precedence in the following order: the Contract between Owner and Contractor; the Supplemental General Conditions; the General Conditions; the Special Conditions; the approved specifications with attachments; and the approved plans.
- (g) All correspondence, invoices, memoranda, submittals and other documents related to this Project whether generated by the Owner, the A/E, the Contractor or others should be identified at the beginning of the document with the four digit (9100) Project Number. Additional identification such as a job number, purchase order number or such may also be shown at the generator's option.
- (h) If any provision of this Contract shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision.
- (i) The Virginia Department of Health Water Works Regulations are included by reference as if fully set forth herein and shall be complied with for the design and construction of the project.
- (j) The Virginia Soil Erosion and Sediment Control Requirements are included by reference as if fully set forth herein and shall be complied with for both the design and construction of the project.
- (k) Deleted.

### **3. LAWS AND REGULATIONS**

- (a) The Contractor shall comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work and shall give all notices required thereby. The Contractor shall

assure that all Subcontractors and tradesmen who perform Work on the project are properly licensed by the Department of Professional and Occupational Regulation as required by Title 54.1, Chapter 11, Articles 1 and 3 and by applicable regulations.

- (b) This Contract and all other contracts and subcontracts are subject to the provisions of Articles 3 and 5, Chapter 4, Title 40.1, Code of Virginia, relating to labor unions and the "right to work." The Contractor and its Subcontractors, whether residents or nonresidents of the Commonwealth, who perform any Work related to the Project shall comply with all of the said provisions.
- (c) IMMIGRATION REFORM AND CONTROL ACT OF 1986: By signing this Contract, the Contractor certifies that it does not and will not during the performance of this Contract violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.
- (d) The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia and as issued by the Department of Labor and Industry under Title 40.1 or the Code of Virginia shall apply to all Work under this Contract. Inspectors from the Department of Labor and Industry shall be granted access to the Work for inspection without first obtaining a search or administrative\warrant.
- (e) Permits and Compliance with Specific Regulations: All Work will be designed, constructed, and commenced in accordance with all applicable laws, standards, regulations, and permits. Such permits and regulations include, but are not necessarily limited to, the Virginia Department of Health (VDH) Water Works Regulations, the VDH permits, the Virginia Department of Transportation (VDOT) requirements and permits, the Soil Erosion and Sediment Control Regulations and permits, the Virginia Uniform Statewide Building Code and building permits, the Louisa and Fluvanna Counties' Community Development Requirements and permits, and the Louisa County Water Authority design and construction specifications with the exception of the pipe bedding requirements.
- (f) The Contractor will obtain approvals in order to satisfy the requirements of all agencies that require approvals and permits overseeing the project (see partial list in Permits and Regulations above). This may require testing data, operations manuals, maintenance manuals, as-built drawings, and certifications of completion as required by each agency. The Contractor is fully responsible for completion of the Work necessary for obtaining such approvals.

- (g) The Contractor shall include in each of its subcontracts a provision requiring each Subcontractor to include or otherwise be subject to the same payment and interest requirements in Subsections (a), (b), and (c) of Section 37 of these General Conditions with respect to each lower-tier Subcontractor and Supplier.
- (h) The Contractor, if not licensed as an asbestos abatement contractor in accordance with §54.1-514, Code of Virginia, shall have all asbestos-related Work performed by subcontractors who are duly licensed as asbestos contractors appropriate for the Work required.
- (i) Lead Based Paint Activities: If the Contract Documents indicate that lead based paint is present on existing materials, components, or surfaces, the Contractor shall conform to the following:
  - (1) The requirements set forth in 59 Federal Register 45,872 (September 2, 1994) Proposed Rule) - Lead: Requirements for Lead based Paint Activities (Proposed Rules) in selecting and performing the means, methods and procedures for performing the Work. This includes, but is not limited to, training of personnel, lead abatement, encapsulation of lead containing materials, removal and handling of lead containing materials, and methods of disposal. When the Final Rule, to be codified at 40 CFR 745, supersedes the Proposed Rule, the Contractor shall be responsible for conforming to the Final Rule, as of the effective date set forth therein.
  - (2) The requirements for employee protection contained in 29 CFR Part 1926, Subpart D, and the requirements for record-keeping contained 29 CFR Part 1910.
  - (3) The Virginia Department of Labor and Industry's (DLI) Emergency Regulation published in the May 27, 1996 Virginia Register, requiring, among other things, that a permit be issued to the lead abatement contractor, or any subsequent regulation issued by DLI.
- (j) If the Contractor violates laws or regulations that govern the Project, the Contractor shall take prompt action to correct or abate such violation and shall indemnify and hold the Owner harmless against any fines and/or penalties that result from such violation. To the extent that such violation is the result of negligence or other actionable conduct of the Contractor, the Contractor shall indemnify and hold the Owner harmless against any third party claims, suits, awards, actions, causes of action or judgments, including but not limited to attorney's fees and costs incurred thereunder, that arise or result from such violation.

- (k) If the Work includes any land disturbing activities, the Contractor shall have on-site an individual certified by the Department of Environmental Quality as a Responsible Land Disturber in accordance with § 10.1-563, Code of Virginia.
- (l) Virginia Department of Health Permit: The Virginia Water Works Regulations, which shall be used for the design and construction of the Work, is administered by the Virginia Department of Health. Contractor shall provide Owner for permit submission, as-builts, operations and maintenance manuals, and the necessary plans, specifications, and other documents required by the VDH.
- (m) Deleted.

#### **4. NONDISCRIMINATION**

(a) §2.2-4311 of the Code of Virginia shall be applicable. It provides as follows:

1. During the performance of this Contract, the Contractor agrees as follows:
    - a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or 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 contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
    - b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such Contractor 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 the requirements of this section.
  2. The Contractor will include the provisions of the foregoing paragraphs a, b, and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- (b) Where applicable, the Virginians with Disabilities Act and the Federal Americans with Disabilities Act shall apply to the Contractor and all Subcontractors.

## **5. PROHIBITION OF ALCOHOL AND OTHER DRUGS**

- (a) § 2.2-4312 of the Code of Virginia shall be applicable. It provides as follows:

“During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor'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 in accordance with this chapter, 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 contract.”

- (b) The Contractor shall also establish, maintain and enforce policies which prohibit the following acts by all Contractor, Subcontractor and Supplier personnel at the Site:
- (1) the manufacture, distribution, dispensation, possession, or use of alcohol, marijuana or other drugs, except possession and medically prescribed use of prescription drugs; and
  - (2) the impairment of judgment or physical abilities due to the use of alcohol, marijuana or other drugs, including impairment from prescription drugs.

## **6. TIME FOR COMPLETION**

- (a) The Time for Completion for the project including any dates for completion of any designated Phase or Sub-phase shall be as stated in the Contract as agreed upon by the Owner and Contractor, subject to Change Orders or written mutual agreement of Owner and Contractor. The Work must be substantially completed by the Time for Completion or the Contract Completion Date. Unless otherwise specified, the Contractor

shall achieve Final Completion within thirty (30) days after the date of Substantial Completion.

- (b) The Time for Completion shall be stated in the Contract between Owner and Design Build Contractor and shall become a binding part of the Contract upon which the Owner may rely in planning the use of the facilities to be constructed and for all other purposes. If, as a result of its own actions or inaction, the Contractor fails to substantially complete the Work within the Time for Completion or Contract Completion Date, as set forth in the Contract, he shall be subject to liquidated damages, if provided for in the Contract.
- (c) The Contractor, in submitting his proposal, acknowledges that he has taken into consideration normal weather conditions. Normal weather does not mean statistically average weather, but rather means a range of weather patterns which might be anticipated based on weather data for the past ten (10) years, (i.e., conditions which are not extremely unusual). Normal weather conditions shall be determined from the public historical records available, including the U.S. Department of Commerce, Local Climatological Data Sheets, National Oceanic and Atmospheric Administration/Environmental Data and Information Service, National Climatic Center and National Weather Service. The data sheets to be used shall be those for the locality or localities closest to the site of the work. No additional compensation will be paid to the Contractor for delays in completion of Contractor's work caused by adverse weather conditions; however, an extension to the Time for Completion for abnormal weather will be granted by the Owner under the following conditions, all of which must be strictly complied with by the contractor:
  - (1) The request for additional time shall be substantiated by independent weather data collected during the period of delay at the Site affected by the alleged weather delay.
  - (2) The extension requested must be supported by a delay in completion of the entire Project shown on the critical path of the accepted CPM Schedule required for the Project. Extensions will be granted only for delays in completion of the Project, not for that portion of any delay which consumes only "float" time.
  - (3) A written request for extension of time based on abnormal weather, and supporting data, must be made within thirty (30) days of the date of the alleged abnormal weather at the Site.
- (d) The failure by the Contractor to comply with any and all of the conditions in (c) above shall constitute a waiver of claims for the extension of time for abnormal weather.

- (e) The Contractor represents and agrees that he has taken into account in his proposal the requirements of the bid documents, the Contract Documents, local conditions, availability of materials, equipment, and labor, and any other factors which may affect the performance of the Work.

## **7. CONDITIONS AT SITE**

- (a) The Contractor shall have visited the Site prior to submitting its proposal and is totally responsible for having ascertained pertinent local conditions such as location, accessibility and general character of the Site, and the character and extent of existing conditions, improvements, and work within or adjacent to the Site. Claims, which result from the Contractor's failure to do so, will be deemed waived.
- (b) If, in the performance of the Contract, hidden physical conditions are exposed revealing unusual or materially different conditions from those ordinarily encountered or inherent in work of this nature, or if subsurface or latent conditions at the Site are found which are materially different from those frequently present in the locality or from those indicated in the Contract Documents, the Contractor must report such conditions to the Owner and to the Architect/Engineer before the conditions are disturbed. Upon such notice, or upon his own observation of such conditions, the Architect/Engineer shall promptly propose such changes in the Contract Documents as he finds necessary to conform to the different conditions. Any change in the cost of the Work or additional time needed for completion must be requested pursuant to Sections 38, 39 and/or 43 of these General Conditions.
- (c) If the Contractor, during the course of the Work, observes the existence of any material which he knows, should know, or has reason to believe is hazardous to human health, the Contractor shall promptly notify the Owner. The Owner will provide the Contractor with instructions regarding the disposition of the material. The Contractor shall not perform any Work involving the material or any Work causing the material to be less accessible prior to receipt of special instructions from the Owner.
- (d) Contractor acknowledges and agrees that it has performed due diligence, surface, and subsurface explorations at the site during the period covered by the Interim Comprehensive Agreement and has identified site conditions that may potentially impede progress, cause delays, or increase costs as a result of added time and materials. These conditions are included in the Contract Price and Contractor shall not request additional time or compensation due to site conditions, rock, or other materials encountered during construction.

## **8. CONTRACT SECURITY**

- (a) Contractor shall deliver to the Owner or its designated representative, a Performance Bond and Labor and Material Payment Bond, each fully executed by the Contractor and one or more surety companies legally licensed to do business in Virginia and each in an amount equal to one hundred percent (100%) of the accepted proposal. If more than one Surety executes a bond, each shall be jointly and severally liable to the Owner for the entire amount of the bond. Sureties shall be selected by the Contractor, subject to approval by the Owner. No payment on the Contract shall be due and payable to the Contractor until the bonds have been approved by the Owner. The power of attorney from the surety company to its agent who executes the bond shall be attached to the bond.
- (b) For the purposes of all Labor and Material Payment Bonds entered into, the term "subcontractors" as used in §2.2-4337.A.2 of the Code of Virginia is interpreted to mean any contractors who participated in the prosecution of the Work undertaken by the Contractor (referred to in §2.2-4337. A.2. of the Code of Virginia as the "prime contractor"), whether such contractor had a direct contract with the Contractor (prime contractor) or whether there were one or more other intervening Subcontractors contractually positioned between it and the Contractor (prime contractor).
- (c) See § 2.2-4338 of the Code of Virginia, for alternative forms of security for payment and/or performance bonds.

## **9. SUBCONTRACTS**

- (a) The Contractor shall, as soon as practicable after the signing of the Contract, notify the Owner in writing of the names of all Subcontractors proposed for the principal parts of the Work and of such others as the Owner may direct. Where the specifications establish qualifications or criteria for Subcontractors, manufacturers, or individuals performing Work on the Project, the Contractor shall be responsible for ascertaining that those proposed meet the criteria or qualifications. The Contractor shall not employ any Subcontractor that the Owner may, within a reasonable time, object by written notice to Contractor to as unsuitable.
- (b) The Owner shall, on request, furnish to any Subcontractor, if practicable, the amounts of payments made to the Contractor, the Schedule of Values, and Requests for Payment submitted by the Contractor and any other documentation submitted by the Contractor which would tend to show what amounts are due and payable by the Contractor to the Subcontractor.

- (c) The Contractor shall be fully responsible to the Owner for all acts and omissions of his agents and employees and all succeeding tiers of Subcontractors and Suppliers performing or furnishing any of the Work. Nothing in the Contract Documents shall create any contractual relationship between Owner and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of Owner to pay for or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization, except as may otherwise be required by law.
- (d) The Contractor shall be fully responsible for his invitees at the Site and for those of his Subcontractors, Suppliers, and their employees, including any acts or omissions of such invitees.
- (e) The Contractor agrees that he alone is responsible for all dealings with his Subcontractors and Suppliers, and their subcontractors, employees and invitees.

## **10. SEPARATE CONTRACTS**

- (a) The Owner reserves the right to let other contracts in connection with the Project, the Work under which may proceed simultaneously with the execution of this Contract. The Contractor shall afford other separate contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work. The Contractor shall cooperate with them and shall take all reasonable action to coordinate his Work with theirs. If the Owner has listed other separate contracts in the Requests for Proposals which it expects to proceed simultaneously with the Work of the Contractor, and has included the estimated timing of such other Contracts in the Requests for Proposals, the Contractor shall integrate the schedule of those separate contracts into his scheduling. The Contractor shall make every reasonable effort to assist the Owner in maintaining the schedule for all separate contracts. If the work performed by the separate contractor is defective or performed so as to prevent or threaten to prevent the Contractor from carrying out his Work according to the Contract, the Contractor shall immediately notify the Owner upon discovering such conditions.
- (b) If a dispute arises between the Contractor and any separate contractor(s) as to their responsibility for cleaning up as required by Sections 31(c) and 31(d) of these General Conditions, the Owner may clean up and charge the cost thereof to the respective contractors in proportion to their responsibility. If a Contractor disputes the Owner's apportionment of clean-up costs, it shall be that contractor's burden to demonstrate and prove the correct apportionment.

## **11. CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE**

- (a) The Contractor shall not commence Work under this Contract until he has obtained all the insurance required hereunder from an insurer authorized to do business in Virginia and such insurance has been approved by the Owner; nor shall the Contractor allow any Subcontractor to commence Work on his subcontract until the same types of insurance in an appropriate amount have been obtained by the Subcontractor and approved by the Contractor. Approval of insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder.
- (b) The Contractor shall take out and shall maintain in force at all times during the performance of the Work Workers' Compensation and Employers' Liability Insurance for all of his employees engaged in the Work in an amount not less than the minimum required by § 2.2-4332 and § 65.2-100 et seq. of the Code of Virginia, and, in case any of the Work is sublet, the Contractor shall require each Subcontractor similarly to provide Workers' Compensation and Employers' Liability Insurance for all of the latter's employees to be engaged in the Work. Contractor shall submit, on the form provided by the Owner, a Certificate of Coverage verifying Workers' Compensation coverage. The Contractor shall likewise obtain a Certificate of Coverage for Workers' Compensation coverage from each subcontractor prior to awarding the subcontract and shall provide a copy to the Owner.
- (c) During the performance of the Work under this Contract, that: Contractor shall maintain commercial general liability insurance to include Premises/Operations Liability, Products and Completed Operations Coverage, Independent Contractor's Liability, Owner's and Contractor's Protective Liability, and Personal Injury Liability, which shall insure him against claims of personal injury, including death, as well as against claims for property damage, which may arise from operations under this Contract, whether such operations be by himself or by any Subcontractor, or by anyone directly or indirectly employed by either of them. The amounts of general liability insurance shall be not less than **\$2,000,000** per occurrence and **\$5,000,000** aggregate combined limit. The James River Water Authority, its officers, employees and agents, shall be named as an additional insured with respect to the Work being procured.
- (d) During the performance of the Work under this Contract, the Contractor shall maintain automobile liability insurance which shall insure him against claims of personal injury, including death, as well as against claims for property damage, which may arise from operations under this Contract, whether such operations be by himself or by any Subcontractor, or by anyone directly or indirectly employed by either of them. The

amounts of automobile insurance shall be not less than **\$2,000,000** combined limit for bodily injury and property damage per occurrence.

- (e) The Contractor's Architect/Engineer responsible for the design portion of the Work shall obtain and maintain in force during the contract period and for a period of 5 years after the final completion of the Work professional liability and errors and omission insurance in the amount of **\$2,000,000** per claim occurrence and **\$2,000,000** aggregate combined claims limit. Contractor shall cause each A/E to agree in writing to indemnify and hold harmless the James River Water Authority from claims, losses, or damages, to the extent caused by (i) the errors or omissions in the services performed by the A/E or (ii) claims of patent infringement, copyright infringement, or similar claims arising from such services. Contractor shall furnish the James River Water Authority with evidence of the errors and omissions policy or policies of the A/E.
- (f) Contractor shall obtain and maintain throughout the performance of this Contract, umbrella/excess liability insurance with minimum coverage (single limit) of \$20,000,000, supplementing the Commercial General Liability and Automobile Liability Insurance.

## **12. "ALL RISK" BUILDER'S RISK INSURANCE**

- (a) **Contractor Controlled During Construction:** The Contractor, at its cost, shall obtain and maintain in the names of the Owner and the Contractor "all-risk" builder's risk insurance (or fire, extended coverage, vandalism and malicious mischief insurance, if approved by the Owner) upon the entire structure or structures on which the Work of this Contract is to be done and upon all material in or adjacent thereto which is intended for use thereon, to one hundred percent (100%) of the insurable value thereof (i.e. construction costs, soft costs, FF&E, and the residual value of the existing structure to remain). Such insurance may include a deductible provision if the Owner so provides in the Supplemental General Conditions, in which case the Contractor will be liable for such deductions, whenever a claim arises. The loss, if any, is to be made adjustable with and payable to the Owner, in accordance with its interests, as they may appear. The Owner, its officers, employees, and its agents, shall be named as an additional insured in any policy of insurance issued. Written evidence of the insurance shall be filed with the Owner no later than thirty (30) days following the award of the Contract. In the event of cancellation of this insurance, not less than thirty (30) days prior written notice must be sent to the Owner. A copy of the policy of insurance shall be given to the Owner upon demand.
- (b) The value of the builder's risk insurance shall exclude the costs of excavations, backfills, foundations, underground utilities, and site work.

- (c) The Owner's insurance will not extend to Contractor's nor Subcontractors' buildings, equipment, materials, tools, or supplies and the Owner does not assume responsibility for such items.

### **13. TAXES, FEES AND ASSESSMENTS**

The Contractor shall, without additional expense to the Owner, pay all applicable federal, state, and local taxes, fees, and assessments except the taxes, fees and assessments on the real property comprising the Site of the project.

### **14. PATENTS**

The Contractor shall obtain all licenses necessary to use any invention, article, appliance, process or technique of whatever kind and shall pay all royalties and license fees. The Contractor shall hold the Owner, its officers, agents and employees, harmless against any loss or liability for or on account of the infringement of any patent rights in connection with any invention, process, technique, article or appliance manufactured or used in the performance of the Contract, including its use by the Owner. If, before using any invention, process, technique, article, or appliance specifically named in the specifications or plans as acceptable for use in carrying out the Work, the Contractor has or acquires information that the same is covered by letters of patent making it necessary to secure the permission of the patentee, or other, for the use of the same, he shall promptly advise the Owner. The Owner may direct that some other invention, process, technique, article or appliance be used. Should the Contractor have reason to believe that the invention, process, technique, article, or appliance so specified is an infringement of a patent, and fail to inform the Owner, he shall be responsible for any loss or liability due to the infringement.

### **(h) 15. ARCHITECT/ENGINEER'S STATUS**

- (a) The Design Build Contractor's Architect/Engineer shall be duly and properly licensed by the Virginia Department of Professional and Occupational Regulation to provide these services in Virginia. The Architect/Engineer shall provide the professional services to design the Work in conformance with the applicable standards indicated below.
- (b) The Architect/Engineer shall have authority to endeavor to secure the faithful performance by Owner and Design Build Contractor of the Work under the Contract. He shall review the Contractor's Submittals for conformance to the requirements of the Contract Documents and applicable regulations and return copies to the Contractor and Owner with appropriate notations. The Owner will review the submittals and approve,

disapprove or require additional information as appropriate. He shall interpret the requirements of the plans and specifications and issue Field Orders to the Contractor as may be required. He shall recommend to the Owner suspension of the Work (in whole or in part) whenever such suspension may be necessary to ensure the proper execution of the Contract. He shall have authority to reject, in writing, Work, including material, installation, or workmanship, which does not conform to the requirements of the plans and specifications. He shall determine the progress and quality of the Work, subject to the right of the Owner to make an overriding decision to the contrary. Upon request by the Contractor, the Architect/Engineer shall confirm in writing within fourteen (14) days, any oral order or determination made by him.

- (c) To the extent required under the scope of the Design Build contract, the Virginia Department of Transportation "Road & Bridge Specifications," current edition and Virginia Department of Transportation "Road Design Standards", current edition are included by reference and shall be used by the Contractor's A/E as the referenced standards for design of the roads, parking areas, sidewalks, curbs, and other site work.
- (d) The building design shall conform to the requirements of the Virginia Uniform Statewide Building Code, Virginia Department of Health Water Works Regulation, the Design and Construction Specifications, and Virginia Soil Erosion and Sediment Control Regulation.. The current edition of the regulations and specifications in effect at the time the construction documents are submitted shall be the applicable for each phase of the project.
- (d) Deleted.
- (e) The Architect/Engineer shall have no authority to approve or order changes in the Work which alter the approved plans and specifications which were the basis of the Building Permit, VDH Permit, Soil Erosion Permit, or other permit without obtaining approval of the appropriate Official.
- (f) The provisions of this section are included as information only to describe the relationship between the Owner, A/E, and Contractor. No failure of the A/E to act in accordance with this section shall relieve the Contractor from his obligations under the Contract or create any rights in favor of the Contractor.

## **16. INSPECTION**

- (a) All material and workmanship shall be subject to inspection, examination and testing by the Owner, its Project Inspector, authorized inspector's, and

authorized independent testing entities at any and all times during manufacture and/or construction. The Owner shall have authority to reject defective material and workmanship and require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be satisfactorily replaced with proper material without charge therefore, and the Contractor shall promptly segregate and remove the rejected material from the Site. If the Contractor fails to proceed at once with replacement of rejected material and/or the correction of defective workmanship, the Owner may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost to the Contractor, or may terminate the right of the Contractor to proceed as provided in Section 41 of these General Conditions, the Contractor and surety being liable for any damage to the same extent as provided in Section 41 for termination thereunder.

- (b) Site inspections, tests conducted on Site, or tests of materials gathered on Site, which the Contract requires to be performed by independent testing entities, shall be contracted and paid for by the Owner. Examples of such tests are the testing of cast-in-place concrete, foundation materials, soil compaction, pile installations, caisson bearings and steel framing connections. The Contractor shall promptly furnish, without additional charge, all reasonable facilities, labor and materials necessary and convenient for making such tests. Except as provided in (d) below, whenever such examination and testing finds defective materials, equipment or workmanship, the Contractor shall reimburse the Owner for the cost of reexamination and retesting. Although conducted by independent testing entities, the Owner will not contract and pay for tests or certifications of materials, manufactured products or assemblies which the Contract, codes, standards, etc., require to be tested and/or certified for compliance with industry standards such as Underwriters Laboratories, Factory Mutual or ASTM. If fees are charged for such tests and certifications, they shall be paid by the Contractor. The Contractor shall also pay for all inspections, tests, and certifications which the Contract specifically requires him to perform or to pay, together with any inspections and tests which he chooses to perform for his own purposes, but are not required by the Contract.
- (c) Where Work is related to or dependent on the Defective Work, the Contractor shall stop such related or dependent Work until the Defective Work or deficiency is corrected or an alternative solution is presented that is satisfactory to the Owner. Where Work is rejected because of defective material or workmanship, the Contractor shall stop like Work in other areas or locations on the Project until the matter is resolved and the Owner has approved corrective measures.

- (d) Should it be considered reasonably necessary or advisable by Owner at any time before final acceptance of the entire Work to make an examination of any part of the Work already completed, by removing or tearing out portions of the Work, the Contractor shall on request promptly furnish all necessary facilities, labor and material to expose the Work to be tested to the extent required. If such Work is found to be defective in any respect, due to the fault of the Contractor or his Subcontractors, the Contractor shall bear all the expenses of uncovering the Work, of examination and testing, and or satisfactory reconstruction. If, however, such Work is found to meet the requirements of the Contract, the actual cost of the Contractor's labor and material necessarily involved in uncovering the Work, the cost of examination and testing, and Contractor's cost of material and labor necessary for replacement including a markup of fifteen (15%) percent for overhead and profit shall be paid to the Contractor and he shall, in addition, if completion of the Work has been delayed thereby, be granted suitable extension of time. Notwithstanding the foregoing, the Contractor shall be responsible for all costs and expenses in removing and replacing the Work if the Contractor covers the Work prior to any inspection or test. Contractor shall provide a schedule for the required testing needs on a weekly basis so that testing services can be scheduled with no delays. Contractor shall provide Owner a minimum of 24 hours notice for changes in the schedule or cancelling of testing services. Contractor's failure to provide such notification that results in expenses to the Owner shall be paid by the Contractor.
- (e) The Project Inspector has the authority to recommend to the Owner that the Work be suspended when in his judgment the Contract Documents are not being followed. Any such suspension shall be continued only until the matter in question is resolved to the satisfaction of the Owner. The cost of any such Work stoppage shall be borne by the Contractor unless it is later determined that no fault existed in the Contractor's Work.
- (f) Deleted.
- (g) The Project Inspector has the right and the authority to:
  - (1) Inspect all construction materials, equipment, and supplies for quality and for compliance with the Contract Documents and/or approved shop drawings and Submittals.
  - (2) Inspect workmanship for compliance with the standards described in the Contract Documents.
  - (3) Observe and report on all tests and inspections performed by the Contractor.

- (4) Recommend rejection of Work which does not conform to requirements of the Contract Documents.
  - (5) Keep a record of construction activities, tests, inspections, and reports.
  - (6) Attend all joint Site construction meetings and inspections held by the Owner and/or the A/E with the Contractor.
  - (7) Check materials and equipment, together with documentation related thereto, delivered for conformance with approved Submittals and the Contract.
  - (8) Check installations for proper workmanship and conformance with shop drawing and installation instructions.
  - (9) Assist in the review and verification of the CO- 12, Schedule of Values & Certificate for Payment, submitted by the Contractor each month.
  - (10) Do all things for or on behalf of the Owner as the Owner may subsequently direct in writing.
- (h) The Project Inspector has no authority to:
- (1) Authorize deviations from the Contract Documents;
  - (2) Enter into the area of responsibility of the Contractor's superintendent;
  - (3) Issue directions relative to any aspect of construction means, methods, techniques, sequences or procedures, or in regard to safety precautions and programs in connection with the Work;
  - (4) Authorize or suggest that the Owner occupy the Project, in whole or in part; or
  - (5) Issue a certificate for payment.
- (i) The duties of the Project Inspector are for the benefit of the Owner only and not for the Contractor. The Contractor may not rely upon any act, statement, or failure to act on the part of the Project Inspector, nor shall the failure of the Project Inspector to properly perform his duties in any way excuse Defective Work or otherwise improper performance of the Contract by the Contractor.

## **17. SUPERINTENDENCE BY CONTRACTOR**

- (a) The Contractor shall have a competent foreman or superintendent, satisfactory to the Owner, on the Site at all times during the progress of the Work. The superintendent or foreman shall be familiar with and be able to read and understand the plans and specifications, and be capable of communicating orally and in writing with the Owner's inspectors and the Contractor's workers. The Contractor shall be responsible for all construction means, methods, techniques, sequences and procedures, for coordinating all portions of the Work under the Contract except where otherwise specified in the Contract Documents, and for all safety and worker health programs and practices. The Contractor shall notify the Owner, in writing, of any proposed change in superintendent, including the reason therefore, prior to making such change.
- (b) The Contractor shall, at all times, enforce strict discipline and good order among the workers on the Project, and shall not employ on the Work, or contract with, any unfit person, anyone not skilled in the Work assigned to him, or anyone who will not work in harmony with those employed by the Contractor, the Subcontractors, the Owner or the Owner's separate contractors and their subcontractors.
- (c) The Owner may, in writing, require the Contractor to remove from the Site any employee or Subcontractor's employee the Owner deems to be incompetent, careless, not working in harmony with others on the Site, or otherwise objectionable, but the Owner shall have no obligation to do so.
- (d) Contractor shall train the superintendent, foreman, and senior technicians for the crews that will work on the Project on the proper installation of the major components of the Project. Contractor will work with the Owner's Project Manager to develop material for this training.

## **18. CONSTRUCTION SUPERVISION, METHODS, AND PROCEDURES**

- (a) The Contractor shall be solely responsible for supervising and directing the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract. The Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction and for coordinating all portions of the Work under the Contract, except where otherwise specified in the Contract Documents. The Contractor, in performing as the Design Build Contractor, shall also be responsible to the Owner for the design or selection of any specific means, method, technique, sequence or procedure of construction which is

indicated in and required by the Contract Documents. The Contractor is solely responsible to the Owner that the finished Work complies with the Contract Documents.

The Contractor shall be solely responsible for health and safety precautions and programs for workers and others in connection with the Work. No inspection by, knowledge on the part of, or acquiescence by the Architect or Engineer, the Project Inspector, the Owner, the Owner's employees and agents, or any other entity whatever shall relieve the Contractor from its sole responsibility for compliance with the requirements of the Contract or its sole responsibility for health and safety programs and precautions.

- (b) The Contractor shall be fully responsible to the Owner for all acts and omissions of all succeeding tiers of A/E's, Subcontractors, and Suppliers performing or furnishing any of the Work just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between the Owner and any Subcontractor. Supplier or other person or organization, nor shall it create any obligation on the part of the Owner to pay for or see to payment of any moneys due any such Subcontractor, Supplier, or other person or organization except as may otherwise be required by law.

## **19. SCHEDULE OF THE WORK**

- (a) **General:** The Contractor is responsible for the scheduling and sequencing of the Work, for coordinating the Work, for monitoring the progress of the Work, and for taking appropriate action to keep the Work on schedule. The Contractor may attempt to achieve Substantial Completion on or before the Time for Completion or the Contract Completion Date established by the Contract and receive payment in accordance with Section 36 for the Work completed each period. However, the date established by the Contract Documents as the deadline for achieving Substantial Completion must be used in all schedules as the date on which Substantial Completion will be achieved. The time (in days) between the Contractor's planned early completion and the contracted Time for Completion is part of the Project "Total Float" time and will be used as such. Extensions of time pursuant to Sections 38, 39, and 43, damages for delay, and all other matters between the Owner and the Contractor will be determined using the contractually required Substantial Completion date, not an early Substantial Completion date planned by the Contractor.

Within two (2) weeks after the Contractor signs the Contract, unless otherwise extended by the Owner at the time of the signing, the Contractor shall prepare and submit to the Owner a preliminary bar graph schedule

for accomplishing the Work based upon the Time for Completion stated in the Contract. The preliminary schedule shall be in sufficient detail to show the sequencing of the various trades for each floor level, wing or work area. The Owner will notify the Contractor of its acceptance of or objections to the preliminary schedule within fifteen (15) days of receipt by the Owner. A fully complete Project schedule for accomplishing the Work must be submitted in like manner no later than sixty (60) days after the Contract is signed by the Owner.

The Owner's failure to reject or its acceptance of any schedule, graph, chart, recovery schedule, updated schedule, plan of action, etc. shall not constitute a representation or warranty by the Owner, including but not limited to a representation or warranty that the schedule is feasible or practical nor shall any such acceptance or failure to reject relieve the Contractor from sole responsibility for completing the Work within the time allowed. No progress payments will be payable to the Contractor until after it has submitted a preliminary schedule which is acceptable to the Owner. Neither the second progress payment nor any subsequent payment shall be payable to the Contractor until it has submitted a fully complete Project schedule accepted by the Owner. Nor shall subsequent progress payments be payable to the Contractor unless and until he submits the monthly bar graphs or status reports required by Section 19(d) herein or unless and until he provides any recovery schedule pursuant to Section 19(e) herein.

Failure to provide a satisfactory preliminary or fully complete Project schedule within the time limits stated above shall be a breach of contract for which the Owner may terminate the Contract in the manner provided in Section 41 of these General Conditions.

The fully complete Project schedule for accomplishing the Work shall be a Critical Path Method (CPM) schedule which shall be utilized to control the planning and scheduling of the Work. The CPM schedule shall be the responsibility of the Contractor and shall be paid for by the Contractor.

It is the Contractor's responsibility to submit a schedule that shows Substantial Completion of the Work by the Contract Time for Completion or the Contract Completion Dare and any interim deadlines established by the Contract.

- (b) **CPM Schedule:** The CPM shall be in the time-scaled precedence format using the Contractor's logic and time estimates. The CPM schedule shall be drawn or plotted with activities grouped or zoned by Work area or subcontract as opposed to a random (or scattered) formal.

The CPM schedule shall be time-scaled on a weekly basis and shall be drawn or plotted at a level of detail and logic which will schedule all salient features of the Work, including not only the actual construction Work for each trade, but also the submission of shop drawings and other Submittals for approval, approval of shop drawings by the Contractor's A/E, placing of orders for materials, the manufacture and delivery of materials, the testing and installation of materials and equipment, and all Work activities to be performed by the Contractor. Failure to include any element of Work required for the performance of this Contract shall not excuse the Contractor from completing all Work required within the Time for Completion, Contract Completion Date and any interim deadlines established by the Contract.

The Contractor shall allow sufficient time in his schedule for his A/E to conduct whatever associated reviews or inspections as may be required. Each Work activity will be assigned a time estimate by the Contractor. One day shall be the smallest time unit used. It is the Contractor's responsibility to submit a schedule that shows Substantial Completion of the Work by the Contract Time for Completion or the Contract Completion Date and any interim deadlines established by the Contract.

When completed, the CPM schedule shall be submitted to the Owner for review. The CPM schedule will identify and describe each activity, state the duration of each activity, the calendar dates for the early and late start and the early and late finish of each activity, and clearly highlight all activities on the critical path. "Total float" and "free float" shall be indicated for all activities. Float time, whether "free float" or "total float" as defined in Section I, shall not be considered for the exclusive use or benefit of either the Owner or the Contractor, but must be allocated in the best interest of completing the Work within the Time for Completion or the Contract Completion Date. Extensions to the Time for Completion or the Contract Completion Date, when granted by Change Order, will be granted only when equitable time adjustment exceeds the Total Float in the activity or path of activities affected by the change, provided that the Owner has reasonably provided information necessary to allow for the orderly progression of the Work. The CPM schedule shall also show what part of the Contract Price (expressed in U.S. dollars) is attributable to each activity on the schedule and shall be in agreement with the schedule of values, the sum of which for all activities shall equal the total Contract Price. The CPM schedule shall have no line-item activities longer than thirty (30) days in duration, and activities shall be included to provide sufficient detail for effectively managing the sequence of the Work. When acceptable to the Owner and Architect/Engineer as to compliance with the requirements of this Section, the schedule shall become the CPM schedule for the Project. Acceptance of the schedule by the Owner does not indicate

agreement with nor responsibility for the proposed or actual duration of any activity or logic shown on the accepted schedule.

- (c) **Monthly Project Reports:** The Contractor shall review progress not less than each month, but as often as necessary to properly manage the Project and stay on schedule. The Contractor shall collect and preserve information on Change Orders, including extensions of time. The Contractor shall evaluate this information and update the latest accepted schedule as often as necessary to finish within the Contract Time for Completion or before the Contract Completion Date. The Contractor shall submit to the Owner along with his monthly request for payment a copy of the bar graph schedule annotated to show the current progress. For projects requiring a CPM schedule, the Contractor shall submit a monthly report of the status of all activities. The bar graph schedule or monthly status report submitted with each periodic request for payment shall show the Work completed to date in comparison with the Work scheduled for completion, including but not limited to the dates for the beginning and completion of the placing of orders; the manufacture, testing and installation of materials, supplies and equipment. The form shall be approved by the Owner; however, a bar graph or a CPM schedule marked, colored or annotated to reflect the above will usually satisfy this requirement. If any elements of the Work are behind schedule, regardless of whether they may prevent the Work from being completed on time, the Contractor must indicate in writing in the report what measures he is taking and plans to take to bring each such element back on schedule and to ensure that the Time for Completion or Contract Completion Date is not exceeded.
  
- (d) **Progress Delay:** Should any of the following conditions exist, the Owner may require the Contractor to prepare, at no extra cost to the Owner, a plan of action and a recovery schedule for completing the Work by the Contract Time for Completion or the Contract Completion Date:
  - (1) The Contractor's monthly project report indicates delays that are, in the opinion of the Owner, of sufficient magnitude that the Contractor's ability to complete the Work by the scheduled Time for Completion or the Contract Completion Date is brought into question;
  
  - (2) The CPM schedule sorted by early finish shows the Contractor to be thirty (30) or more days behind the critical path schedule at any time during construction up to thirty (30) days prior to scheduled Substantial Completion date;

- (1) The Contractor desires to make changes in the logic (sequencing of Work) or the planned duration of future activities of the CPM schedule which, in the opinion of the Architect/Engineer or the Owner, are of a major nature.

The plan of action and recovery schedule, when required, shall explain and display how the Contractor intends to regain compliance with the current accepted, fully completed, Project CPM schedule, as updated by approved change orders.

The plan of action, when required, shall be submitted to the Owner for review within five (5) business days or the Contractor receiving the Owner's written demand. The recovery schedule, when required, shall be submitted to the Owner within five (5) business days of the Contractor's receiving the Owner's written demand.

- (e) **Early Completion of Project:** The Contractor may attempt to achieve Substantial Completion on or before the Time for Completion or the Contract Completion Date. However, such planned early completion shall be for the Contractor's convenience only and shall not create any additional rights of the Contractor or obligations of the Owner under this Contract, nor shall it change the Time for Completion or the Contract Completion Date. The Contractor shall not be required to pay damages to the Owner because of its failure to achieve Substantial Completion by its planned earlier date. Likewise, the Owner shall not pay the Contractor any additional compensation for achieving Substantial Completion early nor will the Owner owe the Contractor any compensation should the Owner, its officers, employees, or agents cause the Contractor not to achieve Substantial Completion earlier than the date required by the Contract Documents. If the Contractor seeks to change the Time for Completion or the Contract Completion Date to reflect an earlier completion date, he may request or propose such a change. The Owner may, but is not required to, accept such proposal. However, a change in the Time for Completion or the Contract Completion Date shall be accomplished only by Change Order. If the Contractor's proposal to change the Time for Completion or the Contract Completion Date is accepted, a Change Order will be issued stating that all references in the Contract, including these General Conditions, to the Time for Completion or the Contract Completion Date shall thereafter refer to the date as modified, and all rights and obligations, including the Contractor's liability for delay damages and/or liquidated damages, shall be determined in relation to the date, as modified.

## **20. SCHEDULE OF VALUES AND CERTIFICATE FOR PAYMENT**

- (a) Before submittal of the first partial payment request under the Contract, the Contractor shall prepare for review and approval of the Owner, a schedule of the estimated values listed by trades or by specification sections of the Work, totaling the Contract Price. Where the total project has multiple parts or phases, the Contractor shall prepare appropriate schedules of values to facilitate reviews and justifications for payments.

All requests for payment shall be made on the Application and Certificate for Payment. Where a computerized spreadsheet is used, one copy of the entire Schedule of Values shall be provided to the Owner in an agreed electronic format (e.g. EXCEL) with the initial request for payment.

- (b) If the Contractor requests, or intends to request, payment for materials stored in an approved and secure manner, the Schedule of Values must indicate the amount for labor and the amount for materials, and in a supplement thereto must include an itemized list of materials for that trade or Work section. The material breakdown shall be in sufficient detail to allow verification of the quantities required for the Project, the quantities delivered, the Work completed, and the quantities stored on or off Site.
- (c) The "Value of Work Completed" portion of the Application and Certificate for Payment shall be completed, the Contractor's certification completed and signed, and the appropriate substantiating material attached to each Application and Certificate for Payment. Such substantiating material includes, but is not limited to, invoices for materials, delivery tickets, time sheets, payroll records, daily job logs/records, and similar materials which, in the opinion of the Owner, are necessary or sufficient to justify payment of the amount requested.
- (d) The labor progress for any task or activity shall be calculated based upon the percentage of Work complete up to fifty percent (50%) of the completion of the task or activity. Thereafter, the evaluation of labor progress will be based upon the effort required to complete that task or activity. The material progress shall be calculated as the invoiced dollar cost of materials used in relationship to the amount estimated as necessary to complete a particular element of Work. When calculating material progress, credit shall be given for installed material as well as that stored on the Site and any material stored off Site which has been certified in accordance with Section 36 of these General Conditions.
- (e) Should Work included in previous Application and Certificate for Payment submittals, and for which payment has been made, subsequently be identified, by tests, inspection, or other means, as not acceptable or not conforming to Contract requirements, the "Value of Work Completed" portion of the first Application and Certificate for Payment submitted after such identification shall be modified to reduce the "completed" value of

that Work by deleting the value of that which has been identified as not acceptable or nonconforming.

## **21. ACCESS TO WORK**

The Owner, the Project Manager, the Owner's inspectors and other testing personnel, inspectors from the Department of Labor and Industry, and others authorized by the Owner, shall have access to the Work at all times. The Contractor shall provide proper facilities for access and inspection.

## **22. SURVEYS AND LAYOUT**

- (a) The Contractor shall furnish the Contractor all necessary documents showing property lines and the location of existing buildings and improvements. The Contractor shall provide competent surveying and engineering services to execute the Work in accordance with the Contract and shall be responsible for the accuracy of these surveying and engineering services.
- (b) The Contractor shall provide such general reference points and benchmarks on the Site as will enable the Contractor to proceed with the Work will be established in the plans and specifications. If the Contractor finds that any previously established reference points have been lost or destroyed, he shall promptly notify the Owner.
- (c) The Contractor shall protect and preserve the established benchmarks and monuments and shall make no changes in locations without the written approval from the Owner. Any of these which may be lost or destroyed or which require shifting because of necessary changes in grades or locations shall, subject to prior written approval of the Owner, be replaced and accurately located by the Contractor.

## **23. PLANS AND SPECIFICATIONS**

- (a) The general character and scope of the Work are illustrated by the plans and the specifications prepared by the Contractor's Architect/Engineer. The level of detail shown on the plans and stipulated in the specifications shall be sufficient to clearly demonstrate to the appropriate Official that the design conforms to the requirements of the applicable regulatory requirements. The Contractor shall carry out the Work in accordance with the plans and specification and any additional detail drawings and instructions provided by the A/E.

- (b) Measurements or dimensions shown on the drawings for Site features, utilities, and structures shall be verified at the Site by the Contractor before commencing the Work. The Contractor shall not scale measurements or dimensions from the drawings. If there are discrepancies, the Architect/Engineer shall be consulted. If new Work is to connect to, match with or be provided in existing Work, the Contractor shall verify the actual existing conditions and necessary dimensions prior to ordering or fabrication.
- (c) As-Built Drawings: The Contractor shall maintain at the Site for the Owner one copy of all drawings, specifications, addenda, approved shop or setting drawings, Change Orders and other modifications (collectively referred to herein as "As-Built Drawings") in good order and marked to record all changes as they occur during construction. These shall be available to the Owner, the Project Inspector, the Owner's other inspectors and to the Owner's testing personnel. The drawings shall be neatly and clearly marked in color during construction to record all variations made during construction. The representation of such variations shall include such supplementary notes, symbols, legends, and details as may be necessary to clearly show the as-built construction.
- (d) Record Drawings: Upon completion of the Work and prior to the final inspection, the Contractor shall deliver to the Owner five complete sets of "As-Built Drawings" and Operations, Maintenance, and Training Manuals in reproducible form along with an electronic version. Additionally, "As-Built Drawings" along with Operations Manuals will be provided to the appropriate permitting agencies as required by each agency.

## **24. SUBMITTALS**

- (a) Shop drawings, setting drawings, product data, and samples generated by the Design Build Contractor shall be known as submittals. Electronic copies of all submittals shall be provided to the Owner, through the Project Manager, when generated.
- (b) Submittals shall be approved by the Design Build Contractor and its licensed professional designer for conformance with the required codes, standards, and provisions of the Contract. Electronic copies of all approved submittals shall be provided to the Owner. One copy of the "Approved" shop drawings/submittals shall be on file in the construction trailer for use by Inspectors.
- (c) Any submittal material, assembly, or product which deviates from the approved Permit Documents shall be submitted to the appropriate Official for approval prior to installation.

- (d) The Work shall be in accordance with approved Permit Documents as detailed by the approved submittals.

## **25. FEES, SERVICES AND FACILITIES**

- (a) The Contractor shall obtain all permits, except the Building Permit, and pay for all fees and charges necessary for temporary access and public right-of-way blockage or use, for temporary connections to utilities and for the use of property (other than the Site) for storage of materials and other purposes unless otherwise specifically stated in the Contract Documents or identified as temporary construction easements.
- (b) The Contractor shall be responsible for providing required connections, temporary wiring, piping, etc. to these services in a safe manner and in accordance with applicable codes. All temporary wire, pipe, etc. shall be removed before the Substantial Completion inspection. Acceptance by the Contractor of the use of Owner's water and electricity constitutes a release to the Owner of all claims and of all liability to the Contractor for whatever damages which may result from power and water outages or voltage variations.
- (c) The Owner shall pay any connection charges for permanent utility connections directly to the utility Supplier. The Contractor shall coordinate such connections with the utility Supplier.
- (d) It is understood that, except as otherwise specifically stated in the Contract Documents, the Contractor, either directly or through his Subcontractors, shall provide and pay for all material, labor, tools, equipment, water, light, power, telephone and other services or facilities of every nature whatsoever necessary to execute completely and deliver the Work within the Contract Time for Completion or before the Contract Completion Date.
- (e) The Contractor shall provide temporary facilities including Contractor's office space, office space for Owner's Inspector or Project Manager, toilet facilities, and storage space, as required for the operations and the protection of the material and work. The location of such facilities shall be subject to approval of the Owner. Sanitary facilities shall be plumbed into an approved waste treatment system or shall be an approved type of chemical toilet and shall be regularly serviced.

## **26. EQUALS**

- (a) **Brand names:** Unless otherwise stated in the Proposal, the name of a certain brand, make or manufacturer denotes the characteristics, quality,

workmanship, economy of operation and suitability for the intended purpose of the article desired, but does not restrict the Contractor to the specific brand, make, or manufacturer; it is set forth to convey to the Contractor the general style, type, character and quality of the article specified.

- (b) **Equal materials, equipment or assemblies:** Whenever in these Contract Documents, a particular brand, make of material, device or equipment is shown or specified, such brand, make of material, device or equipment shall be regarded merely as a standard. Any other brand, make or manufacturer of a product, assembly or equipment which is the equal of that specified, considering quality, capabilities, workmanship, configuration, economy of operation, useful life, compatibility with design of the Work, and suitability for the intended purpose, will be accepted unless rejected by the Owner as not being equal.
- (c) **Substitute materials, equipment or assemblies:** The Contractor may propose to substitute a material, product, equipment, or assembly which deviates from the requirements of the approved plans and specifications but which the Contractor deems will perform the same function and have equal capabilities, service life, economy of operations, and suitability for the intended purpose. The proposal must include any cost differentials proposed. If the proposed substitute is acceptable to the Owner, a Change Order will be proposed to the Contractor to accept the substitute and to deduct the proposed cost savings from the Contract Price. The Owner shall have the right to limit or reject substitutions at its sole discretion.
- (d) The Contractor shall be responsible for making all changes in the Work necessary to adapt and accommodate any equal or substitute product which it uses. The necessary changes shall be made at the Contractor's expense.

## **27. AVAILABILITY OF MATERIALS**

If a brand name, product, or model number included in the Contract Documents is not available on the present market, alternate equal products or model numbers may be proposed by the Contractor for approval by the Owner. Also submit data to the Building Official for approval of products, materials, and assemblies regulated by the VUSBC.

## **28. CONTRACTOR'S TITLE TO MATERIALS**

No materials or supplies for the Work shall be purchased by the Contractor, or by any Subcontractor or Supplier, subject to any security interest, installment or sales contract or any other agreement or lien by which an interest is retained by the

seller or is given to a secured party. The Contractor warrants that he has clear and good title to all materials and supplies which he uses in the Work or for which he accepts payment in whole or in part.

## **29. STANDARDS FOR MATERIALS INSTALLATION & WORKMANSHIP**

- (a) Unless otherwise specifically provided in the Contract, all equipment, material, and accessories incorporated in the Work are to be new and in first class condition.
- (b) Unless specifically approved by the Owner or required by the Contract, the Contractor shall not incorporate into the Work any materials containing asbestos or any material known by the industry to be hazardous to the health of building construction workers, maintenance workers, or occupants. If the Contractor becomes aware that a material required by the Contract contains asbestos or other hazardous materials, he shall notify the Owner immediately and shall take no further steps to acquire or install any such material without first obtaining Owner approval.
- (c) All workmanship shall be of the highest quality found in the building industry in every respect. All items of Work shall be done by craftsmen or tradesmen skilled in the particular task or activity to which they are assigned. In the acceptance or rejection of Work, no allowance will be made for lack of skill on the part of workmen. Poor or inferior workmanship (as determined by the Architect/Engineer, the Owner or other inspecting authorities) shall be removed and replaced at Contractor's expense such that the Work conforms to the highest quality standards of the trades concerned, or otherwise collected to the satisfaction of the Owner, or other inspecting authority, as applicable.
- (d) Under the various sections of the plans or specifications, where specified items are supplied with the manufacturer's printed instructions, recommendations, or directions for installation, or where such instructions, recommendations, or directions are available, installation of the specified items shall be in strict accordance with the manufacturer's printed instructions.
- (e) Under the various sections of the plans or specifications, where reference is made to specific codes or standards governing the installation of specified items, installation shall in all cases be in strict accordance with the referenced codes and standards. Where no reference is made to specific codes or standards, installation shall conform to the generally recognized applicable standards for first-class installation of the specific item to be installed. Contractors are expected to be proficient and skilled

in their respective trades and knowledgeable of the Codes and Standards of the National Fire Protection Association (NFPA), National Electric Code (NEC), Occupational Safety and Health Act (OSHA) and other codes and standards applicable to installations and associated work by his trade.

- (f) Where the manufacturer's printed instructions are not available for installation of specific items, where specific codes or standards are not referenced to govern the installation or specific items, or where there is uncertainty on the part of the Contractor concerning the installation procedures to be followed or the quality of workmanship to be maintained in the installation of specific items, the Contractor shall consult the Architect/Engineer for approval of the installation procedures or the specific standards governing the quality of workmanship the Contractor proposes to follow or maintain during the installation of the items in question.
- (g) During and/or at the completion of installation of any items, the tests designated in the plans or specifications necessary to assure proper and satisfactory functioning for its intended purpose shall be performed by the Contractor or by its Subcontractor responsible for the completed installation. All costs for such testing are to be included in the Contract Price. If required by the Contract Documents, the Contractor shall furnish prior to final inspection the manufacturers' certificates evidencing that products meet or exceed applicable performance, warranty and other requirements, and certificates that products have been properly installed and tested.

### **30. WARRANTY OF MATERIALS AND WORKMANSHIP**

- (a) The Contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the Work under the Contract shall be new, in first class condition, and in accordance with the Contract Documents. The Contractor further warrants that all workmanship shall be of the highest quality and in accordance with the Contract Documents and shall be performed by persons qualified at their respective trades.
- (b) Work not conforming to these warranties shall be considered defective.
- (c) This Warranty of materials and workmanship is separate and independent from and in addition to any of the Contractor's other guarantees or obligations in the Contract or under Virginia law.

### **31. USE OF SITE AND REMOVAL OF DEBRIS**

- (a) The Contractor shall:
- (1) Perform the Work in such a manner as not to interrupt or interfere with the operation of any existing activity on, or in proximity to, the Site or with the Work of any other separate contractor;
  - (2) Store his apparatus, materials, supplies and equipment in such orderly fashion at the Site of the Work as will not unduly interfere with the progress of his Work or the work of any other separate contractor; and
  - (3) Place upon the Work or any part thereof only such loads as are consistent with the safety of that portion of the Work.
- (b) The Contractor expressly undertakes, either directly or through his Subcontractor(s), to effect all cutting, filling or patching of the Work required to make the same conform to the plans and specifications, and, except with the consent of the Owner, not to cut or otherwise alter the Work of any other separate contractor. The Contractor shall not damage or endanger any portion of the Work or Site, including existing improvements, unless called for by the Contract.
- (c) The Contractor expressly undertakes, either directly or through his Subcontractor(s), to clean up frequently all refuse, rubbish, scrap materials and debris caused by his operations, to the end that at all times the Site shall present a neat, orderly and workmanlike appearance. No such refuse, rubbish, scrap material and debris shall be left within the completed Work nor buried on the building Site, but shall be removed from the Site and properly disposed of in a licensed landfill or otherwise as required by law.
- (d) The Contractor expressly undertakes, either directly or through his Subcontractor(s), before Final Payment or such prior time as the Owner may require, to remove all surplus material, false Work, temporary structures, including foundations thereof, plants of any description and debris of every nature resulting from his operations, and to put the Site in a neat, orderly condition; to thoroughly clean and leave reasonably dust free all finished surfaces including all equipment, piping, etc., on the interior of all buildings included in the Contract; and to clean thoroughly all glass installed under the Contract, including the removal of all paint and mortar splatters and other defacements.

If the Contractor fails to clean up at the time required herein, the Owner may do so and charge the costs incurred thereby to the Contractor in accordance with Section 10 (b) of these General Conditions.

- (e) The Contractor shall have, On-Site, an employee certified by the Department of Environmental Quality as a Responsible Land Disturber who shall be responsible for the installation, inspection and maintenance of erosion control and stormwater management measures and devices. The Contractor shall install and maintain erosion control and stormwater management measures and devices to minimize and control Site soil erosion, the runoff of silt and/or debris carrying water from the Site, and the blowing of debris off the Site in accordance with the applicable requirements and standards of the Contract and the Virginia Department of Environmental Quality's Erosion and Sediment Control Regulations and the Virginia Stormwater Management Regulations.

### **32. TEMPORARY ROADS**

Temporary roads, if required, shall be established and maintained until permanent roads are accepted, then removed and the area restored to the conditions required by the Contract Documents. Crushed rock, paving and other road materials from temporary roads shall not be left on the Site unless permission is received from the Owner to bury the same at a location and depth approved by the Owner.

### **33. SIGNS**

The Contractor may, at his option and without cost to the Owner, erect signs acceptable to the Owner on the Site for the purpose of identifying and giving directions to the job. No signs shall be erected without prior approval of the Owner as to design and location.

### **34. PROTECTION OF PERSONS AND PROPERTY**

- (a) The Contractor expressly undertakes, both directly and through his Subcontractors, to take every reasonable precaution at all times for the protection of all persons and property which may come on the Site or be affected by the Contractor's Work.
- (b) The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Any violation of these requirements or duties or any potential safety hazard that is brought to the attention of the Contractor by the Architect/Engineer, the Owner, or any other persons shall be immediately abated.
- (c) The provisions of all rules and regulations governing health and safety as adopted by the Safety Codes Commission of the Commonwealth of

Virginia, issued by the Department of Labor and Industry under Title 40.1 of the Code of Virginia, shall apply to all Work under this Contract.

- (d) The Contractor shall continuously maintain adequate protection of all his Work from damage and shall protect the Owner's property from injury or loss arising in connection with this Contract. He shall make good any such damage, injury or loss, except as may be directly and solely due to errors in the Contract Documents or caused by agents or employees of the Owner. The Contractor shall adequately protect adjacent property to prevent any damage to it or loss of use and enjoyment by its owners. The Contractor shall provide and maintain all passageways, guard fences, lights and other facilities for protection as required by public authority, local conditions, or the Contract. Contractor shall repair all disturbed adjacent property so that it is returned to its former condition or better as soon as work is completed in the area of the disturbance.
- (e) In an emergency affecting the health, safety or life of persons or of the Work, or of the adjoining property, the Contractor, without special instruction or authorization from the Owner, shall act, at his discretion, to prevent such threatened loss or injury. Also, should he, to prevent threatened loss or injury, be instructed or authorized to act by the Owner, he shall so act immediately, without appeal. Any additional compensation or extension of time claimed by the Contractor on account of any emergency work shall be determined as provided by Section 38 of these General Conditions.
- (f) When necessary for the proper protection of the Work, temporary heating of a type compatible with the Work must be provided by the Contractor at the Contractor's expense, unless otherwise specified.

### **35. CLIMATIC CONDITIONS**

The Contractor shall suspend activity on and protect any portion of the Work that may be subject to damage by climatic conditions.

### **36. PAYMENTS TO CONTRACTOR**

- (a) Unless otherwise provided in the Contract, the Owner will make partial payments to the Contractor on the basis of a duly certified and approved Application and Certificate for Payment, showing the estimate of the Work performed during the preceding calendar month or work period. When evaluating the Contractor's Application and Certificate for Payment, the Owner will consider the value of the Work in place, the value of approved and properly stored materials, the status of the Work on the critical path with regard to the Time for Completion, and the estimated

value of the Work necessary to achieve Final Completion. The Owner will schedule a monthly progress meeting to occur no earlier than the 25th day of the month represented by the payment request or not later than the 5th day of the following month. The Contractor will submit his monthly estimate of Work completed Application and Certificate for Payment in accordance with the Contract between the Owner and Contractor so that it is received by the Owner's Project Manager at least one work day prior to the date scheduled for the monthly progress meeting. The progress meeting will be considered the date of receipt. The Owner will review the estimate with the Contractor at the monthly progress meeting and may approve any or all of the estimate of Work for payment. In preparing estimates, the material delivered to the Site and preparatory Work done shall be taken into consideration, if properly documented as required by Section 20 of these General Conditions, or as may be required by the Owner so that quantities may be verified. In addition to material delivered to the Site, material such as large pieces of equipment and items purchased specifically for the Project, but stored off the Site within the Commonwealth of Virginia, may be considered for payment, provided all of the following are accomplished prior to the submission of the monthly payment request in which payment for such materials is requested:

- (1) The Contractor must notify the Owner in writing, at least ten (10) days prior to the submission of the payment request that specific items will be stored off Site in a designated, secured place within the Commonwealth of Virginia. The Schedule of Values must be detailed to indicate separately both the value of the material and the labor/installation for trades requesting payment for stored materials. By giving such notification and by requesting payment for material stored off Site, the Contractor warrants that the storage location is safe and suitable for the type of material stored and that the materials are identified as being the property of the Contractor, and agrees that loss of materials stored off the Site shall not relieve the Contractor of the obligation to timely furnish these types and quantities of materials for the Project and meet the Time for Completion or Contract Completion Date, subject to Section 43 (b) or these General Conditions. If the storage location is more than 20 miles from the Site, the Contractor may be required to reimburse the Owner for the cost incurred for travel to the storage location to verify the Contractor's request for payment for materials stored off Site. A Supplementary Agreement shall be required for payment by the Owner to the Contractor for materials or equipment that is stored offsite at a location that is not within the Commonwealth of Virginia.
- (2) Such notification, as well as the payment request, shall:

- (a) itemize the quantity of such materials and document with invoices showing the cost of said materials;
  - (b) indicate the identification markings used on the materials, which shall clearly reference the materials to the particular project;
  - (c) identify the specific location of the materials, which must be within reasonable proximity to the Site and within the Commonwealth of Virginia.
- (3) Owner has the right to request:
- (a) a letter from the Contractor's Surety which confirms that the Surety on the Performance Bond and the Labor and Material Payment Bond has been notified of the request for payment of materials stored off the Site and agrees that the materials are covered by the bond; and
  - (b) a certificate of all-risk builder's risk insurance in an amount not less than the fair market value of the materials, which shall name the Owner and the Contractor as co-insureds.
- (4) The Contractor's Architect/Engineer shall indicate, in writing, to the Owner that Submittals for such materials have been reviewed and meet the requirements of the Contract Documents, that the stored materials meet the requirement of the plans and specifications, and that such materials conform to the approved Submittals. Should the A/E deem it necessary to visit the storage site to make such review, the Contractor shall bear the costs incurred therewith.
- (5) The Owner shall notify the Contractor in writing of its agreement to prepayment for materials.
- (6) The Contractor shall notify the Owner in writing when the materials are to be transferred to the Site and when the materials are received at the Site.
- (a) Payment will not be made for materials or equipment stored on or off the Site which are not scheduled for incorporation into the Work within the twelve months next following submission of the request for payment, unless the Contractor has the prior consent of the Owner, which consent may be granted or withheld by the Owner in its discretion if, in the opinion of the Owner, it is not

necessary to procure the materials more than twelve months in advance of use to assure their availability when needed.

- (b) No payment shall be made to the Contractor until:
  - (i) The Contractor furnishes to the Owner its Social Security Number (SSN) if an individual, or its Federal Employer Identification Number (FEIN) if a proprietorship, partnership, corporation or other legal entity.
  - (ii) Certificates of Insurance or other satisfactory evidence of compliance by the Contractor with all the requirements of Section 11 (and Section 12 if applicable) of these General Conditions have been delivered to the Owner.
  - (iii) Copies of any certificates of insurance required of a Subcontractor under Section 11 have been delivered to the Owner for payments based on Work performed by a Subcontractor
  - (iv) The Contractor has (i) submitted a preliminary schedule which is acceptable to the Owner in accordance with Section 19(a), (ii) submitted a fully complete Project schedule accepted by the Owner in accordance with Section 19(a), (iii) maintained the monthly bar graphs or status reports required by Section 19(d), or (iv) provided a recovery schedule pursuant to Section 19(e), as each of them may be required.
  - (v) The Contractor shall determine the impact on warranties as a result of the early delivery of materials on site or off site and report this information to the Owner. Warranties that will be shortened by early delivery will need to be remedied by the Contractor either through extension of the warranty or assumption of the warranty by the Contractor.
  
- (d) In making such partial payments, five percent (5%) of each payment to the Contractor shall be retained until Final Completion and acceptance of all Work covered by the Contract, unless otherwise provided by any law, regulation or program of the federal government. Such retainage shall be held to assure faithful performance of the Contract and may also be used as a fund to deduct amounts due to or claimed by the Owner, including,

but not limited to, payment to the Owner of all moneys due for deductive change orders, credits, uncorrected Defective Work, interest, damages, and the like. (§2.2-4333 of the Code of Virginia) The Owner may, at its sole discretion, agree on an item by item basis to release the retainage on items which are fully 100% complete, and which have been accepted by the Owner as being tested and complete, and on which no further action or work will be required. Retainage which is released by the Owner shall be distributed by the Contractor in conformance with Section 37 of these General Conditions.

- (e) All material and Work for which partial payments are made shall thereupon become the sole property of the Owner, but this provision shall not relieve the Contractor from the sole responsibility for all materials and Work, including those for which payment has been made, or for the restoration of any damaged materials or Work. Nor shall this provision serve as a waiver of the right of the Owner to require the fulfillment of all of the terms and conditions of the Contract.
- (f) The Final Payment, which shall include the retainage, less any amounts due to or claimed by the Owner, shall not become due until the Owner agrees that Final Completion has been achieved and until the Contractor shall deliver to the Owner a Certificate of Completion by the Contractor (Form CO-13.2) and an Affidavit of Payment of Claims (Form CO-13), stating that all Subcontractors and Suppliers of either labor or materials have been paid all sums claimed by them for Work performed or materials furnished in connection with this Project that are due and owing, less retainage. Amounts due the Owner which may be withheld from the Final Payment may include, but are not limited to, amounts due pursuant to Section 3(i), Section 16(a)-(d), Section 31(d), costs incurred to repair or replace Defective Work, costs incurred as a result of the Contractor's negligent acts or omissions or omissions of those for whom the Contractor is responsible, delay damages under Section 43(h), and any liquidated or actual damages. If all Subcontractors and Suppliers of labor and materials have not been paid the full amount claimed by them, the Contractor shall list each to which an agreed amount of money is due or which has a claim in dispute, with respect to all such Subcontractors and Suppliers, the Contractor shall provide to the Owner an affidavit from each such Subcontractor and Supplier stating the amount of their subcontract or supply contract, the percentage of completion, the amounts paid to them by the Contractor and the dates of payment, the amount of money still due if any, any interest due the Subcontractor or Supplier pursuant to Section 37(h) below, and whether satisfactory arrangements have been made for the payment of undisputed amounts. Nothing in this Section shall be construed as creating any obligation or contractual relationship between the Owner and any Subcontractor or Supplier, and the Owner shall not be

liable to any Subcontractor or Supplier on account of any failure or delay of the Owner in complying with the terms hereof.

- (g) Upon successful completion of the final inspection and all Work required by the Contract, including but not limited to the delivery of As-Built reproduceable Record Drawings, equipment manuals, written warranties, acceptance of the Work by the Owner and the delivery of the affidavits required in Section 36(f) of these General Conditions, the Contractor shall deliver the written Certificate of Completion by the Contractor (Form CO-13.2) to the Owner stating the entire amount of Work performed and compensation earned by the Contractor, including extra work and compensation therefore. The Owner may accept the Work for occupancy or use while asserting claims against the Contractor; disputing the amount of compensation due to the Contractor; disputing the quality of the Work, its completion, or its compliance with the Contract Documents; or any other reason.
- (h) The Owner shall pay to the Contractor all approved amounts and work not in dispute, less all prior payments and advances whatsoever to or for the account of the Contractor. In the case of final payment, the Certificate of Completion by the Contractor shall accompany the final Schedule of Values and Application and Certificate for Payment which is forwarded to the Owner for payment. Payment shall be due within 30 days of approval of Application and Certificate for Payment. The date on which payment is due shall be referred to as the Payment Date. Payment shall be made on or before the Payment Date for amounts and Work not in dispute, subject to any set offs claimed by the Owner; provided, however in instances where further appropriations are required by the board of supervisors or where the issuance of further bonds is required, in which case, payment shall be made within thirty (30) days after the effective date of such appropriation or within thirty (30) days after the receipt of bond proceeds by the Owner. All prior estimates and payments including those relating to extra Work may be collected and adjusted in any payment and shall be corrected and adjusted in the Final Payment. In the event that any request for payment by the Contractor contains a defect or impropriety, the Owner shall notify the Contractor of any defect or impropriety which would prevent payment by the Payment Date, within five (5) days after receipt of the Application and Certificate for Payment by the Owner.
- (i) Interest shall accrue on all amounts owed by the Owner to the Contractor which remain unpaid seven (7) days following the Payment Date. Said interest shall accrue at the discounted ninety day US Treasury Bill rate as established by the Weekly Auction and reported in the publication, *The Wall Street Journal*, on the weekday following such Weekly Auction. During the period of time when the amounts due to the Contractor remain unpaid following the seventh (7<sup>th</sup>) day after the payment due date, the

interest accruing shall fluctuate on a weekly basis based upon the immediately prior Weekly Auction rate. It shall be the responsibility of the Contractor to gather and substantiate the applicable weekly interest rates and calculate the interest due to the satisfaction of the Owner. In no event shall the interest rate charged exceed 1% per month. No interest shall accrue on retainage or when payment is delayed because of disagreement between the Owner and the Contractor regarding the quantity, quality or timeliness of the Work, including, but not limited to, compliance with Contract Documents or the accuracy of any Request for Payment received. This exception to the accrual of interest stated in the preceding sentence shall apply only to that portion of a delayed payment which is actually the subject of such a disagreement and shall apply only for the duration of such disagreement. Nothing contained herein shall be interpreted, however, to prevent the withholding of retainage to assure faithful performance of the Contract. The date of mailing of any payment by the U.S. Mail is deemed to be the date of payment to the addressee.

- (j) The acceptance by the Contractor of the Final Payment shall be and operate as a release to the Owner of all claims by the Contractor, its Subcontractors and Suppliers, and of all liability to the Contractor whatever, including liability for all things done or furnished in connection with this Work, except for things done or furnished which are the subject of unresolved claims for which the Contractor has filed a timely written notice of intent, and provided a claim is submitted no later than sixty (60) days after Final Payment. Acceptance of any interest payment by the Contractor shall be a release of the Owner from claims by the Contractor for late payment.
- (k) No certificate for payment issued, and no payment, final or otherwise, no certificate of completion, nor partial or entire use or occupancy of the Work by the Owner, shall be an acceptance of any Work or materials not in accordance with the Contract, nor shall the same relieve the Contractor of responsibility for faulty materials or Defective Work or operate to release the Contractor or his Surety from any obligation under the Contract, the Standard Performance Bond and the Standard Labor and Material Payment Bond.

### **37. PAYMENTS BY CONTRACTOR (§2.2-4354, Code of Virginia)**

Under §2.2-4354, Code of Virginia, the Contractor is obligated to:

- (a) Within seven (7) days after receipt of amounts paid to the Contractor by the Owner for Work performed by the Subcontractor or Supplier under this Contract,

- (1) Pay the Subcontractor or Supplier for the proportionate share of the total payment received from the Owner attributable to the Work performed by the Subcontractor or the materials furnished by the Supplier under this Contract; or
  - (2) Notify the Subcontractor or Supplier, in writing, of his intention to withhold all or a part of the Subcontractor or Supplier's payment with the reason for nonpayment;
- (b) Pay interest to the Subcontractor or Supplier on all amounts owed by the Contractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from the Owner for Work performed by the Subcontractor or materials furnished by the Supplier under this contract, except for amounts withheld as allowed under subsection (a) (2) of this Section.
- (c) Include in each of his subcontracts a provision requiring each Subcontractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower tier subcontractor. Each Subcontractor shall include with its invoice to, or request for payment from, the Contractor, a certification that that Subcontractor has paid each of its suppliers and lower tier subcontractors their proportionate share of previous payments received from the Contractor attributable to the Work performed or the materials furnished by it under this Contract.

The Contractor's obligation to pay interest to the Subcontractor or Supplier pursuant to subsection (b) of this Section is not an obligation of the Owner. A modification to this Contract shall not be made for the purpose of providing reimbursement for such interest charge. A Contractor's cost reimbursement claim shall not include any amount for reimbursement of such interest charge.

### **38. CHANGES IN THE WORK**

- (a) The Owner may at any time, by written order utilizing a Change Order Form and without notice to the sureties, make changes in the Work which are within the general scope of the Contract, except that no change will be made which will increase the total Contract Price to an amount more than twenty percent (20%) in excess of the original Contract Price without notice to sureties. At the time of the Pre-construction Meeting described in Section 50(b), the Contractor and the Owner shall advise each other in writing of their designees authorized to accept and/or approve changes to the Contract Price and of any limits to each designee's authority. Should any designee or limits of authority change during the time this Contract is in effect, the Contractor or Owner with such a change shall give written

notice to the other within seven (7) calendar days, utilizing the procedures set forth in these General Conditions. The Contractor agrees and understands that the authority of the Owner's designee is limited by Virginia Code §2.2-4309 and any other applicable statute.

In making any change, the charge or credit for the change shall be determined by one of the following methods as selected by the Owner:

- (1) **Fixed Price:** By a mutually agreed fixed amount change to the Contract Price and/or time allowed for completion of the Work. The Change Order shall be substantiated by documentation itemizing the estimated quantities and costs of all labor, materials, and equipment required as well as any mark-up used. The fixed price change shall include the Contractor's reasonable overhead and profit, including overhead for any unreasonable delay arising from or related to the Change Order and/or the change in the Work. See Subsections (d), (e), and (f) below.
- (2) **Unit Price:** By using unit prices contained in the Contract and calculating the number of net units of Work in each part of the Work which is changed, either as the Work progresses or before Work on the change commences, and by then multiplying the calculated number of units by the applicable unit price set forth in the Contract. If no unit price in the Contract exists, parties may mutually agree to unit prices. No additional percentage markup for overhead or profit shall be added to the unit prices. The unit price of an item may be increased or decreased pursuant to Subsection 38(j).
- (3) **Cost Reimbursement:** By ordering the Contractor to perform the changed Work on a cost reimbursement basis, plus overhead and profit as defined in Subsection 38(d), by issuing two Change Orders citing this Subsection, an initiating Change Order, authorizing the changed Work, and a continuing Change Order approving the additional cost and time for the changed Work. The initiating Change Order shall:
  - (i) Describe the scope or parameters of the change in the Work;
  - (ii) Describe the cost items to be itemized and verified for payment and the method of measuring the quantity of work performed;
  - (iii) Address the impact on the schedule for Substantial Completion;

- (iv) Order the Contractor to proceed with the change to the Work;
- (v) Order the Contractor to keep in a form acceptable to the Owner, an accurate, itemized account of the actual (cost of the change in the Work, including, but not limited to, the actual costs of labor, materials, equipment, and supplies;
- (vi) Order the Contractor-to annotate a copy of the Project schedule to accurately show the status of the Work at the time this first Change Order is issued, to show the start and finish dates of the changed Work, and the status of the Work when the changed Work is completed; and
- (vii) State that a confirming Change Order will be issued to incorporate the cost of the ordered change in the Work into the Contract Price and any change in the Contract Time for Completion or Contract Completion Date.

The Contractor shall sign the initiating Change Order acknowledging he has been ordered to proceed with the change in the Work. The Contractor's signature on each initiating Change Order citing this Subsection 38(a)(3) as the method for determining the cost of the Work shall not constitute the Contractor's agreement on the cost or time impact of the ordered Work.

The Owner shall be permitted to verify such records and may require such additional records as are necessary to determine the cost of the change to the Work.

Contractor shall submit its costs for the changed Work as part of its monthly payment request to the Owner. Within fourteen (14) days after the conclusion of such ordered Work, the Contractor and the Owner shall reach agreement on (i) the total cost for the ordered Work, based on the records kept and the Contractor's allowance for overhead and profit determined in accordance with the provisions set forth in Subsections 38(d), (e), and (f) below; and (ii) the change in the Contract Time for Completion or Contract Completion Date, if necessary, as a result of the ordered Work. Such costs and time shall be incorporated into a confirming Change Order which references the initiating Change Order. If agreement on the cost and time of the changed Work cannot be reached within the fourteen (14) days allotted, the Contractor may

submit notice of its intent to file a claim for the disputed cost or time as provided for in Section 47.

- (4) By issuing a unilateral change order in the amount the Owner believes is the Contractor's reasonable additional cost for the change. If the Owner and Contractor disagree as to the amount or scope of the change order, the Owner shall pay Contractor the amount the Owner believes is the Contractor's additional cost for the change, and the Contractor may, within the 14 days of the date of the change order, file a notice of intent to file a claim for the disputed amount as provided for in section 47.
- (b) The Contractor shall review any change requested or directed by the Owner and shall respond in writing within fourteen (14) days after receipt of the proposed change (or such other reasonable time as the Owner may direct), stating the effect of the proposed change upon his Work, including any increase or decrease in the time and price. The Contractor shall furnish to the Owner an itemized breakdown of the quantities and prices used in computing the proposed change in Contract Price.

The Owner shall review the Contractor's proposal and respond to the Contractor within fourteen (14) days of receipt. If a change to the Contract Price and Time for Completion or Contract Completion Date are agreed upon, both parties shall sign the Change Order. If the Contract Price and Time for Completion or Contract Completion Date are not agreed upon, the Owner may direct the Contractor to proceed under Subsections 38(a)(3) or 38(a)(4) above. Change Orders shall be effective when signed by both parties, unless approval by the board of supervisors or its designee is required, in which event the Change Orders shall be effective when signed by the Owner.

- (c) In figuring changes, any instructions for measurement of quantities set forth in the Contract shall be followed.
- (d) Overhead and profit for both additive and deductive changes in the Work (other than changes covered by unit prices) shall be paid by applying the specified percentage markups only on the net cost of the changed Work (i.e. difference in cost between original and changed Work excluding overhead and profit). Said percentages for overhead and profit shall reasonably approximate the Contractor's overhead and profit, but shall not exceed the percentages for each category listed below:
  - (1) If a Subcontractor does all or part of the changed Work, the Subcontractor's mark-up for overhead and profit on the Work it performs shall be a maximum of fifteen percent (15%). The

Contractor's mark-up for overhead and profit on the Subcontractor's price shall be a maximum of ten percent (10%).

- (2) If the Contractor does all or part of the changed Work, its markup for overhead and profit on the changed Work it performs shall be a maximum of fifteen percent (15%).
  - (3) If a Sub-subcontractor at any tier does all or part of the changed Work, the Sub-subcontractor's markup for overhead and profit on that Work shall be a maximum of fifteen percent (15%). The markup of a sub-subcontractor's Work by the Contractor and all intervening tiers of Subcontractors shall not exceed a total of ten percent (10%).
  - (4) Where Work is deleted from the Contract prior to commencement of that Work without substitution of other similar Work, one hundred percent (100%) of the Contract Price attributable to that Work shall be deducted from the Contract Price. However, in the event that material Submittals have been approved and orders placed for said materials, the Contractor's incurred cost for such materials shall not be deducted from the Contract Price. The credit to the Owner for any reduced premiums on labor and material bonds and performance bonds shall in all cases be one hundred percent (100%).
- (e) Allowable costs for changes in the Work may include but are not limited to the following:
- (1) Labor costs for employees directly employed in the change in the Work, including salaries and wages plus the cost of payroll charges and fringe benefits and overtime premiums, if such overtime is explicitly authorized by the Owner.
  - (2) Materials incorporated into the change to the Work, including costs of transportation and storage, if applicable. If applicable, all cash discounts shall accrue to the Contractor, unless the Owner deposits funds with the Contractor to make such payments, and all trade discounts, rebates, refunds, and returns from the sale of surplus materials shall accrue to the Owner.
  - (3) Equipment incorporated in the changed Work or equipment used directly in accomplishing the Work. If rented expressly for accomplishing the change in the Work, the cost shall be the rental rate according to the terms of the rental agreement. If owned by the Contractor, the costs shall be a reasonable price based upon the life

expectancy of the equipment and the purchase price of the equipment, if applicable, transportation costs may be included.

- (4) Costs of increases in premiums for the Standard Labor and Material Payment Bond and the Standard Performance Bond, provided coverage for the cost of the change in the Work results in such increased costs. At the Owner's request, the Contractor shall provide proof of his notification to the Surety of the change in the Work and of the Surety's agreement to include such change in its coverage. The cost of the increase in premium shall be an allowable cost but shall not be marked up.
- (5) Contractor and Subcontractor overhead costs as set forth in Subsection (d) markups above.
- (6) **Agreed Compensation for Overhead for Changes to Time for Completion or Contract Completion Date for Changes to the Work:** If the change in the Work also changes the Time for Completion or the Contract Completion Date by adding days to complete the Work, an itemized accounting of the following direct Site overhead and home office overhead and other indirect overhead expenses set forth in subparagraphs (i) and (ii) below may be considered as allowable costs for compensation in addition to those shown above:

- (i) **Direct Site Overhead Expenses:**

The Contractor's per diem expenses, as shown by the itemized accounting, for the following allowable direct Site overhead expenses: The Site superintendent's pro-rata salary, temporary Site office trailer, rented office equipment, pick-up trucks, cell phones, and temporary Site utilities including basic telephone service, electricity, heat, water, and sanitary/toilet facilities for each day added. All other direct site overhead expenses are covered by and included in the Subsection 38(d) markups above.

- (ii) **Home Office and Other Indirect Overhead Expenses:** A five percent (5%) markup on the above direct Site overhead expenses will be allowed as compensation for the Contractor's home office overhead and all other direct or indirect overhead expenses for days added to the Time for Completion or the Contract Completion Date for a change in the Work. All other home office overhead and other direct or indirect overhead expenses are covered by and

included in this markup and the Subsection (d) markups above.

- (7) Any other costs directly attributable to the change in the Work with the exception of those set forth in Subsection 38(f) below.
- (f) Allowable costs for changes in the Work shall not include the following:
  - (1) Costs due to the negligence of the Contractor, any Subcontractor, Supplier, their employees or other persons for whom the Contractor is responsible, including, but not limited to, costs for the correction of Defective Work, for improper disposal of material, for equipment wrongly supplied, for delay in performing the Work, or for delay in obtaining materials or equipment.
  - (2) Home office expenses including payroll costs for the Contractor's officers, executives, administrators, accountants, counsel, timekeepers, clerks, and other similar administrative personnel employed by the Contractor, whether at the Site or in the Contractor's principal or branch office for general administration of the Work. These costs are deemed overhead included in the percentage markups allowable in Subsections 38(d) above.
  - (3) Home office, and field office expenses not itemized in Subsection 38(e)(6) above. Such items include, but are not limited to, expenses of Contractor's home and branch offices, Contractor's capital expenses, interest on Contractor's capital used for the Work, charges for delinquent payments, small tools, incidental job costs, rent, and other general overhead expenses.
- (g) All Change Orders, except the "initial" Change Orders authorizing work citing Subsection 38(a)(3) procedures, must state that the Contract Time for Completion or Contract Completion Date is not changed or is either increased or decreased by a specific number of days. The old Time for Completion and, if changed, the new Time for Completion must be stated.

If the Contractor requests an extension to the Time for Completion or a later Contract Completion Date, he must provide written justification for the extension to the Owner. The written justification must demonstrate an anticipated actual increase in the time required to complete the Work beyond that allowed by the Contract as adjusted by prior change orders or amendments to the Contract, not just an increase or decrease in the time needed to complete some portion of the total Work. When a CPM schedule is required by the Contract, no extension to the Time for

Completion or Contract Completion Date shall be allowed unless, and then only to the extent that, the additional or changed Work increases the length of the critical path beyond the Time for Completion or Contract Completion Date. If approved, the increase in time required to complete the Work shall be added to the Time for Completion or Contract Completion Date.

The Owner may decrease, by Change Order, the Time for Completion or Contract Completion Date when an Owner-requested deletion from the Work results in a decrease in the actual time required to complete the Work as demonstrable on the CPM Schedule. The Contractor may submit a request to decrease, by Change Order, the Time for Completion or Contract Completion Date under the procedures and subject to the considerations set forth in Section 19(f). No request for such decrease shall be considered for approval unless the proposed shorter schedule is otherwise acceptable under Sections 19(b) or (c), whichever is applicable. The Change Order decreasing the Time for Completion or changing the Contract Completion Date must be signed by both the Owner and the Contractor.

With the exception of Change Orders under Subsection 38(a)(3), which shall arrive as a change to the Contract Price and any change to time using the procedures set forth therein, each Change Order shall include all time and monetary impacts of the change, whether the Change Order is considered alone or with all other changes during the course of the Project. Failure to include a change to time and changes in the Contract Price attributable to the change in time under Subsections 38(a)(1) or (2) shall waive any change to the time and Contract Price unless the parties mutually agree in writing to postpone a determination of the time related impacts of the change. Such a determination may be postponed not more than forty-five (45) days to give the Contractor an opportunity to demonstrate a change in the time and price needed to complete the Work. During any such postponement, the Work shall proceed, unless the Owner agrees otherwise.

If at any time there is a delay in the critical path of the Work due to postponement, due to the Contractor's efforts to justify an extension of the time or an increase in the Contract Price, or due to the Contractor's refusal to proceed with any of the Work, pending agreement on a change in time or price, such delay and any Contractor costs resulting from it shall not serve as the basis for the extension of the Time for Completion or Contract Completion Date or for an increase in the Contract Price.

- (h) The acceptance by the Contractor of any payment made by the Owner under a Change Order shall be and operate as a release to the Owner of all claims by the Contractor and of all liability owing to the Contractor for all

things done or furnished in connection with the Work described in the Change Order, except for any claims that are timely submitted in accordance with Section 47. The execution of any Change Order by the Owner shall not be an acceptance of any Work or materials not in accordance with the Contract Documents, nor shall it relieve the Contractor of responsibility for faulty materials or workmanship or operate to release the Contractor or his surety from any obligation arising under the Contract or the Standard Performance Bond or Standard Labor and Material Payment Bond.

- (i) If a dispute arises as to payment under Subsection 38(a)(2) and 38(a)(3), the Owner may require any or all of the following documentation to be provided by the Contractor.

**For Work performed on a Unit Price basis:**

- (1) measurements of authorized and approved excavations, over-excavations, fills and/or backfills, and similar work; and/or
- (2) measurements of piling installed, caissons installed, and similar work; and/or
- (3) daily records of waste materials removed from the Site and/or fill materials imported to the Site.

**For Work performed on a Subsection 38(a)(3) basis:**

- (1) certified payroll records showing the name, classification, date, daily hours, total hours, rate, and extension for each laborer, foreman, supervisor or other worker;
- (2) equipment type & model, dates, daily hours, total hours, rental rate, or other specified rate, and extension for each unit of equipment;
- (3) invoices for materials showing quantities, prices, and extensions;
- (4) daily records of waste materials removed from the Site and/or fill materials imported to the Site;
- (5) measurements or over-excavations, piling installed and similar work; and/or
- (6) transportation records for materials, including prices, loads, and extensions.

When requested by the Owner, requests for payment shall be accompanied and supported by invoices for all materials used and for all transportation charges claimed. If materials come from the Contractor's own stock, then an affidavit may be furnished, in lieu of invoices, certifying quantities, prices, etc. to support the actual cost.

(j) When the variation between the estimated quantity and the actual quantity of a unit-priced item is increased or decreased more than 25 percent of the original Contract quantity, the Contract Price and/or unit price of the item shall be increased or decreased to account for the Contractor's increased or decreased cost. The Contractor's increased or decreased cost shall be calculated only on that quantity in excess of 125 percent of the original contract bid item quantity, or, if there is a decrease in quantity of more than 25 percent, on that quantity below 75 percent of the original contract bid item quantity.

### **39. EXTRAS**

If the Contractor claims that any instructions given to him by the Owner, by drawings or otherwise, involve extra Work which increases the scope of the Contract, then, except in emergencies endangering life or property, he shall give the Owner written notice thereof before proceeding to execute the Work. Said notice shall be given promptly enough to avoid delaying the Work and in no instance later than fourteen (14) days after the receipt of such instructions. Should it not be immediately clear to the Contractor that the change involves extra Work outside the scope of the Contract, written notice shall be sufficient if given as soon as possible after such realization, but in no event later than fourteen (14) days after the start of such Work. If the Owner agrees, a Change Order shall be issued as provided in Section 38 of these General Conditions, and any additional compensation shall be determined by one of the four (4) methods provided in Subsection 38(a), as selected by the Owner. If the Owner does not agree, then any claims for compensation for the extra Work shall be filed in accordance with Section 47.

### **40. CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT**

If the Work should be stopped under an order of any court or other public authority for a period of ninety (90) days through no fault of the Contractor or anyone employed by him, or if the Owner should fail to pay to the Contractor within thirty (30) days any sum certified by the Owner when no dispute exists as to the sum due or any provision of the Contract, then the Contractor may, upon ten (10) calendar days written notice to the Owner, stop Work or terminate the Contract and recover from the Owner payment for the cost of the Work actually performed, together with overhead and profit thereon. The Contractor may not

receive profit or any other type of compensation for parts of the Work not performed. The Contractor may recover the reasonable cost of physically closing down the Site, but no other costs of termination. The Owner may offset any claims it may have against the Contractor against the amounts due to the Contractor. In no event shall termination of the Contract by the Contractor terminate the obligations of the Contractor's surety on its payment and performance bonds.

#### **41. OWNER'S RIGHT TO TERMINATE THE CONTRACT FOR CAUSE**

- (a) If the Contractor should be adjudged as bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if the Contractor should refuse or should repeatedly fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials and equipment, or if he should fail to perform the Work in a diligent, efficient, workmanlike, skillful and careful manner, or if he should fail or refuse to perform the Work in accordance with the Contract Documents, or if he should fail to make prompt payment to Subcontractors or Suppliers of material or labor, or if he should disregard laws, ordinances or the written instructions of the Architect/Engineer or the Owner, or otherwise be in substantial violation of any provision of the Contract, the Contractor shall be in default of the Contract.
  
- (b) The Owner shall give the Contractor and his surety written notice of any default in the manner provided in Section 1 (definition of "Notice") of these General Conditions and allow ten (10) days, during which the Contractor and/or his surety may rectify the basis for the notice of default. If the default is rectified to the reasonable satisfaction of the Owner within said ten (10) days, the Owner shall rescind its notice of default. If not, the Owner may terminate the Contract for cause by providing written notice of termination to the Contractor. In the alternative, the Owner may, in writing, postpone the effective date of the termination for cause, at its sole discretion, if it should receive reassurances from the Contractor and/or its surety that the default will be remedied in a time and manner which the Owner finds acceptable. If at any time after such postponement, the Owner determines that Contractor and/or its surety has not or is not likely to rectify the default in an acceptable manner or within the time allowed, then the Owner may immediately terminate the Contract for cause, without the necessity of providing a further notice of default, by notifying the Contractor and his surety in writing of the termination. If Owner postpones the effective date of the termination, and Contractor subsequently rectifies the default to the reasonable satisfaction of the Owner, the Owner shall rescind its notice of default. In no event shall

termination for cause terminate the obligations of the Contractor's surety on its payment and performance bonds.

- (c) Upon termination of the Contract becoming effective, the Owner shall take possession of the Site and of all materials, and make arrangements with Contractor and any rental companies for the assignment of any lease agreement relating to tools and equipment.
  - (1) **No Security Provided:** If no security has been provided pursuant to Section 8 herein, the Owner shall finish the Work by whatever method he may deem expedient. If the expense of finishing the Work, including compensation for additional managerial and administrative services, shall exceed the unpaid balance of the Contract Price, the Contractor shall pay the difference to the Owner, together with any other expenses of terminating the Contract and having it completed by others.
  - (2) **Security Provided:** If security has been provided pursuant to Section 8 herein, the Owner shall provide Notice to the Surety that termination of the Contract became effective and proceed as set forth in the Performance Bond and the Terms and Conditions therein. If the expense of finishing the Work, including compensation for additional managerial and administrative services, shall exceed the unpaid balance of the Contract Price and the penal amount of the Performance Bond, the Contractor shall pay the difference to the Owner, together with any other expenses of terminating the Contract and having it completed by others.
- (d) If it should be judicially determined that the Owner improperly terminated this Contract for cause, then the termination shall be deemed to be a termination for the convenience of the Owner, and the Contractor's rights and remedies shall be solely limited to those provided by Section 42 of these General Conditions.
- (e) Termination of the Contract under this Section is in addition to and without prejudice to any other right or remedy of the Owner. Any actions by the Owner permitted herein shall not be deemed a waiver of any other right or remedy of the Owner under the Contract or under the law. The Owner may offset any claims it may have against the Contractor against the amounts due to the Contractor. The provisions of this Section shall survive termination of the Contract.

## **42. TERMINATION BY OWNER FOR CONVENIENCE**

- (a) The Owner may terminate this Contract, in whole or in part, at any time without cause upon giving the Contractor written notice of such

termination in the manner provided in Section I (definition of "Notice") or these General Conditions. Upon such termination, the Contractor shall immediately cease Work and remove from the Site all of its labor forces, equipment, and such of its materials as Owner elects not to purchase or to assume in the manner hereinafter provided. Upon such termination, the Contractor shall take such steps as Owner may require to assign to the Owner the Contractor's interest in all Subcontracts and purchase orders designated by Owner. After all such steps have been taken to Owner's satisfaction, the Contractor shall receive as full compensation for termination and assignment the following:

- (1) Amounts due for Work performed in accordance with the Contract subsequent to the latest approved Application and Certificate for Payment through the date of termination; and
- (2) All amounts then otherwise due under the terms of this Contract associated with the Work performed prior to the date of termination; and
- (3) Reasonable compensation for the actual cost of demobilization incurred by the Contractor as a direct result of such termination.

The Contractor shall not be entitled to any compensation or damages for lost profits or for any other type of contractual compensation or damages other than those provided in Subsection 42(a). The Owner may offset any claims it may have against the Contractor against the amounts due to the Contractor. Upon payment of the foregoing, Owner shall have no further obligations to Contractor of any nature. The Contractor agrees to waive all claims against the Owner for any consequential damages that may arise from or relate to the Owner's termination of the Contract including, but not limited to, damages for loss of revenue, income, profit, business, reputation, or bonding capacity.

- (b) In no event shall termination for the convenience of the Owner terminate the obligations of the Contractor's surety on its payment and performance bonds.
- (c) Any actions by the Owner permitted herein shall not be deemed a waiver of any other right or remedy of the Owner under the Contract or under the law. The provisions of this Section shall survive termination of the Contract.

#### **43. DAMAGES FOR DELAYS; EXTENSION OF TIME**

- (a) Excusable Non-Compensable Delays: If and to the extent that the Contractor is delayed at any time in the progress of the Work by strikes,

fires, unusual delays in transportation or unavoidable casualties, or other causes outside the control of the Owner or the Contractor, with the exception of delays caused by weather provided for in Section 6, for which the Contractor intends to request an extension of either the Time for Completion or the Contract Completion Date, as the case may be, then the Contractor shall give the Owner written notice of the delay within fourteen (14) days after inception of the delay. If the Owner agrees with the existence and the impact of the delay, the Owner shall extend the Time for Completion, the Contract Completion Date or Final Completion Date, as the case may be, for the length of time that the date for Substantial Completion or Final Completion was actually delayed thereby, and the Contractor shall not be charged with liquidated for delay during the period of such extension nor shall the Contractor be due compensation or damages of any kind, under any theory of law, as a result of such delay, the impact of such delay, or acceleration of Work as a result of such delay. In the event a CPM schedule is required by the Contract, no extension of the Time for Completion or Contract Completion Date shall be granted unless the Contractor demonstrates a delay in the critical path of the approved CPM schedule.

- (b) Excusable Compensable Delays: If and to the extent that the Contractor is unreasonably delayed at any time in the progress of the Work by any acts or omissions of the Owner, its agents, or employees, and due to causes within the Owner's control, and the Contractor intends to request an extension of either the Time for Completion or the Contract Completion Date, as the case may be, and/or additional compensation for damages, if any, caused by the delay, then the Contractor shall give the Owner written notice of the delay within fourteen (14) days after inception of the delay. The Contractor's written notice shall specify the nature of the delay claimed by the Contractor, the cause of the delay and the impact of the delay on the Contractor's Work schedule. The Owner shall then have seven (7) working days to respond to the Contractor's notice with a resolution, remedy, direction to alleviate the delay, or rejection of the existence of a delay. The Owner's failure to respond within the time required shall be deemed to be Owner's rejection of the existence of a delay. If and to the extent that a delay is caused by or due to the Owner taking any actions permitted or required by the Contract, the Contractor shall be entitled to an extension of time or additional compensation only for the portion of the delay that is unreasonable, if any.
- (c) Non-Excusable Non-Compensable Delays: The Contractor shall not be entitled to an extension of the Time for Completion or Contract Completion Date or to any additional compensation for delays if and to the extent they are (1) caused by acts, omissions, fault, or negligence of the Contractor or his Subcontractors, agents or employees or due to foreseeable causes within their control, including, but not limited to,

delays resulting from Defective Work including workmanship and/or materials, from rejected work which must be corrected before dependent work can proceed, from Defective Work or rejected work for which corrective action must be determined before like work can proceed, from incomplete, incorrect or unacceptable Submittals or samples, or from the failure to furnish enough properly skilled workers, proper materials or necessary equipment to diligently perform the work in a timely manner in accordance with the Project schedule; or (2) due to causes that would entitle the Owner to recover delay costs or damages.

- (d) No extension of time or additional compensation, if applicable, will be granted for any delay unless the claimed delay directly affects the critical path of the approved CPM schedule or the schedule shown on the approved bar graph schedule, whichever is applicable, and any float has been consumed. No extension of time or additional compensation shall be given for a delay if the Contractor failed to give notice of the delay in the manner and within the time prescribed in Subsections 43(a) or (b) above, whichever applies. Furthermore, no extension of time or additional compensation shall be given for any delay unless a written request for additional time or money is made in writing to the Owner within twenty (20) days of the end of the delay. The request shall state the cause of the delay, the number of days of extension requested, and any additional compensation requested by the Contractor. If the Owner denies, or fails to timely respond to Contractor's request, Contractor may submit its notice of intent to file a claim and claim for extension in time or additional compensation in accordance with Section 47. Contractor's failure to timely provide notice of the delay, request additional time or compensation, or file its notice of intent and claim within the times prescribed shall constitute a waiver of any claim for extension or additional compensation based upon that cause.
- (e) Requests for extensions of time and/or compensation for delays pursuant to Subsection 43(b) above must be substantiated by itemized data and records clearly showing that the Work delayed was on the critical path of the approved CPM schedule or on the sequence of Work on the approved bar graph schedule, as modified, whichever applies, and that the additional time and/or costs incurred by the Contractor are directly attributable to the delay in the Work claimed. Furthermore, compensation for delay shall be calculated from the contractual Time for Completion or Contract Completion Date, as adjusted by Change Order, and shall not be calculated based on any early completion planned or scheduled by the Contractor, unless a Change Order has been executed pursuant to Section 38 changing the Time for Completion or the Contract Completion Date to reflect such early completion. See Section 19 for procedures for the Contractor to follow if he plans early completion of the Work and wishes to request a Change Order reflecting the early completion date.

**Agreed Compensation/Liquidated Damages for Owner Delay:**

If and to the extent that the Contractor is entitled to an extension in the Time for Completion or the Contract Completion Date and additional compensation purely as a result of delay under Subsection 43(b) and not as a result of a change in the Work under Section 38, the agreed compensation and liquidated damages due the Contractor for days added to the Time for Completion or the Contract Completion Date for each day of such delay shall be its idle equipment and labor costs, and the per diem expenses as determined from an itemized accounting or the direct Site overhead expenses and home office and other indirect overhead expenses only as specified in Subsections 38(e)(6)(i) and (ii). These expenses shall exclude any and all expenses specified in Subsection 38(1).

- (f) If the Contractor submits a claim for delay damages pursuant to Subsection 43(b) above, the Contractor shall be liable to the Owner for a percentage of all costs incurred by the Owner in investigating, analyzing, negotiating and litigating or arbitrating the claim, which percentage shall be equal to the percentage of the Contractor's total delay claim which is determined through litigation or arbitration to be false or to have no basis in law or in fact. (Section 2.2-4335, Code of Virginia)
- (g) Any change in the Contract Time for Completion or Contract Completion Date shall be accomplished only by issuance of a Change Order.
- (h) **Agreed Compensation/Liquidated Damages for Contractor Delay:** If the Contractor fails to complete the Work within the Time for Completion or the Contract Completion Date, the Contractor shall be liable to the Owner, not as a penalty, but as fixed, agreed liquidated damages for delay until the Work is substantially or finally completed as the case may be.
- (i) The following Liquidated Damages provisions shall apply:
  - (1) If the Work is not substantially complete by the Time for Completion or Contract Completion Date, the Contractor shall owe to the Owner, not as a penalty but as liquidated damages, the sum of One Thousand Two Hundred and Fifty and no/100 Dollars (\$1250.00) for each and every partial or total calendar day of delay in Substantial Completion.
  - (2) Once the Work is substantially complete, the accrual of liquidated damages shall cease and the Contractor shall have thirty (30) calendar days in which to achieve Final Completion of the Work.

- (3) If Final Completion of the Work is not achieved on or before the thirtieth (30th) calendar day after Substantial Completion, and if the Owner has not granted any extension of time, the Contractor shall owe to the Owner, not as a penalty, but as liquidated damages, the sum of \$500 for each and every partial or total calendar day of delay in Final Completion.
- (j) The Contractor waives any and all defenses as to the validity of any liquidated damage provisions in the General Conditions or other Contract Documents, or of any liquidated damages assessed against the Contractor, on the grounds that such damages are void as penalties or are not reasonably related to actual damages.

#### **44. INSPECTION FOR SUBSTANTIAL COMPLETION & FINAL COMPLETION**

- (a) The Contractor shall notify the Owner, in writing on the Certificate of Partial or Substantial Completion by the Contractor of the date when the Work or designated portion thereof, will be, in his opinion, substantially complete and ready for inspection and testing to determine if it has reached Substantial Completion. The notice shall be given at least ten (10) days in advance of said date. Inspection and testing shall take place at a time(s) mutually agreeable to the Contractor and the Owner.

The inspection shall include a demonstration by the Contractor that all equipment, systems and operable components of the project function properly and in accordance with the Contract Documents. The Contractor shall furnish access for the inspection and testing as provided in Section 21 of these General Conditions. The inspection and testing shall determine whether Substantial Completion has been accomplished and shall result in a written list of unfinished Work and Defective Work, commonly referred to as a "punch list", which must be finished and corrected to obtain Final Completion.

After successful completion of the testing and the Architect/Engineer determines that, in its opinion, the Work, either in whole or in part, is substantially complete, the Architect/Engineer shall notify the Owner, in writing on the Certificate of Partial or Substantial Completion by the Architect/Engineer, that the Work, or a specified portion thereof, is recommended to be declared substantially complete. The Owner shall notify the Contractor, in Writing, of the date the Owner accepts the Work, or the specified portion thereof, as substantially complete or the Owner shall notify the Contractor of the deficiencies to be corrected or completed before such Work will be accepted as substantially complete.

- (b) The Contractor shall notify the Owner, in writing on the Certificate of Completion by the Contractor (form CO-13.2) of the date when the Work has reached or will reach Final Completion and will be ready for final inspection and testing. The notice shall be given at least five (5) days in advance of said date. That inspection and any necessary testing shall be conducted in the same manner as the inspection for Substantial Completion. When the Work is finally and totally complete, including the elimination of all defects, the Work shall be finally accepted by the Owner and Final Payment shall be made in accordance with Section 36 of these General Conditions.
- (c) Representatives of the appropriate permitting Officials will participate in the Substantial Completion Inspection. The Owner may elect to have other persons of its choosing also participate in the inspections. If one or more Substantial or Final Completion re-inspections are required through the fault of the Contractor, the Contractor shall reimburse the Owner for all costs of re-inspection or, at the Owner's option, the costs may be deducted from payments due to the Contractor.
- (d) A representative of the County Fire Department will either be present at the Substantial and Final Completion inspections or otherwise inspect the completed Work and advise the Owner whether the Work meets the fire safety requirements of the applicable building code.
- (e) Approval of Work as a result of any inspection required herein shall not release the Contractor or his surety from responsibility for complying with the Contract.

#### **45. GUARANTEE OF WORK**

- (a) Except as otherwise specified, all Work shall be, and is hereby, guaranteed by the Contractor against defects resulting from the use of materials, equipment or workmanship, which are defective, inferior, or not in accordance with the terms of the Contract, for one (1) year from the date of Final Completion of the entire Project by the Owner. Equipment and facilities which have seasonal limitations on their operation (e.g. heating or air conditioning units) shall be guaranteed for one (1) full year from the date of seasonally appropriate tests and acceptance, in writing, by the Owner. Where the Owner agrees to take Beneficial Occupancy of a portion or phase of the Work which has been determined to be substantially complete before the entire Work is finally completed, the guarantees for the materials, equipment and workmanship in that portion or phase shall begin on the date that the Owner takes Beneficial Occupancy, unless otherwise specified in the Supplemental General Conditions, Special Conditions, or by separate agreement. At six (6) months and eleven (11) months after substantial completion, the

Contractor shall meet with the Owner to review the status of and assign value to any unresolved warranty, guarantee, and punch list items.

- (b) If, within any guarantee period, Work which is not in accordance with the Contract, Defective Work, or inferior material, equipment or workmanship is noted by the Owner which requires or renders necessary repairs or changes in connection with the guaranteed Work, the Contractor shall, promptly upon receipt or notice from the Owner, such notice being given no later than two weeks after the guarantee period expires, and without expense to the Owner:
  - (1) Place in satisfactory condition in every particular all of such guaranteed Work and correct all defects, inferior materials, equipment or workmanship therein;
  - (2) Make good all damage to the structure or Site or equipment or contents thereof, which, in the opinion of the Owner, is the result or the list of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Contract; and
  - (3) Make good any Work or materials or the equipment and contents of structures and/or Site disturbance that results from fulfilling the provisions of this Section.
- (c) In any case, when in fulfilling the requirements of the Contract and this guarantee or any other guaranty or warranty, the Contractor disturbs any work performed by a separate contractor, he shall restore such work to a condition satisfactory to the Owner and guarantee such restored work to the same extent as if it was guaranteed under this Contract.
- (d) If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee as set forth in this Section, the Owner may have the defects or inferior materials, equipment or workmanship corrected and the Contractor and his surety shall be liable for all expense incurred.
- (e) All special warranties and guarantees applicable to definite parts of the Work that may be stipulated in or required by the Contract Documents shall be subject to the terms of this Section during the first year of the life of such special warranty or guarantee.
- (f) The guarantee of this Section shall be in addition to and not in lieu of all other warranties, express or implied, applicable to or arising from this Contract or by law.

- (g) Nothing contained in this Section shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including liability for Defective Work under Section 30. This Section relates only to the specific obligation of the Contractor as set forth in this Section to correct the Work and does not limit the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor the time within which proceedings may be commenced to establish the Contractor's liability with respect to his other obligations under the Contract Documents.
- (h) In the event the Work of the Contractor is to be modified by another contractor, either before or after the Final Inspection provided by Section 44 of the General Conditions, the first Contractor shall remain responsible in all respects under this Section's Guarantee of Work and under any other warranties or guarantees, express or implied, applicable to or arising from this Contract or by law. However, the Contractor shall not be responsible for any defects in material or workmanship introduced by the contractor modifying his Work. The first Contractor and the contractor making the modifications shall each be solely responsible for his respective work. The contractor modifying the earlier Work shall be responsible for any damage to or defect introduced into the Work by his modification. If the first contractor claims that a subsequent contractor has introduced defects of materials and/or workmanship into his Work, it shall be the burden of the contractor making the claim to demonstrate clearly the nature and extent of such introduced defects and the other contractor's responsibility for those defects. Any contractor modifying the work of another shall have the same burden if he asserts that defects in his work were caused by the contractor whose work he is modifying.
- (i) The Contractor shall indemnify and hold harmless Owner and Owner's consultants, representatives, agents and employees from and against any and all claims, causes of action, losses, costs, expenses or damages, including but not limited to attorney's fees, of any kind or nature whatsoever, arising from or relating to any bodily injury, including sickness, disease or death, or any property damage, that result from or arise out of the work performed by the Contractor, or by or in consequence of any neglect in safeguarding the Work, through the use of unacceptable materials in the Work, or resulting from any act, omission, negligence, or misconduct of the Contractor, any of his subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. To the extent Contractor fails or refuses to indemnify or hold harmless Owner from any such claims, the Owner may retain as much of the moneys due the Contractor under the Contract as the Owner considers necessary to ensure that a fund will be available to pay a settlement or judgment of such suits, actions, or claims. If insufficient monies are or

will become due, the Contractor's surety and/or insurers will not be released from liability until all such claims and actions have been settled and suitable evidence to that effect has been furnished the Owner.

#### **46. ASSIGNMENTS**

Neither party to the Contract shall assign the Contract in whole or any part without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to him hereunder, without the prior written consent of the Owner. Consent to assignment shall not be unreasonably withheld. No assignment shall relieve any party from its obligations under the Contract.

#### **47. CONTRACTUAL DISPUTES (§2.2-4363, Code of Virginia)**

- (a) Contractual claims, whether for money or for other relief, shall be submitted, in writing, no later than sixty (60) days after Final Payment; however, written notice of the Contractor's intention to file such claim must be given within fourteen (14) days of the time of the occurrence or beginning of the Work upon which the claim is based. Such notice shall state that it is a "notice of intent to file a claim" and include a written statement describing the act or omission of the Owner or its agents that allegedly caused or may cause damage to the Contractor and the nature of the claimed damage. The submission of a timely notice of intent is a prerequisite to recovery under this Section. Failure to submit such notice of intent within the time and in the manner required shall be a conclusive waiver of the claim by the Contractor. Oral notice, the Owner's actual knowledge, or a written notice given after the expiration of fourteen (14) days of time of the occurrence or beginning of the Work upon which the claim is based, shall not be sufficient to satisfy the requirements of this Section. The Contractor is not prevented from submitting claims during the pendency of the Work, and the Owner shall not be obligated to render a final written decision on any claim until after Final Payment. All claims shall state that they are "claims" pursuant to this Section, be submitted along with all practically available supporting evidence and documentation and the certification required by Subsection 47(f), and request a final decision. Certificates for payment, applications for payment, vouchers, invoices and similar requests for payment submitted for work done by the Contractor in accordance with the expected contract performance are routine submissions and shall not be considered claims under this Section. Proposed or requested change orders, demands for money compensation or other relief, and correspondence and e-mails to the Owner or its representatives, which do not strictly comply with the requirements of this Section, shall not be considered claims under this Section.

- (b) No written decision denying a claim or addressing issues related to the claim shall be considered a denial pursuant to this Section unless the written decision makes express reference to this Section and is signed by the Owner or his designee. The Contractor may not institute legal action prior to receipt of the Owner's final written decision on the claim unless the Owner fails to render such a decision within ninety (90) days of submission of the claim, at which time the claim shall be deemed denied.
- (c) The decision of the Owner on the Contract shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on a claim or Final Payment, whichever is later, initiates legal action as provided in § 2.2-4364 of the Code of Virginia . Failure of the Owner to render a decision within 90 days shall not result in the Contractor being awarded the relief claimed nor shall it result in any other relief or penalty. The sole result of the Owner's failure to render a decision within 90 days shall be the Contractor's right to immediately institute legal action. No administrative appeals procedure pursuant to § 2.2-4365 of the Code of Virginia has been established for contractual claims under this Contract.
- (d) Deleted.
- (e) In the event that a dispute, claim or controversy between the Owner and the Contractor arises regarding the requirements of the Contract, the performance of the Work, payment due the Contractor, the terms of any Change Order, or otherwise, the Contractor shall not stop, suspend or delay the Work or any part of the Work to be performed under the Contract, or under any Change Order, or as ordered by the Owner. The Contractor shall continue to diligently prosecute the Work to completion, including work required in any Change Order or as directed by the Owner.
- (f) Along with a claim submitted under this Section, the Contractor shall submit a notarized statement under penalty of perjury certifying that the claim is a true and accurate representation of the claim. Claims submitted without the statement shall not constitute a proper claim and, if not submitted with the certification within the time required, shall be deemed to be waived.
- (g) The remedies provided in these General Conditions, including costs, expenses, damages or extensions of time, shall be the Contractor's sole remedies for the acts, omissions or breaches of the Owner, which shall survive termination or breach of the Contract.

**48. ASBESTOS – NOT APPLICABLE**

**49. TRAINING, OPERATION AND MAINTENANCE OF EQUIPMENT**

- (a) As a part of the Work, the Contractor in conjunction with his Subcontractors and Suppliers shall provide the Owner's operations and maintenance personnel with adequate instruction and training in the proper operation and maintenance of any equipment, systems, and related controls provided or altered in the Work. The training requirements may be further defined in the specifications.
- (b) The Contractor shall provide the Owner with five copies of operating, maintenance and parts manuals for all equipment and systems provided in the Work. Additionally, Contractor will provide all necessary copies of documents required by regulatory agencies for their review and approval. Further specific requirements may be indicated in the specifications.

**50. PROJECT MEETINGS**

- (a) The intention of this Section is that the Contractor and the Owner have timely exchange of information and cooperate to accomplish the Work as required by the Contract Documents. The Contractor is responsible for managing the Work, obtaining approvals and requesting clarifications on a timely, reasonable basis. The Owner is responsible for making a reasonable effort to provide timely responses to the Contractor.
- (b) **Preconstruction Meeting:**

Prior to the start of construction and no later than 15 calendar days after the Notice to Proceed, a "Preconstruction" meeting shall be held with attendees to include the Owner's Project Manager and Project Inspector, the Architect/Engineer's project manager and representatives of each design discipline involved in the Project, the Regional Fire Marshal, the Contractor's project manager and superintendent (and scheduler, if Contractor desires), and representatives of the Contractor's major Subcontractors. The purpose of the meeting is to clarify and discuss the specifics related to, but not limited to, the following:

- (1) Persons involved from each entity and their chain of authority including the names of persons authorized to sign Change Orders and any limits to their authority. Name of Contractor's on-site certified Responsible Land Disturber.

- (2) Names, addresses, telephone numbers and email addresses to be used for Requests for Information (RFI), Requests for Clarification (RFC), Requests for Proposals (RFP), shop drawings, Submittals, and notices.
  - (3) Contractor's proposed construction schedule and Owner's sequencing requirements, if any.
  - (4) Application and Certificate for Payment requirements and procedures.
  - (5) Procedures for shop drawings, product data and Submittals.
  - (6) Procedures for handling Field Orders and Change Orders.
  - (7) Procedures for Contractor's request for time extension, if any.
  - (8) Construction Site requirements, procedures and clarifications to include:
    - Manner of conducting the Work
    - Site specialties such as dust and erosion control, stormwater management, project signs, clean up and housekeeping, temporary facilities, utilities, security, and traffic Safety
    - Layout of the Work
    - Quality control, testing, inspections and notices required
    - Site visits by the A/E and others
    - Owner's Project Inspector duties
    - Running Punch List
    - As-Built Drawings
  - (9) Procedures and documentation of differing or unforeseen Site conditions
  - (10) Monthly Progress Meeting
  - (11) Assignment of responsibility for generation of meeting minutes of all project meetings.
  - (12) Project Close-Out requirements and procedures
  - (13) Project records
- (c) **Monthly Progress Meeting:**  
 Section 36 establishes the requirement for a monthly pay meeting which will usually be held at or near the Site. In addition to Owner and

Contractor representatives, the following representatives, at a minimum, should be available to attend portions of the meeting, as applicable or necessary:

- Owner's Project Inspector
- Contractor's project superintendent
- A/E representative
- A representative of each major subcontractor who performed work included in the current pay request.
- A representative of each major subcontractor who is projected to perform work in the coming month.

The following topics should be included, as a minimum, in the monthly progress meeting:

- (1) Observations of status, quality and workmanship of Work in progress
  - (2) Validation of the Schedule of Values and Certificate for payment
  - (3) Conformance with proposed construction schedule
  - (4) Outstanding Requests for Information, Requests for Clarification and Requests for Proposal
  - (5) Submittals with action pending
  - (6) Status of pending Change Orders
  - (7) Status of Running Punch List items
  - (8) Work proposed for coming pay period
  - (9) Discussions of any problems or potential problems which need attention
- (d) **Other Meetings:**  
Requirements for other meetings, such as coordination meetings, pre-installation meetings and/or partnering meetings, may be included in the Contract Documents.

\* \* \* END OF DESIGN-BUILD GENERAL CONDITIONS \* \* \*

**AGREEMENT FOR PURCHASE, SALE AND  
RESERVATION OF WETLAND MITIGATION CREDITS**

THIS AGREEMENT FOR PURCHASE, SALE AND RESERVATION OF WETLAND MITIGATION CREDITS (this "Agreement") is dated this 5th day of April, 2016, by and between BYRD CREEK, LLC t/a ELK ISLAND MITIGATION BANK ("Seller"), and James River Water Authority ("Purchaser").

**RECITALS**

A. Seller has acquired the right to create a wetland mitigation bank on approximately 103 acres located at Elk Island Mitigation Bank in Goochland County, Virginia.

B. Seller has obtained from the United States Army Corps of Engineers (the "Corps") and the Virginia Department of Environmental Quality ("DEQ"), the permits necessary to create the mitigation bank. Seller has received final approval from all governing agencies. The mitigation bank will be known as the "Elk Island Mitigation Bank" and is referred to herein as the "Bank".

C. Purchaser desires to purchase from Seller and Seller desires to sell to Purchaser 0.10 wetland mitigation credits in the Bank, pursuant to the terms and conditions set forth herein.

## AGREEMENT

IN consideration of the sum of \$10.00 paid by Purchaser to Seller, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals. The Recitals are incorporated as an integral part hereof and not as mere recitals.
2. Agreement to Sell and Purchase. Seller shall sell and reserve for sale to Purchaser or its designees, and Purchaser or its assignees shall purchase from Seller 0.10 wetlands mitigation credits in the Bank (the "Credits"). Seller acknowledges and agrees that, notwithstanding the payment of the Purchase Price (as defined below) contemporaneously with the execution and delivery of this Agreement, Purchaser is purchasing the Credits for use on future projects, and the Credits reserved herein shall be conveyed to Purchaser, its successors, assigns or designees in accordance with Section 4 herein, when and as Purchaser directs from time to time in writing to Seller, without limit as to (i) the amount of Credits conveyed in connection with any such request (subject to an aggregate total limit of 0.10 Credits), or (ii) the time frame for such re-conveyance of the Credits. Upon payment of the Purchase Price, Purchaser shall have the right to re-convey all or a portion of its interest in the Credits to its successors, assignees or designees for use on future projects, and Seller consents to such re-conveyances and agrees to cooperate with and assist Purchaser in the documentation of such re-conveyances, including delivery of notices of such re-conveyances to the Corps, DEQ and any other governing agency with jurisdiction over the creation of wetland and stream mitigation banks. In the event that any governing authority refuses to recognize the re-conveyance of the Credits for purposes of

satisfying the mitigation requirements of future projects, Seller agrees to convey a total of up to 0.10 of Credits directly to any designee of Purchaser as may be requested by Purchaser with respect to any credits that have been purchased by Purchaser and not previously conveyed.

3. Purchase Price. The purchase price for the Credits (the "Purchase Price") shall be Thirty Six Thousand and 00/100 Dollars (\$36,000.00) for each Credit, for a total Purchase Price of Three Thousand Six Hundred and 00/100 Dollars (\$ 3,600.00) for .10 credits. The Purchase Price shall be paid in good funds on the date of execution of this Agreement by both parties. Upon payment of the Purchase Price in full, neither Purchaser, nor its successors, assignees or designees shall be liable for the payment of any other consideration or fee in connection with the conveyance or assignment and/or re-conveyance of the Credits.

4. Delivery of Credits. Upon payment of the purchase price, Seller shall deliver to Purchaser, its successors, assignees or designees the following documents to evidence the conveyance of the Credits:

(a) An affidavit in substantially the same form as Exhibit A attached hereto, with the project number filled in, and which shall also be delivered to the Corps and, if appropriate, DEQ, by Seller.

(b) A bill of sale for the Credits in substantially the same form as Exhibit B attached hereto.

Seller acknowledges and agrees that Purchaser may request the conveyance of up to the total amount of Credits purchased by Purchaser in one or more transactions to satisfy the requirements of one or more permits issued by the Corps, DEQ and/or any other governing

agency, all in accordance with the provisions of this Agreement.

5. Representations, Warranties and Covenants. Seller hereby warrants to, represents to and covenants with Purchaser as follows:

(a) Seller expressly represents, warrants and covenants the matters set forth as recitals A and B above.

(b) Seller has a sufficient number of credits in the Bank to consummate the transactions contemplated herein.

(c) Seller shall follow and comply with all of the requirements for the maintenance of the Bank as required by the Corp, DEQ and any other agency having jurisdiction over the Bank.

(d) To the best of the seller's knowledge, there is no pending or threatened action or proceeding affecting Seller before any court, governmental agency or arbitrator that would adversely affect Seller's ability to comply with its obligations hereunder.

(e) Seller hereby covenants and agrees with Purchaser that Seller shall not sell a number of credits in the Bank that would prevent the consummation of the transactions contemplated herein.

(f) Seller shall be solely responsible, at its sole cost and expense, for compliance with the requirements of this Agreement and with all statutes, regulations and other requirements applicable to the operation, management and maintenance of the Bank, and for the payment of all taxes applicable to the Bank or the real property on which it is located (collectively the "Bank Regulatory Requirements"). Seller shall indemnify, defend and hold harmless Purchaser and Purchaser's

successors, assigns and designees, from and against any action, order, investigation or proceeding initiated by any governmental agency and arising from or based on Seller's failure to comply with any Bank Regulatory Requirements, such indemnification to include any and all costs and expenses, including without limitation, reasonable attorney's fees, incurred by purchaser or its successors, assigns, and designees related thereto.

(g) The execution and delivery of this agreement on behalf of Seller has been duly authorized, and such execution and delivery shall constitute a valid and binding agreement with Seller and is enforceable in accordance with its terms.

All of seller's representations, warranties and covenants herein shall survive the termination of this agreement and the delivery of the bill or bills of sale pursuant to this agreement.

6. Miscellaneous

(a) Notices. Any notice, demand or request which is required or permitted hereunder shall be deemed effective when hand delivered, sent by a receipted overnight delivery service, or mailed, via certified mail, to the following addresses:

Seller: Byrd Creek , LLC  
c/o Kelby Morgan  
1815 Bennington Road  
Rockville, Virginia 23146

Purchaser: James River Water Authority  
c/o County of Fluvanna  
Attn: Steve Nichols, County Administrator  
132 Main Street, P.O. Box 540  
Palmyra, Virginia, 22963

The parties may change the address for notices by delivery of a change of address to the other party in accordance with the requirements set forth above.

(b) Brokerage Commission. Seller and Purchase each warrant to the other that no broker, agent, salesman or similar person is entitled to a commission or other fee in connection with this transaction.

(c) Entire Agreement; Modification. There are no other agreements or understandings, written or oral, between the parties with regard to the subject matter of this Agreement. This Agreement shall not be modified or amended except by a written document executed by both parties.

(d) Governing Law. The validity, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, with the proper venue being Goochland County, except to the extent that any applicable federal law or regulation shall supersede Virginia law in relation to the matter set forth in this agreement.

(e) Compliance with Applicable Laws. Both parties shall comply with all applicable federal, state and local laws, rules, regulations and orders in the conduct of their obligations hereunder.

(f) Severability. The provisions of this Agreement shall be deemed severable and, if any term herein shall be held invalid, illegal or unenforceable, the remainder of this Agreement shall continue to be effective and binding on the parties.

(g) Additional Assurances. Both of the parties agree to execute and deliver any

other document or documents that may be requested from time to time by the other party necessary to perform such party's obligations under this Agreement.

(h) Attorney's Fees. If legal action is commenced by either party to enforce its rights under this Agreement, the prevailing party in such action shall be entitled to recover reasonable costs incurred by it, including, but not limited to, reasonable attorneys' fees and costs, in addition to any other relief granted.

(i) Nature of Credits. The sale and conveyance of the Credits pursuant to this Agreement shall not constitute the conveyance or transfer of any right, interest or ownership of real property or the Bank, nor shall such conveyance impose upon Purchaser any obligation, duty or liability arising from or incident to ownership of an interest in real property.

(j) Duration. This Agreement shall continue in existence until the later of (a) the conveyance of all the Credits,.

(k) Assignability. Purchaser may assign its rights and obligations hereunder to any person or entity. Seller shall not assign its obligations hereunder without the prior written consent of Purchaser, which may be withheld in Purchaser's sole discretion.

(l) Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall together constitute one and the same Agreement.

(m) Refund. If there is a decrease in the number of credits required by the Purchaser's permit a refund will be issued by the seller in the amount of \$36,000.00 per credit.

WITNESS the following signatures:

SELLER:

BYRD CREEK, LLC,  
a Virginia limited liability company

By: \_\_\_\_\_  
Kelby Morgan, Manager

PURCHASER:

JAMES RIVER WATER AUTHORITY

By: \_\_\_\_\_  
Goodman B. Duke, Chairman

EXHIBIT A

AFFIDAVIT OF WETLAND MITIGATION SALE

I, KELBY MORGAN., certify that I am now, and at all times mentioned herein have been, the Manager of Byrd Creek, LLC, a Virginia limited liability company (the “Company”), and as such I hereby certify the following:

The Company, as of the date hereof, has granted, sold and transferred or made available for transfer .10 wetlands mitigation credits to James River Water Authority from the Elk Island Mitigation Bank located in Goochland County, Virginia, established as United States Army Corps of Engineers Project No. 206046.04 .

The execution and delivery of this Affidavit has been duly authorized and is not in violation of the Operating Agreement of the Company or any other agreement, document or obligation to which the Company is bound.

IN WITNESS WHEREOF, I have duly executed this Affidavit as of the 5th day of April, 2016.

Byrd Creek LLC,  
a Virginia limited liability company

By: \_\_\_\_\_  
Name: Kelby Morgan  
Title: Manager

Sworn to and subscribed before me this 5th day of April, 2016, the undersigned notary public for and in the jurisdiction aforesaid, by Kelby Morgan, the Manager of Byrd Creek, LLC, a Virginia limited liability company.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

EXHIBIT B

BILL OF SALE

THIS BILL OF SALE is made as of the 5th day of April, 2016, by Byrd Creek, LLC, a Virginia limited liability company (“Seller”), and James River Water Authority (“Purchaser”).

Seller and Purchaser have entered into that certain Agreement for Purchase, Sale and Reservation of Wetland Mitigation Credits dated April 5, 2016 (the “Purchase Agreement”), the terms of which are incorporated herein by reference and made a part hereof, with respect to the sale by Seller and the purchase by Purchaser of wetland mitigation credits held in Seller’s Elk Island Mitigation Bank located in Goochland County, Virginia.

IN consideration of the payment of the Purchase Price (as defined in the Purchase Agreement) and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, Seller hereby sells, transfers, assigns, conveys, delivers, and sets over to Purchaser, its successors or assigns, 0.10 wetland mitigation Credits (as defined in the Purchase Agreement), to have and hold all such wetland mitigation Credits forever.

Witness the following signature:

Byrd Creek, LLC  
a Virginia limited liability company

By: \_\_\_\_\_

Name: Kelby Morgan

Title: Manager