

The following supplements modify, change, delete from or add to the “**General Conditions of the Contract for Construction**” AIA Document A201, 2017 Edition. Where any article of the General Conditions is modified or any paragraph, subparagraph or clause thereof is modified or deleted by these Supplementary General Conditions, the unaltered provisions of the Article, Paragraph or Subparagraph shall remain in effect.

The General Conditions of the Contract for Construction may also be supplemented elsewhere in the Contract Documents.

ARTICLE 1 - GENERAL PROVISIONS

Paragraph 1.1 - Basic Definitions

Subparagraph 1.1.1 – The Contract Documents

DELETE Subparagraph 1.1.1 in its entirety and, in lieu thereof, substitute the following:

[*Substitute:*] The Contract Documents are enumerated in the Standard Form of Agreement Between Owner and Contractor (AIA Document A101) between Owner and Contractor (hereinafter the “Agreement” or the “Contract”); see Article I and Article 9 of the Agreement. A Contract Modification is a written Amendment to the Contract signed by the Owner and Contractor. Any terms defined in the Agreement have the same meaning when used herein.

Subparagraph 1.1.2 – The Contract

DELETE the last two (2) sentences of Subparagraph 1.1.2 in their entirety.

Subparagraph 1.1.3 – The Work

ADD the following to the end of the first sentence:

[*Add:*] “including all requirements of the Plans, Technical Specifications, Specifications, Grant requirements, and IFB requirements and any subcontractor’s and sub-subcontractor’s work and suppliers or any other entity for which Contractor is responsible and whether on or off the site of the Project.”

Subparagraph 1.1.4 – The Project

ADD the following to the end of the last sentence of Subparagraph 1.1.4:

[*Add:*] “only if and as specifically stated in the Contract Documents.”

Subparagraph 1.1.5 – The Drawings

ADD the following to the end of the last sentence of Subparagraph 1.1.5:

[*Add:*] “,the Plans and shop drawings.”

Subparagraph 1.1.6 – The Specifications

ADD the following to the end of the last sentence of Subparagraph 1.1.6:

[Add:] “including without limitation, the Plans, Technical Specifications, Specifications, Grant requirements, IFB requirements and shop drawings.”

Subparagraph 1.1.7 – Instruments of Service

DELETE Subparagraph 1.1.7 in its entirety and, in lieu thereof, substitute the following:

[Substitute:] Instruments of Service are representations in any medium of the tangible and intangible work performed by Architect for Owner related to this Project and are owned by the Owner pursuant to that contract between the Owner and Architect related to this Project (the “CRA Contract”). Architect has signed this Contract as seen and agreed to indicate Architect’s acceptance and acknowledgment of the Project administration requirements as set forth herein such being a supplement to and clarification of those services in the CRA Contract. See also Fluvanna County’s General Terms, Conditions and Instructions to Bidders and Contractors (the “County’s General Terms”) attached to the IFB and incorporated herein as a material part of the Contract.

Subparagraph 1.1.8 Initial Decision Maker – intentionally omitted.

DELETE Subparagraph 1.1.8 in its entirety without replacement.

ADD the following new Subparagraphs:

- 1.1.9 The term “product” includes materials, systems and equipment.
- 1.1.10 The term “provide” includes furnishing and installing a product, complete in place, operating, tested and approved.
- 1.1.11 The term “building code” and the term “code” refer to regulations of governmental agencies having jurisdiction.
- 1.1.12 The terms “approved”, “required” and “as directed” refer to and indicate the work or materials that may be approved, required or directed by Architect acting as the agent of Owner.
- 1.1.13 The term “similar” means in its general sense and not necessarily identical.
- 1.1.14 The terms “shown”, “indicated”, “detailed”, “noted”, “scheduled” and terms of similar import refer to requirements contained in the Contract Documents.
- 1.1.15 The term “Applicable Law” is as defined in IFB, Section 3(l). When used herein “applicable laws” “applicable law” and “Applicable Laws” shall have the same meaning as Applicable Law as defined in this subparagraph 1.1.15.

Paragraph 1.2 - Correlation and Intent of the Contract Documents

Subparagraph 1.2.1

DELETE "only to the extent" and replace it with "to be".

ADD the following new Subparagraphs:

- 1.2.4 Computed dimensions shall take precedence over scale dimensions, and large scale drawings shall take precedence over small scale drawings.
- 1.2.5 Anything shown on the Drawings and not mentioned in the Specifications or mentioned in the Specifications and not shown on the Drawings shall have the same effect as if shown or mentioned respectively in both. Any work shown on one Drawing shall be construed to be shown in all Drawings, and Contractor shall coordinate the Work and Drawings to conform to the requirements of the Contract Documents.
- 1.2.6 In the event of conflict between different provisions in the Contract Documents, the provision calling for the higher quality or greater benefit to Owner shall prevail, unless Owner accepts in writing the provision calling for a lower quality or lesser benefit.
- 1.2.7 If any portion of the Contract Documents shall be in conflict with any other portion, after the application of the rules of interpretation set forth in this Paragraph 1.2, the various documents comprising the Contract Documents shall govern in the order of precedence as herein set forth according to their latest date of execution: (a) Contract Modifications, Change Orders, and Change Directive submitted, processed and approved by Owner in accordance with applicable procedure, with the most recent supplementing and modifying the less recent; and (b) then each of the Contract Documents (i) through and including (viii) in that order listed in Article 1 of the Agreement (with (i) controlling over (ii) through (viii), and (ii) controlling over (iii) through (viii), and so forth). As between large scale drawings and small scale drawings, the large scale drawings shall take precedence. Specifications having greater detail or specificity take priority over specifications of lesser detail or specificity and detail takes precedence over general drawings.
- 1.2.8 Any component, material or equipment necessary to complete a system but not specifically described or depicted in the Contract Documents shall be included in the Work as if it were described or shown in the Contract Documents without an adjustment in the Contract Sum or Contract Time.

Paragraph 1.5 - Ownership and Use of Drawings, Specifications and Other Instruments of Service

Subparagraph 1.5.1 is deleted in its entirety and replaced with the following:

- 1.5.1 All reports, plans, specifications and computer files relating to this project (hereinafter the Instruments of Service) are the property of Owner. See also the County's General Terms.

Subparagraph 1.5.2

DELETE the last two (2) sentences of subparagraph 1.5.2 and replace it with the following:

[Substitute:] The Contractor may not use the Instruments of Service, Plans, Specifications or other Contract Documents except for use in performing the Work on the Project without the express written consent of Owner. See also limitations set out in the County's General Terms.

Paragraph 1.6 – Notice

Subparagraph 1.6.1

Subparagraph 1.6.1 is DELETED in its entirety and, in lieu thereof, SUBSTITUTE the following:

[Substitute:] Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if: delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or delivered at or sent by registered or certified mail (with a copy by regular mail), *or overnight courier*, postage prepaid, to the address for such party as indicated in the Agreement, or as may be changed from time to time by written notice to the other party. A notice sent by overnight courier shall be deemed delivered one business day following deposit with the overnight courier. A notice sent by U.S. mail shall be deemed delivered five (5) days after deposit in the U.S. mail.

Subparagraph 1.6.2

DELETE "Section 15.1.3" in Subparagraph 1.6.2 and replace it with "Section 15.1.2".

ADD new Subparagraph 1.6.3 as follows:

1.6.3 With regard to giving notice, the designated representative shall be as set forth in Article 8 of AIA Document A101 Standard Form of Agreement Between Owner and Contractor (also referred to as the "Agreement" or the "Contract").

Paragraph 1.7 – Digital Data Use and Transmission - intentionally deleted

Paragraph 1.7 is DELETED in its entirety.

Paragraph 1.8 – Building Information Models Use and Reliance - intentionally deleted

Paragraph 1.8 is DELETED in its entirety.

ARTICLE 2 - OWNER

Paragraph 2.1 - General

Subparagraph 2.1.1

DELETE Subparagraph 2.1.1 in its entirety, and in lieu thereof, SUBSTITUTE as follows:

[SUBSTITUTE:] Owner means Fluvanna County, a political subdivision of the Commonwealth of Virginia:

**County of Fluvanna
132 Main Street
Palmyra VA 22963**

Owner's designated representative is Eric M. Dahl, County Administrator; and the Owner's Representative must sign any Contract Modification for it to be valid and binding on the Owner. In the IFB, the "County" is the Owner. The County's Project Manager is Ben Powell who will deal with the day-to-day matters related to the Project and who will report to the Owner and Owner's Representative. The Architect does not have authority to bind the Owner.

Subparagraph 2.1.2

DELETE Subparagraph 2.1.2 in its entirety.

Paragraph 2.2 – Evidence of the Owner's Financial Arrangements

DELETE Paragraph 2.2, including all subparagraphs, in their entirety.

Paragraph 2.3 Information and Services Required of the Owner

Subparagraph 2.3.2

CHANGE "shall retain" to "may retain" in the first line.

Subparagraph 2.3.3

CHANGE "shall employ" to "may employ" in the first line.

DELETE "to whom the Contractor has no reasonable objection and" from the second line.

Subparagraph 2.3.4

CHANGE "shall furnish" to "has furnished" in the first line.; and

DELETE the last sentence in its entirety, and in lieu thereof, SUBSTITUTE the following new sentence:

[*Substitute*] "Contractor shall be responsible to verify the accuracy of the site's physical characteristics, legal limitations and utility locations and bring to the attention of Owner and Architect any discrepancies discovered that may affect the Work."

Subparagraph 2.3.5

INSERT at the beginning of the first sentence: "Upon written request from the Contractor,"

Subparagraph 2.3.6

DELETE Subparagraph 2.3.6 in its entirety and, in lieu thereof, SUBSTITUTE the following new Subparagraph:

2.3.6 Contractor with whom Owner shall enter into a contract shall be entitled to receive up to three (3) sets of drawings and specifications without charge.

Paragraph 2.4 - Owner's Right to Stop the Work

DELETE the word "repeatedly" from the first sentence.

ADD the following to the end of the Subparagraph:

[Add:] "This right shall be in addition to and not in restriction of or derogation of Owner's rights under Article 14 hereof, the County's General Terms, or any other right the County may have under the Contract Documents, in law, equity or otherwise. Owner's right to stop the Work shall not relieve Contractor of its responsibilities and obligations under or pursuant to the Contract Documents. In the event an order by Owner to stop the Work is determined to be inappropriate, it shall not constitute a breach of Contract by Owner, but rather shall be a suspension of Work for the convenience of Owner."

Paragraph 2.5 - Owner's Right to Carry Out the Work

REVISE the second line of the first sentence from "a ten-day period" to a "a two business-day period".

DELETE the second sentence in its entirety and, in lieu thereof, SUBSTITUTE the following new sentence:

"In such case, Owner shall have the right to deduct from payments then or thereafter due Contractor, the cost to Owner of correcting such default or neglect, including Owner's expenses and any fees or costs charged by attorneys, court costs, Architect or Owner's Representative in connection with such corrective action and any administrative costs associated with the correction such as contract negotiation and the expenses of procurement."

ADD the following to the end of the Subparagraph:

[Add:] "Nothing contained herein shall obligate Owner to carry out work for the benefit of Contractor."

[Add:] "This right shall be in addition to and not in restriction of or derogation of Owner's rights under Article 14 hereof, the County's General Terms and any other rights of Owner under the Contract Documents, law, equity or otherwise. Owner's right to stop the Work shall not relieve Contractor of its responsibilities and obligations under or pursuant to the Contract Documents.

[Add:] "Owner shall not be required to comply with the two-day notice provision stated above, and shall have the right to immediately correct any deficiencies of Contractor subject to the remaining provisions of this Paragraph 2.5, where providing such notice would impose risk of substantial disruption to the Project schedule or to the safety of any person or property."

ADD new Paragraph 2.6 as follows:

Paragraph 2.6 – Owner's Representative

Subparagraph 2.6.1

2.6.1 Owner’s Representative during construction is Owner’s designated and authorized representative to stop work for, including, but not limited to, unsatisfactory field test results, deficient materials, equipment or systems, deficient work, safety issues, or unsatisfactory installations. Owner’s Representative shall be assisted by the Owner’s Project Manager as described in subparagraph 2.1.1. The following is a description of the services being provided by the Owner’s Project Manager to the Owner’s Representative and Owner as well as the Architect to the Owner. Owner’s Project Manager and Architect shall assist Owner and Owner’s Representative in observing performance of the work of Contractor and Architect. Architect, Owner’s Representative and the Project Manager shall endeavor to provide further protection for Owner against defects and deficiencies in the work of Contractor; but, furnishing of such services will not make them responsible for or give them control over construction means, methods, techniques, sequences or procedures for safety precautions or programs, or responsibility for Contractor’s failure to perform the Work in accordance with the Contract Documents and in particular the specific limitations set forth in this Agreement are applicable. The duties and responsibilities of the Architect and Owner’s Project Manager are described as follows:

- 2.6.1.1 Owner’s Project Manager is Owner’s agent at the site and will act as directed by and under the supervision of Owner and will confer with Architect, Owner, Owner’s Representative and Contractor, keeping Owner advised as necessary. Owner’s Project Manager and Owner’s Representative shall generally communicate with Owner with the knowledge and under the direction of Owner.
- 2.6.1.2 Schedules: Architect shall review the progress schedule, schedule of shop drawing submittals and schedules of value prepared by Contractor and consult with Owner, Owner’s Project Manager and Owner’s Representative (collectively “Owner Parties”) concerning acceptability. Architect shall monitor Contractor’s prepared Project Schedule and Contractor’s progress and conformance with project completion dates, pursuant to the schedule criteria and report to Owner Parties regularly.
- 2.6.1.3 Conferences and Meetings: Project Manager and Architect shall attend meetings with Contractors, such as Pre-Construction Conferences, Progress Meetings, Job Conferences, and other project-related meetings. Architect shall organize such meetings.
- 2.6.1.4 Liaison: Architect shall serve as Owner’s liaison with Contractor, and assist the Owner Parties in understanding the intent of the Contract Documents upon request of any of the Owner Parties; Architect shall assist Owner Parties when Contractor’s operations affect Owner’s on-site operations.
- 2.6.1.5 Architect shall assist Owner Parties in obtaining from Owner additional details or information, when required for proper execution of the Work.

2.6.2 Shop Drawings and Samples: Architect shall do as follows:

- 2.6.2.1 Record date of receipt of Shop Drawings and Samples;
- 2.6.2.2 Receive samples which are furnished at the site by Contractor, and notify Owner Parties of availability of samples for examination; and

2.6.2.3 Advise Owner Parties and Contractor of the commencement of any Work requiring a shop drawing or sample or if the submittal has not been approved by Architect and/or Owner as required under the Contract Documents.

2.6.3 Review of Work, Rejection of Defective Work, Inspections and Tests:

2.6.3.1 Architect shall conduct on-site observation of Work in progress to assist Owner in determining if the Work is in general, proceeding in accordance with the Contract Documents. Owner Parties may also conduct on-site observation of Work in progress determine if the Work is in general, proceeding in accordance with the Contract Documents.

2.6.3.2 Architect must report to Owner Parties whenever they believe that any Work is unsatisfactory, faulty, or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and Architect must advise the Owner Parties of Work that they believe should be corrected or rejected or should be uncovered for observation or requires special testing, inspection or approval. Notwithstanding the foregoing, the Owner's Representative shall be officially designated to act on Owner's behalf as its authorized representative to exercise Owner's right to stop and/or suspend work or reject materials, equipment and systems or other non-conforming, deficient, incomplete and unacceptable work in complete accordance with the Contract Documents.

2.6.3.3 Architect must verify that all tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that Contractor maintains adequate records thereof; and observe, record, and report to Owner's Representative promptly.

2.6.4 Interpretation of the Contract Documents: Architect must report to Owner Parties when it believes clarifications and interpretations of the Contract Documents are; Architect will provide guidance to Owner Parties related to such clarifications, however clarifications and interpretations can only be approved by Owner through Owner's Representative. After clarifications and interpretations are approved by Owner, then Architect will transmit to Contractor.

2.6.5 Modifications: Architect must consider and evaluate Contractor's suggestions for modifications on Drawings or Specifications and report recommendations to Owner Parties and advise Owner Parties on the same as requested by Owner. Architect shall transmit to Contractor decisions/modifications issued by Owner. Any Contract Modification must be approved by Owner in a writing signed by Owner's Representative to be binding on Owner.

2.6.6 Records:

2.6.6.1 Contractor must maintain at the job site orderly files for correspondence, reports of Job Conferences, Shop Drawings and Samples, reproductions of original Contract Documents including all Work Directive Changes, Addenda, Change Orders, Field Orders, additional drawings issued subsequent to the execution of the Contract, Architect and Owner clarifications and interpretations of the Contract Documents,

- progress reports, and other Project related documents. Architect shall insure that the Contractor complies with this subparagraph 2.6.6.1.
- 2.6.6.2 Architect must keep a diary or log book, recording Contractor hours on the job site, weather conditions, data relative to questions of Work Directive Changes, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures and send copies to Owner's Representative and Owner's Project Manager.
- 2.6.6.3 Contractor must keep a record at the Work site of all names, addresses and telephone numbers of all Contractors, subcontractors and major suppliers of materials and equipment. Such record must be updated as necessary. Contractor must provide a copy to Owner's Project Manager and Architect before the start of work, and as updated.
- 2.6.7 Reports:
- 2.6.7.1 Architect shall furnish Owner Parties periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of shop drawing and sample submittals.
- 2.6.7.2 Architect and Contractor shall consult with Owner Parties and each other, as needed, in advance of scheduled major tests, inspections or start of important phases of the Work. Owner may attend the same.
- 2.6.7.3 Architect shall draft proposed Change Orders and Work Directive Changes, obtaining backup material from Contractor and recommend to Owner, appropriate Change Orders, Work Directive Changes, and Field Orders. Only written Change Orders, Work Directive Changes, or Field Orders signed by the Owner's Representative and approved by Owner shall be binding on Owner. Architect cannot bind Owner.
- 2.6.7.4 Contractor and Architect must report immediately to Owner Parties upon the occurrence of any accident.
- 2.6.8 Payment Requests: Architect must review Applications for Payment with Contractor for compliance with the established procedures for their submission and forward with recommendations to Owner Parties, noting particularly the relationship of the payments requested to the Schedule of Values, Work completed and materials and equipment delivered at the site but not incorporated into the Work. Architect shall advise Owner on the same as requested by Owner Parties. Only the Owner can approve an Application for Payment.
- 2.6.9 Certificates, Maintenance, and Operations Manuals: During the course of the Work, Architect must verify that certificates, maintenance and operations manuals and other data required to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to Owner prior to final payment for the Work. Owner Parties shall also review the same. Only the Owner may approve Work, approve Substantial Completion and approve Final Completion. Owner shall also review certificates, maintenance and operations manuals and other data required to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents and all shall be subject to Owner's approval and acceptance.

2.6.10 Completion:

- 2.6.10.1 Before Owner issues a Certificate of Substantial Completion, Architect shall submit to the Owner Parties a list of observed items requiring completion or correction which will be reviewed and modified by Owner as Owner deems appropriate. Upon Owner acceptance of the list, Architect shall provide the Contractor a list of observed items requiring completion or correction approved by Owner.
- 2.6.10.2 Owner Parties shall conduct a final inspection in the company of Architect, Owner's Representative, Owner, and Contractor and prepare a final list of items to be completed or corrected and the Architect shall assist the Owner Parties as requested by the Owner Parties.
- 2.6.10.3 Architect shall check that all items on the final list have been completed or corrected and make recommendations to Owner concerning acceptance or still outstanding items. Architect shall assist Owner in preparing any notice, defect, correction or acceptance to Contractor which shall be binding on Owner only if signed by the Owner's Representative.

2.6.11 - Limitations of Authority:

- 2.6.11.1 Architect shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by Owner or Owner's Representative in writing.
- 2.6.11.2 Architect shall not exceed limitations of authority as set forth in the Agreement or the Contract Documents or in the Owner's contract with the Architect related to this Project and administration thereof.
- 2.6.11.3 Architect must not undertake or limit any of the responsibilities of Contractor, Subcontractors or Contractor's superintendent.
- 2.6.11.4 Intentionally Omitted.
- 2.6.11.5 All safety precautions and programs are the responsibility of Contractor. Contractor agrees to immediately act upon any issued notice, warning or communication from the Architect or any Owner Parties related to any issue or concern regarding any safety precautions and programs in connection with the Work.
- 2.6.11.6 Contractor must submit all Shop Drawings or Sample Submittals. Contractor shall not permit its subcontractors to directly submit Shop Drawings or Sample Submittals. Contractor shall be responsible for any delays, claims, issues, costs or charges associated with a failure to submit Shop Drawings and Sample Submittals as required by this subparagraph.
- 2.6.11.7 Contractor shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by Owner.

ARTICLE 3 – CONTRACTOR

Paragraph 3.1 – General

Subparagraph 3.1.1

REPLACE "The Contractor shall be lawfully licensed," with "The Contractor and any subcontractors shall be lawfully licensed," in the second sentence of subparagraph 3.1.1.

Subparagraph 3.1.3

Add the following to the end of the subparagraph:

[Add:] Contractor shall also not be relieved of any obligations under the Contract Documents by any activities or duties of any Owner Parties. Only a written Contract Modification signed as approved by the Owner's Representative shall modify the Contract Documents.

Paragraph 3.2 - Review of Contract Documents and Field Conditions by Contractor
Subparagraph 3.2.2

DELETE the second and third sentences in their entirety and, in lieu thereof, SUBSTITUTE the following new sentences:

[Substitute:] "Contractor shall not be liable to Owner or Architect for any costs, fees or damage resulting from material errors, inconsistencies or omissions in the Contract Documents unless Contractor could have reasonably recognized such error, inconsistency or omission and failed to report it to the Owner. Contractor warrants that Contractor has carefully studied and reviewed the Contract Documents and that Contractor has reported any errors, inconsistencies or omissions to Owner. Contractor hereby acknowledges and declares that the Contract Documents are full and complete, are sufficient to have enabled Contractor to determine the cost of the Work and to fulfill all of Contractor's obligations under the Contract Documents. If Contractor encounters an error, inconsistency or omission, Contractor shall immediately submit it to Architect and Owner for Owner approved resolution. If Contractor performs any construction activity knowing or having reason to know that it involves an error, inconsistency or omission, Contractor shall be responsible for such performance and shall bear the costs for correction. Contractor shall be liable to Owner for all costs fees by attorneys or Owner's Representative, and fees or costs for Additional Services of Architect (as defined in the CRA Contract between Owner and Architect) to the extent that such fees and costs are caused by or arise from any deficient Work or the negligent acts or omissions of Contractor. Owner (who may consult with Architect as necessary) shall determine if the Additional Services were caused by or arose from the negligent acts or omissions of Contractor."

ADD the following new Subparagraph 3.2.2.1:

3.2.2.1 Contractor shall carry out their duty with prudence, good judgment, and shall exercise reasonable diligence in the performance of the Work contained in the Contract Documents as it pertains to Applicable Laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities (see Applicable Laws as defined in subparagraph 1.1.15 hereof), and Contractor shall promptly report to the Project Manager and Architect any nonconformity discovered by or made known to Contractor as a request for information submitted to Project Manager and Architect in such form as the Project Manager may require. All Work on the Project must be done in strict conformance to the Contract Documents including the Specifications and Plans in the IFB, except as modified by a written Contract Modification signed by the Owner.

Subparagraph 3.2.3 and 3.2.4

DELETE Subparagraph 3.2.3 and 3.2.4 in its entirety.

Paragraph 3.3 - Supervision and Construction Procedures

Subparagraph 3.3.1

REPLACE "Unless the Architect objects to" with "If the Owner accepts in writing" in the last sentence of subparagraph 3.3.1.

Subparagraph 3.3.2

ADD the following to the end of the Subparagraph 3.3.2:

[Add:] "...or claiming by, through or under Contractor and for any damages, losses, costs and expenses resulting from such acts or omissions. If any failure by Contractor to comply with the Contract Documents or to maintain an approved project schedule causes any damage or costs to Owner, then Contractor shall indemnify and hold harmless Owner for any such damage or costs. Such damage or cost to Owner shall include any payment by Owner to others or liability of Owner to others resulting from such failure by Contractor, including but not limited to (1) any payment for liability arising from change orders, claims, mediation (only if mutually agreed to by the parties) or litigation, (2) any payment or liability for fees or costs to Owner's Representative, Architect, consultants, experts and attorneys; and (3) specifically those liquidated damages as set forth in the Contract and without limitation in Section 8.4 of the Conditions. Contractor acknowledges and understands that all deadlines including without limitation the date for Substantial Completion and the date for Final Completion are TIME OF THE ESSENCE."

ADD the following new Subparagraph:

- 3.3.4 In the event any of the Work is required to be inspected or approved by any governmental authority having jurisdiction including Owner, Contractor shall cause such inspection or approval to be scheduled and performed. No inspection performed or failed to be performed shall release Contractor from its obligations to have such work inspected nor shall it be construed as an approval or acceptance of the Work or any part thereof.

Paragraph 3.4 - Labor and Materials

Subparagraph 3.4.1

ADD the following new Sub-subparagraphs to Subparagraph 3.4.1:

- 3.4.1.1 Refer to Division 1, Section "Temporary Facilities and Controls", for detailed requirements regarding temporary utilities, services and facilities.
- 3.4.1.2 **All applicable provisions related to the Grant requirements must be followed by Contractor, see IFB. Contractor acknowledges that in addition to all other requirements of the Contract Documents, Substantial Completion requires approval of the Project by Grant agency, Virginia Department of Fire Programs ("VDFP") and Fluvanna County Building Official and a final review of the site and building plan by The Structures Group (TSG) and TSG's approval of those plans (VDFP requires as a condition of the Grant ISG review and approval).**

Subparagraph 3.4.2

DELETE Subparagraph 3.4.2 in its entirety, and in lieu thereof, SUBSTITUTE the following new Subparagraph:

3.4.2 Refer to Division 1, Section "Substitutions", for additional requirements regarding substitutions. Notwithstanding the foregoing, the Contractor may make Substitutions only with the written consent of the Owner in a Contract Modification. The Owner shall consult with the Architect as needed for advice related to Substitutions.

Subparagraph 3.4.3

ADD the following new sentences to the end of the Subparagraph:

[Add:] "Owner encourages but does not require that laborers and mechanics employed on the Project be residents of the County in which the work is being performed. Contractor shall be licensed in accordance with all applicable requirements of Fluvanna County and the Commonwealth of Virginia. Upon request of Owner, Contractor shall remove from the project any worker who is incompetent, careless or unsafe. Contractor must comply with all Applicable Laws and health directives related to the COVID-19 pandemic issued by the Federal, State, or local authorities, including without limitation, the Virginia Department of Health and the Centers for Disease Control in relation to performance of Work at the job-site. As used herein Contractor means the Contractor its employees, officers, subcontractors, suppliers and any person on the job-site under Contractor's control, supervision or at Contractor's request or invitation."

Paragraph 3.5 – Warranty

Subparagraph 3.5.1

DELETE "except for those inherent in the quality of the work the Contract Documents require or permit" from the second sentence.

DELETE the word "may" from the third sentence and replace it with "will".

ADD the following to the end of the third sentence.

[Add] "unless Owner accepts in writing such nonconforming Work."

DELETE the fourth and fifth sentences in their entirety and replace them with the following:

[Replace:] The Contractor's warranty includes all warranties required under the IFB and all exhibits and attachment thereto, including specifically, but without limitation, the warranties required under the Technical Specifications, IFB and under Section 61 of the County's General Terms. Any duplicative warranties shall each apply and may run concurrently and shall begin upon Final Completion as required under Section 9.8.4, or later if required under the specific warranty provision. If required by the Owner, who may consult with the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

ADD the following new sentence to the end of the Subparagraph:

[Add:] "Contractor will protect both new work and existing conditions during the period of construction which may be susceptible to vandalism, damage or abuse."

ADD the following new Subparagraphs:

- 3.5.3 At minimum, the Contractor's general warranty period shall be 5 years (consistent with IFB) from the date of Final Completion of the Work, except for specific items of work or equipment for which the warranty period is specified as a longer period elsewhere in the Contract Documents. During the warranty period, Contractor shall promptly correct all defects which are due to defective materials or workmanship at no cost to Owner. Such correction shall extend to any other work damaged by such correction.
- 3.5.4 At the end of the 59 month period from the commencement of the warranty period, Contractor shall schedule a walk-through inspection with Owner to identify any warranty items to be corrected under such warranty period.
- 3.5.5 Contractor shall be responsible for scheduling the 59 month walk-through inspection contemplated in this warranty Section. The five (5) year Contractor's warranty period shall be extended for a period of thirty (30) days beyond the date the fifty-nine (59) month walk-through inspection is actually performed. It is the intent of this Section to extend the warranty period by thirty (30) days beyond the date the 59 month walk-through inspection is finally completed in order to give Owner the benefit of the walk-through inspection prior to the expiration of the warranty period. The thirty (30) day extension period shall not begin to run until final completion of the walk-through inspection. Thus, if the walk-through inspection takes more than one day to complete, the thirty (30) day extension begins to run from the date the walk-through is actually completed. If Owner unreasonably refuses to schedule the walk-through inspection, Contractor shall notify Owner in writing of a date on which Contractor shall be available to perform the walk-through inspection, which date shall not be less than ten (10) days after the date of Contractor's letter, and the thirty (30) day extension shall begin to run from the date of the proposed walk-through inspection. Under no circumstances shall Contractor's warranty expire in less than five (5) full years.
- 3.5.6 Even after the fifty-nine (59) month walk-through inspection, Contractor shall remain responsible to correct, at no cost to Owner, any defective Work or material discovered thereafter that is not in compliance with the Contract Documents and for any damages arising from such defective Work or material and for any latent defects.

Paragraph 3.6 - Taxes

ADD the following new Subparagraph 3.6.1:

[ADD:]

- 3.6.1 Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work. Owner is a tax-exempt political subdivision of the Commonwealth of Virginia.

Paragraph 3.7 - Permits, Fees, Notices and Compliance with Laws

Subparagraph 3.7.3

DELETE "knowing it to be" from the first line of subparagraph 3.7.3

ADD the following new sentence to the end of Subparagraph 3.7.3:

[Add:] "Owner shall not be responsible for any inspection fees due to re-inspection of rejected Work due to faulty or defective workmanship of Contractor, or scheduling error by Contractor. Contractor shall be responsible for all such re-inspection fees."

Subparagraph 3.7.4

CHANGE "14 days" to "2 days" in line five.

DELETE the second, third and fourth sentences of Subparagraph 3.7.4 in their entirety and replace them with the following:

[REPLACE:] The Architect will promptly investigate such conditions and report to Owner its findings. If the Owner determines that a Contract Modification is justified and appropriate under Article 7 and 8, then the Owner will issue the same. If the Owner determines that a Contract Modification is not justified, then the Owner will so notify the Contractor. Owner and Contractor understand TIME IS OF THE ESSENCE and the Contractor agrees that the Owner will not modify Contract Times or the Substantial Completion Date or the Final Completion Date. If the Contractor disputes the Owner's determination, it may submit a Claim pursuant to Article 15.

Paragraph 3.8 - Allowances

DELETE Paragraph 3.8 and all subparagraphs thereof and, in lieu thereof, SUBSTITUTE the following:

3.8 No cash allowances are permitted.

Paragraph 3.9 – Superintendent

Subparagraph 3.9.2

DELETE subparagraph 3.9.2 in its entirety and, in lieu thereof, SUBSTITUTE the following new Subparagraph:

3.9.2 Contractor shall provide Architect and Owner a resume of its superintendent within 10 days after signing the Contract. If at any time during the course of the Project, Owner objects to any superintendent or assistant, Contractor shall submit a substitute to whom Owner has no objection. No increase in the Contract Sum or Contract Time shall be allowed for any such substitution.

DELETE subparagraph 3.9.3 in its entirety and, in lieu thereof, SUBSTITUTE the following new Subparagraph:

- 3.9.3 If during the course of the Project, Contractor proposes to replace its superintendent, written notice shall be given to Owner and Architect. Written notice shall include a resume of the new superintendent. Upon objection by Owner, Contractor shall not assign the proposed new superintendent, and no increase in the Contract Sum or Contract Time shall be allowed.

Paragraph 3.10 - Contractor's Construction and Submittal Schedules

DELETE the last sentence of subparagraph 3.10.1 and replace it with the following:

[*Replace:*] The deadline for Substantial Completion and the deadline for Final Completion shall be as set forth in Section 3.2 of the Contract which deadlines may be modified only by Contract Modification approved and signed by the Owner in accordance with Article 15 of these Conditions. Time is of the essence. Any deadlines or contract milestones required by VDFP or under the Grant will not be extended. The Contractor acknowledges that a building permit for the Project must be filed on or before the ____ day of _____, 2022 per the IFB requirements.

ADD new Sub-subparagraph 3.10.1.1 as follows:

- 3.10.1.1 Refer to Division 1, Section "Construction Progress Documentation", for further requirements regarding construction schedules.

Subparagraph 3.10.2

REPLACE "Architect's approval" with "Owner's approval" in each occurrence in subparagraph 3.10.2.

REPLACE "allow the Architect" in line four with "allow the Architect and Owner"

Paragraph 3.11 - Documents and Samples at the Site

DELETE the last sentence of Paragraph 3.11 and, in lieu thereof, SUBSTITUTE the following new sentence:

[*Substitute:*] "These shall be in electronic form or paper copy, available to Architect and Owner, and shall be delivered to Owner, in good condition, upon completion of the Work, and before final payment is made."

Paragraph 3.12 - Shop Drawings, Product Data and Samples

Subparagraph 3.12.4

REPLACE "Architect" in each occurrence in Subparagraph 3.12.4 with "Owner (in consultation with Architect)".

ADD the following new Sub-subparagraphs:

- 3.12.4.1 Issuance of the Instruments of Service via electronic media may be either .dwf or .dwg file format, hereinafter referred to as "Media" will be provided at the request of

Contractor. This Media is provided without detail and dimensions and is for illustrative purposes only and does not amend, supplement or replace any drawing, Contract Document, Specification and/or in any way, the Contract requirements of such. The purpose of this Media is solely for coordination by Contractor and shall not be relied upon for any other purpose. Contractor fully releases the Owner, its agents, officers, and employees, and consultants, from any and all liability, including without limitation, damages, consequential damages, costs and attorney's fees that Contractor may incur as a result of its reliance on the information contained in the Media.

- 3.12.4.2 In accepting and utilizing Media provided by Owner or Architect, Contractor understands and agrees that all such Media are owned by the Owner pursuant to the CRA Contract. Contractor acknowledges that the information and designs contained on the Media are provided to Contractor as a convenience and at the request of Contractor. Contractor also acknowledges that there may be undiscovered errors or inconsistencies in the Media that may result from any number of issues, including migrating the data from printed material to the Media or from others adding information to, or changing information in, the Media once transmitted to Contractor. Contractor agrees not to hold the Owner or Architect responsible for any defects Contractor may discover with the Media or information contained in the Media.
- 3.12.4.3 Contractor agrees not to use the Media, in whole or in part, for any purpose or project other than the Project of this Contract. Contractor agrees to waive all claims against the Owner resulting in any way from use of the Media.
- 3.12.4.4 Contractor agrees, to the fullest extent permitted by law, to defend, release, indemnify and hold the Owner harmless from and against any and all claims, damage, loss, liability or cost, including reasonable attorney's fees and costs of defense, arising out of or resulting from any changes made by anyone other than the Owner, or from any reuse of the Media, and data contained on the Media without the prior written consent of the Owner.
- 3.12.4.5 Contractor recognizes that information contained on the Media may not be 100% compatible with Contractor's computer system; therefore, Contractor agrees that the Owner shall not be liable for the completeness or accuracy of any materials provided on the Media arising out of, due to, or resulting from the difference in computer and software systems, or translations or mistranslation of electronic data, the incompatibility of viewing or operating programs, or the corruption of documents or data as a result of compatibility issues.
- 3.12.4.6 Contractor recognizes that information stored on electronic media including, but not limited to, computer disks may be subject to undetectable alteration and/or uncontrollable deterioration, due to, among other causes, errors in transmission, conversion, media degradation, software error or human error or alteration. Accordingly, the Media is provided for informational purposes only and is not intended as an end-product. Contractor therefore agrees that the Owner and Architect shall not be liable for the completeness or accuracy of any materials provided on the Media for this or any other reason whatsoever.
- 3.12.4.7 Under no circumstances shall the transfer of Instruments of Service in electronic media, for use by Contractor, be deemed a sale by the Owner, and the Design Professional makes no warranties, either expressed or implied, of merchantability and fitness for any particular purpose of the electronic media, or the information

stored or contained thereon. Contractor acknowledges that the Media is provided as a convenience by the Owner at Contractor's request, and Contractor assumes all risk in the use of the Media, and the data contained therein for any purpose.

- 3.12.4.8 Contractor agrees that in the event of a conflict between non-electronic data and data provided on the Media, including but not limited to the Model, the Contractor will notify the Owner and Architect and the Owner will issue an opinion on which controls.

Subparagraph 3.12.5

DELETE in line two "Architect" and replace it with "Architect and Owner".

DELETE in line three "approved by Architect" and replace it with "approved by Owner (who may consult with Architect)".

Subparagraph 3.12.7

DELETE in line three "approved by Architect" and replace it with "approved by Owner (who will consult with Architect)".

Subparagraph 3.12.8

DELETE in line two "Architect's approval" and replace it with "Owner's approval (who may consult with Architect)".

DELETE in lines three and four "Architect" and replace both occurrences with "Architect and Owner".

DELETE in the last line "Architect's approval" and replace it with "Architect's or Owner's approval (who may consult with Architect)".

Subparagraph 3.12.9

DELETE in line two "Architect" and replace it with "Owner or Architect".

DELETE in line two "Architect's approval" and replace it with "Architect's and Owner's approval".

Subparagraph 3.12.10.1

DELETE in fourth and sixth sentences "Architect" and replace it with "Owner and Architect".

ADD new Subparagraph 3.12.11 as follows:

- 3.12.11 Refer to Division 1, Section "Submittals", for further requirements regarding shop drawings, product data and samples.

Subparagraph 3.12.10.2

REPLACE "Architect" with "Owner" in each occurrence in Subparagraph 3.12.10.2

Paragraph 3.13 Use of Site
Subparagraph 3.13.1

ADD new Subparagraph 3.13.1 as follows:

- 3.13.1 Control or Reference Points: Immediately upon occupancy of the project site for the purpose of commencement of the Work, Contractor shall locate, including but not limited to, all general control or reference points, benchmarks, etc., and take such action as may be necessary to prevent damage or destruction of such points. In the event Contractor fails to do so, Contractor shall be liable for all such costs necessary to re-establish such control or reference points.

Paragraph 3.14 - Cutting and Patching

DELETE Paragraph 3.14, including all subparagraphs, in its entirety, and in lieu thereof, SUBSTITUTE it with the following new Paragraph:

- 3.14 Refer to Division 1, Section "Cutting and Patching", for requirements regarding cutting and patching.

Paragraph 3.15 Cleaning Up
Subparagraph 3.15.1

ADD new Subparagraph 3.15.3 as follows:

- 3.15.3 Refer to Division 1, Section "Contract Closeout", for further requirements regarding cleaning up.

Paragraph 3.17 Royalties, Patents and Copyrights

DELETE the last sentence of Subparagraph 3.17 and REPLACE it with "Contractor shall immediately notify Architect and Owner of any such infringement."

Paragraph 3.18 Indemnification
Subparagraph 3.18.1

ADD "of any kind" after the word "expenses" in the first sentence.

DELETE "provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself)" from the first sentence.

DELETE the word "negligent" before the words "acts or omissions" in the first sentence.

ADD the following at the end of Subparagraph 3.18.1:

[ADD:] This shall be in addition to any other indemnification obligations of Contractor under the Contract Documents, including specifically, but without limitation, Section 54 of the County's General Terms.

ADD the following new Paragraphs as follows:

- 3.19 Contractor shall indemnify Owner for any additional fee, cost or expense (beyond a base fee) charged to Owner by Architect or other project consultant pursuant to its own agreement with Owner to the extent such additional fee, cost or expense is caused by Contractor's acts or omissions.
- 3.20 Owner may deduct amounts owed by Contractor pursuant to Paragraph 3.18 or 3.19 from payments otherwise due to Contractor, and upon request of Owner shall provide Contractor a copy of the written agreement requiring such additional payment.

ARTICLE 4 - ARCHITECT

Paragraph 4.1 - General

Subparagraph 4.1.2

DELETE Subparagraph 4.1.2 in its entirety.

Paragraph 4.2 – Administration of the Contract

Subparagraph 4.2.1 is deleted in its entirety and, in lieu thereof, SUBSTITUTE the following:

[Substitute:] "The Architect will provide Contract administration services as described in the Contract Documents and the CRA Contract. Owner has engaged Architect as its consultant and Architect shall report to Owner. Architect shall not have any authority to act on behalf of Owner.

Subparagraph 4.2.4

DELETE the first and second sentences in their entirety and, in lieu thereof, SUBSTITUTE the following:

[Substitute:] "Owner and Contractor shall endeavor to communicate with each other about matters arising out of or relating to the Contract and may use the Architect as a liaison. The Architect shall have a duty and obligation to communicate to the Owner any matters related to the Project which are material, related to safety, related to a failure to adhere to Contract Documents or which require Owner approval, attention, determination, or consideration."

Subparagraph 4.2.5

ADD to the end of the subparagraph, the following:

[Add:] ", with Certificates for Payment being subject to prior Owner approval."

Subparagraph 4.2.6

REPLACE Subparagraph 4.2.6 in its entirety, and in lieu thereof, SUBSTITUTE the following:

[*Replace:*] “Only the Owner (who will consult with the Architect) has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will advise the Owner to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed, or completed.

Subparagraph 4.2.7

REPLACE “Architect” with “Owner (in consultation with Owner)” in each occurrence.

ADD at the end of the first sentence the following:

[*Add:*] “; and Architect shall advise the Owner related to such reviews, approvals and actions.”

DELETE in the fifth line “Architect’s professional judgment” and replace it with “Owner’s judgment (made in consultation with the Architect)”.

DELETE in ninth line, tenth line and eleventh line “Architect’s” and replace it with “Architect’s or Owner’s”.

Subparagraph 4.2.8

DELETE Subparagraph 4.2.8, in its entirety, and in lieu thereof, SUBSTITUTE it with the following new Subparagraph:

[*REPLACE:*] “The Architect will prepare Change Orders and Construction Change Directives and present the same to the Owner for review, modification if necessary, discussion and approval by Owner in Owner’s sole discretion. The Architect will investigate and make recommendations to the Owner regarding concealed and unknown conditions as provided for in Section 3.7.4.”

Subparagraph 4.2.9

REPLACE “The Architect” with “The Architect and Owner” in the first occurrence.

ADD after “Certificates of Substantial Completion” AND after “a final Certificate for Payment”, both in the first sentence, the following:

[*Add:*] “subject to Owner review and approval prior to being issued,”

Subparagraph 4.2.11, 4.2.12, 4.2.13, and 4.2.14 (deleted)

DELETE Subparagraph 4.2.11, 4.2.12, 4.2.13, and 4.2.14 in their entirety and SUBSTITUTE the following:

[*REPLACE*] “4.2.11 The Architect will assist Owner as requested in interpreting the Contract Documents; and will review and respond to requests of the Owner. Architect will provide Contract Documents to Contractor upon request. Architect will not provide any opinion or

recommendation which binds the Owner; and Architect will inform Owner of all issues, concerns or problems related to Contractor or its performance of the Work on the Project. Owner shall have final approval of all aesthetic selections such as color, finish, tile, paint, etc. Architect is Owner's consultant and shall meet or exceed all requirements of the CRA Contract."

ARTICLE 5 – SUBCONTRACTORS

Paragraph 5.2 - Award of Subcontracts and Other Contracts for Portions of the Work

Subparagraph 5.2.1

DELETE the first sentence of Subparagraph 5.2.1 and, in lieu thereof, SUBSTITUTE the following new sentence:

[*Substitute:*] "Prior to Contract award and execution of this Contract, Contractor certifies it has notified Owner and Architect, in writing, the names of all of its subconsultants, subcontractors, and the persons or entities, including those who are to furnish materials or equipment fabricated to a special design, proposed for each of the principal portions of the Work as such is required under the IFB, Addendum #1, Section 11.

DELETE "within 14 days of receipt of the information" in the second sentence.

DELETE the last sentence of Subparagraph 5.2.1 in its entirety.

Subparagraph 5.2.3

DELETE the second and third sentences in their entirety and, in lieu thereof, SUBSTITUTE the following:

[*Substitute:*] "In the event of any such objection, Contractor shall not contract with the proposed person or entity, and there shall be no increase in the Contract Sum or Contract Time."

Paragraph 5.4 – Contingent Assignment of Contracts

Subparagraphs 5.4.1, 5.4.2, and 5.4.3 are deleted in their entirety including all subparts thereof and replaced with "Intentionally Omitted."

ADD new Paragraph 5.5 as follows:

Paragraph 5.5 - Payment to Subcontractors

5.5.1 Contractor shall pay each subcontractor, upon receipt of payment from Owner, an amount equal to the percentage of completion allowed to Contractor on account of such subcontractor's Work, less the percentage retained from payments to Contractor; PROVIDED, however, that Contractor shall make no payment to any subcontractor unless the subcontractor shall execute a waiver of liens in favor of Owner and Contractor reflecting the amount of each such payment. Contractor shall also require each subcontractor to make similar payments to sub-subcontractors. All such payments shall be paid within the time limits. Notwithstanding any other provision of the Agreement,

Contractor must at all times conform to all requirements of the County's General Terms including Section 48 thereof related to Subcontractor payments.

- 5.5.2 If Owner fails to approve an Application for Payment for a cause which Owner and Architect determine is the fault of Contractor and not the fault of a particular subcontractor, or if Contractor fails to make payment which is properly due to a particular subcontractor, Owner may pay such subcontractor directly, less the amount to be retained. Any amount so paid by Owner shall be repaid to Owner by Contractor. Owner shall have no obligation to pay or to see to the payment of any monies to any subcontractor. Nothing contained in Paragraph 5.5 shall be deemed to create any contractual relationship between Owner and any subcontractor or to create any rights in any subcontractor against Owner. Contractor shall promptly advise Owner of any claim or demand by a subcontractor claiming that any amount is due to such subcontractor or claiming any default by Contractor in any of its obligations to such subcontractor.

ARTICLE 6 – CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

Paragraph 6.1 – Owners Right to Perform Construction and to Award Separate Contracts

DELETE Subparagraph 6.1.3 in its entirety and, in lieu thereof, SUBSTITUTE the following new Subparagraph:

- 6.1.3 It is the sole duty and responsibility of Contractor to plan, direct, perform and coordinate their Work as to cause no delay, hindrance, loss, injury, or similar damage to their subcontractors or suppliers. In the event Contractor causes any delay, hindrance, loss, injury, or similar damage to their subcontractors or suppliers, the aggrieved subcontractors or suppliers may pursue recovery of money damages against Contractor pursuant to Article 15 or as otherwise permitted by law or equity. There shall be no claim asserted against Owner or Architect, or their respective directors, employees or agents for money damages based on the alleged acts or omissions with respect to coordinating, expediting or directing the Work. If Contractor or any subcontractor prosecutes a claim against Owner or Architect for money damages or for an alleged failure to coordinate, expedite or direct the Work, then Contractor shall indemnify and hold harmless Owner and Architect against any and all costs, losses or expenses, including counsel fees, that Owner or Architect incur in responding to any such claim plus 10% interest per annum, or if lower, the highest amount allowed by Applicable Law, on all such costs from the date of occurrence of such costs up to the date of payment.

DELETE Subparagraph 6.1.4 in its entirety and, in lieu thereof, SUBSTITUTE the following new Subparagraph: "Intentionally omitted."

Paragraph 6.2 – Mutual Responsibility

Subparagraph 6.2.2

DELETE in line three and line five "Architect" and replace it with "Owner and Architect".

DELETE the last sentence of Subparagraph 6.2.2 in its entirety.

Subparagraph 6.2.3

DELETE the second sentence of Subparagraph 6.2.3 in its entirety and, in lieu thereof, SUBSTITUTE the following new sentence:

[Substitute:] "Costs caused by delays, or by improperly timed activities or defective construction shall be borne by the responsible party therefore being the Contractor or the Separate Contractor. Contractor shall indemnify Owner for any costs, damages or payments Owner incurs (including any payments to other contractors, Architect, legal counsel, agents or consultants) arising from or relating to Work by Contractor that is not in compliance with the Contract Documents. Owner may withhold payments otherwise due to Contractor in the event of such indemnification duty.

DELETE Subparagraph 6.2.5 in its entirety.

Subparagraph 6.3 – Owner's Right to Clean Up

DELETE in line 3 "the Architect" and replace with "Owner".

ARTICLE 7 - CHANGES IN THE WORK

Paragraph 7.1 - General

Subparagraph 7.1.2

DELETE Subparagraph 7.1.2 in its entirety and in lieu thereof, SUBSTITUTE the following:

[Revise:] "7.1.2 A Change Order or Construction Change Directive shall be based upon a written agreement among Owner and Contractor; and a minor modification may be approved by the Owner in a writing."

Subparagraph 7.1.3

DELETE Subparagraph 7.1.3 in its entirety and, in lieu thereof, SUBSTITUTE the following new Subparagraph:

7.1.3 Before any Change Order is prepared, Contractor shall submit to Architect and Owner an itemized breakdown of the cost of the proposed Change in the Work. The term "cost" shall be interpreted to mean and include the actual cost of the following:

1. Labor, including foremen.
2. Materials at cost plus applicable taxes entering permanently into the Work.
3. Rental cost of construction plant and equipment, whether rented from Contractor or others.
4. Power and consumable supplies for the operation of power equipment.
5. Liability insurance and bonds.
6. Social security, old age and unemployment contributions.

When determining the labor costs of Work by Change Order, Contractor shall use the actual wage paid to the personnel performing the Work, and if requested by Owner, at any time during or after the project, Contractor shall provide certified payroll records necessary to evidence those labor

costs. Using the actual wage paid to the personnel performing the Work, Contractor shall submit cost of the Change Order and cost may be (i) the reasonable cost as mutually agreed upon by the parties; (ii) based on unit prices in the Contract; (iii) as permitted by 7.3.3; or (iv) at cost without mark of any kind in accordance with Virginia Code Section 2.2-4331. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

Paragraph 7.2 - Change Orders

Subparagraph 7.2.1

DELETE Subparagraph 7.2.1 in its entirety and, in lieu thereof, SUBSTITUTE the following new Subparagraph:

7.2.1 A Change Order or Change Directive (each a type of Contract Modification) is a written instrument prepared by Architect and reviewed, approved, and signed by Owner and Contractor. A Change Order is the only method by which the Contract Sum and/or the Contract Time may be adjusted. A Change Order shall provide for the following: (1) a change in the Work, if any; (2) the amount of the adjustment in the Contract Sum, if any; and (3) the extent of the adjustment in the Contract Time, if any.

ADD the following new Subparagraphs:

7.2.2 Contractor is responsible for submitting accurate cost and pricing data to support its proposals for change orders and other Contract price adjustments under the Contract Documents. Contractor shall certify in writing that to the best of its knowledge and belief, the cost and pricing data submitted is accurate, complete, current and in accordance with the terms of the Contract Documents with respect to pricing of change orders. Contractor shall also certify in writing that he has made reasonable good faith inquiries to appropriate individuals within its organization to confirm that the data submitted is accurate, complete and current. The above-described certification shall be required for all change order requests with a positive or negative value greater than \$1. If it is later determined by audit or by other means that the cost and pricing data submitted is inaccurate, incomplete, not current or not in compliance with the terms of the Contract Documents regarding the pricing of change orders, then an appropriate contract price reduction shall be made.

7.2.3 Contractor shall perform the work of Change Orders only with personnel appropriate for the tasks performed and, in all respects, consistent with the requirements of the Contract Documents. Should Contractor use overqualified personnel, Contractor shall only be entitled to payment for the work at the wage rate of the appropriate personnel.

7.2.4 Any Contractor creating the need for Additional Services by Architect, with respect to a Change Order, shall pay all costs associated with such Additional Services, and Architect

shall prepare and present to Owner for approval, a Change Order or Construction Change Directive regarding such costs.

Paragraph 7.3 – Construction Change Directives

Subparagraph 7.3.1 is deleted in its entirety and in lieu thereof, SUBSTITUTE the following:

[REPLACE:] “7.3.1 Construction Change Directives originate from the Owner as a change directed by Owner. See Section 7.2.1. for the Construction Change Directive Process which shall be the same as for a Contract Change Order.”

Subparagraph 7.3.2 and all subparagraphs thereof are deleted in its entirety and in lieu thereof, SUBSTITUTE the following:

[REPLACE:] “7.3.2 Any Contractor creating the need for Additional Services by Architect, with respect to a Construction Change Directive, shall pay all costs associated with such Additional Services, and Architect shall prepare and present to the Owner for approval (who will consult with Architect), a Change Order or Construction Change Directive regarding such costs.

Subparagraph 7.3.3.4 is deleted in its entirety.

Subparagraph 7.3.4 and all subparagraphs thereof is deleted in its entirety and in lieu thereof, SUBSTITUTE the following:

[REPLACE:] “7.3.4 Intentionally Omitted.”

Subparagraph 7.3.6

DELETE in line 2 “advise the Architect” and replace with “advise the Architect and Owner”.

Subparagraph 7.3.8

ADD to the end of the first sentence the following: “and approved by Owner.”

Subparagraph 7.3.9 is deleted in its entirety and in lieu thereof, SUBSTITUTE the following:

[REPLACE:] “7.3.9 Intentionally Omitted.”

Subparagraph 7.3.10 is deleted in its entirety and in lieu thereof, SUBSTITUTE the following:

[REPLACE:] “7.3.10 When the Owner and Contractor reach agreement upon adjustments, such agreement shall be memorialized in a written Change Order prepared by the Architect and presented to the Owner and Contractor for review and approval.”

Subparagraph 7.4 – Minor Changes in the Work

DELETE the first two sentences of Subparagraph 7.4 in their entirety and in lieu thereof, SUBSTITUTE the following:

[REPLACE:] "The Owner or Owner's Representative may approve minor changes in the work requested by Owner or Architect without a formal Change Order such as any written record of approval including approval in an email shall suffice."

DELETE the word "Architect" in the fourth line of Subparagraph 7.4 and replace with "Owner and Architect".

DELETE the last sentence of Subparagraph 7.4 in its entirety and in lieu thereof, SUBSTITUTE the following:

[REPLACE:] "If the Contractor performs the Work without prior notice to Architect and Owner that such change will affect the Contract Sum or Contract Time or without execution of a Contract Modification as required by these Conditions, then the Contractor waives any adjustment to the Contract Sum or Contract Time except where such change would benefit the Owner (such as a decrease in Contract Sum or sooner Contract Time). Notwithstanding the foregoing, the Contractor may take reasonable necessary actions to prevent imminent damage to persons or property related to emergencies as specifically permitted by Section 10.4 of these Conditions."

ARTICLE 8 - TIME

Paragraph 8.1 – Definitions

Subparagraph 8.1.3

INSERT after "Architect", the following:

[Insert:] "and approved by Owner"

Paragraph 8.2 – Progress and Completion

Subparagraph 8.2.1

ADD the following new sentences to the end of Subparagraph 8.2.1:

[ADD:] "Contractor acknowledges and understands that all deadlines including without limitation the Date of Substantial Completion and the Date of Final Completion are TIME OF THE ESSENCE."

Subparagraph 8.2.2

DELETE the word "knowingly" from the first line.

Paragraph 8.3 – Delays and Extensions of Time

Subparagraph 8.3.1

DELETE 8.3.1 and all subparagraphs thereof in its entirety and, in lieu thereof, SUBSTITUTE the following:

[REPLACE:] "If the contractor is delayed at any time in the commencement or progress of Work by: (1) negligent or wrongful acts of owner or Architect; (2) fire not caused by any act, omission, negligence or fault of Contractor or any subcontractor; (3) delay authorized and approved by Owner in WRITING in its discretion; or (4) other reasonable causes that Contractor asserts, and the Owner agrees in writing are reasonable with specific reference to this Section 8.3.1; then in such case the Owner and Contractor may negotiate a mutually agreeable Change Order addressing such delay and modifying Contract Times; and such shall be binding on Owner only if in writing, approved by Owner and signed by Owner's Representative. All claims for extension of time shall be made, in writing, to Architect and Owner no more than seven (7) calendar days after the occurrence of the event causing the delay. If Contractor has caused Project delay, it shall be liable for, among other things, reimbursing Owner for any additional fees to Architect resulting from such delay."

Subparagraph 8.3.3

DELETE Subparagraph 8.3.3 in its entirety and, In lieu thereof, SUBSTITUTE the following:

8.3.3 Contractor recognizes that delays, acceleration or hindrances to the Work may occur. No claim or litigation for increased costs, charges, expenses or damages of any kind shall be filed by Contractor against Owner, Architect or Owner's Representative (or against any of their respective officers, members, representatives, employees or agents) for any delays, acceleration, hindrances, or sequencing of work due to any cause whatsoever, notwithstanding whether such delays are caused by factors within or outside Contractor's control. Contractor's sole remedy for delays, acceleration, hindrances or sequencing of work shall be Change Order agreed to by the Owner in writing. Should Contractor file any claim or litigation for money damages against Owner, Architect or Owner's Representative (including their employees or agents) in violation of this provision, such contractor shall provide indemnification for any costs incurred in the defense against such claim or litigation, including all fees by attorneys, court costs, and experts, plus 10% interest per annum, or if lower, the highest amount allowed by Applicable Law, on all such costs from the date of occurrence of such costs up to the date of payment.

ADD new Paragraph 8.4 as follows:

Paragraph 8.4 – Liquidated Damages for Delays

8.4.1 **The amount of Liquidated Damages shall be \$500 per day for each date not met as specifically set forth below and also as set forth herein and in the Contract Documents. TIME FOR COMPLETION: THE PROJECT MUST BE SUBSTANTIALLY COMPLETED TO THE COMPLETE REASONABLE SATISFACTION OF THE COUNTY IN ACCORDANCE WITH THE CONTRACT AND THIS IFB ON OR BEFORE THE SUBSTANTIAL COMPLETION DATE, TIME OF THE ESSENCE. THE PROJECT MUST BE FINALLY COMPLETED TO THE COMPLETE REASONABLE SATISFACTION OF THE COUNTY IN ACCORDANCE WITH THE CONTRACT AND THE CONTRCT DOCUMENTS ON OR BEFORE THE FINAL COMPLETION DATE, TIME OF THE ESSENCE.** Contractor MUST comply with the Project Schedule. The Contractor understands and acknowledges that the County is using Grant Funds to pay for a portion of the cost of the Project and therefore, the

Project must be completed on schedule or the Grant funding for the Project may become unavailable for use. Contractor and County recognize that time is of the essence with respect to the Project schedule and that County will suffer financial loss if the Work on the Project is not completed on schedule. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by County if the Work is not completed on time. Accordingly, instead of requiring any such proof, County and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay the County \$500.00 for each day that expires after the Substantial Completion Date until the Project is substantially complete; and Contractor shall pay the County \$500.00 for each day that expires after the Final Completion Date until the Project is finally complete. For clarification, if after the Final Completion the Project is not Substantially Complete and is also not Finally Complete Date the total liquidated damages owed for both delays is \$1,000.00 for each day that expires after the Final Completion Date.

- 8.4.2 The damages incurred by Owner due to Contractor's failure to complete the Work, (or any phase thereof, designated in the Project Schedule) by the Contract Time or the Specific Dates, including any extensions thereof under the Contract Documents, shall be in the amount set forth in the Contract Documents for each consecutive calendar day beyond each deadline for which Contractor shall fail to complete the Work or designated phase thereof.
- 8.4.3 Contractor agrees that the daily amount of liquidated damages and other liquidated damages provided in the Contract Documents shall not be considered a penalty, and further agrees not to challenge the reasonableness or lawfulness of such liquidated damages. The amount of the liquidated damages shall compensate Owner for delay only specifically for Owner's inability to use or otherwise have available and use the Project or any phase thereof for its intended purpose by the Dates set forth in the Contract Documents. In addition, if the Project is not completed pursuant to the Grant Requirements, including any Grant or VDFP deadlines, then the Grant funding for this Project may be lost and if lost, the parties agree that entire amount of the Grant funding is a foreseeable damage to the Owner should the Grant requirements or Grant deadlines not be met and if the Grant funds not be awarded or not received by Owner, then the entire amount of the Grant funding shall be owed by Contractor as liquidated damages payable to the Owner for loss of the grant funding and is not a penalty. The assessment of liquidated damages for delay and/or loss of Grant funds shall not preclude Owner from additional recovery or from seeking any other or additional remedy to which it is entitled under the Contract Documents or by law or in equity including, but not limited to, the costs to correct any defective or incomplete Work.
- 8.4.4 If, during the course of Contractor's performance of the Work, Contractor shall fail to complete the Work, or portions thereof, in accordance with Specific Dates or the Contract Time, Owner may retain the estimated amount of liquidated damages from time to time as accrued for which Contractor shall be liable to Owner under the Contract Documents, from amounts which become payable or are otherwise certified as payable to Contractor under the Contract Documents.

- 8.4.5 In the event that the Work must be conducted beyond the normal working hours specified or if the Project is not completed within the specified duration, Contractors shall indemnify Owner for any costs, damages or payments incurred by Owner, including payments to Architect, Clerk-of-the Works, or legal counsel. The Contractor may work outside of normal working hours only with advance approval of Owner. Contractor shall notify Owner at least one-business day in advance of any work on the weekends, a holiday or outside of normal business hours (normal business hours shall be 8 a.m. to 5 p.m. on weekdays) such that Owner will be aware that Contractor is on the job-site and for security purposes.
- 8.4.6 If Contractor files any claim or litigation challenging an assessment of liquidated damages, or the daily or total amount of liquidated damages assessed, and does not prevail completely on the merits in such challenge, after all appeals are exhausted, Contractor shall be liable to Owner for all costs incurred by Owner in defending against the challenge, including all fees of attorneys, court costs, architects and other consultants, and all time incurred by Owner's staff and administrators based on the burdened hourly compensation rates of Owner's employees.

ARTICLE 9 - PAYMENTS AND COMPLETION

Paragraph 9.1 Contract Sum

Subparagraph 9.1.2

ADD the following new Sub-subparagraphs:

- 9.1.2.1 Owner reserves the right to accept or reject any and all Unit Prices stipulated on the Bid Form.
- 9.1.2.2 If quantities originally contemplated are materially changed so that application of a unit price will cause a substantial inequity to Owner or Contractor, Owner reserves the right to equitably adjust the Unit Price or to require that the work be performed on a time and material basis.

Paragraph 9.2 – Schedule of Values

DELETE "Architect" in each occurrence in Section 9.2 and replace with "Owner and, if applicable the Architect,".

ADD new Subparagraph 9.2.1 as follows:

- 9.2.1 Refer to Division 1 Section, "Applications for Payment" for requirements regarding the schedule of values.

ADD new Subparagraph 9.2.2 as follows:

- 9.2.2 The Schedule of Values shall be prepared in such a manner that each major item of Work and each subcontracted item of Work is shown as a line item. Each major item of Work shall be further broken down into separate line items for work done in each area of the building, site and each phase of construction. Each work item shall be broken down into

separate line items for material and labor. Each line item shall include quantities and unit prices in such detail as required by Owner who may consult with the Architect.

Paragraph 9.3 - Applications for Payment

Subparagraph 9.3.1

DELETE Subparagraph 9.3.1 in its entirety and, in lieu thereof, SUBSTITUTE the following new Subparagraph:

9.3.1 At least fifteen (15) days before the date established for each progress payment, Contractor shall submit to Owner and Architect an itemized Application for Payment for Work completed in accordance with the Contract Documents. Such application shall be notarized and supported by such data substantiating Contractor's right to payment as Owner or Architect may require, such as copies of requisitions, and releases and waiver of liens from subcontractors and suppliers and reflecting retainage.

Notwithstanding the language in Section 9.10.5 or any other section hereof, before Owner shall have any obligation to release any payments for Work completed to Contractor, Contractor shall deliver an executed and notarized "Partial Waiver and Release of Mechanics Lien Claims" in the form provided. The partial waiver of liens shall waive Contractor's right to file a lien against the Property or Owner for an amount equal to the payment received by Contractor at that time. Notwithstanding the foregoing, Owner is a political subdivision of the Commonwealth of Virginia and mechanics liens are not applicable against Owner.

Contractor shall obtain and post a bond guaranteeing payment for labor and materials provided by subcontractors in an amount, form and a surety acceptable to Owner. Contractor's Performance and Payment Bonds in a form acceptable to the Owner shall be attached to and made a part of this Contract. Owner will not be deemed to have accepted this Contract unless the Performance Bond and Payment Bonds are attached to this Contract.

Contractor hereby agrees that it will defend, indemnify and hold harmless Owner from and against any mechanics' lien or claim filed by any subcontractor by reason of Contractor's failure to pay the Subcontractor any amount owed to such Subcontractor. Contractor shall prevent the filing of any mechanics' lien, or should a lien be filed, Contractor shall undertake any and all action necessary to remove said lien. Any failure of Contractor in any of its obligations in this Section 9.3.1 shall constitute a material breach of this Contract. Furthermore, Contractor shall be obligated to pay Owner all of Owner's costs incurred in defending or removing any such mechanics' lien whether filed by Contractor or any subcontractor. This shall include payment of all of Owner's attorney's fees, court costs, whether incurred in removing or challenging any mechanics' lien claim filed by Contractor or any subcontractor, or in enforcing Contractor's obligations hereunder.

Owner shall retain five percent (5%) of all amounts due Contractor until the Work is finally complete in accordance with the County's General Terms Section 49 and the Agreement.

The retained percentage will be paid with the final Payment after Final Completion in accordance with Section 47 of the County's General Terms, and these Conditions. In the event a dispute arises between Owner and Contractor, which dispute is based upon increased costs claimed by Contractor occasioned by damages or other actions of another contractor, additional retainage, in the sum of one and one half times the amount of any possible liability, may be withheld until such time as a final resolution is agreed to by all parties directly or indirectly involved, unless Contractor causing the additional claim furnishes an additional bond satisfactory to Owner to indemnify Owner against the claim. The liquidated damages provisions benefiting Owner control over this Section 9.3.1.

Subparagraph 9.3.1.1 is deleted in its entirety and in lieu thereof, SUBSTITUTE the following:

[REPLACE:] "9.3.1.1 Applications may include requests for payment on account of Approved Change Orders and Change Directives."

ADD new Sub-subparagraph 9.3.1.3 as follows:

9.3.1.3 Refer to Division 1 Section "012900 Applications for Payment" for additional requirements regarding applications for payment.

Paragraph 9.4 - Certificates for Payment

Subparagraph 9.4.1

ADD and INSERT the the following: "consult with Owner and recommend that Owner:" in line 1 before "either (1)".

DELETE the words ", with a copy to Contractor" from the third and fourth line.

DELETE the words "Contractor and" from the fourth line and the fifth line.

CHANGE the words "for withholding" to "for recommending withholding" in the fourth and sixth line.

ADD the following sentence to the end of Subparagraph 9.4.1: "Contractor will be notified of Owner's decision related to the Application for Payment after Owner's approval or denial in whole or part."

Subparagraph 9.4.2

CHANGE the words "an evaluation" to "future evaluations" in the fifth line.

DELETE the words "upon Substantial Completion" from the sixth line.

DELETE the word "minor" from the sixth line.

ADD after the words "specific qualifications expressed by the Architect" in the seventh line the following: "; and to any evaluation or inspection of the Work by the Owner in accordance with these Contract Documents."

CHANGE the word “Architect” to “Architect or Owner” in the eighth line.

ADD the following sentence to the end of Subparagraph 9.4.2: “Nothing herein shall be deemed to have removed any requirement of the Contract Documents; and Contractor is solely responsible for performing all Work in strict compliance with the Contract Documents.”

Paragraph 9.5 - Decisions to Withhold Certification

Subparagraph 9.5.1

DELETE the first sentence of Subparagraph 9.5.1 and, in lieu thereof, SUBSTITUTE it with the following:

[*Substitute:*] “Architect shall not certify payment and shall withhold a Certificate for Payment in whole or in part to the extent necessary to protect Owner or as required by Owner.”

DELETE the first occurrence of the words “Contractor and” from the fourth line.

DELETE the third sentence of Subparagraph 9.5.1 and, in lieu thereof, SUBSTITUTE it with the following:

[*Substitute:*] “If the Owner in consultation with the Architect and Contractor cannot agree on a revised amount, the Architect shall promptly recommend Owner issue a Certificate for Payment for the amount the Architect deems appropriate.”

CHANGE the word “Architect” to “Owner” in the sixth line.

CHANGE the words “Architect’s opinion” to “Architect or Owner’s opinion” in the eighth line.

REVISE the following Sub-subparagraphs as follows:

9.5.1.2 DELETE the word “reasonable”.

9.5.1.4 DELETE the word “reasonable”.

9.5.1.6 DELETE the word “reasonable”.

9.5.1.7 DELETE the word “repeated”.

ADD the following new Sub-subparagraphs:

9.5.1.8 Unsatisfactory prosecution of the Work in accordance with the Contract Documents.

9.5.1.9 Failure to comply with Applicable Law, the requirements of IFB (including specifically but without limitation Grant requirements), AND any statute, ordinance regulation or other legal requirement.

9.5.1.10 Failure to submit progress schedule updates as required by the Contract Documents.

9.5.1.11 Failure to submit wage certification as required by the Contract Documents.

9.5.1.12 Failure to submit a Schedule of Values that is acceptable to Architect and Owner.

9.5.1.13 Failure to comply with the Plans, Technical Specifications or other material provisions of the Contract Documents.

Subparagraph 9.5.2

DELETE the word "Architect's" in Subparagraph 9.5.2.

Paragraph 9.6 – Progress Payments

Subparagraph 9.6.1

ADD "and Owner has approved" AFTER "the Architect has issued,"; AND DELETE "and shall so notify Architect."

Subparagraph 9.6.2

ADD the following to the end of Subparagraph 9.6.2:

[ADD:] "Notwithstanding any other provision of the Agreement, Contractor must at all times conform to all requirements of the County's General Terms including Section 48 thereof related to Subcontractor payments."

Subparagraph 9.6.7

DELETE Subparagraph 9.6.7 in its entirety.

Paragraph 9.7 – Failure of Payment

DELETE Subparagraph 9.7 and, in lieu thereof, SUBSTITUTE the following new Subparagraph:

9.7 If Owner does not pay Contractor within forty-five (45) days after the date established in the Contract Documents, the amount certified by Architect and approved by Owner, then Contractor may, upon seven additional days' written notice to Owner and Architect, stop the Work until payment of the amount owing has been received. A Contract Modification may be issued related thereto if approved by Owner and Contractor.

Paragraph 9.8 – Substantial Completion

Subparagraph 9.8.1

DELETE Subparagraph 9.8.1 in its entirety and, in lieu thereof, SUBSTITUTE it with the following:

9.8.1 Substantial Completion of Project shall be deemed to occur when Owner in consultation with the Architect determines and Owner approves that the Work is sufficiently complete in accordance with the Contract Documents so Owner can occupy or utilize the Work for its intended use, and in addition, all requirements of the Contract Documents for Substantial Completion have been fulfilled. Substantial Completion (the "Date of Substantial Completion" or the "Substantial Completion Date") and Final Completion must be met to the satisfaction of the Owner and in strict conformance to all requirements of the Contract Documents. **Contractor acknowledges that in addition to all other requirements of the Contract Documents, Substantial Completion requires approval of the Project by Grant agency, Virginia Department of Fire Programs ("VDFP") and Fluvanna County Building Official and a final review of the site and building plan by The Structures Group (TSG) and TSG's approval of those plans (VDFP requires as a condition of the Grant ISG review and approval).**

Subparagraph 9.8.2

INSERT the following: “within 30 days of the date of Substantial Completion and in any event” before the words “prior to final payment.” in Subparagraph 9.8.2.

ADD new Sub-subparagraph 9.8.2.1 as follows:

- 9.8.2.1 Definition: Contractor’s comprehensive list of items to be completed or corrected shall be referred to as the “Punch List.” The Punch List shall be prepared by Contractor on the form provided in Division 1 Section “Contract Closeout”, or in an electronic format acceptable to Architect and Owner (i.e., Bluebeam, PlanGrid, etc.).

Subparagraph 9.8.3

CHANGE the word “Architect” to “Owner and Architect” in the first, second, and sixth (both occurrences) lines.

Subparagraph 9.8.4

CHANGE the word “Architect” to “Architect with Owner’s approval” in the first line.

ADD after “that shall” in the first sentence “upon approval by Owner” AND ADD at the end of the subparagraph “or in the Contract Documents.”

The last sentence of Subparagraph 9.8.4 is deleted and in lieu thereof is SUBSTITUTED with the following: “Warranties required by the Contract Documents shall commence on the date of Final Completion of the Work.”

Subparagraph 9.8.5

ADD new Sub-subparagraph 9.8.5.1 as follows:

- 9.8.5.1 Owner’s retainage upon Substantial Completion shall be the greater of (a) 5% of the Contract Sum adjusted by Change Orders, or (b) the amount necessary to protect Owner’s interests, a minimum of 150% of Architect’s estimated cost to complete or correct Work at the time of Substantial Completion. This retainage is in addition to and separate and distinct from any other rights of Owner to deduct or set off or withhold any portion of the Contract Price. For example only, and not as a limitation, the Owner may deduct liquidated damages from delay as accrued from time to time from any amounts owed to Contractor – and these deductions do not limit, affect or impair the retainage.

Paragraph 9.9 – Partial Occupancy or Use

Subparagraph 9.9.1

DELETE at the end of Subparagraph 9.9.1 the following “or, if no agreement is reached by decision of Architect.”

Paragraph 9.10 - Final Completion and Final Payment

Subparagraph 9.10.1

CHANGE the word "Architect" to "Owner and Architect" in each occurrence in the second, third and seventh lines.

Subparagraph 9.10.2

ADD after the words "shall become due until" in the first sentence, "Owner approves such payment and"

REPLACE the word "Architect" with "Owner and Architect" in the second line.

ADD new Subsections (7) and (8) to the end of the first sentence:

[Add:] "(7) Final as-built prints of record drawings marked by Contractor with record information as set forth in the Contract Documents and all warranties, and (8) A final sworn statement from Contractor duly executed and acknowledged showing all subcontractors to be fully paid and similar final sworn statements from subcontractors and, where appropriate, from sub-subcontractors.

Subparagraph 9.10.3

DELETE Subparagraph 9.10.3 in its entirety.

Subparagraph 9.10.4

DELETE Subparagraph 9.10.4 9 (but Subparagraphs 9.10.4.1, 9.10.4.2, 9.10.4.3 and 9.10.4.4 are NOT deleted) in its entirety and, in lieu thereof, SUBSTITUTE the following:

[Substitute:] "The making of final payment by Owner shall not constitute a waiver or release of any claim by Owner. Owner specifically does not waive or release the following:"
[Subparagraphs 9.10.4.1, 9.10.4.2, 9.10.4.3 and 9.10.4. are unmodified]

Subparagraph 9.10.4

ADD the following new Sub-subparagraphs:

- 9.10.4.5 Latent failures of Contractor to comply with the requirements of the Contract Documents; or any failure of the Contractor to conform to the Contract Documents;
- 9.10.4.6 Architect's fees resulting from re-inspections due to Contractor's failure to satisfactorily, fully and finally complete the Work or legal and accounting costs and expenses arising therefrom; and
- 9.10.4.7 Architectural fees for services (60) days after the date of Substantial Completion shall be borne by the responsible contractor.

ARTICLE 10 - PROTECTION OF PERSONS AND PROPERTY

Paragraph 10.2 - Safety of Persons and Property

Subparagraph 10.2.1

ADD the word "all" after the word "take" in the first line.

Subparagraph 10.2.2

ADD new Subparagraph 10.2.2.1 as follows:

[ADD:] "10.2.2.1 Specifically and without limitation the Contractor must comply with the requirements of Section 3.4.3 hereof."

Subparagraph 10.2.5

DELETE "(other than damage or loss insured under property insurance required by the Contract Documents)"

ADD new Subparagraph 10.2.5.1

[ADD:] "10.2.5.1 This shall be in addition to all requirements of the IFB."

Subparagraph 10.2.8

ADD the following sentence to the end of Subparagraph 10.2.8: "Nothing herein shall be deemed a waiver of the Owner's sovereign immunity."

ADD new Subparagraph 10.2.9 as follows:

10.2.9 Contractor shall promptly report in writing to Owner and Architect all accidents, arising out of, or in connection with the Work which cause death, personal injury or property damage, giving full details and statements of any witnesses whether or not Owner has actual knowledge of the accident. In addition, if death or serious personal injuries or serious damage are caused, the accident shall be reported immediately by telephone or messenger to Owner and Architect.

Subparagraph 10.3.2

REPLACE "By Change Order" in the last sentence of Subparagraph 10.3.2 with the following: "By Change Order approved by Owner in writing".

Subparagraph 10.3.3 is deleted in its entirety.

DELETE Subparagraph 10.3.4 in its entirety and in lieu thereof, SUBSTITUTE the following:

[SUBSTITUTE:] "10.3.4 Contractor shall be reasonable for hazardous materials or substances Contractor or any subcontractor (including all agents, officer, employees or members or representatives of either) brings or causes to be on the site or on Owner's property. The

Contractor shall not be responsible for hazardous materials or substances outside of its control brought onto the site by Owner except to the extent of Contractor's or any subcontractors' (including all agents, officer, employees or members or representatives of either) fault, negligence or wrongful acts related to or in the use or handling of such hazardous materials. Nothing herein shall be deemed a waiver of the Owner's sovereign immunity."

DELETE Subparagraph 10.3.5 in its entirety and in lieu thereof, SUBSTITUTE the following:

[*SUBSTITUTE:*] "10.3.5 Environmental Provisions: Generally, the Contractor shall reimburse the owner for the cost and expense Owner incurs: (1) for remediation of hazardous materials or substances the Contractor or any subcontractors' (including all agents, officer, employees or members or representatives of either) brings to the site and negligently handles; and (2) where the Contractor fails to perform any of its obligations under this Section 10.3.5 (including all subparagraphs) or Section 10.3.1 of these Conditions. In addition Contractor specifically agrees as follows:

10.3.5.1 **'Environmental Laws'** as used herein shall mean: any and all federal, state and/or local laws, statutes, ordinances, regulations, rules, judgments, orders, notice requirements, court decisions, permits, licenses, agency guidelines or principles of law, which (a) relate to the protection of human health or the environment, (b) regulate or relate to the protection or clean-up of the environment, the use, treatment, storage, transportation, handling, or disposal of Hazardous Materials (as defined below), the preservation or protection of waterways, groundwater, drinking water, air, wildlife, plants or other natural resources, or the health and safety of persons or property, including without limitation protection of the health and safety of employees, or (c) impose liability with respect to any of the foregoing, including without limitation the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), Resource Conservation & Recovery Act (42 U.S.C. § 6901 et seq.) ("**RCRA**"), Safe Drinking Water Act (21 U.S.C. § 349, 42 U.S.C. § 201, 300f), Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), Clean Air Act (42 U.S.C. § 7401 et seq.), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.) ("**CERCLA**"), the Superfund Amendments and Reauthorization Act (Pub. L. No. 99-499) ("**SARA**"), the Hazardous Materials Transportation Act (42 U.S.C. § 1801 et seq.), or any other applicable or similar federal, state or local laws, rules, or regulations adopted pursuant thereto or of a similar effect, each as amended.

10.3.5.2 **"Hazardous Materials"** as used herein shall mean: (a) any quantity of hazardous, toxic or otherwise dangerous substances, materials or wastes, whether solid, liquid or gas, including but not limited to asbestos in any form, urea formaldehyde, PCB's, radon gas, crude oil or any fraction thereof, all forms of natural gas, petroleum products or by-products or fraction thereof, any radioactive substance, asbestos or asbestos containing materials, any infectious, reactive, corrosive, ignitable or flammable chemical or chemical compound, (b) materials that because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled, or (c) any other substance or material regulated by Environmental Laws. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined or listed under the Environmental Laws.

10.3.5.3 **"Environmental Conditions"** as used herein shall mean: the introduction into the soil, groundwater, soil vapor or environment of the property, building or property of Owner which includes the work site (through leak, spill, release, discharge, escape, migration,

emission, dumping, disposal or otherwise) of any Hazardous Materials (whether or not such introduction constituted at the time thereof a violation of any Environmental Laws), as a result of which Owner or Contractor has or may become liable to any person or entity.

- 10.3.5.4 Contractor's Representations, Warranties and Obligations: Contractor agrees, represents and warrants to Owner as follows: (1) Contractor shall promptly notify Owner if Contractor becomes aware of any Hazardous Material on Owner Property or at the work site in violation of any Environmental Laws or becomes aware of any pending or threatened litigation or proceedings before any administrative agency in which any person or entity alleges the presence, release, threat of release, placement in, on, under, from or about the Owner's property, building, or the generation, transportation, storage, treatment, or disposal at the work site or Owner's property, building or other property of Owner, of any Hazardous Materials in violation of any Environmental Laws
- 10.3.5.5 Contractor shall indemnify, defend (with counsel reasonably approved by Owner) and hold Owner and its directors, officers, employees and agents harmless from any and all claims, judgments, damages (including consequential damages), penalties, fines, costs, liabilities (including sums paid in settlement of claims) or loss including reasonable attorneys' fees, consultant fees, expert fees, investigation, remediation and restoration costs (consultants and experts to be selected by Owner) from or in connection with (a) any Environmental Condition which results from the acts or omissions of Contractor, its subcontractors, officers, partners, members, employees, agents, guests, invitees, contractors and representatives, (b) any liability arising under any Environmental Laws which results from the acts or omissions of Contractor, its subcontractors, officers, partners, members, employees, agents, guests, invitees, contractors and representatives; or (c) any liability arising from Contractor's use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any Hazardous Substance in, on, under, from or about the building or property of Owner. Without limiting the generality of the foregoing, the indemnification provided by this Section and all subparts thereof shall specifically cover costs incurred in connection with any investigation of site conditions or any clean-up (including any costs for inspection, testing or otherwise), remedial or removal work required by any federal, state or local governmental agency or political subdivision because of any Environmental Conditions, unless the Environmental Condition is caused in whole or party by the act or omission of Owner.
- 10.3.5.6 Contractor represents and warrants to Owner that Contractor, its officers, subcontractors, partners, members, employees, agents, guests, invitees, contractors and representatives: (1) shall not use, generate, manufacture, store, treat, dispose, release, or threaten to release any Hazardous Substance on, under, about the property of Owner (2) shall fully comply with all Applicable Law at all times, including, but not limited to, Environmental Laws, in its activities; and (3) shall not cause any Environmental Conditions in, on or about the work site or on Owner's building or property.
- 10.3.5.7 The provisions of this Section 10.3.5 including all subparts thereof, shall survive the expiration or earlier termination of the Agreement.

Subparagraph 10.3.6 is deleted in its entirety.

ARTICLE 11 - INSURANCE AND BONDS

DELETE All Paragraphs of Article 11 in their entirety, and in lieu thereof, SUBSTITUTE the following:

11.1 Contractor's Liability Insurance

11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as is required under the Contract Documents including without limitation as required under the IFB and specifically including, but without limitation, Section 39 of the County's General Terms, and as will protect the Contractor and Owner from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- 11.1.1.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- 11.1.1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- 11.1.1.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- 11.1.1.4 Claims for damages insured by usual personal injury liability coverage: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or (i) by any other person for any other reason;
- 11.1.1.5 Claims for damages, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- 11.1.1.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- 11.1.1.7 Claims for bodily injury or property damage arising out of completed operations; and
- 11.1.1.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

11.1.2 The insurance required of Contractor shall be written for not less than limits of liability specified in the Contract Documents (including without limitation the minimums set out in Section 39 of the County's General Terms) or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. Where Owner's and Contractor's/Subcontractor's policies each apply, Contractor's/Subcontractor's policies shall be considered primary. The policies of insurance required by this Article 11 shall be written on an occurrence basis, include as additional

insureds (subject to any customary exclusion regarding professional liability) Owner and Architect, and any other individuals or entities identified in the Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby. Owner shall also be shown on such policies as a Loss Payee.

- 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by Owner shall contain a provision that coverages afforded under the policies will not be canceled, materially changed, renewal refused or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Owner. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.
- 11.1.4 In addition to all other requirements, the Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner and Architect as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's acts, negligent acts or omissions during the Contractor's completed operations.
- 11.2 Owner's Liability Insurance/Other Insurance: The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance and any other insurance required by the ifb.
- 11.3 Property Insurance
 - 11.3.1 Contractor must purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles or other policy of insurance acceptable to Owner. Such property insurance must be maintained by Contractor at all times, until final payment has been made as provided in Section 9.10. Owner shall be named as an additional insured and loss payee under such policy. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph to protect the interests of Contractor, Subcontractors, or others in the Work or to protect the same to the extent of any deductible amounts that are identified in the Conditions. The risk of loss within any identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes

property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and may include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements.

11.3.1.2 The Contractor may effect any additional or other insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, as Contractor desires at Contractor's cost and expense. In addition to any insurance required by the Contract, the Owner may effect any additional insurance that will protect the interests of the Owner, as Owner desires at Owner's cost and expense.

11.3.1.3 Contractor or contractors making the claim shall be responsible for paying all costs not covered because of any deductibles required by the insurer or insurers underwriting the builder's risk policy defined in Paragraph 11.3.1. The amount of the deductible for the builder's risk policy shall be paid by Contractor on a per occurrence basis.

11.3.2 Contractor shall purchase and maintain such equipment breakdown insurance or additional property insurance or other insurance as may be required by the Conditions or Applicable Law or which Contractor desires, which will include the interests of Owner, Contractor, Subcontractors, and Architect, and any other individuals or entities identified in the Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee and additional insured.

11.3.3 Loss of Use Insurance

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

11.3.7 Intentionally Omitted.

11.3.8 A loss insured under the Owner's property insurance shall be made payable to the Owner. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, if any, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

11.3.9 The Owner shall have power to adjust and settle a loss or claim with its insurers in its sole discretion as the Owner deems is in the Owner's best interests

11.4 Performance Bond and Payment Bond

11.4.1 The Contractor shall provide bonds in accordance with the provisions of the Virginia Public Procurement Act and in so doing shall provide:

- (a) A Performance Bond at one hundred percent (100%) of the Contract amount (to be increased as required by any change in Contract amount under any Change Order, Contract Modification or Change Directive), conditioned upon the faithful performance of the Contractor in accordance with the plans, specifications and conditions of the Contract. Such bond shall be solely for the protection of the Owner or assignee as authorized in accordance with the provisions of Paragraph 13.2.1 herein.
- (b) A Payment Bond at one hundred percent (100%) of the Contract amount (to be increased as required by any change in Contract amount under any Change Order, Contract Modification or Change Directive). Such bond shall be solely for the protection of claimants supplying labor or materials to the Contractor or to any of their Subcontractors in the prosecution of the Work provided for in the Contract Documents and shall be conditioned for the prompt payment of all such material furnished or labor supplied or performed in the prosecution of the Work. "Labor or Materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.
- (c) A Maintenance Bond providing additional coverage in the full amount of the Contract Sum insuring against defective or inferior materials or workmanship which may develop during the period of one (1) year from the date of Final Completion of the Project.
- (d) Each of such bonds required by the Contract Documents shall be executed by one or more surety companies legally authorized to do business in the Commonwealth of Virginia and not otherwise objectionable to the Owner. The surety of whom the Contractor has purchased bonds shall have an "A-" or better rating, plus a financial rating of VI or better with the A. M. Best's Company (Key Rating Guide – Latest Edition) and listed in the Department of Treasury Circular 570, with a capacity which meets or exceeds the contract amount. The bond shall be payable to the Owner or assignee as provided for in Paragraph 13.2.1

Both a Performance Bond and Payment Bond shall be required as specified in the IFB and Contract.

11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 - UNCOVERING AND CORRECTION OF WORK

Paragraph 12.1 - Uncovering of Work

Subparagraph 12.1.1

REPLACE the word "Architect's" with "Owner's" in the first line and second line.

REPLACE the word "Architect" with "Owner" in the second line.

Subparagraph 12.1.2

REPLACE the word "Architect" with "Owner" in the first line and second line.

Paragraph 12.2 - Correction of Work

Subparagraph 12.2.1 Before Substantial Completion

REPLACE the word "Architect" with "Architect or Owner" in the first line.

Subparagraph 12.2.2 After Substantial Completion

Sub-subparagraph 12.2.2.1

DELETE the following from the first sentence and, in lieu thereof, SUBSTITUTE the following:

[Delete:] "if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties"

[Substitute:] "if, within five (5) years after the date of Final Completion or after the date for commencement of warranties, whichever is later,"

DELETE the following from the second sentence "one-year" and, in lieu thereof, substitute the following: "five-year".

Subparagraph 12.2.2.2

DELETE the following from the first sentence "one-year" and, in lieu thereof, substitute the following: "five-year".

DELETE sub-subparagraph 12.2.2.3 in its entirety and, in lieu thereof, SUBSTITUTE the following new sub-subparagraph:

12.2.2.3 In the event any Work, material or equipment is replaced or repaired as a consequence of latent defects or failure to meet the terms of the Contract Documents, all warranties with respect to such Work, material or equipment replaced or repaired shall continue following repair or replacement of such Work, material or equipment for an additional period equivalent to the original period of warranty for such Work, material or equipment.

Subparagraph 12.2.5

DELETE the following from the second sentence “one-year” and, in lieu thereof, substitute the following: “five-year”.

Paragraph 12.3 – Acceptance of Non-Conforming Work

ADD to the end of the first sentence the following: “in a written Change Order signed by Owner.”

ARTICLE 13 - MISCELLANEOUS PROVISIONS

Paragraph 13.1 – Governing Law

DELETE the remainder of the sentence after the word “located”.

DELETE the second sentence in its entirety.

Subparagraph 13.3.2

REPLACE “Owner, Architect or Contractor” with “Owner or Architect”

Paragraph 13.4 - Tests and Inspections

Subparagraph 13.4.1

DELETE Subparagraph 13.4.1 in its entirety and, in lieu thereof, SUBSTITUTE the following new subparagraph:

13.4.1 If the Contract Documents or any Applicable Laws, statutes, ordinances, building codes, rules, regulations or orders of any governmental body or public or quasi-public authority having jurisdiction over the work or the site of the Project require any portion of the Work to be inspected, tested or approved, Contractor shall give Architect and Owner timely notice thereof so Architect and Owner may observe such inspection, test or approval. **Contractor acknowledges that in addition to all other requirements of the Contract Documents, Substantial Completion requires approval of the Project by Grant agency, Virginia Department of Fire Programs (“VDFP”) and Fluvanna County Building Official and a final review of the site and building plan by The Structures Group (TSG) and TSG’s approval of those plans (VDFP requires as a condition of the Grant TSG review and approval).**

Subparagraph 13.4.2

REPLACE the word “Architect” with “Architect or Owner” in the fourth line and fifth line.

DELETE the last sentence of Subparagraph 13.4.2.

Subparagraph 13.4.4

REPLACE the word “Architect” with “Architect and Owner” in the second line.

Subparagraph 13.5 – Interest - intentionally omitted.

DELETE Subparagraph 13.5 in its entirety and, in lieu thereof, SUBSTITUTE the following:

13.5 Intentionally Omitted.

ADD new Paragraph 13.6 as follows

Paragraph 13.6 Tax Credits

13.6 The Project, or part or all of the Project or Work, may qualify for tax benefits arising from or related to the energy efficiency, energy efficiency rating, or energy efficiency score assigned to the Project or Work by the relevant taxing authority. These tax benefits include, without limitation, Internal Revenue Code §179.D and other federal, state or local tax benefits, as established by those authorities having jurisdiction over such benefits (hereinafter the "Tax Benefits"). These Tax Benefits may take various forms, including without limitation, accelerated depreciation for commercial, multifamily, and publicly owned facilities. The Tax Benefits may be assignable by Owner to third parties, as provided for by the statutes, rules and regulations governing such Tax Benefits. Notwithstanding any other language contained in any of the Contract Documents, no Contractor or subcontractor shall, under any circumstances, apply for, request, receive, accept or retain any Tax Benefit arising from or related to the Project, Work, or any part of the Project or Work.

ADD new Paragraph 13.7 as follows

Paragraph 13.7 – Time Limits on Claims

13.7 As between Owner and Contractor, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued as provided by the laws of the Commonwealth of Virginia. Nothing herein shall be deemed to have caused any applicable statute of limitations to commence to run or any alleged cause of action to have accrued in the event of any latent defect upon actual discovery until after the issuance of the final certificate for payment. Any applicable statute of limitations shall commence on any cause of action related to an alleged latent defect upon actual discovery of such latent defect. Owner reserves all rights and privileges applicable to it pursuant to the doctrine of *nullum tempus occurrit regi*. Nothing in this Agreement is a waiver of the County's sovereign immunity.

ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT

Paragraph 14.1 - Termination by the Contractor

DELETE Paragraph 14.1 and all subparagraphs thereof in its entirety.

Paragraph 14.2 - Termination by the Owner for Cause

Subparagraph 14.2.1

DELETE Subparagraph 14.2.1 in its entirety and, in lieu thereof, SUBSTITUTE the following:

14.2.1 Owner may terminate the Contract if Contractor:

- .1 shall institute proceedings or consent to proceedings requesting relief or arrangement under the Federal Bankruptcy Code or any similar or applicable federal or state law; or if a petition under any federal or state bankruptcy or insolvency law is filed against Contractor and such petition is not dismissed within sixty (60) days from the date of said filing; or if Contractor admits in writing, its inability to pay its debts generally as they become due, or if it makes a general assignment for the benefit of its creditors, or if a receiver, liquidator, trustee or assignee is appointed on account of its bankruptcy or insolvency; or if a receiver of all or any substantial portion of Contractor's properties is appointed.
- .2 abandons the Work; or if it fails, except in cases for which an extension of time is provided, to prosecute promptly and diligently the Work or to supply enough properly skilled workers or proper materials for the Work; or if Contractor delays make Substantial and Final Completion deadlines unreasonable;
- .3 submits an Application for Payment, sworn statement, affidavit or document of any nature whatsoever which is intentionally falsified or misleading;
- .4 fails to make prompt payment to subcontractors or for materials or labor or otherwise breaches their obligations under any subcontract with a subcontractor; or if a materialman's lien or notice of lien is filed against any party of the Work or the site of the Project and not promptly bonded or insured over by Contractor in a manner satisfactory to Owner;
- .5 disregards any Applicable Laws, Grant requirements (as such are identified in the Contract Documents including the IFB), safety protocols (including related to COVID-19), statutes, ordinances, rules, regulations or orders of any governmental body or public or quasi-public authority having jurisdiction of the Work or the site of the Project;
- .6 as permitted under the County's General Terms; or
- .7 otherwise violates any provision of the Contract Documents;

Then Owner, upon the occurrence of the events described in clauses .1 through .7 above, without prejudice to any right or remedy available to Owner under the Contract Documents or at law or in equity may, after giving Contractor (Owner may, but is not required, to also give notice to surety under the Performance Bond and under the Labor and Material Payment Bond), if any, three (3) days written notice, terminate the employment of Contractor and, in accordance with the Uniform Commercial Code, may enforce a Security Agreement by taking possession of and using all or any part of Contractor's materials, equipment, supplies and other property of every kind used by Contractor in the performance of the Work in the completion of the Work. If requested by Owner, Contractor shall remove any part or all of its equipment, machinery and supplies from the site of the Project within seven (7) days from the date of such request, and in the event of Contractor's failure to do so, Owner shall have the right to remove or store such equipment, machinery and supplies at Contractor's expense; and after thirty (30) days from the date of such request any equipment, machinery or supplies remaining shall be deemed abandoned by the Contractor and the County may either continue to store the same at the Contractor's expense or otherwise dispose of the same in its sole discretion (nothing herein requires the Owner to take title to such tangible property). In case of such termination, Contractor shall not be entitled to receive any further payment for Work performed by the Contract through the date of termination. Owner's right to

terminate Owner-Contractor Agreement pursuant to this Subparagraph 14.2.1 shall be in addition to and not in limitation of any rights or remedies existing hereunder or pursuant hereto or at law or in equity and under the Contract Documents. Alternatively, the Owner, upon the occurrence of the events described in clauses .1 through .7 above, without prejudice to any right or remedy available to Owner under the Contract Documents or at law or in equity, may, but is not required to, give Contractor written notice (and may also, but is not required to, notify surety) of said default and allow the Contractor seven (7) days to cure the default, and in the event Contractor does not cure such default to Owner's satisfaction Owner may terminate as provided for in this Subparagraph.

Subparagraph 14.2.2

DELETE "and upon certification by the Architect that sufficient cause exists to justify the action," from the first sentence.

DELETE "and Contractor's surety, if any, seven days" from the first sentence and, in lieu thereof, SUBSTITUTE the following: "(and may also give notice, but is not required, to surety) three days".

ADD to the end of Subparagraph 14.2.2 at the end of ".3" the following: "and any applicable costs, fees, charges, liquidated damages or other amounts properly owed or for which the Contractor is otherwise liable pursuant to the Contract Documents based on the reasons for the termination. Notwithstanding the foregoing, in the event of any termination of Contractor for cause, Contractor shall be liable to Owner for all attorneys' fees, costs, administrative charges, excess Contract Price or other amounts paid to complete the Work on the Project, and other amounts of any kind caused by Contractor's for cause termination or related thereto in the reasonable judgment of the Owner or otherwise appropriate under the Contract Documents."

Subparagraph 14.2.4

DELETE Subparagraph 14.2.4 in its entirety and, in lieu thereof, SUBSTITUTE the following new Subparagraph 14.2.4:

14.2.4 If such costs to Owner of completing the Work and any damages or other amounts due to Owner under the Contract Documents exceed such unpaid balance, Contractor shall pay the difference to Owner upon Owner's demand. The costs to Owner of completing the Work shall include, but not be limited to, the cost of any additional architectural, legal, managerial and administrative services required thereby, any costs incurred in retaining another contractor or other subcontractors, any additional interest or fees which Owner must pay by reason of a delay in completion of the Work, attorneys' fees and expenses and any other damage, costs and expenses Owner may incur by reason of completing the Work. The amount, if any, to be paid to Contractor or owing to the Owner, shall be certified by Architect and Owner upon application, in the manner provided in Paragraph 9.4, and this obligation for payment shall survive the termination of the Contract. Should the Contractor owe the Owner any unpaid amounts hereunder, such shall accrue interest from the date due or demand at the highest rate allowed by applicable law or 10%, whichever is lower."

Paragraph 14.3 - Suspension by Owner for Convenience
Subparagraph 14.3.1

ADD the following new sentence to the end of Subparagraph 14.3.1:

[Add:] Any suspension by Owner for convenience does not constitute grounds for termination by Contractor under Section 14.1.

Subparagraph 14.3.2.

DELETE the second sentence of Subparagraph 14.3.2 in its entirety.

ADD Subparagraph 14.3.2.3 as follows:

[ADD:] "14.3.2.3 that it would negate the Grant or violate any requirements of the Grant."

Subparagraph 14.4.3

DELETE the remainder of the subparagraph after the words "for Work properly executed" and SUBSTITUTE the following: "up to no more than the reasonable fair market value of all Work performed by Contractor to the date of termination limited by the Contract Price, being for this purpose that portion of the Contract Price based on the portion of the Work completed and not the total Contract Price, as a ceiling on fair market value."

ADD new Paragraph 14.5 as follows:

Paragraph 14.5 Indemnification

- 14.5 Contractor and each subcontractor shall indemnify and hold harmless, Owner, its officers, directors, agents, and employees, Architect and its officers, directors, agents and employees, and each of them, as "indemnitee", from and against any and all fines, penalties, losses, costs, damages, injuries, expenses, claims, liens, encumbrances and/or liabilities (individually and collectively referred to herein as "liabilities") arising out of, related to, or resulting from (a) any claim for any service or goods allegedly infringed, including without limitation any patent, copyright, trademark, service mark, trade secret or other legally-protected proprietary right; and (b) the Work as described in the Contract Documents, including, but not limited to, any claim of injury (including death) to persons or damage to property, and contamination of, or any adverse impact upon the environment, except to the extent that any such claim is finally found by the court by which such claims are finally resolved, to have arisen solely from the willful wanton misconduct of the indemnitee. A finding of "willful wanton misconduct" as against one indemnitee shall not nullify the indemnification provided to any other indemnitee who is not found to have performed any willful wanton misconduct. As used herein, "willful wanton misconduct" shall mean gross reckless negligence or any intentional criminal act. Owner shall notify Contractor of any suit or legal proceeding asserting a claim for liabilities. Contractor and subcontractors shall, at no cost to any indemnitee, defend and/or settle such suit or legal proceeding, or judgment, including any appellate proceeding, asserting a claim for liabilities and pay all indemnitee's reasonable attorneys'

fees and costs of any kind associated with such liabilities. Contractor and subcontractors shall pay any costs and legal fees incurred by any indemnitee in connection with any liabilities, whether or not litigation is actually commenced, and shall keep indemnitees informed as to the progress of the defense. If requested by an indemnitee, Contractor and subcontractors shall afford indemnitees the opportunity to participate in the defense or settlement of any claim. With regard to any claim of infringement as referred to herein, Contractor and Subcontractors shall procure the right to continue using the services or goods, or at the indemnitees' option, replace or modify the services or goods to make them non-infringing services or goods.

ARTICLE 15 – CLAIMS AND DISPUTES

Paragraph 15.1 - Claims

Subparagraph 15.1.1 - Definition

ADD the following new sentence to the end of Subparagraph 15.1.1:

[Add:] “ This Article 15 shall be in addition to all other remedies afforded to Owner under the Contractor Documents, under law or in equity or otherwise and shall not be intended to be a limit on Owner’s rights thereunder. All Claims as defined in §15.1.1, and any other claim or dispute between Contractor and Owner or Architect, including without limitation those claims set forth in §15.3, shall be governed by this Article 15 in the case of a Contractor’s claim.

Subparagraphs 15.1.2 – Time Limits on Claims and 15.1.3 – Notice of Claims

DELETE Subparagraphs 15.1.2 and 15.1.3 including all subparagraphs thereof in their entirety, and in lieu thereof, SUBSTITUTE the following:

“15.1.2 Owner shall commence any claims or causes of action against Contractor related to the Contract in accordance with the Contract Documents, Applicable Law, or within ten (10) years, whichever period allows for the greatest period of time and benefit to Owner and is consistent with requirements of Applicable Law shall control.”

ADD Subparagraphs 15.1.2.1, 15.1.2.2, 15.1.2.3

[ADD:] “15.1.2 The Claims Act, Time Limits on Claims and Notice

15.1.2.1 The Contractor shall comply with the Virginia Claim’s Act: If a Claim cannot be resolved under Subparagraph 15.1.2.2 and 15.1.2.3 below, then the following provisions applies to such Claims. Contractor shall notify Owner in writing of any Claims hereunder consistent with Section 65 of the County’s General Terms, except those waived under any provision of the Contract Documents by Contractor. The Owner shall respond to all Claims, except those waived, only if a response it required by Section 65 of the County’s General Terms. If Owner has a Claim against Contractor hereunder, then the Owner may pursue any rights or remedies it may have under the Contract Documents or by Laws and Regulations in respect of such Claims or law, equity or otherwise. Any Claims not brought by Contractor in strict conformance with this Subparagraph 15.1.2 shall be waived by Contractor. No Claim by Contractor for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Subparagraph 15 1 2.

15.1.2.2 Notice: Written notice stating the general nature of each Claim shall be delivered by the Contractor to the Owner, including the amount or extent of the Claim, with supporting data shall be delivered to the other party to the Contract within 60 days after the start of such event. A Claim for an adjustment in Contract Price or other remedy shall be prepared in accordance with the provisions of Article 7 hereof. Each Claim must be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to the claimant within 30 days after receipt of the claimant's last submittal. If no response is provided under 15.1.2.3 below, the Claim shall be deemed rejected in whole by the Owner.

15.1.2.3 The Owner will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the other party, if any, take one of the following actions in writing: (i) deny the Claim in whole or in part; (ii) approve the Claim; or (iii) notify the other party that more information is need to determine approval or denial of the Claim.

15.1.3 As between Owner and Contractor, any applicable statute of limitations shall commence to run, and any alleged cause of action shall be deemed to have accrued as provided by the laws of the Commonwealth of Virginia. Nothing herein shall be deemed to have caused any applicable statute of limitations to commence to run or any alleged cause of action to have accrued in the event of any latent defect upon actual discovered until after the issuance of the final certificate for payment. Any applicable statute of limitations shall commence on any cause of action related to an alleged latent defect upon actual discovery of such latent defect. Owner reserves all rights and privileges applicable to it pursuant to the doctrine of *nullum tempus occurrit regi*. Fraud or other acts of Contractor may allow Owner to toll the statue of limitations and such tolling shall apply to the fullest extent permitted by Applicable Law. Notwithstanding any provision of the Contract Documents, nothing in the Contract Documents shall be deemed a waiver of the Owner's sovereign immunity."

Subparagraph 15.1.4.2

DELETE Sub-subparagraph 15.1.4.2 in its entirety.

Subparagraph 15.1.5 – Claims for Additional Cost

DELETE Subparagraph 15.1.5 in its entirety, and in lieu thereof, SUBSTITUTE as follows: "See Sections 15.1.2 and 15.1.3 above."

ADD the following new Sub-subparagraphs:

15.1.5.1 In planning the construction schedule within the agreed Contract Time, it shall be assumed that Contractor has anticipated the amount of adverse weather conditions and other delays normal to the site of the Work for the season or seasons of the year involved. CONTRACT TIMES ARE TIME OF THE ESSENCE.

15.1.5.2 Intentionally Omitted.

15.1.5.3 Contractor's Construction Schedule must reflect the following anticipated adverse weather delays in all weather dependent activities.

Standard Baseline

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
14	/	/	8	8	/	4	5	4	4	5	/

15.1.5.4 Upon acknowledgement of the Notice to Proceed and continuing throughout the Contract, Contractor will record in a daily log the occurrence of adverse weather and resultant impact to normally scheduled Work. Actual adverse weather delay days must prevent work on critical activities for 50 percent or more of Contractor’s scheduled work day in order to constitute an adverse weather delay day. The number of actual adverse weather delay days shall include days impacted by actual adverse weather (even if adverse weather occurred in a previous month), be calculated chronologically from the first to the last day of each month, and be recorded as full days. If the number of actual adverse weather delay days exceeds the number of days anticipated in sub-subparagraph 15.1.5.4 above, Architect will notify the Owner and Owner in its discretion may proceed in accordance with Article 7. A no-cost Change Order approved by Owner under Article 7 shall be the sole remedy for delays associated with weather.

Subparagraph 15.1.6 Claims for Additional Time and all subparagraphs thereof are deleted in their entirety and, in lieu thereof, SUBSTITUTE the following:

“See Subparagraphs 15.1.2, 15.1.3 and Article 7 hereof for information on a Contractor’s Claim related to delays.”

Subparagraph 15.1.7 – Waiver of Claims for Consequential Damages

DELETE Subparagraph 15.1.7, including all sub-subparagraphs, in its entirety, and in lieu thereof, SUBSTITUTE the following subparagraph:

15.1.7 Contractor waives Claims against Owner for consequential damages arising out of or relating to this Contract, including but not limited to waiving any claims for damages incurred by Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit.

Subparagraph 15.1.8 – Owner as a Contracting Body

ADD new Subparagraph 15.1.8 as follows:

15.1.8 Contractor agrees and acknowledges that Owner is a “contracting body” under the Public Works Contractors’ Bond Law of 1967 (the “Bond Law”), and the Work on the Project is public construction and not subject to the filing of Mechanics Liens, and further agrees to provide and specify in its subcontracts with subcontractors for their acknowledgment that their sole remedy against Owner exists only under the provisions of the Bond Law and in accordance with the Payment Bond.

Paragraph 15 2 – Initial Decision

Subparagraph 15.2 and all subparagraphs thereof are DELETED in their entirety and, in lieu thereof, SUBSTITUTE the following: "Subparagraph 15.2 and all subparagraphs thereof are INTENTIONALLY OMITTED."

Paragraph 15.3 – MEDIATION and all subparagraphs thereof are DELETED in their entirety and, in lieu thereof, SUBSTITUTE the following: "Subparagraph 15.3 – Mediation and Arbitration. The parties may agree in each party's sole discretion to attempt to mediate any claims or issues related to the Contract on terms mutually agreeable to each party. Nothing herein requires any party to submit to mediation, and no request for mediation shall extend any Contract deadlines or excuse performance of any obligation or responsibility of any party under this Contract. The Owner will not agree to arbitration."

Paragraph 15.4 – Arbitration

DELETE Paragraph 15.4, including all subparagraphs thereof, in its entirety and in lieu thereof, SUBSTITUTE the following: "Subparagraph 15.4 – Costs of Claims

15.4.1. Should any Contractor bring a claim against Owner or Architect, then, unless Contractor prevails on the merits in a court of applicable jurisdiction on a claim made in accordance with the requirements of this Agreement after all appeals on such Claim against Owner or Architect, Contractor shall be liable to Owner and Architect for all of Owner's and Architect's costs in having all such claims dismissed, or in defending all such claims, or both at all levels including all of Owner's or Architect's costs of any kind related thereto, including without limitation personnel costs, attorney fees, court costs, expert fees, fees of Architect and Owner's Representative, travel expenses, and the like.

15.4.2 Should any Contractor bring a claim against Owner or Architect, then, unless the fact finder finds that Contractor had a good faith basis for a material claim against Owner or Architect, Contractor shall be liable to Owner and Architect for all of Owner's and Architect's costs in having all such claims dismissed, or in defending all such claims, or both. These costs shall include all of Owner's or Architect's costs, including without limitation personnel costs, attorney's fees, court costs, expert fees, travel expenses, and the like. "

ADD new Paragraph 15.5 as follows:

15.5 - Scheduling and Completion

15.5.1 By execution of the Agreement, Contractor agrees to the following:

- .1 Owner and Architect are not responsible for delays arising from or related to any act or omission of Contractor. Owner and Architect are not responsible for any costs or damages arising from or related to Contractor's coordination and scheduling of its Work. Owner and Architect are not liable for any costs or damages suffered by Contractor arising from or related to Contractor's coordination of its Work. Contractor hereby waives and releases and indemnifies Owner and Architect from any liability and damages arising from or related to coordination by Contractor of the Work.

- .2 Architect and Owner and their representatives shall not be liable to Contractor for any increased costs or damages for defective work. These costs shall include all of Owner's or Architect's costs, including without limitation personnel costs, attorney's fees, court costs, expert fees, travel expenses, and the like.
- .3 It is agreed by Contractor that no dispute shall delay completion of the Work, which shall be continued by Contractor pending final resolution of a claim, including without limitation, judicial proceedings.
- .4 It is agreed by the parties to this Contract that the intent of this Paragraph 15.5.1 is to benefit Owner, and Owner's interests, and that the provisions of the Contract Documents.
- .5 Contractor specifically releases, foregoes and waives any claims against Owner or Architect for extended overhead, delay damages, "impact" damages, loss of efficiency, loss of productivity, lost profit, or any other similar form of loss, damage or compensation.

15.5.2 Claims Related to Project Delay, Acceleration, Hindrances, Loss or Productivity or Similar Damages

As stated above in Subparagraphs §3.3.4, §6.1.3 and §8.3.3, Contractor shall not pursue any claim for money damages against Owner, Architect, Owner's Representative (or their respective directors, employees or agents) in the event of any project delay, acceleration, hindrances, loss of productivity or similar damages

ADD new Paragraph 15.6 as follows:

15.6 – Jurisdiction and Venue for Claims and Disputes

- 15.6 This Agreement shall be construed and interpreted under and in accordance with the laws of the Commonwealth of Virginia. Any action or proceeding between the parties hereto arising out of this Agreement shall be brought in the State Courts of the Commonwealth of Virginia, specifically the courts of Fluvanna County and the parties hereby consent to such jurisdiction and venue. See also the County's General Terms, specifically, but without limitation Sections 34, 51, and 65.

END OF SECTION 000750