

WVRIFA PARTICIPATION COMMITTEE MEETING

**Friday, July 19, 2019 at 10:00 a.m.
Roanoke Valley-Alleghany Regional Commission (Top Floor Conference Room)
313 Luck Avenue, SW, Roanoke, VA 24016**

AGENDA

1. Welcome, Call to Order *Chair Cowell*
2. Roll Call *Meg Hibbert*
3. Approval of Consent Agenda Items..... *Chair Cowell*
 - Minutes of the June 21, 2019 Participation Committee Meeting, pp. 2-4
 - Financial Reports as of June 30, 2019, pp. 5-8
4. Public Comment Period *Chair Cowell*

The WVRIFA Participation Committee will allow a 30-minute public comment period in which a citizen may sign-up for up to three (3) minutes of speaking time.
5. Authorization to Proceed on Water/Sewer Contract with E.C. Pace, pp. 9-27 *John Hull*
6. Authorization to Enter into Business Ready Sites/VEDP Contract, pp. 28-33 *John Hull*
7. Authorization to Enter into Stormwater Maintenance Agreement with Roanoke *John Hull*
County including Awarding Public Easement & Review of Other Permitting Items, pp. 34-64
8. Advisement on Overhead Utility Project *John Hull*
9. Advisement of Demolition of Structure at 7627 Wood Haven Road *John Hull*
10. Advisement on VDOT Industrial Access Grant *John Hull*
11. Advisement on Bower Property *Beth Doughty*
12. Other Business *Chair Cowell*
13. Adjournment

ADMINISTERED BY:

Roanoke Valley-Alleghany Regional Commission
P.O. Box 2569, Roanoke, VA 24010
540.343.4417 / info@wvrifa.org / www.wvrifa.org

MINUTES

A meeting of the WVRIFA Participation Committee for the Wood Haven Road Project was held on Friday, June 21, 2019 at 10:00 a.m. at the Roanoke Valley-Alleghany Regional Commission office (Top Floor Conference Room), 313 Luck Avenue, SW, Roanoke, VA.

1. CALL MEETING TO ORDER

Chair Cowell called the meeting to order at 10:00 a.m.

2. ROLL CALL

Chair Cowell welcomed those in attendance and asked Virginia Mullen to call the roll. Ms. Mullen noted that a quorum was present.

Participation Committee Members Present: Melinda Payne for James Taliaferro, City of Salem; Bob Cowell, City of Roanoke; and Dan O'Donnell, County of Roanoke.

Staff Present: Beth Doughty, WVRIFA Director; John Hull, WVRIFA Assistant Director; Sam Darby, WVRIFA Counsel; Sherry Dean and Virginia Mullen, WVRIFA Finance/Administrative Staff, Meg Hibbert, Administrative Staff (Bright Services).

Others Present: Gary Larrowe, WVRIFA Board Member, Botetourt County; Granger Macfarlane, WVRIFA Board Member, City of Roanoke; Jill Loope, WVRIFA Board Member, Roanoke County; Richard Caywood, WVRIFA Board (Alternate), Roanoke County; and Pete Peters, WVRIFA Board Member, Town of Vinton.

3. PUBLIC COMMENT PERIOD

There were no comments.

4. APPROVAL OF THE May 17, 2019 PARTICIPATION COMMITTEE MINUTES

The May 17, 2019 Participation Committee Minutes were previously distributed.

WVRIFA Participation Committee Action:

Melinda Payne moved approval of the May 17, 2019 Participation Committee Minutes, as presented. The motion was seconded by Dan O'Donnell and carried.

ADMINISTERED BY:

5. WATER AND SEWER PROJECT CONTRACT

John Hull stated he was not prepared to approve a contract at this time, noting that the apparent low bidder is E.C. Pace, for \$355,345 plus some miscellaneous engineering expenses. Proposed start date is August 12, 2019, which would give time to negotiate a contract and to bring a contract back to the Participation Committee at the July meeting. It is being funded by a GO Virginia grant. Beth Doughty said the value of the \$200,000 grant is being held in WVRIFA's financial escrow.

Mr. Hull asked for authorization to enter into negotiations with the apparent low bidder, and to bring a contract back to the Participation Committee in July. The committee concurred.

6. ACTION ON OVERHEAD UTILITY PROJECT CONTRACT

John Hull reported an overhead copper phone line on the property frontage on the other side of the road needs to be relocated for aesthetic reasons and to make it easier for work equipment to get into the site. WVRIFA would reimburse Appalachian Power and others for their work on the project to replace a pole on the south side of Wood Haven Road and to reattach lines for other utilities. Anticipated costs are around \$100,000: \$61,307 for the Appalachian Power pole, \$3,500 for underground wiring for the FAA wind shear tower in the front yard of the church, \$10,000 for relocating Verizon lines, and \$25,000 for other utility reattachment fees.

Mr. Hull stated he would be seeking authorization from the WVRIFA Board of Directors to reimburse the utility owners involved.

Beth Doughty said there is a communications plan in place and that she would be sending a letter to all the residents advising them of the stages of work that WVRIFA is undertaking.

PARTICIPATION COMMITTEE ACTION

Dan O'Donnell made a motion to authorize the overhead utility relocation project. The motion was seconded by Melinda Payne and carried.

7. REPORT ON DEMOLITION OF STRUCTURE AT 7627 WOOD HAVEN ROAD

Mr. Hull reported the remaining unoccupied residence with garage, associated structures and underground storage tank has become a potential nuisance attractor and should be demolished. Three estimates were obtained, with the lowest one \$23,000. He further reported that the demolition could be handled under the Small Purchase Policy.

8. OTHER BUSINESS

- Dan O'Donnell updated the Participation Committee on the VDOT grant. He stated that the first draft of the payment agreement has been done, and Roanoke County would have to be the grant recipient, and then contract with WVRIFA. There were questions

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whether the project was eligible because the property already has access on Wood Haven Road. Beth Doughty said she hopes to have an answer on the eligibility question by the next meeting.

- Beth Doughty updated the Participation Committee on the status of the Bower property, noting that Mr. Bower has not yet signed the contract.
- Mr. Hull reported that WVRIFA was awarded a \$135,000 Business Economic Development Partnership grant to clear the property and design a 58-acre pad. There is an opportunity to extend or modify the agreement with Balzer Associates to fast-track some additional design work so that some clearing activities could be started by September. WVRIFA Counsel, Sam Darby, stated that the current contract with Balzer is to design the utilities and includes design of some grading work. The contract may be expanded, but the original amount of the contract was for only around \$42,100. Committee members asked that the next phase of engineering work be offered for bid. Mr. Hull said he could present a selection and possibly new contract for additional engineering work in August. Hull noted that clearing likely would not begin until the fall of 2020.

Granger Macfarlane asked if the extension of the contract would include preserving buffer zones which are already agreed to by neighbors. Mr. Hull stated that they would remain undisturbed.

The WVRIFA Participation Committee adjourned at 10:30 a.m.

Meg Hibbert, Acting Recording Secretary for Virginia Mullen
WVRIFA Participation Committee

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Western Virginia Regional Industrial Facility Authority
As of June 30, 2019
Statement of Cash Balances

Operating Fund	\$ 55,687
Woodhaven Project	<u>\$ 4,393,951</u>
Total Cash	<u><u>\$ 4,449,638</u></u>

Western Virginia Regional Industrial Facility Authority
Statement of Financial Position
As of June 30, 2019

	<u>Jun 30, 19</u>	<u>Jun 30, 18</u>	<u>\$ Change</u>	<u>% Change</u>
ASSETS				
Current Assets				
Checking/Savings				
LGIP Investment Cash Woodhaven	4,169,427.10	4,155,931.94	13,495.16	0.33%
Union Bank Bond Cash Woodhaven	224,523.62	23,027.87	201,495.75	875.01%
Union WVRIFA Operating	55,687.41	51,660.54	4,026.87	7.8%
Total Checking/Savings	<u>4,449,638.13</u>	<u>4,230,620.35</u>	<u>219,017.78</u>	<u>5.18%</u>
Accounts Receivable				
Accounts Receivable	8,755.23	5,698.70	3,056.53	53.64%
Total Accounts Receivable	<u>8,755.23</u>	<u>5,698.70</u>	<u>3,056.53</u>	<u>53.64%</u>
Other Current Assets				
Accrued Receivables	0.00	702,177.14	-702,177.14	-100.0%
Prepaid Expense	844.00	939.00	-95.00	-10.12%
Total Other Current Assets	<u>844.00</u>	<u>703,116.14</u>	<u>-702,272.14</u>	<u>-99.88%</u>
Total Current Assets	<u>4,459,237.36</u>	<u>4,939,435.19</u>	<u>-480,197.83</u>	<u>-9.72%</u>
Fixed Assets				
Land-WoodHaven	5,259,082.18	5,280,954.23	-21,872.05	-0.41%
Total Fixed Assets	<u>5,259,082.18</u>	<u>5,280,954.23</u>	<u>-21,872.05</u>	<u>-0.41%</u>
TOTAL ASSETS	<u>9,718,319.54</u>	<u>10,220,389.42</u>	<u>-502,069.88</u>	<u>-4.91%</u>
LIABILITIES & EQUITY				
Liabilities				
Current Liabilities				
Accounts Payable				
Accounts Payable	175,195.20	26,457.61	148,737.59	562.17%
Total Accounts Payable	<u>175,195.20</u>	<u>26,457.61</u>	<u>148,737.59</u>	<u>562.17%</u>
Other Current Liabilities				
Accrued Payable	0.00	137,965.86	-137,965.86	-100.0%
Deferred Revenue	15,416.30	0.00	15,416.30	100.0%
Total Other Current Liabilities	<u>15,416.30</u>	<u>137,965.86</u>	<u>-122,549.56</u>	<u>-88.83%</u>
Total Current Liabilities	<u>190,611.50</u>	<u>164,423.47</u>	<u>26,188.03</u>	<u>15.93%</u>
Long Term Liabilities				
Revenue Bond Payable	10,000,000.00	10,000,000.00	0.00	0.0%
Total Long Term Liabilities	<u>10,000,000.00</u>	<u>10,000,000.00</u>	<u>0.00</u>	<u>0.0%</u>
Total Liabilities	<u>10,190,611.50</u>	<u>10,164,423.47</u>	<u>26,188.03</u>	<u>0.26%</u>
Equity				
Retained Earnings	55,965.95	47,228.53	8,737.42	18.5%
Net Income	-528,257.91	8,737.42	-536,995.33	-6,145.93%
Total Equity	<u>-472,291.96</u>	<u>55,965.95</u>	<u>-528,257.91</u>	<u>-943.89%</u>
TOTAL LIABILITIES & EQUITY	<u>9,718,319.54</u>	<u>10,220,389.42</u>	<u>-502,069.88</u>	<u>-4.91%</u>

	Debt Fund			Operating			Woodhaven		
	Jul '18 - Jun 19	Budget	\$ Over Budget	Jul '18 - Jun 19	Budget	\$ Over Budget	Jul '18 - Jun 19	Budget	\$ Over Budget
Ordinary Income/Expense									
Income									
Bond Revenue Carryforward	0.00			0.00		*	4,154,621.65	4,154,622.00	-0.35
Government Contracts	0.00			291,098.75			0.00		
Grants									
EDGE Grant	0.00			0.00			15,000.00	15,000.00	0.00
GO VA Grant	0.00			0.00			8,457.75	76,313.00	-67,855.25
Grants - Other	0.00			0.00			0.00	0.00	0.00
Total Grants	0.00			0.00			23,457.75	91,313.00	-67,855.25
Investments									
Interest-Savings, Short-term CD	0.00			0.00			90,495.16	84,000.00	6,495.16
Total Investments	0.00			0.00			90,495.16	84,000.00	6,495.16
Locality Support Revenue	370,000.40	370,000.00	0.40	56,250.00	56,250.00	0.00	0.00		
Total Income	370,000.40	370,000.00	0.40	347,348.75	56,250.00	291,098.75	4,268,574.56	4,329,935.00	-61,360.44
Expense									
Contract Services									
Accounting Fees	0.00			6,875.00	6,875.00	0.00	0.00		
Engineering	0.00			0.00			52,927.91	75,000.00	-22,072.09
Legal Fees	0.00			2,712.01	7,500.00	-4,787.99	2,461.04	446.00	2,015.04
Legal Fees Land Acquisition	0.00			0.00			1,904.00	2,500.00	-596.00
Legal Fees Rezoning	0.00			0.00			4,163.06	4,163.05	0.01
Master Plan	0.00			0.00			9,738.40	8,118.00	1,620.40
Rezoning Application	0.00			0.00			0.00		
Utility Extension	0.00			0.00			0.00	316,675.00	-316,675.00
Utility Relocation	0.00			0.00			0.00	50,000.00	-50,000.00
Total Contract Services	0.00			9,587.01	14,375.00	-4,787.99	71,194.41	456,902.05	-385,707.64
Facilities and Equipment									
Equipment Other	0.00			290,600.00			0.00		
Property Acquisition	0.00			0.00			0.00	0.00	0.00
Property Insurance	0.00			0.00			0.00	0.00	0.00
Property Maintenance	0.00			0.00			1,620.00	5,000.00	-3,380.00
Total Facilities and Equipment	0.00			290,600.00			1,620.00	5,000.00	-3,380.00
Insurance	0.00			674.00	674.00	0.00	265.00	950.00	-685.00
Operations									
Bank Fees	0.00			0.00			0.00	200.00	-200.00
Meetings	0.00			0.00			0.00	0.00	0.00
Roanoke Reg. Partnership Staff	0.00			15,000.00	15,000.00	0.00	0.00		
RVARC Staff	0.00			25,000.00	25,000.00	0.00	0.00		
Signs	0.00			0.00			0.00	0.00	0.00
Supplies	0.00			0.00	600.00	-600.00	0.00		
Total Operations	0.00			40,000.00	40,600.00	-600.00	0.00	200.00	-200.00
Other Types of Expenses									
Advertising	0.00			0.00			1,422.98	869.62	553.36
Bond Loan Interest Expense	370,000.40	370,000.00	0.40	0.00			0.00		
Loss on Sale of Land	0.00			0.00			9,772.05		
Marketing	0.00			0.00			0.00	10,000.00	-10,000.00
Technical Assistance	0.00			0.00	601.00	-601.00	0.00	2,250.00	-2,250.00
Total Other Types of Expenses	370,000.40	370,000.00	0.40	0.00	601.00	-601.00	11,195.03	13,119.62	-1,924.59
Total Expense	370,000.40	370,000.00	0.40	340,861.01	56,250.00	284,611.01	84,274.44	476,171.67	-391,897.23
Net Ordinary Income	0.00	0.00	0.00	6,487.74	0.00	6,487.74	4,184,300.12	3,853,763.33	330,536.79
Net Income	0.00	0.00	0.00	6,487.74	0.00	6,487.74	4,184,300.12	3,853,763.33	330,536.79

* shown and manually entered to this report for budget comparison purposes only

CONTRACT FOR CONSTRUCTION OF A SMALL PROJECT

This Contract is by and between Western Virginia Regional Industrial Facility Authority (Owner) and EC Pace Inc (Contractor).

Owner and Contractor hereby agree as follows:

ARTICLE 1 - THE WORK

1.01 Work

- A. Work includes all labor, materials, equipment, services, and documentation necessary to construct the Project defined herein. The Work may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
- B. The Contractor shall complete all Work as specified or indicated in the Contract Documents. The Project is generally described as follows:
 1. **Wood Haven Technology Park Water and Sewer Extension Project** which includes **extension of water/sewer utilities and grading of future roadbed.**
 2. The Site of the Work includes property, easements, and designated work areas described in greater detail in the Contract Documents but generally located **on property the Western Virginia Regional Industrial Facility Authority owns on Wood Haven Road.**

ARTICLE 2 - CONTRACT DOCUMENTS

2.01 Intent of Contract Documents

- A. It is the intent of the Contract Documents to describe a functionally complete project. The Contract Documents do not indicate or describe all of the Work required to complete the Project. Additional details required for the correct installation of selected products are to be provided by the Contractor and coordinated with the Owner and Engineer. This Contract supersedes prior negotiations, representations, and agreements, whether written or oral. The Contract Documents are complementary; what is required by one part of the Contract Documents is as binding as if required by other parts of the Contract Documents.
- B. During the performance of the Work and until final payment, Contractor and Owner shall submit all matters in question concerning the requirements of the Contract Documents, or relating to the acceptability of the Work under the Contract Documents to the Engineer. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- C. Engineer will render a written clarification, interpretation, or decision on the issue submitted, or initiate a modification to the Contract Documents.

- D. Contractor, and its subcontractors and suppliers, shall not have or acquire any title to or ownership rights to any of the Drawings, Specifications, or other documents (including copies or electronic media editions) prepared by Engineer or its consultants.

2.02 Contract Documents Defined

- A. The Contract Documents consist of the following documents:

1. This Contract.
2. Performance bond.
3. Payment bond.
4. Specifications listed in the Table of Contents.
5. Drawings as listed on the Drawing Sheet Index.
6. Addenda.
7. Exhibits to this Contract (enumerated as follows):
 - a. Invitation for Bid #1029-01 Wood Haven Technology Park Water/Sewer Utility Extension Project, Roanoke County, Virginia, dated May 1, 2019
 - b. Wood Haven Technology Park Infrastructure Improvements Addendum #1 & Pre-Bid Meeting Notes, dated June 3, 2019.
 - c. Wood Haven Technology Park Infrastructure Improvements Addendum #2, dated June 14, 2019.
 - d. Construction Plans Entitled "Wood Haven Technology Park Infrastructure Improvements," prepared by Balzer & Associates, Inc. dated February 25, 2019 and last revised May 16, 2019.
 - e. General Terms and Conditions
8. The following which may be delivered or issued on or after the Effective Date of the Contract:
 - a. Work Change Directives (EJCDC C-940).
 - b. Change Orders (EJCDC C-941).
 - c. Field Orders.

ARTICLE 3 - ENGINEER

3.01 Engineer

- A. The Engineer for this Project is **Balzer and Associates, 1208 Corporate Cir SW, Roanoke, VA 24018.**

ARTICLE 4 - CONTRACT TIMES

4.01 Contract Times

- A. The Work will be substantially completed within **145** days after the Effective Date of the Contract and completed and ready for final payment within **190** days after the Effective Date of the Contract.

4.02 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence in the performance of the Contract, and that Owner will incur damages if Contractor does not complete the Work according to the requirements of Paragraph 4.01. Because such damages for delay would be difficult and costly to determine, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner **\$200** for each day that expires after the Contract Time for substantial completion.

4.03 Delays in Contractor's Progress

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor or their subcontractors or suppliers.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times.
- D. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor or Contractor's subcontractors or suppliers.

4.04 Progress Schedules

- A. Contractor shall develop a progress schedule and submit to the Engineer for review and comment before starting Work on the Site. The Contractor shall modify the schedule in accordance with the comments provided by the Engineer.
- B. The Contractor shall update and submit the progress schedule to the Engineer each month. The Owner may withhold payment if the Contractor fails to submit the schedule.

ARTICLE 5 - CONTRACT PRICE

5.01 Payment

- A. Owner shall pay Contractor in accordance with the Contract Documents at the following unit prices for each unit of Work completed:

Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
1	Bid Price of Project	Base Bid	1	\$355,345	\$355,345
2	Bulk Rock	Cubic Yard	Unknown	\$75	\$75/cubic yd
3	Trench Rock	Cubic Yard	Unknown	\$250	\$250/cubic yd
4	Bore Rock	Linear Foot	Unknown	\$800	\$800/linear ft
5	Unsuitable Soils	Cubic Yard	Unknown	\$12	\$12/cubic yd
Total of all extended prices for Estimated Quantities of Work					\$355,345 plus unit prices notated

Payment will be made in an amount equal to the total of all extended prices for actual Work completed. The extended price is determined by multiplying the unit price times the actual quantity of that Work item completed. Actual quantities installed will be determined by the Engineer.

ARTICLE 6 - BONDS AND INSURANCE

6.01 Bonds

- A. Before starting Work, Contractor shall furnish a performance bond and a payment bond from surety companies that are duly licensed or authorized to issue bonds in the required amounts in the jurisdiction in which the Project is located. Each bond shall be in an amount equal to the Contract Price, as security for the faithful performance and payment of all of Contractor’s obligations under the Contract. These bonds shall remain in effect until the completion of the correction period specified in Paragraph 7.12 but, in any case, not less than one year after the date when final payment becomes due.

6.02 Insurance

- A. Before starting Work, Contractor shall furnish evidence of insurance from companies that are duly licensed or authorized in the jurisdiction in which the Project is located with a minimum AM Best rating of A-VII or better. Contractor shall provide insurance in accordance with the following:
 - 1. Contractor shall provide coverage for not less than the following amounts, or greater where required by Laws and Regulations:
 - a. Workers’ Compensation:

State: _____ Statutory _____

Employer's Liability:

Bodily Injury, each Accident	\$ 100,000
Bodily Injury By Disease, each Employee	\$ 100,000
Bodily Injury/Disease Aggregate	\$ 500,000

b. Commercial General Liability:

General Aggregate	\$ 2,000,000
Products - Completed Operations Aggregate	\$ 2,000,000
Personal and Advertising Injury Each Occurrence (Bodily Injury and Property Damage)	\$ 1,000,000

c. Automobile Liability herein:

Combined Single Limit of:	\$ 1,000,000
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- B. All insurance policies required to be purchased and maintained will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the insured and additional insured.
- C. Automobile liability insurance provided by Contractor shall provide coverage against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- D. Contractor's commercial general liability policy shall be written on a 1996 or later ISO commercial general liability occurrence form and include the following coverages and endorsements:
1. Products and completed operations coverage maintained for three years after final payment;
 2. Blanket contractual liability coverage to the extent permitted by law;
 3. Broad form property damage coverage; and
 4. Severability of interest; underground, explosion, and collapse coverage; personal injury coverage.
- E. The Contractor's commercial general liability and automobile liability, umbrella or excess, and pollution liability policies shall include and list Owner and Engineer and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each as additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis.
1. Additional insured endorsements will include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO

endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.

2. Contractor shall provide ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent for design professional additional insureds.
- F. Umbrella or excess liability insurance shall be written over the underlying employer's liability, commercial general liability, and automobile liability insurance. Subject to industry-standard exclusions, the coverage afforded shall be procured on a "follow the form" basis as to each of the underlying policies. Contractor may demonstrate to Owner that Contractor has met the combined limits of insurance (underlying policy plus applicable umbrella) specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policies and an umbrella or excess liability policy.
- G. The Contractor shall provide property insurance covering physical loss or damage during construction to structures, materials, fixtures, and equipment, including those materials, fixtures, or equipment in storage or transit.
- H. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 15.

ARTICLE 7 - CONTRACTOR'S RESPONSIBILITIES

7.01 Supervision and Superintendence

- A. Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, safety, and procedures of construction.
- B. Contractor shall assign a competent resident superintendent who is to be present at all times during the execution of the Work. This resident superintendent shall not be replaced without written notice to and approval by the Owner and Engineer except under extraordinary circumstances.
- C. Contractor shall at all times maintain good discipline and order at the Site.
- D. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday.

7.02 Other Work at the Site

- A. In addition to and apart from the Work of the Contractor, other work may occur at or adjacent to the Site. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.

7.03 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction

equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.

- B. All materials and equipment incorporated into the Work shall be new, of good quality and shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract Documents.

7.04 Subcontractors and Suppliers

- A. Contractor may retain subcontractors and suppliers for the performance of parts of the Work. Such subcontractors and suppliers must be acceptable to Owner.

7.05 Quality Management

- A. Contractor is fully responsible for the managing quality to ensure Work is completed in accordance with the Contract Documents.

7.06 Licenses, Fees and Permits

- A. Contractor shall pay all license fees and royalties and assume all costs incident to performing the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others.
- B. Contractor shall obtain and pay for all construction permits and licenses unless otherwise provided in the Contract Documents.

7.07 Laws and Regulations; Taxes

- A. Contractor shall give all notices required by and shall comply with all local, state, and federal Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages if Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations.
- C. Contractor shall pay all applicable sales, consumer, use, and other similar taxes Contractor is required to pay in accordance with Laws and Regulations.

7.08 Record Documents

- A. Contractor shall maintain one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved shop drawings in a safe place at the Site. Contractor shall annotate them to show changes made during construction. Contractor shall deliver these record documents to Engineer upon completion of the Work.

7.09 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.

- B. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. All persons on the Site or who may be affected by the Work;
 - 2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of construction.
- C. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, or anyone for whose acts the Contractor may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Contract Documents or to the acts or omissions of Owner or Engineer and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor).
- D. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.
- E. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor shall act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.10 Shop Drawings, Samples, and Other Submittals

- A. Contractor shall review and coordinate the shop drawing and samples with the requirements of the Work and the Contract Documents and shall verify all related field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information.
- B. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
- C. With each submittal, Contractor shall give Engineer specific written notice, in a communication separate from the submittal, of any variations that the shop drawing or sample may have from the requirements of the Contract Documents.
- D. Engineer will provide timely review of shop drawings and samples.
- E. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs.
- F. Engineer's review and approval of a separate item does not indicate approval of the assembly in which the item functions.
- G. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of shop drawings and submit, as required, new samples for review and

approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

H. Shop drawings are not Contract Documents.

7.11 Warranties and Guarantees

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.

7.12 Correction Period

A. If within one year after the date of substantial completion, any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly and without cost to Owner, correct such defective Work.

7.13 Indemnification

A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts they may be liable.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 Owner's Responsibilities

- A. Except as otherwise provided in the Contract Documents, Owner shall issue all communications to Contractor through Engineer.
- B. Owner shall make payments to Contractor as provided in this Contract.
- C. Owner shall provide Site and easements required to construct the Project.
- D. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, unless stated elsewhere in the Contract Documents, Owner shall have sole authority and responsibility for such coordination.
- E. The Owner will contract directly with a 3rd party testing company to provide geotechnical testing services. Contractor shall coordinate the construction schedule with the geotechnical engineer to ensure that necessary testing is completed at appropriate times during construction.

- F. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- G. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- H. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 Engineer's Status

- A. Engineer will be Owner's representative during construction. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in this Contract.
- B. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any subcontractor, any supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- C. Engineer will make visits to the Site at intervals appropriate to the various stages of construction. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work.
- D. Engineer has the authority to reject Work if Contractor fails to perform Work in accordance with the Contract Documents.
- E. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work.
- F. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

ARTICLE 10 - CHANGES IN THE WORK

10.01 Authority to Change the Work

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work.

10.02 Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 - 2. Changes in the Work which are: (a) ordered by Owner or (b) agreed to by the parties or (c) resulting from the Engineer's decision, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
 - 3. Changes in the Contract Price or Contract Times or other changes which embody the substance of any final binding results under Article 12.
- B. 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.

ARTICLE 11 - DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS

11.01 Differing Conditions Process

- A. If Contractor believes that any subsurface or physical condition including but not limited to utilities or other underground facilities that are uncovered or revealed at the Site either differs materially from that shown or indicated in the Contract Documents or is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.
- B. After receipt of written notice, Engineer will promptly:
 - 1. Review the subsurface or physical condition in question;
 - 2. Determine necessity for Owner obtaining additional exploration or tests with respect to the condition;
 - 3. Determine whether the condition falls within the differing site condition as stated herein;
 - 4. Obtain any pertinent cost or schedule information from Contractor;
 - 5. Prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and
 - 6. Advise Owner in writing of Engineer's findings, conclusions, and recommendations.

- C. After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.

ARTICLE 12 - CLAIMS AND DISPUTE RESOLUTION

12.01 Claims Process

- A. The party submitting a claim shall deliver it directly to the other party to the Contract and the Engineer promptly (but in no event later than 10 days) after the start of the event giving rise thereto.
- B. The party receiving a claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the claim through the exchange of information and direct negotiations. All actions taken on a claim shall be stated in writing and submitted to the other party.
- C. If efforts to resolve a claim are not successful, the party receiving the claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the claim within 45 days, the claim is deemed denied.
- D. If the dispute is not resolved to the satisfaction of the parties, Owner or Contractor shall give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction unless the Owner and Contractor both agree to an alternative dispute resolution process.

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION OF DEFECTIVE WORK

13.01 Tests and Inspections

- A. Owner and Engineer will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access.
- B. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- C. If any Work that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense.
- D. Contractor shall coordinate directly with Roanoke County, VDOT, and Western Virginia Water Authority for all inspections required for final acceptance of the work by these entities and provide all testing necessary to meet these requirements.

13.02 Defective Work

- A. Contractor shall ensure that the Work is not defective.
- B. Engineer has the authority to determine whether Work is defective, and to reject defective Work.

- C. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. The Contractor shall promptly correct all such defective Work.
- E. When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. If the Work is defective or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

ARTICLE 14 - PAYMENTS TO CONTRACTOR

14.01 Progress Payments

- A. The Contractor shall prepare a schedule of values that will serve as the basis for progress payments. The schedule of values will be in a form of application for payment acceptable to Engineer. The unit price breakdown submitted with the bid will be used for unit price work. Break lump sum items into units that will allow for measurement of Work in progress.

14.02 Applications for Payments:

- A. Contractor shall submit an application for payment in a form acceptable to the Engineer, no more frequently than monthly, to Engineer. Applications for payment will be prepared and signed by Contractor. Contractor shall provide supporting documentation required by the Contract Documents. Payment will be paid for Work completed as of the date of the application for payment.
- B. Beginning with the second application for payment, each application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior applications for payment.

14.03 Retainage

- A. The Owner shall retain 5 % of each progress payment until the Work is substantially complete.

14.04 Review of Applications

- A. Within 10 days after receipt of each application for payment, the Engineer will either indicate in writing a recommendation for payment and present the application for payment to Owner or return the application for payment to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. The Contractor will make the necessary corrections and resubmit the application for payment.
- B. Engineer will recommend reductions in payment (set-offs) which, in the opinion of the Engineer, are necessary to protect Owner from loss because the Work is defective and requires correction or replacement.
- C. The Owner is entitled to impose set-offs against payment based on any claims that have been made against Owner on account of Contractor's conduct in the performance of the Work, incurred costs, losses, or damages on account of Contractor's conduct in the performance of

the Work, or liquidated damages that have accrued as a result of Contractor's failure to complete the Work.

14.05 Contractor's Warranty of Title

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

14.06 Substantial Completion

- A. The Contractor shall notify Owner and Engineer in writing that the Work is substantially complete and request the Engineer issue a certificate of substantial completion when Contractor considers the Work ready for its intended use. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Engineer will make an inspection of the Work with the Owner and Contractor to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor and Owner in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete or upon resolution of all reasons for non-issuance of a certificate identified in 14.06.B, Engineer will deliver to Owner a certificate of substantial completion which shall fix the date of substantial completion and include a punch list of items to be completed or corrected before final payment.

14.07 Final Inspection

- A. Upon written notice from Contractor that the entire Work is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.08 Final Payment

- A. Contractor may make application for final payment after Contractor has satisfactorily completed all Work defined in the Contract, including providing all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents and other documents.
- B. The final application for payment shall be accompanied (except as previously delivered) by:
 - 1. All documentation called for in the Contract Documents;
 - 2. Consent of the surety to final payment;
 - 3. Satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any liens or other title defects, or will so pass upon final payment;
 - 4. A list of all disputes that Contractor believes are unsettled; and
 - 5. Complete and legally effective releases or waivers (satisfactory to Owner) of all lien rights arising out of the Work, and of liens filed in connection with the Work.

- C. The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.

14.09 Waiver of Claims

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 Owner May Suspend Work

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 60 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension.

15.02 Owner May Terminate for Cause

- A. Contractor's failure to perform the Work in accordance with the Contract Documents or other failure to comply with a material term of the Contract Documents will constitute a default by Contractor and justify termination for cause.
- B. If Contractor defaults in its obligations, then after giving Contractor and any surety ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
 - 1. Declare Contractor to be in default, and give Contractor and any surety notice that the Contract is terminated; and
 - 2. Enforce the rights available to Owner under any applicable performance bond.
- C. Owner may not proceed with termination of the Contract under Paragraph 15.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- D. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- E. In the case of a termination for cause, if the cost to complete the Work, including related claims, costs, losses, and damages, exceeds the unpaid contract balance, Contractor shall pay the difference to Owner.

15.03 Owner May Terminate for Convenience

- A. Upon seven days written notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for, without duplication of any items:
 - 1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. Other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

15.04 Contractor May Stop Work or Terminate

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, either stop the Work until payment is received, or terminate the Contract and recover payment from the Owner.

ARTICLE 16 - CONTRACTOR'S REPRESENTATIONS

16.01 Contractor Representations

- A. Contractor makes the following representations when entering into this Contract:
 - 1. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - 3. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - 4. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on:
 - a. The cost, progress, and performance of the Work;
 - b. The means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and

- c. Contractor's safety precautions and programs.
5. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
6. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
7. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
8. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
9. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that, without exception, all prices in the Contract are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 17 - MISCELLANEOUS

17.01 Cumulative Remedies

- A. The duties and obligations imposed by this Contract and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.02 Limitation of Damages

- A. Neither Owner, Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

17.03 No Waiver

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

17.04 Survival of Obligations

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract.

17.06 Controlling Law

- A. This Contract is to be governed by the law of the state in which the Project is located.

IN WITNESS WHEREOF, Owner and Contractor have signed this Contract.

This Contract will be effective on July 19, 2019 (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

By: _____

By: _____

Title: _____

Title: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

License No.: _____
(where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Contract.)

NOTE TO USER: Use in those states or other jurisdictions where applicable or required.

VIRGINIA BUSINESS READY SITES PROGRAM

SITE DEVELOPMENT GRANT

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** (this “Agreement”) is entered into as of June 25, 2019, by and between the **VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP AUTHORITY** (“VEDP”), a political subdivision of the Commonwealth of Virginia (the “Commonwealth”), and the **WESTERN VIRGINIA REGIONAL INDUSTRIAL FACILITY AUTHORITY** (the “Grantee”, and together with VEDP, the “Parties”), a political subdivision of the Commonwealth.

The Virginia Business Ready Sites Program (“VBRSP”), established pursuant to § 2.2-2238(C) of the Code of Virginia of 1950, as amended, is administered through VEDP, in consultation with a committee (the “VBRSP Review Committee”).

The Grantee submitted an application to the VBRSP Review Committee for a site development grant to assist with the costs associated with preparing and positioning a potential site for selection and development by prospective economic development projects, such site being known as the Wood Haven Technology Park, located on Wood Haven Road in Roanoke, Virginia (the “Site”).

The VBRSP Review Committee is awarding to the Grantee a \$135,000 site development grant (the “Grant”) from the VBRSP, subject to the following terms and conditions:

1. Disbursement of Grant; Use of Proceeds.

(a) **Disbursement:** Subject to Section 4 below, the Grant will be paid to the Grantee in full after: (i) completion of the Scope of Work (as hereinafter defined); (ii) the Grantee’s delivery of the Grant Report (as hereinafter defined) to VEDP; and (iii) verification of the Grant Report by VEDP. The Grantee shall promptly provide such additional information and documentation requested by VEDP and the VBRSP Review Committee to complete the verification.

(b) **Use of Proceeds:** The Grantee will use the Grant proceeds to reimburse itself for the necessary and reasonable costs expended in connection with the work to be performed at the Site by a licensed engineer or equivalent (the “Site Development Professional”), to raise the Site’s currently designated VBRSP level of readiness for marketing for economic development purposes (“Tier Level”) from Tier Level 3 to Tier Level 4, as described in the scope of work set forth in Exhibit A attached to this Agreement (all such work, collectively, the “Scope of Work”). Tier Levels are described in Appendix A to the VBRSP Site Development Guidelines. The proceeds of the Grant may not be expended for any other purpose.

2. Performance; Responsibility for Costs.

(a) **Performance:** On or before April 15, 2021 (the “Performance Date”), the Grantee will cause completion of the Scope of Work. The Grantee will notify VEDP of any necessary revisions to the Scope of Work. Except for revisions impacting, in the aggregate, less than 10% of the total costs for the Scope of Work, no revisions may be made to the Scope of Work without the prior written approval of VEDP, in consultation with the VBRSP Review Committee.

(b) **Responsibility for Costs:** On or before the Performance Date, the Grantee shall make a one-to-one cash match of the total amount of the Grant (the “Local Match”), paid toward the costs of the Scope of Work. The Grantee is also responsible for (i) any costs necessary to complete the Scope of Work not covered by the proceeds of the Grant and the Local Match, and (ii) the costs of reporting to VEDP in accordance with this Agreement.

3. Reporting.

(a) **Grant Report:** Within thirty days after the Performance Date, the Grantee shall submit to VEDP a written report (the “Grant Report”) summarizing the completion of the Scope of Work. The Grant Report must include the following information:

- (i) a brief summary of the Scope of Work;
- (ii) any revisions to the Scope of Work;
- (iii) documentation confirming that (i) an amount equal to the total amount of the Grant has been fully expended or incurred on the Scope of Work, or (ii) the costs of the Scope of Work are less than anticipated and the Grant proceeds exceed the Local Match or are not required in full;
- (iv) documentation confirming that the Local Match and any balance of the costs of the Scope of Work have been or will be paid in full;
- (v) copies of all analyses and reports related to the Scope of Work; and
- (vi) a letter from the Site Development Professional coordinating the Scope of Work: (A) indicating that the Site’s Tier Level has increased from Tier 3 to Tier 4, or (B) if the Site’s Tier Level did not increase fully to Tier 4, establishing that it has advanced towards Tier 4 and providing plans to complete such an increase; and
- (vii) any revised plans for marketing the Site and/or a description of any new interest from prospective economic development projects.

(b) **Status Report:** The Grantee shall submit to VEDP, upon request at any time before

or after the Performance Date, a report providing an update on the Site (the “Status Report”). The Status Report will include all information reasonably requested and whether the Site was successfully marketed to a new economic development prospect and generated any additional private investment and job creation.

4. Adjustments and Repayment.

(a) ***If Costs are Less than Anticipated:*** If the Grant Report indicates or any evidence reveals that the costs of the Scope of Work are less than anticipated and the Grant proceeds exceed the Local Match or are not required in full, then (i) the amount of the Grant under this Agreement shall be reduced by an amount equal to the excess amount or the amount no longer required, or (ii) if the Grant previously disbursed, the Grantee will repay to VEDP an amount equal to the excess amount or the amount no longer required.

(b) ***If Grant Proceeds are Misspent:*** If the Grant Report indicates or any evidence reveals that the Grant proceeds were expended on anything other than the Scope of Work, then (i) the amount of the Grant under this Agreement shall be reduced by an amount equal to the amount misspent, or (ii) if the Grant previously disbursed, the Grantee will repay to VEDP an amount equal to the amount misspent.

(c) ***Failure to Complete:*** If VEDP reasonably determines that the Grantee is unable or unwilling to complete the Scope of Work by the Performance Date, VEDP may terminate this Agreement by delivering written notice of termination to the Grantee, and in such case the Grantee shall repay to VEDP the entire amount of Grant.

(d) ***Repayment Date:*** Within 60 days of receipt of written notice from VEDP of any repayment due under this Agreement, the Grantee will make the repayment to VEDP.

5. Notices.

Written notices and communications between the Parties under this Agreement will be delivered by: (i) personal service, effective upon receipt; (ii) delivery by a document delivery service providing a receipt showing date and time of delivery, effective upon receipt; (iii) mailing, first class postage prepaid or certified providing a receipt showing date and time of delivery, effective the second business day following deposit in the United States mail; or (iv) delivery by electronic mail with transmittal and delivery confirmation; effective the next business day. Such written notices and communications shall be addressed to:

if to the Grantee, to:

Western Virginia Regional Industrial
Facility Authority
PO Box 2569
Roanoke, VA 24010
Email: beth@roanoke.org

with a copy to:

Western Virginia Regional Industrial Facility
Authority
PO Box 2569
Roanoke, VA 24010
Email: jhull@wvrifa.org

Attention: Executive Director

Attention: Assistant Director

if to VEDP, to:

with a copy to:

Virginia Economic Development
Partnership
One James Center, Suite 900
901 East Cary Street
Richmond, Virginia 23219
Email: lstuhldreher@vedp.org
Attention: Incentives Coordinator

Virginia Economic Development
Partnership
One James Center, Suite 900
901 East Cary Street
Richmond, Virginia 23219
Email: smcninch@vedp.org
Attention: General Counsel

6. Miscellaneous.

(a) ***Entire Agreement; Amendments:*** This Agreement constitutes the entire agreement between the Parties as to the Grant, and may not be amended or modified, except in writing, signed by each of the Parties. This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and assigns. The Grantee may not assign its rights and obligations under this Agreement without the prior written consent of VEDP.

(b) ***Governing Law; Venue:*** This Agreement is made and intended to be performed in the Commonwealth and will be construed and enforced in accordance with the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement lies in and will only be brought in the Circuit Court of the City of Richmond, Virginia. If this Agreement is subject to litigation, each of the Parties will be responsible for its own attorneys' fees.

(c) ***Counterparts:*** This Agreement may be executed in one or more counterparts, each of which will be an original, and all of which together will be one and the same instrument.

(d) ***Severability:*** If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the Parties as nearly as possible in accordance with applicable law.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

WITNESS the following signatures as of the date first above written.

**VIRGINIA ECONOMIC DEVELOPMENT
PARTNERSHIP AUTHORITY**

By _____
Name: _____
Title: _____

**WESTERN VIRGINIA REGIONAL
INDUSTRIAL FACILITY AUTHORITY**

By _____
Name: _____
Title: _____

EXHIBIT A

SCOPE OF WORK

Raise Site from Tier 3 to Tier 4.

- o Phase 1 Design and Permitting
 - Preparation of Erosion Control and Stormwater plans for the clearing of approximately 30 acres (Exhibit A) to include:
 - Erosion Control Plans
 - Stormwater Management Plans
 - State and Local Permitting
 - Bid Assistance

- o Phase 1 Construction
 - Clearing of 30 acres. (Exhibit A)
 - Storm Water Management
 - Site Stabilization

- o Full Pad Design and permitting
 - Preparation of Design Plans for the entire site currently owned by WVRIFA to include:
 - Mass Grading Plans
 - Storm Water Management Plans
 - Erosion and Sediment Control Plans
 - Define Phasing/Development Scenarios.

Order of Magnitude Budget Estimate

QTY.	UNIT	CONSTRUCTION ITEM	UNIT COST	LINE ITEM COST
CLEARING OPERATIONS				
1	EACH	MOBILIZATION	\$10,000.00	\$10,000.00
1	EACH	CONSTRUCTION SURVEYING	\$10,000.00	\$10,000.00
30	ACRES	CLEARING	\$7,000.00	\$210,000.00
30	ACRES	EROSION CONTROL	\$2,500.00	\$75,000.00
1	LS	STORM WATER MANAGEMENT	\$35,000.00	\$35,000.00
DESIGN AND PERMITTING				
1	LS	DESIGN FEES -PHASE 1 AND FULL PAD DESIGN	\$75,000.00	\$75,000.00
1	LS	WATER QUALITY -PHASE 1	\$45,000.00	\$45,000.00
1	LS	PERMITTING - PHASE 1	\$15,000.00	\$15,000.00
			SUBTOTAL	\$475,000
			CONTINGENCY	\$75,000
			ESTIMATE TOTAL	\$550,000

Of the total budget, \$135,000 will be funded by the proceeds of the Grant and the remainder will be paid for by the Grantee.



**STORMWATER MANAGEMENT FACILITIES
MAINTENANCE AGREEMENT
Roanoke County, Virginia**

THIS AGREEMENT, made and entered into this _____ day of _____, _____, by and between _____, hereinafter called the "Landowner," and the Board of Supervisors of Roanoke County, Virginia, hereinafter called the "County."

WITNESSETH:

WHEREAS, the Landowner is the owner in fee simple of certain real property described on _____, as recorded by deed in the land records of _____, (Roanoke County Tax Map/Parcel Identification Number) Roanoke County, Virginia, Instrument Number _____, hereinafter called the "Property."

WHEREAS, the Site Plan/Subdivision Plan known as _____, (Name of Plan/Development) hereinafter called the "Plan," as approved by the County and which is expressly made a part hereof, provides for the management of stormwater runoff within the confines of the property; and

WHEREAS, the Property noted above contains stormwater management facilities (SWMFs), often called Best Management Practices (BMPs), and their accompanying components and structures; and

WHEREAS, a plat or plan identifying such areas is attached hereto for reference; and

WHEREAS, the stormwater facilities maintenance and inspection schedule for such areas is attached hereto for reference; and

WHEREAS, the Landowner is proceeding to build on and develop the property; and

WHEREAS, the County and the Landowner, its successors and assigns, including any homeowners association, agree that the health, safety, and welfare of the residents of Roanoke County, Virginia, require that on-site stormwater management facilities be constructed and maintained on the Property; and

WHEREAS, the County requires that on-site stormwater management facilities, as shown on the Plan, be constructed and adequately maintained by the Landowner, its successors and assigns, including any homeowners association; and

WHEREAS, a maintenance and inspection schedule has been included on the Plan and is attached for reference, which details the requirements to perpetually maintain the structural integrity and the proper functioning of the SWMF and all of its components.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree, as follows:

1. The Landowner, its successors and assigns, shall construct the required on-site SWMFs, as shown on Exhibit 1 and listed on Exhibit 2, at its sole expense and in strict accordance with the approved Plan and the associated specifications identified in the Plan.
2. The Landowner, its successors and assigns, shall, at its sole expense, make such changes or modifications to the SWMFs as may, in the County's sole discretion, be determined necessary to insure that the SWMFs are properly maintained and are continuing to operate as designed and approved.
3. The Landowner, its successors and assigns, including any homeowners association, shall perpetually and adequately maintain the SWMFs. This includes all pipes and channels built to convey stormwater to or from the facilities, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater. Adequate maintenance is herein defined as that which is necessary to maintain the structural integrity of the facilities and to insure good working condition so that the facilities are performing their intended design functions. The Maintenance and Inspection Schedule is shown on Exhibit 3.
4. The Landowner, its successors and assigns, shall periodically inspect the SWMFs, as shown on Exhibit 3. The purpose of the inspection is to assure safe and proper functioning of the facilities. The inspection shall cover the facilities in their entirety and all related components, including but not limited to berms, outlet structure, pond areas, incoming or outgoing pipes or channels, side slopes, access roads, etc. Deficiencies shall be noted in the inspection report.
5. The Landowner, its successors and assigns, shall document all inspections, maintenance activities, and repairs that are performed on the SWMFs. Documents shall be maintained by the Landowner, its successors and assigns, for a minimum period of five (5) years and said documents shall be made available for review by, or copies shall be provided to, the County upon request.
6. The Landowner, its successors and assigns, hereby grant to the County, its authorized agents, employees, and contractors the perpetual right of ingress and egress over the Property for the purpose of inspecting the SWMFs. Such inspections shall be conducted periodically and whenever the County deems necessary. Such inspections may be conducted for a variety of reasons, including the following: (a) to insure that the SWMF is being properly maintained and is continuing to function as designed and

approved by the County, (b) to ensure that adequate maintenance is occurring, (c) to follow-up on reported deficiencies, and (d) to respond to citizen complaints. The County shall provide the Landowner, its successors and assigns, copies of the inspection findings and a directive to commence with maintenance or repairs, if necessary. The County shall specify in the directive a time frame in which the work shall be completed.

7. In the event the Landowner, its successors and assigns, fail to maintain the SWMFs in good working condition acceptable to the County, the County may enter upon the Property to correct all deficiencies, make all repairs, and to perform all maintenance, construction, and re-construction, as deemed necessary by the County, and to charge the costs of such repairs to the Landowner, its successors and assigns, and to any or all persons or entities served by the SWMFs. This provision shall not be construed to allow the County to erect any permanent structure on the Landowner's land outside of the easement or property wherein the SWMFs and their related components reside. It is expressly understood and agreed that the County is under no obligation to routinely maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the County.
8. The Landowner, its successors and assigns, shall perform the necessary work to comply with the attached maintenance schedule, including sediment removal, and as otherwise required to keep the SWMFs in good working order, as appropriate.
9. In the event the County, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, etc., the County may assess the Landowner, its successors and assigns, and/or all landowners served by the SWMFs for their proportionate share of the actual costs incurred by the County hereunder; such assessment may be placed on the real estate property tax bill of said properties and collected as ordinary taxes by the County. In collecting such charges, the County shall not be limited to the above remedy, but shall also have available to it all remedies accorded by law for the collection of unpaid debts.
10. The Landowner, its successors and assigns, shall indemnify, save harmless, and defend the County against any and all claims, demands, suits, liabilities, losses, damages, and payments, including reasonable attorney fees claimed or made by persons not party to this agreement, against the County that are alleged or proved to result or arise from any construction, operation, or maintenance of the SWMFs by the Landowner, its successors and assigns.
11. This Agreement and the covenants and agreements contained herein shall run with the title to the land and whenever the Property shall be held, sold, conveyed, or otherwise transferred, it shall be subject to the covenants, stipulations, agreements, and provisions of this Agreement which shall apply to, bind, and be obligatory upon the Landowner hereto, its administrators, executors, assigns, heirs and any other successors in interests, including any homeowners association, and it shall bind all present and subsequent owners of the Property described herein.

12. Initially, the Landowner is solely responsible for the performance of the obligations required hereunder and, to the extent permitted under applicable law, the payment of any and all fees, fines, and penalties associated with such performance or failure to perform under this Agreement. Notwithstanding any provisions of this Agreement to the contrary, upon the recordation of a deed or other instrument of sale, transfer, or other conveyance of fee simple title to the Property or any portion thereof (a "Transfer") to a third party (the "Transferee"), the Landowner shall be released of all its obligations and responsibilities under this Agreement accruing after the date of such Transfer to the extent such obligations and responsibilities are applicable to that portion of the Property included in such Transfer, but such release shall be expressly conditioned upon the Transferee assuming such obligations and responsibilities by recorded written agreement for the benefit of the County. Such written agreement may be included in the Transfer deed or instrument, provided that the Transferee joins in the execution of such deed or instrument. A certified copy of such deed, instrument, or agreement shall be provided to the County. The provisions of the preceding three sentences shall be applicable to the original Landowner and any successor Transferee who has assumed the obligations and responsibilities of the Landowner under this Agreement, as provided above.
13. Nothing in this Agreement shall be construed to prohibit a transfer of the Property by the Landowner to subsequent owners and assigns.
14. Provisions of this Agreement shall be severable and if any phrase, clause, sentence, or provision is declared unconstitutional, or the applicability thereof to Landowner held invalid, the remainder of this Agreement shall not be affected thereby.
15. This Agreement shall be recorded among the land records of Roanoke County, Virginia, at the expense of the Landowner.
16. In the event that the County shall determine, at its sole discretion at any future time, that the SWMFs are no longer required, the County shall, at the request of the Landowner, execute a release of this Stormwater Management Facilities Maintenance Agreement.
17. In the event of any dispute arising under the provisions of this Agreement, the laws of the Commonwealth of Virginia shall apply and jurisdiction over such dispute shall be in the Roanoke County Circuit Court.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on their behalf.

LANDOWNER:

(Full Name of Company, Corporation, or Partnership)

By: _____ **(SEAL)**
(Duly Authorized Officer Signature)

As: _____ **(TITLE)**
(Duly Authorized Officer Title)

LANDOWNER ACKNOWLEDGMENT

State of: _____

County/City of: _____, **to wit:**

The foregoing instrument was acknowledged before me this____, day of _____, _____,

by: _____ as _____ on
(Duly Authorized Officer Printed Name) (Duly Authorized Officer Printed Title)

behalf of _____
(Insert Full Name of Company/Corporation/Partnership)

_____/_____
(Notary Public Signature) (Notary Public Printed Name)

My Commission expires: _____ Registration # _____

Approved as to Content and Form:

**Board of Supervisors of
Roanoke County, Virginia**

_____ By: _____(SEAL)
County Attorney County Administrator

COUNTY ACKNOWLEDGMENT

**State of Virginia
County of Roanoke, to wit:**

The foregoing instrument was acknowledged before me this____, day of _____, _____,
by _____, County Administrator, on behalf of the Board of Supervisors
of Roanoke County, Virginia.

_____/_____
(Notary Public Signature) (Notary Public Printed Name)

My Commission expires: _____ Registration # _____

EXHIBIT 1

Plat or Plan Depicting Location of Stormwater Management Facilities

INSERT A PLAT OR A PLAN THAT CLEARLY SHOWS THE LOCATION OF ALL STORMWATER MANAGEMENT FACILITIES FOR THE SITE. LEAVE “EXHIBIT 1” AT THE TOP OF THIS PAGE.

EXHIBIT 2
Listing of Stormwater Management Facilities

<i>Facility Name as Shown on the Plan</i>	<i>Facility Type</i>	<i>How many?</i>	<i>Tax Map/Parcel I.D.</i>
Ex., SWMF- 1 or BMP-1	Ex., Bioretention, Level 1	2	000.00-00-00.00-0000

14.3.1 Earthen Embankments

Earthen embankments are an integral part of many BMPs including detention and retention basins and constructed wetlands. For Earthen Embankments maintenance guidance, see Table 14.1.

**Table 14.1
Earthen Embankments Maintenance**

Required Action	Maintenance Objective	Frequency of Action
Inspections	Inspect earthen embankments for signs of settlement, seepage, woody vegetation growth, animal burrows, and good ground cover.	Annually
Vegetation Management	Objective is to maintain a healthy grass cover free of trees and brush <ul style="list-style-type: none"> • Mow grass on embankments to a height of 6 to 8 inches. • Remove all trees and brush from embankment and at least 25’ beyond embankment. When removing trees and brush, extract as much of the root as possible. • Fertilize, lime, or treat with pesticide or herbicide when needed to maintain grass health (do not over fertilize). • Reseed embankments as necessary to maintain vegetation. • Avoid over-fertilization. 	Mow grass on embankments at least twice during both growing seasons and once during the summer.
Slope, Embankment, and Outlet Stabilization	<ul style="list-style-type: none"> • Fill animal burrows with compacted fill. • Regrade, repair, and revegetate eroded embankments. • If there are signs of seepage or embankment slumps consult with a professional engineer. 	As needed based on damage observed during routine maintenance or inspections
Debris and Litter Control	Keep the embankment clear of debris and litter	During inspections or mowing
Mechanical Components	Not applicable	Not applicable
Insect Control	Not applicable	Not applicable
Access Road and Area Maintenance	Remove woody plants and maintain surface in drivable condition	Annually
Sediment and Pollutant Removal	Not applicable	Not applicable
Component Repair and Replacement	Replace embankments that have major erosion, seepage, or slumping problems. Consult with a professional engineer.	Infrequent

14.3.2 Principal Spillways

Principal Spillways are an integral part of many BMPs including detention and retention basins and constructed wetlands. Principal spillways normally consist of an outlet structure, pipe through an embankment, and outlet discharging to a downstream open channel. For guidance for the maintenance of Principal Spillways, see Table 14.2.

**Table 14.2
Principal Spillways Maintenance**

Required Action	Maintenance Objective	Frequency of Action
Inspections	Inspect outlet structure for signs of cracks, spalling, broken or loose sections, or leakage, and corrosion or damage to anti-vortex device or trash rack; inspect pipe for signs of corrosion or settling; inspect outlet protection for signs of erosion or damage.	Semiannually and after every major storm event inspect the outlet structure, pipe, and outlet protection.
Vegetation Management	Not applicable	Not applicable
Slope, Embankment, and Outlet Stabilization	Repair any erosion damage to outlet protection.	As needed based on damage observed during routine inspections
Debris and Litter Control	Keep outlet structure clear of debris. Remove debris from the BMP and properly dispose of in an upland area.	Semiannually and after major rain events as a minimum. Debris removal may be more frequent.
Mechanical Components	If a drain valve is present, exercise the valve semiannually to insure proper function. Periodically lubricate the stem and paint exposed metal to protect from corrosion.	As noted
Insect Control	Not applicable	Not applicable
Access Road and Area Maintenance	Remove woody plants and maintain surface in drivable condition	Annually
Sediment and Pollutant Removal	Not applicable	Not applicable
Component Repair and Replacement	Repair or replace outlet structure components to correct leakage, cracks, spalling, broken or loose sections, or corrosion. Repair or replace pipe to correct settlement, leakage, or corrosion. Repair or replace outlet protection to correct erosion damage. Take care to avoid changing the BMP discharge characteristics and to avoid damage to the embankment. Repairs and replacements may require consulting a professional engineer.	Infrequently

14.3.6 Stormwater Detention and Retention Basins

For the design of basins see VA BMP Clearinghouse specifications.

For maintenance guidance of stormwater basins, refer to the maintenance guidance for Earthen Embankments, Principal Spillways, Emergency Spillways, Sediment Forebay, and Landscaping contained in this chapter.

For additional maintenance guidance for basins, see Table 14.6.

**Table 14.6
Basins Maintenance ⁽¹⁾**

Required Action	Maintenance Objective	Frequency of Action
Inspections	(1)	(1)
Vegetation Management	(1)	(1)
Slope, Embankment, and Outlet Stabilization	(1)	(1)
Debris and Litter Control	Keep the embankment clear of debris and litter	During inspections or mowing
Mechanical Components	(1)	(1)
Insect Control	(1)	(1)
Access Road and Area Maintenance	(1)	(1)
Sediment and Pollutant Removal	(1), also remove accumulated sediment from basin area. Dispose of sediments in an upland area and stabilize with vegetation. If necessary, obtain erosion and sediment control permit, prior to performing land disturbance.	(1), Depending on the effectiveness of the sediment forebay and the condition of the watershed, sediment removal from the basin may be required every 5 – 10 years.
Component Repair and Replacement	(1)	(1)

(1) Refer to the maintenance guidelines for Earthen Embankments, Principal Spillways, Emergency Spillways, Sediment Forebay, and Landscaping contained in this chapter.

CONTRACTOR/OWNER AGREEMENT

This Agreement, made this _____ day of _____, 20____ by and between _____, hereafter referred to as CONTRACTOR and _____, hereafter referred to as OWNER, serves as confirmation that both CONTRACTOR and OWNER are responsible for completion of the Site Improvements and Erosion and Sediment Control (E&S) measures outlined in plans approved by the County of Roanoke, Virginia, known as the _____ located in _____, and dated _____, 20____. Both CONTRACTOR and OWNER agree to execute any changes to these plans required by the County of Roanoke for project completion and final site and E&S approval.

WITNESS the following signatures and seals:

Contractor: _____ Owner: _____

By: _____ By: _____

as _____ as _____

APPLICATION is hereby made for permit as shown on the accompanying plan or sketch and as described below. Said activity(s) will be done under and in accordance with the rules and regulations of the Commonwealth Transportation Board of Virginia, in so far as said rules are applicable thereto and any agreement between the parties herein before referred to. Where applicable agreements may be attached and made a part of the permit assembly including any cost responsibilities covering work under permit. Applicant agrees to maintain work in a manner as approved upon its completion. Applicant also hereby agrees and is bound and held responsible to the owner for any and all damages to any other installations already in place as a result of work covered by resulting permit. Applicants to whom permits are issued shall at all times indemnify and save harmless the Commonwealth Transportation Board members of the Board, the Commonwealth and all Commonwealth employees, agents, and offices, from responsibility, damage, or liability arising from the exercise of the privileges granted in such permit to the extent allowed by law. In consideration of the issuance of a permit the applicant agrees to waive for itself, successors in interest or assigns any entitlements it may otherwise have or have hereafter under the Uniform Relocation and Assistant Act of 1972 as amended in event the Department or its successor, chooses to exercise its acknowledged right to demand or cause the removal of any or all fixtures, personality of whatever kind or description that may hereafter be located, should this application be approved.

<u>Applicant information:</u>	
Driver's License or Tax ID No. _____	Contact Name _____
Owner Name _____	E-mail Address _____
Address _____	Telephone Number (____) _____ - _____
City _____ State _____ Zip Code _____	Emergency Telephone Number (____) _____ - _____
	Fax Number (____) _____ - _____
<u>Agent information:</u>	
Driver's License or Tax ID No. _____	Contact Name _____
Owner Name _____	E-mail Address _____
Address _____	Telephone Number (____) _____ - _____
City _____ State _____ Zip Code _____	Emergency Telephone Number (____) _____ - _____
	Fax Number (____) _____ - _____

Permit Term Requested _____ Fees Enclosed \$ _____ Check Number _____ Money Order _____
 Estimated cost of work to be performed on VDOT Right of Way \$ _____

Surety Information:

Surety Posted by: Owner Agent County Resolution Waived

Bonding Company Name _____
 Irrevocable Letter of Credit - Bank Name _____
 Surety paid by Check - Check Number _____
 Amount of Surety \$ _____ Obligation Amount \$ _____

If cash/check surety is posted, please complete Commonwealth of Virginia's Substitute Form W-9.

Request permission to perform the following activity(s): _____

 _____ as per attached plans.

Location: County Town City of _____ Route No. _____ Street Name _____
 Between Route No. _____ Street Name _____ and Route No. _____ Street Name _____
 Latitude _____ Longitude _____ Tax Map Number _____ Applicant Job No. _____

Applicant shall provide proof of registration as an operator with the appropriate notification center in accordance as defined in §2.2-1151.1 of the Code of Virginia & must provide a notarized affidavit, stating that the utility owner has notified the commercial and residential developer, owner of commercial or multifamily real estate, or local government entities with a property interest in any parcel of land located adjacent to the property over which the land use is being requested, that application for the permit has been made.

IF APPLICABLE, I AGREE TO PAY THE FULL SALARY AND EXPENSES OF A STATE ASSIGNED INSPECTOR IN CONJUNCTION WITH ACTIVITIES AUTHORIZED UNDER THE AUSPICES OF A VDOT LAND USE PERMIT.
 I the undersigned hereby acknowledge that I am fully cognizant of all the LUP-SPG requirements associated with the issuance of a VDOT Land Use Permit.

Signature of Applicant: _____ Title _____ Date _____
 Signature of Agent: _____ Title _____ Date _____

All applicable items on this form must be completed to avoid delay in processing the issuance of a VDOT Land Use Permit.
 Prepayment required with remittance payable to Virginia Department of Transportation.

VDOT USE ONLY

Receipt is hereby acknowledged for: CHECK No.: _____ MONEY ORDER No.: _____
 In the Amount of \$ _____ for PERMIT FEE \$ _____ CASH SURETY \$ _____
 Authorized VDOT Signature: _____ Date: _____

*Agent mean: Applicant contractor's or a person or business authorized to act on another's behalf.

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
 GENERAL VPDES PERMIT FOR DISCHARGES OF STORMWATER FROM
 CONSTRUCTION ACTIVITIES (VAR10)
 REGISTRATION STATEMENT 2019**

FOR OFFICE USE ONLY ID Number: _____ Technical Criteria: IIB <input type="checkbox"/> IIC <input type="checkbox"/>
--

NEW ISSUANCE

RE-ISSUANCE

MODIFICATION WITH ACREAGE INCREASE

MODIFICATION WITHOUT ACREAGE INCREASE

Existing Permit Coverage Number (if applicable, VAR10####): N/A

Section I. Operator/Permittee Information.

A. Construction Activity Operator (Permittee). The person or entity that is applying for permit coverage and will have operational control over construction activities to ensure compliance with the general permit. A person with signatory authority for this operator must sign the certification in Section VI. (per Part III. K. of the VAR10 Permit).

Construction Activity Operator Name: Western Virginia Regional Industrial Facility Authority

Contact person: John Hull

Address: P.O. Box 2569

City, State, Zip Code: Roanoke, VA 24010

Phone Number: (540) 343-1550

Primary Email: jhull@wvriifa.org

CC Email: cburns@balzer.cc

B. Billing Information (leave blank if same as the Operator identified in Section I. A. above). This entity will receive Annual Permit Maintenance and Permit Modification Fee invoices (if applicable).

Name: _____

Contact Person: _____

Address: _____

City, State Zip Code: _____

Phone Number: _____

Primary Email: _____

CC Email: _____

C. May we transmit correspondence electronically? You must choose **YES** and include a valid email in order to pay by credit card and to receive your permit coverage approval letter via email:

YES NO

CONSTRUCTION GENERAL PERMIT (VAR10) REGISTRATION STATEMENT 2019

Section II. Construction Activity Location Information. Project site information.

A. Include a site map showing the location of the existing or proposed land-disturbing activities, the limits of land disturbance, construction entrances and all water bodies receiving stormwater discharges from the site.

B. Construction Activity Name: Wood Haven Technology Park Infrastructure Improvements
 Address: 7629 Wood Haven Road
 City and/or County and Zip Code: Roanoke, VA 24019
 Latitude and Longitude (6-digit, decimal degrees format): Latitude 37.3349, Longitude -80.0015

C. Construction Activity Entrance Location (description, street address and/or latitude/longitude in decimal degrees): Wood Haven Road

Section III. Offsite Support Activity Location Information. List all offsite support activities to be included under this permit registration. Enter additional areas on a separate page. Offsite areas not included on this registration may need to obtain coverage under a separate VPDES permit.

A. Offsite Activity Name: N/A
 Address: _____
 City and/or County and Zip Code: _____
 Latitude and Longitude (6-digit, decimal degrees format): _____

B. Offsite Activity Entrance Location (description, street address and/or latitude/longitude in decimal degrees): N/A

Section IV. Site Information.

A. Acreage totals for all land-disturbing activities to be included under this permit coverage. Report to the nearest one-hundredth of an acre.	
Total land area of development (including the entire area to be disturbed as approved in the Stormwater Management Plan):	109.90 ac.
Primary estimated area to be disturbed (portions with Erosion and Sediment Control Plan approval only):	4.20 ac.
Offsite estimated area to be disturbed (if applicable):	N/A

B. Estimated Project Dates (MM/DD/YYYY)	
Start date:	8/15/2019
Completion date:	2/15/2020

C. Property Owner Status: **FEDERAL** **STATE** **PUBLIC** **PRIVATE**

D. Nature of the Construction Activity Description (i.e. commercial, industrial, residential, agricultural, environmental): Commercial

E. Municipal Separate Storm Sewer System (MS4) name (if discharging to a MS4): VDOT

F. Is this construction activity part of a common plan of development or sale? **YES** **NO**

G. 6th Order Hydrologic Unit Code (HUC) and Receiving Water Name(s). Attach a separate list if needed.

HUC	RECEIVING WATERBODY(S)
RU14	Roanoke River - Peters Creek
RU13	Tinker Creek - Glade Creek

Section V. Other Information.

A. A stormwater pollution prevention plan (SWPPP) must be prepared in accordance with the requirements of the General VPDES Permit for Discharges of Stormwater from Construction Activities prior to submitting the Registration Statement. By signing the Registration Statement, the operator is certifying that the SWPPP has been prepared.

B. Has an Erosion and Sediment Control Plan been submitted to the VESCP Authority for review? **YES** **NO**
 Erosion and Sediment Control Plan Approval Date (for estimated area to be disturbed).: 05/08/2019

C. Has land disturbance has commenced? **YES** **NO**

D. If this project is using approved Annual Standards and Specifications (AS&S), attach the completed AS&S Entity Form. AS&S Entity Name (if different from the Operator identified in Section II. A.): N/A

**SEE THE FOLLOWING PAGE FOR SIGNATURE
AND CERTIFICATION REQUIREMENTS AND INFORMATION**

CONSTRUCTION GENERAL PERMIT (VAR10) REGISTRATION STATEMENT 2019

Section VI. Certification. A person representing the operator as identified in Section I. A. and meeting the requirements of 9VAC25-880-70. Part III. K must physically sign this certification. A typed signature is not acceptable. Please note that operator is defined in 9VAC25-870-10 as follows:

"Operator" means the owner or operator of any facility or activity subject to the Act and this chapter. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other state permit or VSMP authority permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions). In the context of stormwater discharges from Municipal Separate Storm Sewer Systems (MS4s), operator means the operator of the regulated MS4 system.

9VAC25-880-70. Part III. K. Signatory Requirements. *Registration Statement. All Registration Statements shall be signed as follows:*

- a. For a corporation: by a responsible corporate officer. For the purpose of this chapter, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation; or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for state permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;*
- b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or*
- c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this chapter, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.*

Certification: "I certify under penalty of law that I have read and understand this Registration Statement and that this document and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

Printed Name: _____

Signature (signed in ink): _____

Date: _____

Section VII. Submittal Instructions. Submit this form to the Virginia Stormwater Management Program (VSMP) Authority. If the locality is the VSMP Authority, please send your Registration Statement submittal directly to the locality; do NOT send this form to DEQ. A list of local VSMP Authorities is available here: [VSMP Authorities](#).

If DEQ is the VSMP Authority, please send to:

**Department of Environmental Quality
Office of Stormwater Management Suite 1400
PO Box 1105
Richmond VA 23218
constructiongp@deq.virginia.gov**

If the locality is the VSMP Authority, please send to:

The Local VSMP Authority (insert address below)

CONSTRUCTION GENERAL PERMIT (VAR10) REGISTRATION STATEMENT 2019 INSTRUCTIONS

PLEASE DO NOT PRINT OR SUBMIT

This Registration Statement is for coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities. The following permit actions are covered by this form: new issuance, re-issuance, modification with an increase in acreage and plan modifications that do not result in an increase in acreage.

Choose **NEW ISSUANCE** if this Registration Statement submittal is to obtain a new permit coverage, **RE-ISSUANCE** to renew an active, expiring permit coverage or **MODIFICATION** to modify an active permit coverage. When modifying permit coverage, indicate if the modification is increasing the amount of acreage previously covered (**MODIFICATION WITH ACREAGE INCREASE**) or changing the site design with no increase in acreage (**MODIFICATION WITHOUT ACREAGE INCREASE**).

Existing Permit Coverage Number. Provide the permit number for a modification or reissuance (i.e. VAR10#####).

Section I. Operator/Permittee Information.

A. Construction Activity Operator (Permittee). The person or entity that is applying for permit coverage and will have operational control over construction activities to ensure compliance with the general permit. For companies, use the complete, active, legal entity name as registered with a state corporation commission. Entities that are considered operators commonly consist of the property owner, developer of a project (the party with control of project plans and specifications), or general contractor (the party with day-to-day operational control of the activities at the project site that are necessary to ensure compliance with the general permit). If an individual person is named as the operator, that person (or a representative of) must sign the certification in Section VI. An operator can be one of the following:

9VAC25-870-10. Definitions.

"Operator" means the owner or operator of any facility or activity subject to the Act and this chapter. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other state permit or VSMP authority permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions). In the context of stormwater discharges from Municipal Separate Storm Sewer Systems (MS4s), operator means the operator of the regulated MS4 system.

"Owner" means the Commonwealth or any of its political subdivisions including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes or pollutants to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5 of the Code of Virginia, the Act and this chapter.

"Person" means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, including a federal, state, or local entity as applicable, any interstate body or any other legal entity.

B. Billing information. If the person or entity responsible for billing/invoicing is different from the operator, please complete this section. If they are the same, leave this section blank.

C. May we transmit correspondence electronically? If you choose **YES** to this question and provide an email address in Section I. A., all correspondence, forms, invoices and notifications will be transmitted by email to the operator. This will also allow the operator to pay by credit card and receive permit coverage approval letters immediately upon approval.

Section II. Construction Activity Location Information.

 Location information related to the project site.

A. A site map indicating the location of the existing or proposed land-disturbing activities, the limits of land disturbance, construction entrances and all water bodies receiving stormwater discharges from the site must be included with the submittal of this form. Aerial imagery maps or topographic maps showing the required items are acceptable. Plan sheet sized site maps are not required. Please consult your Virginia Stormwater Management Program (VSMP) authority if you have additional questions regarding site map requirements.

B. Provide a descriptive project name (it is helpful to use the same naming convention as listed on the Stormwater plans), 911 street address (if available), city/county of the construction activity, 6-digit latitude and longitude in decimal degrees format for the centroid, main construction entrance or start and end points for linear projects (i.e. 37.1234N/-77.1234W).

C. Construction Activity Entrance Location. Provide an address or decimal degrees coordinates and a description of the main construction entrance where the permit coverage letter will be posted.

CONSTRUCTION GENERAL PERMIT (VAR10) REGISTRATION STATEMENT 2019 INSTRUCTIONS
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Section III. Offsite Support Activity Location Information.

This general permit also authorizes stormwater discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) located on-site or off-site provided that (i) the support activity is directly related to a construction activity that is required to have general permit coverage; (ii) the support activity is not a commercial operation, nor does it serve multiple unrelated construction activities by different operators; (iii) the support activity does not operate beyond the completion of the construction activity it supports; (iv) the support activity is identified in the Registration Statement at the time of general permit coverage; (v) appropriate control measures are identified in a SWPPP and implemented to address the discharges from the support activity areas; and (vi) all applicable state, federal, and local approvals are obtained for the support activity.

If requesting permit coverage for offsite activities, please complete this section. List additional offsite areas to be included under this permit coverage on a separate page. Offsite areas not included on this registration will need to obtain coverage under a separate VPDES permit.

A. Offsite activity location information. Provide a descriptive offsite project name, 911 street address (if available) and city/county of all off-site support activities. Provide the 6-digit latitude and longitude in decimal degrees (i.e. 37.1234N,-77.1234W). Please note that off-site activities not covered under this permit may require separate permit coverage.

B. Offsite activity entrance location. Provide an address or decimal degrees coordinates and a description of the main construction entrance.

Section IV. Site Information.

A. Acreage totals for all land-disturbing activities, on- and off-site, to be included under this permit. Acreages are to be reported to the nearest one-hundredth acre (two decimal places; i.e. 1.15 acres). Provide the total acreage of the primary development site as approved on the Stormwater Management Plans and the primary on-site estimated acreage to be disturbed by the construction activity as approved under the Erosion and Sediment Control Plans. The off-site estimated area to be disturbed is the sum of the disturbed acreages for all off-site support activities to be covered under this general permit. Do not include the off-site acreage totals in the primary, on-site total and estimated disturbed acreage totals. Permit fees are calculated based on your disturbed acreage total for all on- and off-site areas being disturbed under this permit coverage (the sum of all on-site and off-site disturbed acreages).

B. Estimated Project Dates. Provide the estimated project start date and completion date in Month/Day/Year or MM/DD/YYYY format (i.e. 07/30/2019).

C. Property owner status. The status of the construction activity property owner. Any property not owned by a government entity or agency (i.e. federal, state or local governments) is **PRIVATE**.

D. Nature of the construction activity description. Choose the designation that best describes the post-construction use of this project (you may choose more than one). (i.e. Residential, Commercial, Industrial, Agricultural, Environmental, Educational, Oil and Gas, Utility, Transportation, Institutional, etc.). Describe the project (i.e. Commercial – one new office building and associated parking and utilities; Transportation – Roads, sidewalks and utilities; Agricultural – 3 Poultry Houses, etc.).

E. Municipal Separate Storm Sewer System (MS4) name(s) if discharging to a MS4. If stormwater is discharged through a MS4 (either partially or completely), provide the name of the MS4(s) that will be receiving water from this construction activity. The MS4 name is typically the town, city, county, institute or federal facility where the construction activity is located.

F. This construction activity is part of a common plan of development or sale. "Common plan of development or sale" means a contiguous area where separate and distinct construction activities may be taking place at different times on different schedules per 9VAC25-870-10. Definitions. I.e. a subdivision, commercial development, business park, etc.

G. 6th Order Hydrologic Unit Code (HUC) and associated Receiving Water Name(s). Provide all 6th order HUCs and receiving waters for the site and offsite areas that could potentially receive stormwater runoff discharging from this activity. The HUC can be either a 12-digit number (i.e. 0208010101) or 2-letter, 2-number code (i.e. JL52). Include additional HUCs or receiving waters on a separate page. You may utilize DEQ's web-based GIS application, VEGIS, to obtain this information.

- VEGIS application link: [DEQ's VEGIS Mapping Application](#)
- Instructions for utilizing DEQ's VEGIS application link: [CGP-GIS HUC Instructions](#)

CONSTRUCTION GENERAL PERMIT (VAR10) REGISTRATION STATEMENT 2019 INSTRUCTIONS
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Section V. Other Information.

- A.** A stormwater pollution prevention plan (SWPPP) must be prepared prior to submitting the Registration Statement per 9VAC25-880. See 9VAC25-880-70. Part II. of the General Permit for the SWPPP requirements.
- B.** If the Erosion and Sediment Control Plan for the estimated area to be disturbed listed in Section IV. A. has been submitted to the Virginia Erosion and Sediment Control Program (VESCP) Authority for review and plan approval, choose **YES**. If you are submitting this application to reissue an existing permit coverage, please provide the date that the VESC Authority approved the Erosion and Sediment Control Plan for the estimated area to be disturbed.
- C.** If land disturbance has commenced, choose **YES**. "Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics, including construction activity such as the clearing, grading, excavating, or filling of land per §62.1-44.15:24. Definitions.
- D.** If this project is using approved Annual Standards and Specifications (AS&S), attach the completed AS&S Entity Form. If the AS&S Entity is different from the operator identified in Section I. A., list the AS&S Entity Name. The AS&S entity is the entity or agency that holds the approved annual standards & specification.
- AS&S Entity Form link: [Annual Standards and Specifications Entity Information Form](#)

Section VI. Certification.

A properly authorized individual associated with the operator identified in Section I. A. of the Registration Statement is responsible for certifying and signing the Registration Statement. A person must physically sign the certification, a typed signature is unacceptable. State statutes provide for severe penalties for submitting false information on the Registration Statement. State regulations require that the Registration Statement be signed as follows per 9VAC25-880-70 Part III. K. 1.:

- a. For a corporation: by a responsible corporate officer. For the purpose of this part, a responsible corporate officer means:*
- (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or*
 - (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.*
- b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.*
- c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this part, a principal executive officer of a public agency includes:*
- (i) The chief executive officer of the agency, or*
 - (ii) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.*

Section VII. Submittal Instructions.

Submit this form to the VSMP Authority that has jurisdiction for your construction activity. The VSMP Authority may be either DEQ **or** your locality depending on the location and type of project. If your project is under the jurisdiction of a Local VSMP Authority, please contact the locality for additional submittal instructions. A blank area is provided for the Local VSMP Authority to include their mailing address.

Who is the VSMP Authority for my project? DEQ or the locality?

- **DEQ:** DEQ is the VSMP Authority and administers permit coverage for land-disturbing activities that are:
 - within a locality that is not a VSMP Authority;
 - owned by the State or Federal government; or
 - utilizing approved Annual Standards and Specifications.
- **The Locality:** The local government (locality) is the VSMP Authority and administers permit coverage for all other projects not covered by DEQ as listed above. For these projects, please submit permit forms directly to the Local VSMP Authority. A list of Local VSMP Authorities is available on DEQ's website here: [Local VSMP Authority List](#).

DEQ'S CONSTRUCTION GENERAL PERMIT WEBSITE

<http://www.deq.virginia.gov/Programs/Water/StormwaterManagement/VSMPPermits/ConstructionGeneralPermit.aspx>

AGREEMENT FOR PURCHASE AND SALE
OF NUTRIENT OFFSET CREDITS

THIS AGREEMENT FOR PURCHASE AND SALE OF NUTRIENT OFFSET CREDITS (this “Agreement”) is dated this 10th day of July, 2019, by and between RLP Investments, LC, a Virginia limited liability company (“Seller”) and Western Virginia Regional Industrial Facility Authority, (“Purchaser”).

RECITALS

A. Seller has established the Twittys Creek Nutrient Bank, (the “Bank”) on approximately 100.10 acres located in Charlotte County, Virginia in accordance with applicable statutes and regulations of the Virginia Department of Environmental Quality (“DEQ”) and the Virginia Department of Conservation and Recreation (“DCR”).

B. The Bank has obtained all necessary permits and taken all necessary actions to create nutrient reductions such that the Bank has nutrient offsets transferable to those entities requiring offsets in accordance with the Chesapeake Bay Watershed Nutrient Credit Exchange Program, DCR’s Stormwater Offset Program, and the Virginia Soil and Water Conservation Board’s Guidance Document and Stormwater Nonpoint Nutrient Offsets approved on July 23, 2009, to those regulated entities qualifying for nutrient offsets.

C. Purchaser desires to purchase from Seller and Seller desires to sell to Purchaser nutrient offsets measured in pounds of nitrogen or phosphorus (one pound of nitrogen or phosphorus equals one nitrogen or phosphorus nutrient offset credit, as the case may be), pursuant to the terms and conditions set forth herein.

AGREEMENT

In consideration of the purchase price paid by Purchaser to Seller, and other good and valuable consideration, the receipt and sufficient of which are hereby acknowledged, the parties agree as follows:

1. Agreement to Sell and Purchase. Seller shall sell to Purchaser or its assigns, and Purchaser or its assignees shall purchase from Seller 0.88 phosphorus nutrient offset credits (the "Credits"). Seller acknowledges and agrees that, notwithstanding the payment of the Purchase Price (as defined below) contemporaneously with the execution and delivery of this Agreement, Purchaser may be purchasing the Credits for use on future projects, and the Credits purchased herein shall be conveyed by Bill of Sale to Purchaser, its successors or assigns in accordance with Section 3 herein, when and as Purchaser directs from time to time in writing to Seller.

Upon payment of the Purchase Price, Purchaser shall have such rights as permitted by law to re-convey all or a portion of its interest in the Credits to its successors in interest or assignees for use on future projects, and Seller consents to such re-conveyances and agrees to cooperate with and assist Purchaser in the documentation of such re-conveyances, including delivery of notices of such re-conveyances to the DEQ, DCR and any other governing agency with jurisdiction over the transfer of nutrient offsets.

2. Purchase Price. The purchase price for the Credits shall be \$7,900.00 per lb. [of nitrogen and/or phosphorus] for each Credit for a total Purchase Price of \$6,952.00 for the Credits.

3. Payment of Purchase Price. The Purchase Price shall be paid in collected funds on the date of execution of this Agreement by both parties but no later than 45 calendar days from the date of this Agreement unless seller consents in writing to a later date. Upon payment of the

Purchase Price in full, neither Purchaser, nor its successors, nor assigns shall be liable for the payment of any other consideration or fee to Seller in connection with the conveyance or assignment and/or re-conveyance of the Credits.

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

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

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

Seller acknowledges and agrees that Purchaser may request the conveyance of up to the total amount of Credits purchased by Purchaser in one or more transactions to satisfy the requirements of one or more permits issued by the DEQ, DCR and/or any other governing agency all in accordance with the provisions of this Agreement.

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

(a) The matters set forth in Recitals A and B above; provided, however, Seller makes no warranty or representation with respect to the eligibility of the Credits sold hereunder to satisfy the permit requirements of any DEQ, DCR or other permittee.

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

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

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

(e) Seller shall be solely responsible, at its sole cost and expense, for compliance with the requirements of with all federal, state and local statutes, regulations and other requirements applicable to the operation, management and maintenance of the Bank (collectively the Bank Regulatory Requirements").

(f) That the execution and delivery of this Agreement on behalf of Seller has been duly authorized and such execution and delivery shall constitute the valid and binding agreement with Seller and is enforceable in accordance with its terms.

All of Seller's representations, warranties and covenants herein shall survive the sale of Credits under this Agreement and the delivery of the Bill of Sale pursuant to this Agreement for a period of 10 years.

5. Miscellaneous

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

Seller: RLP Investments, LC
c/o Ronald Pemberton
15961 Goodes Bridge Road
P.O. Box 559
Amelia Courthouse, VA 23002

Purchaser: Western Virginia Regional Industrial Facility Authority
P.O. Box 2569
Roanoke, VA 24010

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

(b) Brokerage Commission. Seller warrants to Purchaser that Seller shall pay a 5% brokerage fee to RRG, LC, (“Broker”); and also a 6% water quality enhancement fee to the Virginia Department of Environmental Quality (“DEQ”) in connection with this transaction.

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

(d) Governing Law. The validity, interpretation and enforcement of this Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Virginia, except to the extent that any applicable Federal Law or regulation shall supersede Virginia law in relation to the matter set forth in the Agreement, in which case Federal Law shall apply. Jurisdiction and venue for any litigation brought pursuant to this Agreement shall lie

exclusively in the state courts of Charlotte County, Virginia or the United States District Court for the Eastern District of Virginia to the express exclusion of any other jurisdiction or venue.

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

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

(g) Additional Assurances. Both of the parties agree to execute and deliver any other document or documents that may be requested from time to time by the other party necessary to perform such party's obligations under this Agreement.

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

(i) Assignability. Purchaser may assign its rights and obligations hereunder to any person or entity. Seller shall not assign its obligations hereunder except in connection with a sale or transfer of the real estate on which the Bank is located, without prior written consent of Purchaser, which may not be unreasonably withheld by Purchaser.

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

WITNESS the following authorized signatures:

SELLER: RLP Investments, LC
a Virginia limited liability company

By: _____
Its: Managing Member

PURCHASER: Western Virginia Regional Industrial Facility Authority

By: _____
Its: _____

EXHIBIT A

AFFIDAVIT OF NUTRIENT CREDITS

I, Ronald Pempelton, certify that I am now, and at all times mentioned herein have been, the Manager of RLP Investments, LC, a Virginia limited liability company (the “Company”), which is the owner of the Twittys Creek Nutrient Bank located in Charlotte County, Virginia, and as such I hereby certify the following:

1) Pursuant to that certain Acquisition and Sale Agreement dated July 10, 2019, (“The Agreement”), between Company (as Seller) and Western Virginia Regional Industrial Facility Authority, (“Acquirer”), the Company, for the benefit of the Acquirer, agrees to sell 0.88 pounds of phosphorus offsets and retire 3.74 pounds of nitrogen (representing the ratio of nitrogen offsets to the phosphorus offsets at the offset generating facility) offsets to Acquirer;

2) The Company and the Acquirer, as of the date hereof, have closed the transaction contemplated by the Agreement and the Company has sold to Acquirer phosphorus offsets and retired 3.74 pounds of nitrogen (representing the ratio of nitrogen offsets to the phosphorus offsets at the offset generating facility) offsets.

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

IN WITNESS WHEREOF, I have duly executed this Affidavit as of the ____ day of _____, 2019.

RLP Investments, LC,
a Virginia limited liability company

By: _____
Name: Ronald Pembelton
Title: Manager

COMMONWEALTH OF VIRGINIA,

City/County of _____, to-wit:

Sworn to and subscribed before me this ____ day of _____, 2019, the undersigned Notary Public for and in the jurisdiction aforesaid, by Ronald Pembelton, the Manager of RLP Investments, LC, a Virginia limited liability company.

Notary Public

My commission expires: ____/____/____
Registration No.: _____

Acquirer: Western Virginia Regional Industrial Facility Authority

Name of Project: Wood Haven Technology Park Infrastructure Improvements

HUC Code: 03010101

VSMP Permit #: Pending

Phosphorus offsets: 0.88

Nitrogen offsets: 3.74

EXHIBIT B

BILL OF SALE

THIS BILL OF SALE is made as of the ___ day of _____, 2019, by RLP Investments, LC, a Virginia limited liability company (“Seller”) and Western Virginia Regional Industrial Facility Authority, (“Purchaser”).

Seller and Purchaser have entered into that certain Agreement for Purchase and Sale of Nutrient Offset Credits dated July 10, 2019, (the “Purchase Agreement”), the terms of which are incorporated herein by reference and made a part hereof, with respect to the sale by Seller and the purchase by Purchaser of nutrient offset credits generated by Seller’s Twittys Creek Nutrient Bank located in Charlotte County, Virginia.

In consideration of the payment of the Purchase Price \$6,952.00 and (as defined in the Purchase Agreement) and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, Seller hereby sells, transfers, assigns, conveys, delivers, and sets over to Purchaser, its successors or assigns the following nutrient offset credits (as defined in the Purchase Agreement):

Phosphorus: 0.88 lbs. and

Nitrogen: 3.74 lbs.

Project: Wood Haven Technology Park Infrastructure Improvements

VSMP Permit #: Pending

HUC: 03010101

WITNESS the following authorized signature:

RLP Investments, LC,
a Virginia limited liability company

By: _____
Name: Ronald Pembelton
Title: Manager