

SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

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SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

These Supplementary Conditions amend or supplement EJCDC® C-700, Standard General Conditions of the Construction Contract (2018). The General Conditions remain in full force and effect except as amended.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added—for example, "Paragraph SC-4.05."

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

SC-1.01 Defined Terms

Add the following at the end of paragraph 42:

Substantial Completion will occur once all fill included in the Base Bid or any awarded Alternates have been placed, as confirmed by project Engineer. Final grading on the beach and demobilization may be completed after Substantial Completion, but before Final Payment; provided, however, final grading on the beach and demobilization must be concluded by the prescribed time of completion.

ARTICLE 2—PRELIMINARY MATTERS

2.02 *Copies of Documents*

SC-2.02 Amend the first sentence of Paragraph 2.02.A. to read as follows:

Upon request, Owner shall furnish to Contractor up to three (3) printed copies of the Contract Documents (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF).

2.03 *Before Starting Construction*

SC-2.03.A Replace paragraph A with:

- A. *Preliminary Schedules:* After Notice of Award is given, Contractor will submit a preliminary schedule to the Engineer, detailing the Contractor's plans for completing the project within the times identified in the Bid Form. Engineer and Owner require five business days to examine, comment on, and return the preliminary schedule to the Contractor. Any delays in the project, which are the result of delays in Contractor delivering a preliminary schedule showing completion of the Work within the times prescribed, will be the sole responsibility of the Contractor and will not entitle Contractor to an increase in the Contract Price or Contract Times. Owner reserves the right to withhold Notice to Proceed until such schedule has been delivered and examined.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.05 *Delays in Contractor’s Progress*

SC-4.05 Amend Paragraph 4.05.C by adding the following subparagraphs:

5. *Weather-Related Delays*

- a. If “abnormal weather conditions” as set forth in Paragraph 4.05.C.2 of the General Conditions are the basis for a request for an equitable adjustment in the Contract Times, such request must be documented by data substantiating each of the following: 1) that weather conditions were abnormal for the period of time in which the delay occurred, 2) that such weather conditions could not have been reasonably anticipated, and 3) that such weather conditions had an adverse effect on the Work as scheduled.
- b. To make a request for time extension due to abnormal weather conditions, the Contractor shall provide the wave data comparison between the period of construction and the historical average conditions for the same month(s) at the National Data Buoy Center (NDBC) at Diamond Shoals (NC).

ARTICLE 5—SITE, SUBSURFACE AND PHYSICAL CONDITIONS, HAZARDOUS ENVIRONMENTAL CONDITIONS

5.03 *Subsurface and Physical Conditions*

SC-5.03 Add the following new paragraphs immediately after Paragraph 5.03.D:

- E. The following reports of explorations and tests of subsurface conditions at or contiguous to the Site are known to the Owner:
 1. Report dated July 2021, prepared by CSE, entitled: “Environmental Assessment for Avon Village Beach Nourishment, Dare County, North Carolina” consisting of 250 pages plus 7 appendices.
 2. Report dated July 2021, prepared by CSE, entitled: “Geotechnical Data Analyses for Avon Village Beach Nourishment, Dare County, North Carolina – Appendix A of the Environmental Assessment” consisting of 48 pages plus attachments.
 3. Report dated July 2021, prepared by CSE, entitled: “Littoral Processes for Avon Village Beach Nourishment, Dare County, North Carolina – Appendix D of the Environmental Assessment” consisting of 85 pages plus attachments.
 4. Report dated August 2021, prepared by Tidewater Atlantic Research, entitled: “A Phase I Remote-Sensing Archaeological Survey of A Proposed Borrow Site Off Avon, Dare County, North Carolina – Appendix G of the Environmental Assessment” consisting of 107 pages plus attachments.

5. Report dated July 2021, prepared by CSE, entitled: “Environmental Assessment for Beach Renourishment to Protect NC Highway 12 at Buxton, Dare County, North Carolina” consisting of 222 pages plus 7 appendices.
 6. Report dated July 2021, prepared by CSE, entitled: “Geotechnical Data Analyses for Beach Renourishment to Protect NC Highway 12 at Buxton, Dare County, North Carolina – Appendix A of the Environmental Assessment” consisting of 54 pages plus attachments.
 7. Report dated July 2021, prepared by CSE, entitled: “Littoral Processes for Beach Renourishment to Protect NC Highway 12 at Buxton, Dare County, North Carolina – Appendix D of the Environmental Assessment” consisting of 97 pages plus attachments.
 8. Report dated August 2021, prepared by Tidewater Atlantic Research, entitled: “A Phase I Remote-Sensing Archaeological Survey of A Proposed Borrow Site Off Buxton, Dare County, North Carolina – Appendix G of the Environmental Assessment” consisting of 107 pages plus attachments.
 9. Report dated 8 November 2025, prepared by Tidewater Atlantic Research, entitled: “Phase I Remote-Sensing Archaeological Surveys of Four Proposed Borrow Sites in Proximity of Avon and Buxton, Dare County, North Carolina – Volume 1: Technical Report” consisting of 23 pages plus attachments.
 10. Report dated 8 November 2025, prepared by Tidewater Atlantic Research, entitled: “Phase I Remote-Sensing Archaeological Surveys of Four Proposed Borrow Sites in Proximity of Avon and Buxton, Dare County, North Carolina – Volume 2: Historical Context” consisting of 23 pages plus attachments.
- F. Contractor may request copies of reports and drawings identified in SC-5.03.E from Engineer.

5.04 *Differing Subsurface or Physical Conditions*

SC-5.04 Add the following new paragraphs immediately after Paragraph 5.04.A.4:

5. Contractor acknowledges that variability exists in the sediment characteristics in offshore borrow areas and that areas of material unsuitable for beach placement may be present between boring samples provided in the geotechnical data. Minor differences in sediment criteria, shell content, mud content within the borrow from the obtained borings do not constitute a material difference in subsurface or physical conditions, though may require adjustment of the dredge location or depth.

5.06 *Hazardous Environmental Conditions*

SC-5.06 Add the following new paragraphs immediately after Paragraph 5.06.A.3:

4. The following table lists the reports known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data (if any) upon which Contractor may rely:

Report Title	Date of Report	Technical Data
None		

5. A Formerly Used Defense Site (FUDS) is present adjacent to a portion of the Buxton Village project area. Information regarding the site is available at darenc.gov/government/beach-hazards.

ARTICLE 6—BONDS AND INSURANCE

6.03 Contractor's Insurance

SC-6.03 Supplement Paragraph 6.03 with the following provisions after Paragraph 6.03.C:

- D. *Other Additional Insureds:* As a supplement to the provisions of Paragraph 6.03.C of the General Conditions, the commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies must include as additional insureds (in addition to Owner and Engineer) the following: **N/A**
- E. *Workers' Compensation and Employer's Liability:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance, including, as applicable, United States Longshoreman and Harbor Workers' Compensation Act, Jones Act, stop-gap employer's liability coverage for monopolistic states, and foreign voluntary workers' compensation (from available sources, notwithstanding the jurisdictional requirement of Paragraph 6.02.B of the General Conditions).

Workers' Compensation and Related Policies	Policy limits of not less than:
Workers' Compensation	
State	Statutory
Applicable Federal (e.g., Longshoreman's)	Statutory
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	Statutory
Jones Act (if applicable)	
Bodily injury by accident—each accident	\$1,000,000
Bodily injury by disease—aggregate	\$1,000,000
Employer's Liability	
Each accident	\$1,000,000
Each employee	\$1,000,000
Policy limit	\$1,000,000

Workers' Compensation and Related Policies	Policy limits of not less than:
Stop-gap Liability Coverage	
For work performed in monopolistic states, stop-gap liability coverage must be endorsed to either the worker's compensation or commercial general liability policy with a minimum limit of:	\$N/A

- F. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against claims for:
1. damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees,
 2. damages insured by reasonably available personal injury liability coverage, and
 3. damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- G. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage.
 - a. Such insurance must be maintained for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
 2. Blanket contractual liability coverage, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
 3. Severability of interests and no insured-versus-insured or cross-liability exclusions.
 4. Underground, explosion, and collapse coverage.
 5. Personal injury coverage.
 6. Additional insured endorsements that 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.
 7. For design professional additional insureds, ISO Endorsement CG 20 32 07 04 "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- H. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:

1. Any modification of the standard definition of “insured contract” (except to delete the railroad protective liability exclusion if Contractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).
2. Any exclusion for water intrusion or water damage.
3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.
4. Any exclusion of coverage relating to earth subsidence or movement.
5. Any exclusion for the insured’s vicarious liability, strict liability, or statutory liability (other than worker’s compensation).
6. Any limitation or exclusion based on the nature of Contractor’s work.
7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.

I. *Commercial General Liability—Minimum Policy Limits*

Commercial General Liability	Policy limits of not less than:
General Aggregate	\$5,000,000
Products—Completed Operations Aggregate	\$5,000,000
Personal and Advertising Injury	\$2,000,000
Bodily Injury and Property Damage—Each Occurrence	\$2,000,000

- J. *Automobile Liability:* Contractor shall purchase and maintain automobile liability insurance 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 must be written on an occurrence basis.

Automobile Liability	Policy limits of not less than:
Bodily Injury	
Each Person	\$1,000,000
Each Accident	\$2,000,000
Property Damage	
Each Accident	\$500,000
[or]	
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	\$

- K. *Umbrella or Excess Liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer’s liability, commercial general liability, and automobile liability insurance described in the Paragraphs above. The coverage afforded must be at least as broad as that of each and every one of the underlying policies.

Excess or Umbrella Liability	Policy limits of not less than:
Each Occurrence	\$2,000,000
General Aggregate	\$5,000,000

- L. *Using Umbrella or Excess Liability Insurance to Meet CGL and Other Policy Limit Requirements:* Contractor may meet the policy limits specified for employer’s liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policy’s policy limits and partial attribution of the policy limits of an umbrella or excess liability policy that is at least as broad in coverage as that of the underlying policy, as specified herein. If such umbrella or excess liability policy was required under this Contract, at a specified minimum policy limit, such umbrella or excess policy must retain a minimum limit of \$2,000,000 after accounting for partial attribution of its limits to underlying policies, as allowed above.
- M. *Contractor’s Pollution Liability Insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage, including cleanup costs, as a result of pollution conditions arising from Contractor’s operations and completed operations. This insurance must be maintained for no less than three years after final completion.

Contractor’s Pollution Liability	Policy limits of not less than:
Each Occurrence/Claim	\$10,000,000
General Aggregate	\$10,000,000

- N. *Contractor’s Professional Liability Insurance:* If Contractor will provide or furnish professional services under this *Contract*, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance must cover negligent acts, errors, or omissions in the performance of professional design or related services by the insured or others for whom the insured is legally liable. The insurance must be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. The retroactive date on the policy must pre-date the commencement of furnishing services on the Project.

Contractor’s Professional Liability	Policy limits of not less than:
Each Claim	\$N/A
Annual Aggregate	\$N/A

- O. *Railroad Protective Liability Insurance:* Prior to commencing any Work within 50 feet of railroad-owned and controlled property, Contractor shall (1) endorse its commercial general liability policy with ISO CG 24 17, removing the contractual liability exclusion for work within 50 feet of a railroad, (2) purchase and maintain railroad protective liability insurance meeting the following requirements, (3) furnish a copy of the endorsement to Owner, and (4) submit a copy of the railroad protective policy and other railroad-required documentation to the railroad, and notify Owner of such submittal.

[Insert additional specific requirements, commonly set by the railroad, here.]

Railroad Protective Liability Insurance	Policy limits of not less than:
Each Claim	\$N/A
Aggregate	\$N/A

- P. *Unmanned Aerial Vehicle Liability Insurance:* If Contractor uses unmanned aerial vehicles (UAV—commonly referred to as drones) at the Site or in support of any aspect of the Work, Contractor shall obtain UAV liability insurance in the amounts stated; name Owner, Engineer, and all individuals and entities identified in the Supplementary Conditions as additional insureds; and provide a certificate to Owner confirming Contractor’s compliance with this requirement. Such insurance will provide coverage for property damage, bodily injury or death, and invasion of privacy.

Unmanned Aerial Vehicle Liability Insurance	Policy limits of not less than:
Each Claim	\$10,000
General Aggregate	\$10,000

- Q. *Other Required Insurance:*

6.04 *Builder’s Risk and Other Property Insurance*

SC-6.04 Delete Paragraph 6.04.A and insert the following in its place:

- A. Builder’s Risk Insurance is not required.

ARTICLE 7—CONTRACTOR’S RESPONSIBILITIES

7.03 *Labor; Working Hours*

SC-7.03 Delete Paragraph 7.03.C in its entirety, and insert the following:

- C. In the absence of any Laws or Regulations to the contrary, Contractor may perform the Work on holidays, during any or all hours of the day, and on any or all days of the week, at Contractor's sole discretion.
- D. Owner will not be responsible for Contractor’s overtime, holiday pay, or weekend pay. Contractor agrees to hold Owner harmless from any and all violations of state or federal labor laws caused directly or indirectly by Contractor’s actions in performance of this Contract and further agrees to indemnify Owner for any fines, penalties, fees or other monies assessed against Owner for such violations.

7.09 *Permits*

SC-7.09 Add the following new paragraphs immediately after paragraph 7.09A.

- A. Owner is responsible to obtain the North Carolina CAMA Permit, and will secure the National Park Service (NPS) Special Use Permit and the U.S. Army Corps of Engineers Permit for the project before the issuance of Notice to Proceed. Contractor is required to abide by the

permit conditions. The Special Conditions listed in those three permits are appended to these Supplementary Conditions.

- B. Special Conditions resulting from the state and federal permits are summarized in the Project Manual's Section 01060 Regulatory Requirements.

7.11 *Laws and Regulations*

SC-7.11 Add the following new paragraphs immediately after Paragraph 7.11C

- D. Owner is a municipal corporation subject to North Carolina statutory and Constitutional restraints which prevent it from expending amounts in excess of that budgeted and financed by general obligation bonds approved for this Project by voter referendum or other means. For this reason, notwithstanding any other provisions in the Contract Documents, it is the express intent of the parties hereto to comply with all relevant North Carolina Constitutional restrictions and general statutes. No provision of this Contract shall be construed or interpreted as creating a pledge of the faith and credit of the Owner within the meaning of any constitutional debt limitation except for any funding which may have been budgeted for this Contract from general obligation bond revenues specifically related to the Project. No provision of this Contract shall be construed or interpreted as creating a delegation of Governmental powers nor as a donation by or a lending of credit of the Owner within the meaning of the Constitution of the State of North Carolina.

This Contract shall not directly or indirectly or contingently obligate the Owner to make any payments beyond those budgeted for this Contract from revenues to be from general obligation bonds specifically issued for the Project or as may be appropriated from other revenues in the sole discretion of the Owner for any fiscal year in which this Contract shall be in effect. Beyond the amount approved by the Owner's relevant bond referendum or other means, the taxing power of the Owner is not and may not be pledged directly or indirectly or contingently to secure any monies due under this Contract. No provisions of this Contract shall be construed to pledge or create a lien on any class or source of the Owner's monies nor shall any provision of this Contract restrict the future issuance of any of the Owner's bonds or obligations payable from any class or source of the Owner's monies. To the extent of any conflict between this Section and any other provision of the Contract, this Section shall take priority.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.09 *Limitations on Owner's Responsibilities*

SC-9.09 Add the following new paragraphs immediately after Paragraph 9.09.A:

- B. No officer or agent of the Owner or Engineer, while acting within the scope of his/her authority, shall be subject to any personal liability or accountability by reason of his/her execution of this Contract or any other documents related to the transactions contemplated hereby. Such officers or agents shall be deemed to execute such documents in their official capacities only, and not in their individual capacities.

- C. The Owner's Site Representative or his designee shall reserve the right to periodically audit the Contractor's job site(s) to ensure compliance with applicable safety regulations, rules, and standards. The Owner's Site Representative shall have the right to stop the work, if a hazardous situation is observed that, in the opinion of the Representative, is immediately dangerous to life or health. The job shall remain closed until such time as the unsafe condition is corrected to the satisfaction of the Representative. In all cases, the Representative shall make every effort to contact the Contractor's designated safety representative. The Representative does not have to allow a condition to persist in order to satisfy any requirement to contact the Contractor's designated safety representative. No additional compensation shall be added to the Contract Price, and the Owner shall not be liable for any expenses or damages incurred by the Contractor as a result of stopping work to correct a condition that is reasonably believed by the Owner's Site Representative to be immediately dangerous to life or health. No additional time shall be added to the Contract Time as a result of stopping work by the Owner's Site Representative to correct a condition that is reasonably believed by the Owner's Site Representative to be immediately dangerous to life or health.

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.03 Resident Project Representative

SC-10.03 Add the following new paragraphs immediately after Paragraph 10.03.B:

- C. The Resident Project Representative (RPR) will be Engineer's representative at the Site. RPR's dealings in matters pertaining to the Work in general will be with Engineer and Contractor. RPR's dealings with Subcontractors will only be through or with the full knowledge or approval of Contractor. The RPR will:
1. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
 2. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
 3. *Liaison*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for Contractor's proper execution of the Work.
 4. *Review of Work; Defective Work*

- a. Conduct on-Site observations of the Work to assist Engineer in determining, to the extent set forth in Paragraph 10.02, if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Observe whether any Work in place appears to be defective.
 - c. Observe whether any Work in place should be uncovered for observation, or requires special testing, inspection or approval.
5. *Inspections and Tests*
- a. Observe Contractor-arranged inspections required by Laws and Regulations, including but not limited to those performed by public or other agencies having jurisdiction over the Work.
 - b. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work.
6. *Payment Requests: Review Applications for Payment with Contractor.*
7. *Completion*
- a. Participate in Engineer's visits regarding Substantial Completion.
 - b. Assist in the preparation of a punch list of items to be completed or corrected.
 - c. Participate in Engineer's visit to the Site in the company of Owner and Contractor regarding completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
 - d. Observe whether items on the final punch list have been completed or corrected.
- D. The RPR will not:
- 1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
 - 2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
 - 3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.
 - 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction.
 - 5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
 - 6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
 - 7. Authorize Owner to occupy the Project in whole or in part.

ARTICLE 11—CHANGES TO THE CONTRACT

No suggested Supplementary Conditions in this Article.

ARTICLE 12—CLAIMS

12.01 *Claims Between Contractors*

Add the following immediately after paragraph General Conditions 12.01:

- A. Should Contractor cause damage to the work or property of any separate contractor at the Site, or should any claim arising out of Contractor's performance of the Work at the Site be made by any separate contractor against Contractor, Owner, Engineer, Engineer's Consultants, or the construction coordinator, then Contractor (without involving Owner, Engineer, or construction coordinator) shall either (1) remedy the damage, (2) agree to compensate the other contractor for remedy of the damage, or (3) remedy the damage and attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by arbitration or at law.
- B. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, Engineer, Engineer's Consultants, the construction coordinator and the officers, directors, partners, employees, agents and other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including, but not limited to, fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any separate contractor against Owner, Engineer, Engineer's Consultants, or the construction coordinator to the extent said claim is based on or arises out of Contractor's performance of the Work or the performance of the Work by any person or entity for whom Contractor is responsible. Should a separate contractor cause damage to the Work or property of Contractor or should the performance of work by any separate contractor at the Site give rise to any other Claim, Contractor shall not institute any action, legal or equitable, against Owner, Engineer, Engineer's Consultants, or the construction coordinator or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from Owner, Engineer, Engineer's Consultants or the construction coordinator on account of any such damage or Claim.
- C. If Contractor is delayed at any time in performing or furnishing Work by any act or neglect of a separate contractor, and Owner and Contractor are unable to agree as to the extent of any adjustment in Contract Times attributable thereto, Contractor may make a Claim for an extension of times in accordance with Article 11. An extension of the Contract Times shall be Contractor's exclusive remedy with respect to Owner, Engineer, and construction coordinator for any delay, disruption, interference, or hindrance caused by any other contractor. This paragraph does not prevent recovery from Owner, Engineer, or construction coordinator for activities that are their respective responsibilities.

ARTICLE 13—COST OF WORK; ALLOWANCES, UNIT PRICE WORK

13.01 *Cost of the Work*

13.03 *Unit Price Work*

SC-13.03 Delete Paragraph 13.03.E in its entirety and insert the following in its place:

E. *Unit Price Work Quantity*

1. Unit price work will be approved on a not-to-exceed basis to a quantity provided in the Agreement. Contractor will be not be paid for excess fill volume placed beyond this quantity.

ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

No suggested Supplementary Conditions in this Article.

ARTICLE 15—PAYMENTS TO CONTRACTOR, SET OFFS; COMPLETIONS; CORRECTION PERIOD

15.01 *Progress Payments*

SC-15.01.B.1 Delete Paragraph 15.01.B.1 in its entirety and insert the following in its place:

1. Notwithstanding any provision of this paragraph 15.01 to the contrary, each Application for Payment is due to the Engineer by the 25th day of each month that it is claimed. A total of 35 days is required for review by Engineer, and Owner, for payment to be made by the 1st of the applicable month

SC-15.01.B.5 Add the following directly after Paragraph 15.01.B.4

5. Documentation that must accompany Applications for Payments is detailed in Section 02230 of the Technical Specifications.

ARTICLE 17—FINAL RESOLUTIONS OF DISPUTES

17.02 *Arbitration*

SC-17.02 Add the following new paragraph immediately after Paragraph 17.01.

17.02 *Mediation*

A. Dispute Resolution

Owner and Contractor agree that they shall first make a good faith effort to resolve any issues which may arise between the parties during regarding this Contract and the business relationship created thereby and to submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to this Contract or the breach thereof ("disputes"), to mediation prior to either of them seeking recourse by legal process.

The above notwithstanding, nothing shall limit the right of any party to this Contract: (1) to seek judicial equitable relief, or other equitable relief available to it under applicable statutory and/or case law including, but not limited to, injunctive relief and the appointment of a receiver; or (2) to exercise any self-help rights or any other rights or remedies available to it by contract or applicable statutory or case law (including but not limited to the filing of an involuntary petition in bankruptcy, the right of set off, attachment, recoupment, foreclosure, or repossession) with respect to its extension of credit, the protection and preservation of collateral, the liquidation and realization of collateral, the protection, continuation and

preservation of lien rights and priorities, the collection of indebtedness, and the processing and payment or return of checks, whether such occurs before, during or after the pendency of any negotiation or mediation proceeding.

The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary rights or remedies or exercise of self-help remedies, all as provided herein, and the pursuit of any such rights or remedies, shall not constitute a waiver of the right or obligation of any Party, including the plaintiff seeking judicial relief or remedies, to submit a dispute to negotiation and mediation, including disputes that may arise from the exercise of such rights. The costs of the mediation, including the fees and expenses of the mediator, shall be borne by the parties to the mediation in equal shares, each party to this Contract bearing the expense of its own counsel, experts, witnesses, and preparation and presentations at the mediation. The mediation process is non-binding and shall conform with the following rules and procedures:

1. Request for Mediation

When a dispute between the parties is not resolved by informal negotiations, any party shall serve upon the other(s) a request for mediation which shall contain a brief statement of the nature of the dispute and the names, addresses, and telephone numbers of all parties to the dispute and those who will represent them, if any, in the mediation. Upon service of the request for mediation, the parties shall have ten (10) days to select a mediator.

2. The Mediator

The parties shall select a certified mediator as licensed with the State of North Carolina. The mediator must remain neutral and impartial in all aspects of the mediation. The mediator will control the procedural aspects of the mediation. The parties agree to cooperate fully with the mediator throughout the proceeding. During the mediation, the mediator is free to meet and communicate separately with each party or groupings of parties. The mediator will not transmit information which has been disclosed to him or her in confidence by any party to another party without the former party's express authorization. The mediator may freely express his or her views to the parties on the legal issues of the dispute, however, each party, shall rely exclusively on its own counsel for legal representation and advice. The mediator shall be compensated by payment of a one-time administrative fee and an hourly rate which represents the mediator's standard rates for such services and as agreed upon by the parties with the mediator. Each party shall bear an equal share of the mediator's compensation.

3. Pre-Mediation Submissions

Prior to the date that mediation is scheduled to begin, each party shall cooperate with each other in exchanging all documents that are relevant to the dispute and in permitting reasonable review of each other's contract files. Not later than ten (10) days prior to mediation, each party will send to the mediator with copies to each other, the following documents: a) all documents that are relevant to the dispute (parties will cooperate in selecting documents to avoid duplication between the submissions of each party); b) a list of the issues to be determined (the parties will make every effort to submit a joint list of issues in the order that is most logical for presentation); c) a list of witnesses and participants in the mediation proceeding. Within the same time frame, any party may submit to the mediator a written brief of not more than 15 typewritten pages (Times New Roman, 12 pitch), outlining the nature of and basis for its claims and its principal defenses to the claims of others. Each brief will include an analysis by each

party of the cause or causes of the damages or other harm based on evidence presently available to it, including the opinions of its own personnel and any independent experts. Each party must send copies of its brief to all other participants in the mediation simultaneously with its submission to the mediator. The mediator may request any party to provide clarification and additional information prior to and during the mediation and may request any party's attorney to brief legal issues.

4. Mediation Conference

Once the mediator has familiarized himself or herself with the case, the mediator will mediate settlement discussions between and among the representatives of the parties. In addition to party counsel (if any), each party must be represented at the mediation by a person authorized to conclude a settlement of the dispute on behalf of that party, or in the case of a governmental entity, by a person who has authority to negotiate for and make recommendations to the governing board subject to such board's approval. Each representative must participate in the mediation process in good faith toward the settlement of all issues. Each party will notify the mediator of its designated representatives prior to the mediation. The mediation will be conducted at any location selected by the mediator which will facilitate the joint and individual meetings involved in the mediation and otherwise accommodate the needs of the representatives of the parties and the mediator. The mediation process will be conducted expeditiously and privately. Each representative (and counsel, if any) will be available for meetings throughout the entire time period set aside for the mediation. Other persons may attend only with the permission of the parties and with the consent of the mediator. The mediator will decide when to meet or confer separately with each party or parties and when to hold joint meetings.

There shall be no stenographic record of the mediation process. The mediator will fix the time and place of each session and the agenda in consultation with the parties. The mediator may assist the parties in arriving at a settlement in such ways as he or she deems advisable and proper under the circumstances. Efforts to reach a settlement will continue until a settlement is reached or when the mediator concludes and informs the parties that further effort would not be useful. Continuation will be on terms and conditions to which the parties agree.

The mediation proceeding will begin with each party making an opening statement of no longer than fifteen minutes. The first statement will be made by the proponent of the major elements of the dispute. Following opening statements, each issue will be discussed using a round table discussion technique. Each party will make its relevant key employees and consultants available to participate in this discussion. In the discussion, the proponent of the issue will make a brief presentation of its position on the issue. The other party will then make a brief presentation of its defense. The neutral advisor will then moderate a discussion--calling on participants from each side as they request to address the issues in question. There will be no side discussions and no participant will speak until called on by the neutral advisor. The goal of this discussion is to fully develop all information relevant to the determination of the facts of the dispute and the precise position of each party. All participants will refrain from statements that are unduly argumentative or contentious.

The proceedings will not be recorded and witnesses will not be sworn. However, all participants will be expected to be forthright in their statements and to be fully open and honest in their dealings with each other. Attorneys may participate in the discussion and may call on other personnel when necessary to ensure that they contribute their knowledge to the discussion. Attorneys will not cross-examine witnesses of the other party.

Following the round table discussions, each party may summarize its position in a statement no longer than one-half hour. The parties may, by mutual agreement, waive these statements.

Following the summarizations, if any, the parties and mediator will meet to negotiate a settlement that is fair to both parties. The parties may conduct these discussions with or without the mediator. The mediator may present his views on any issues or propose resolution of one or more of the issues in dispute. Either party or the mediator may request a private, confidential meeting with the mediator to discuss possible settlement positions, and the mediator will not reveal any confidential information to the other party, unless authorized to do so. Either party may adjourn the meeting at any time to caucus with his team, but all parties will endeavor to keep the negotiations active until a settlement has been reached.

The entire mediation process is confidential. No record of the proceedings, electronic or otherwise, will be made. The parties and the mediator will not disclose information regarding the process, including settlement terms, to third parties, unless otherwise agreed. The process will be treated as a compromise and settlement negotiation purposes of federal and state Rules of Evidence, and in no case may any conversation or communication originating during the mediation process, whether written or oral, be used as evidence in a court of law. The mediator is disqualified as a witness, consultant, or expert in any pending or future action relating to the subject matter of the mediation, including those between persons not parties to the mediation.

5. Settlement

If a settlement is reached, the mediator, or counsel for one of the parties at the mediator's request, will draft a written settlement document incorporating all settlement terms. This draft will be circulated among the parties, edited as necessary, and, if acceptable, formally executed. A consent judgment or one or more voluntary dismissals shall be filed with the Court in which any proceedings have been brought before or during mediation as stipulated in the settlement agreement reached by the parties.