

**DELAWARE RIVER JOINT TOLL BRIDGE COMMISSION  
EXECUTIVE OFFICES  
2492 RIVER ROAD  
NEW HOPE, PENNSYLVANIA 18938-9519**

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**CONTRACT NO. T-668A, CAPITAL PROJECT 0301A  
THE SCUDDER FALLS BRIDGE REPLACEMENT PROJECT**

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**ADDENDUM NO. 6**

This **Addendum No. 6** gives additional information in connection with **Contract No. T-668A, Capital Project 0301A** and is hereby made a part of the Contract. This Addendum is to be signed by the Contractor and this **Page AD6-1** is to be attached to the bid proposal.

This Addendum including pages **AD6-1** through **AD6-18** is hereby accepted and agreed that it shall become part of the **Contract No. T-668A, Capital Project 0301A** Documents.

\_\_\_\_\_  
(DATE)

\_\_\_\_\_  
(CONTRACTOR'S NAME)

(SEAL)

BY: \_\_\_\_\_

ATTEST: \_\_\_\_\_

## **ADDENDUM NO. 6**

### **I. CHANGES TO THE NOTICE TO CONTRACTORS**

1. In the NOTICE TO CONTRACTORS, on page 7, delete the paragraph beginning “The Commission is contemplating the use of an Owner Controlled Insurance Policy” in its entirety.

### **II. CHANGES TO THE GENERAL PROVISIONS**

1. On Pages GP-26 to GP-34: SECTION 113-INSURANCE AND INDEMNIFICATION REQUIREMENTS, and any amendments thereto, are replaced in their entirety as follows:

#### **SECTION 113- INSURANCE AND INDEMNIFICATION REQUIREMENTS**

**THE COMMISSION HAS DETERMINED THAT IT WILL USE AN OWNER CONTROLLED INSURANCE PROGRAM (OCIP) FOR THIS CONTRACT.**

#### **Insurance Coverages to be Provided by The Commission and Contractor**

1. **Owner Controlled Insurance Program.** The Commission is in the process of arranging for the Project to be insured under its Owner Controlled Insurance Program (“OCIP”). Parties performing labor or services at the Project site are eligible to enroll in the OCIP, unless they are an Excluded Party (as defined below). The OCIP will provide certain insurance coverages to Contractors, including Worker’s Compensation, Employer’s Liability, Commercial General Liability insurance and Excess Liability insurance in connection with the performance of the Work (the “OCIP Policies”). Participation in the OCIP is mandatory for eligible contractors and subcontractors directed by The Commission to enroll in the OCIP. Eligible contractors and subcontractors must follow the enrollment procedures set forth in this Exhibit and other procedures that will be set forth in an OCIP Insurance Manual, which will be provided after the OCIP Administrator is selected.

The amounts and terms of coverage provided through the OCIP are determined by the OCIP Policies. In the event any provision of this Exhibit, the OCIP Insurance Manual, or any other Contract Document conflicts with the OCIP Policies, the provisions of the OCIP Policies shall govern.

2. **Enrolled Parties and Their Insurance Obligations.** The following are Enrolled Parties: The Commission, General Contractor and all eligible Subcontractors of all tiers that enroll in the OCIP and receive confirmation of enrollment from the OCIP Administrator, and such other persons or entities as The Commission may designate,

in its sole discretion. A party performing labor or providing services at the Project site is eligible to enroll in the OCIP, unless such party is an Excluded Party.

In addition to the OCIP Policies, Enrolled Parties shall obtain and maintain, and shall require each of their Subcontractors of all tiers to obtain and maintain, the insurance coverage specified in Section 9, below.

**3. Excluded Parties and Their Insurance Obligations.** The following are Excluded Parties:

- a. Hazardous materials remediation, removal and/or transport companies and their consultants, including but not limited to asbestos abatement and lead abatement contractors;
- b. Architects, surveyors, engineers, and soil testing engineers, and their consultants that do not perform any actual labor at the Project;
- c. Vendors, suppliers, fabricators, material dealers, truckers, haulers, drivers and others that merely transport, pick up, deliver, or carry materials, personnel, parts or equipment, or any other items or persons to or from the Project that do not perform any actual labor at the Project;
- d. Subcontractors of all tiers that do not perform any actual labor on the Project;
- e. Subcontractors performing site security, any labor staffing firms or subcontractors performing demolition that utilizes explosives; and
- f. Any parties or entities not specifically identified in this Exhibit, or such parties or entities excluded by The Commission, in its sole discretion, even if they are otherwise eligible.

Excluded Parties and parties no longer enrolled in or covered by the OCIP shall obtain and maintain, and shall require each of their Subcontractors of all tiers to obtain and maintain, the insurance coverage specified in Section 9, below.

**4. OCIP Policies.**

**4.1 OCIP Policies Establish Coverage.**

The OCIP Policies summarized in this Exhibit and other Contract Documents are set forth in full in their respective insurance policy forms. The summary descriptions of the OCIP Policies in this Exhibit and/or other Contract Document(s) are not intended to be exhaustive, or to alter or amend any provision of the actual OCIP Policies. Any reference in this Exhibit or elsewhere in any Contract Document as to the potential applicability of the OCIP to any potential claim or loss is for reference only, and General Contractor hereby represents and warrants that it has not relied upon any such reference or any other oral or written statement by or on behalf of The Commission, the OCIP Administrator, or their agents, employees or representatives as to the potential applicability of the OCIP. A copy of the OCIP Policies will be made available, upon written request, for review at the office of the Sponsor.

In the event that any provision of this Exhibit, any OCIP Insurance Manual, and/or other Contract Document(s) conflict with the actual terms of the OCIP Policies, the provisions of the actual OCIP insurance policies shall govern. To the extent there are any other conflicts between or among the provisions of the OCIP Policies, this Exhibit, or any OCIP Insurance Manual, and the Contract Documents, then, in descending order, the OCIP Policies shall govern, followed by this Exhibit, the OCIP Insurance Manual, and then the other Contract Documents.

#### **4.2 Applicability of the OCIP Policies.**

The OCIP Policies shall apply only to those operations of each Enrolled Party performed at the Project Site, as defined in the OCIP Policies, in connection with the Work, and only to Enrolled Parties. The OCIP Policies provides the precise definition of the Project Site. An Enrolled Party's operations away from the Project Site, as defined in the OCIP Policies, including product manufacturing, assembly, or otherwise, are not generally covered by the OCIP Policies unless the policies have been specifically amended or written to provide coverage for such "off-Site" operations. The OCIP shall not apply to the operations of General Contractor or Subcontractors at their offices, factories, warehouses, or other such locations away from the Project Site.

#### **4.3 Summary of OCIP Policies.**

(a) **Workers' Compensation** (including but not limited to coverage or endorsements for Occupational Disease Benefits, Voluntary Compensation and Disability benefits, Jones Act and U.S. Longshoremen's and Harbor Worker's Act, if applicable) – Statutory Limits for the state(s) in which the Work will take place.

(b) **Employer's Liability** - for designated premises only. This insurance shall have limits of at least \$1,000,000 for each bodily injury by accident, each bodily injury by disease, and annual aggregate.

(c) **Commercial General Liability**

Bodily Injury/Property Damage Each Occurrence Limit	\$2,000,000
Personal Advertising Injury Each Occurrence	\$2,000,000
General Aggregate Limit	\$4,000,000
Products/Completed Operations Aggregate	\$4,000,000

(d) This insurance is primary for all occurrences at the Project site. The policy limits are shared by all Enrolled Parties and are dedicated to the Project. The Policy includes a products-completed operations extension for twelve (12) years following substantial completion of the Project or until the Statute of Repose, whichever is longer.

(e) **Umbrella or Excess Liability Insurance**

Combined Single Limit	
\$100,000,000	
General Annual Aggregate	
\$100,000,000	
Products/Completed Operations Aggregate	
\$100,000,000	

(f) The policy limits are shared by all Enrolled Parties and are dedicated to the Project. The Policy includes a products-completed operations extension for twelve (12) years following substantial completion of the Project or until the Statute of Repose, whichever is longer.

5. **The Commission's Insurance Obligations.** The Commission shall pay the costs of premiums for the OCIP Policies. The Commission will receive or pay, as the case may be, all adjustments to such costs, whether by way of dividends, retroactive adjustments, return premiums, other moneys due, audits or otherwise. **The Commission promises Enrolled Parties no insurance other than what is actually provided per the terms of the OCIP Policies. Enrolled Parties shall review the OCIP Policies themselves and not rely on any representation by The Commission or OCIP Administrator as to such insurance.** The Commission's furnishing of OCIP Policies shall in no way relieve or limit, or be construed to relieve or limit, General Contractor or any of its Subcontractors of any tier of any responsibility, liability, or obligation imposed by the Contract Documents, the OCIP Policies, or by law, including, without limitation, any indemnification obligations which General Contractor or any of its Subcontractors has to The Commission thereunder. The Commission reserves the right at its option, without obligation to do so, to furnish other insurance coverage of various types and limits.

6. **General Contractor and OCIP Obligations.** General Contractor shall:

- a. Fully comply with all of the enrollment, administrative, safety, insurance and all other requirements outlined in this Exhibit, the OCIP Insurance Manual, and the OCIP Policies, and/or elsewhere in the Contract Documents.
- b. Ensure that each non-Excluded subcontractor of all tiers enrolls and maintains enrollment in the OCIP and complies with all of the administrative, safety, insurance and all other requirements outlined in this Exhibit, the OCIP Insurance Manual, and the OCIP Policies, and/or elsewhere in the Contract Documents.

- a. Incorporate the terms of this Exhibit into all subcontract agreements and ensure that all their Subcontractors, in turn, incorporate the terms of this Exhibit in any of their lower tier subcontracts.
- b. Provide to each of its Subcontractors of all tiers a copy of the OCIP Insurance Manual and ensure each such Subcontractors' compliance with the provisions of the OCIP Policies, the OCIP Insurance Manual, this Exhibit and the Contract Documents. The failure of General Contractor to provide each of its eligible Subcontractors with a copy of the same shall not relieve General Contractor or any such Subcontractors, of any of the obligations contained therein.
- c. Acknowledge, and require all of its Subcontractors to acknowledge, in writing, that The Commission and the OCIP Administrator are not agents, partners, or guarantors of the insurance companies providing the OCIP Policies (each such insurer is an "OCIP Insurer"), that neither The Commission nor the OCIP Administrator is responsible for any claims or disputes between or among General Contractor, its Subcontractors, and any OCIP Insurer(s), and that neither The Commission nor the OCIP Administrator guarantees the solvency, or the availability of limits, of any OCIP Insurer(s). Any type of insurance coverage or limits of liability in addition to the OCIP Coverages that General Contractor or its Subcontractors of any tier require for its or their own protection, or that is required by applicable laws or regulations, shall be General Contractor or its Subcontractors' sole responsibility and expense, and shall not be billed to The Commission.
- f. Comply, and require all of its Subcontractors to comply, with OCIP Administrator's instructions for enrollment in, and administration of, the OCIP, and timely provide The Commission or OCIP Administrator all documents or information requested in connection with enrollment or administration of the OCIP, and as required by the OCIP Insurance Manual and/or the OCIP Policies.
- g. Comply, and require all of its Subcontractors to comply, with The Commission's mandatory return to work program.

**7. Bids Net of OCIP Insurance Costs.** General Contractor and each subcontractor shall bid the Project 'net' of insurance costs due to eligibility for the OCIP. General Contractor shall exclude the Cost of OCIP Policies from its bid, and ensure that each Subcontractor of every tier excludes the Cost of OCIP Policies from their respective bids. The "Costs of OCIP Coverages" is defined as the amount of General Contractor and it's Subcontractors' reduction in insurance costs due to eligibility for OCIP Coverages. The Costs of OCIP Coverages includes reduction in insurance premiums, related taxes and assessments, markup on the insurance premiums and losses retained through the use of the self-funded program, self-insured retention, or deductible program. The Cost of OCIP Coverages must include expected losses within any retained risk. General Contractor must deduct the Cost of OCIP Coverages for all Subcontractors in addition to their own Cost of OCIP Coverages. Change orders must also be priced to exclude the Cost of OCIP Coverages.

**8. OCIP Policies Deductibles and Self-Insured Retentions.**

**8.1     The Commission Responsibility for Payment of Deductible and Self-Insured Retentions.**

The Commission shall be responsible for payment of the deductibles and self-insured retentions set forth in the OCIP Policies, both during the period of construction and during the completed operations coverage period. Enrolled Subcontractors of every tier shall be responsible for a “CGL Deductible Contribution,” as defined and as set forth in Section 8.2 below.

**8.2     CGL Deductible Contribution.**

In the event of an “occurrence” of “bodily injury” or “property damage” or a “personal injury” or “advertising injury offense,” as those terms are defined in the OCIP CGL Policy, which arises out of or is in any way connected with the Work, whether during construction or after completion of the Work or both, The Commission may, in its sole discretion, seek contribution(s) towards the CGL Policy Deductible (the “CGL Deductible Contribution”) from any “involved Enrolled Party,” in a total amount not to exceed \$5,000.00 per occurrence per involved Enrolled Party.

For purposes of this Section 8.2, the term “involved Enrolled Party” shall mean any Enrolled Party out of whose portion(s) of the Work the occurrence, offense, loss or claim arises. In the event more than one involved Enrolled Party is responsible for the occurrence or offense, The Commission may, in its sole discretion, allocate the CGL Deductible Contribution amongst the involved Enrolled Parties. The CGL Deductible Contribution shall include, without limitation, attorneys’ fees, court costs, and other defense expenses. The CGL Deductible Contribution is not an indemnity obligation on the part of the Enrolled Parties; it is a contractual allocation of the Insured Parties’ mutual obligations under the OCIP. The CGL Deductible Contribution may be assessed against any involved Enrolled Party by The Commission, in its sole discretion, and, to the extent assessed, shall be in amounts that bear a reasonable and proportionate relationship to the alleged liability arising from the claim.

If The Commission assesses a CGL Deductible Contribution against an involved Enrolled Party, then that CGL Deductible Contribution shall be due and payable to The Commission within ten (10) days after The Commission’s written demand. The Commission may back-charge the involved Enrolled Party, may withhold from monies otherwise owing to them or may collect by any other lawful means, the amount(s) owed by them as its allocated portion of the CGL Deductible. The CGL Deductible Contribution shall remain uninsured by Enrolled Parties and will not be covered by the OCIP Policies, nor shall it be included in the Contract Price or GMP. The obligations of General Contractor and its Enrolled Subcontractors of every tier are not limited in any manner because of any coverage provided under the OCIP Policies or because of any CGL Deductible Contribution.

**9.     Insurance Required From Enrolled Parties and Excluded Parties.**

**9.1     Minimum Coverages Required.**

The OCIP Policies include only certain types of coverage, for a specific period of time, and at a specifically defined location(s). **Enrolled Parties** (including but not limited to General

Contractor) shall provide the following insurance, with an insurance company or companies having an A.M. Best Rating of A-: Class VII or better, as more particularly set forth below:

- A. for all operations off the Project Site (as defined by the OCIP Insurance Policies)
  - 1. Worker's Compensation and Employer's Liability insurance,
  - 2. Commercial General Liability and Excess/Umbrella Liability insurance,
- B. for all operations, both on and off the Project Site,
  - 1. Automobile Liability insurance,
- C. for all operations both on and off the Project Site, when the respective OCIP Insurance Policies terminate for any Enrolled Party's Work: Worker's Compensation and Employer's Liability, General Liability and Excess Umbrella Liability insurance;
- D. pursuant to the requirements below, professional liability insurance, aircraft/watercraft insurance, contractor's pollution liability insurance, for all operations, both on and off the Project Site (as specified in 9.1 A., B. and C, above), if applicable.

(1) **Commercial Automobile Liability Insurance.** This insurance shall be on a current ISO form (CA 00 01 10 01) or equivalent and apply on an "any auto" basis, including all vehicles used in connection with the Work, and provide a combined single limit of not less than \$1,000,000 per occurrence – bodily injury and property damage, including uninsured and underinsured motorist coverage and medical payment protection. Coverage shall include, without limitation, loading and unloading.

(2) **Workers' Compensation** (including but not limited to coverage or endorsements for Occupational Disease Benefits, Voluntary Compensation and Disability benefits, Jones Act and U.S. Longshoremen's and Harbor Worker's Act, if applicable) – Statutory Limits for the state(s) in which the Work will take place. Self-insurance is not acceptable.

(3) **Employer's Liability.** This insurance shall have limits of at least **\$1,000,000.00** for each bodily injury by accident, each bodily injury by disease, and annual aggregate.

(4) **Commercial General Liability insurance.** This insurance shall be provided by a current ISO occurrence form policy, including, without limitation, coverage for damages because of bodily injury, property damage, and personal and advertising injury. This insurance shall include, without limitation, coverage for the products completed operations hazard. This insurance shall have annual limits of at least the following:

Each Occurrence	\$1,000,000
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury Aggregate	\$1,000,000

This insurance shall be maintained from commencement of the Work until not less than twelve (12) years after substantial completion and acceptance of the



Project, or to the applicable Statute of Repose in the jurisdiction where the Project is located, whichever is longer. The General Aggregate Limits must apply on a per project/per location basis.

(5) **Excess/Umbrella Liability insurance.** For the General Contractor, this insurance shall include annual limits of liability of not less than **\$10,000,000** Per Occurrence; Products/Completed Operations Aggregate; General Aggregate and but must be specifically endorsed such that the coverage is primary and non-contributory to any of The Commission's or other Additional Insured's other insurance or self-insurance (as set forth in greater detail below). For all other Subcontractors, this insurance shall include annual limits of liability of not less than **\$2,000,000** Per Occurrence; Products/Completed Operations Aggregate; General Aggregate and but must be specifically endorsed such that the coverage is primary and non-contributory to any of The Commission's or other Additional Insured's other insurance or self-insurance (as set forth in greater detail below). The insurance shall follow form to the Employer's Liability, Commercial General Liability, and Automobile Liability policies and "drop down" for defense and indemnity in the event of exhaustion of the underlying insurance; to the extent such insurance is used to satisfy the above requirements.

(6) **Professional Liability Insurance.** For the General Contractor, this insurance shall include annual limits of liability of not less than **\$5,000,000** per claim, and not less than **\$5,000,000** annual aggregate, with a deductible of not greater than \$25,000 per claim. For all Subcontractors, this insurance shall include annual limits of liability of not less than **\$2,000,000** per claim, and not less than **\$2,000,000** annual aggregate, with a deductible of not greater than \$25,000 per claim. This requirement shall apply to any Subcontractor only if any Work or services required of the Subcontractors by this Agreement (including any Work or services to be provided by its Subcontractors) would be excluded from coverage as professional services: (i) for Enrolled Parties, under the OCIP or such party's CGL insurance required by this Section 9; or (ii) for Excluded Parties, under such party's Commercial General Liability Insurance required by this Section 9. This insurance must be maintained for at least **5 years** after substantial completion and acceptance of the Project, or to the applicable Statute of Repose in the jurisdiction where the Project is located, whichever is longer.

(7) **Pollution Liability Insurance.** Such insurance shall be provided for off-site activities only as The Commission intends to purchase a Contractor's Pollution Liability Wrap-up Policy providing coverage for enrolled subcontractors. Such insurance shall include a combined single limit per occurrence, and general annual aggregate, of **\$2,000,000.00** for the General Contractor and if the Work or services to be provided by of any of its Subcontractors, involves removal or treatment of hazardous materials, those Subcontractors shall obtain and maintain contractor's pollution liability insurance for off-site activities. Such insurance shall include a combined single limit per occurrence, and general annual aggregate, of **\$2,000,000** for any Subcontractor. If General Contractor, or any of its Subcontractors, will be transporting hazardous waste/materials to or from the Project site, an appropriate MCS-90 Endorsement must be attached and supplied to The Commission on a primary basis with **\$2,000,000** limits of liability. If such coverage is secured on a "claims made" basis, extended reporting coverage shall be secured for a minimum of (5) years following the completion of General Contractor or Subcontractor's work. In addition to maintaining coverage for Non-Owned Disposal Site Liability, General Contractor or Subcontractor shall secure evidence of coverage from the disposal sites used under this contract. Further, remediation Subcontractors

shall maintain or secure any additional required insurance, permits, licenses, and other forms of documentation as required by the applicable regulatory authorities having jurisdiction over the scope of work.

(8) **Watercraft and Aircraft Liability.** If General Contractor or any of its Subcontractors uses commercial watercraft and/or aircraft (including helicopters) in connection with the Project, it must maintain liability insurance covering such watercraft and/or aircraft with limits of not less than **\$10,000,000** for aircraft and **\$5,000,000** for watercraft. The Commission shall not be liable for any damage to any watercraft and/or aircraft owned, leased, rented, or borrowed by General Contractor or any Subcontractor.

(9) The OCIP does not insure, and The Commission will not be liable for, damage to any mobile equipment, vehicles, or tools and equipment. Required insurance coverage for equipment and vehicle physical damage must include a waiver of subrogation in favor of the additional insureds.

**Excluded Parties** shall provide *all* insurance, with an insurance company or companies having an A.M. Best Rating of A-: Class VII or better, set forth below for both on-site and off-site operations.

(1) **Commercial Automobile Liability Insurance.** This insurance shall be on a current ISO form (CA 00 01 10 01) or equivalent and apply on an “any auto” basis, including all vehicles used in connection with the Work, and provide a combined single limit of not less than \$1,000,000 per occurrence – bodily injury and property damage, including uninsured and underinsured motorist coverage and medical payment protection. Coverage shall include, without limitation, loading and unloading.

(2) **Workers' Compensation** (including but not limited to coverage or endorsements for Occupational Disease Benefits, Voluntary Compensation and Disability benefits, Jones Act and U.S. Longshoremen's and Harbor Worker's Act, if applicable) – Statutory Limits for the state(s) in which the Work will take place. Self-insurance is not acceptable.

(3) **Employer's Liability.** This insurance shall have limits of at least **\$1,000,000.00** for each bodily injury by accident, each bodily injury by disease, and annual aggregate.

(4) **Commercial General Liability insurance.** This insurance shall be provided by a current ISO occurrence form policy, including, without limitation, coverage for damages because of bodily injury, property damage, and personal and advertising injury. This insurance shall include, without limitation, coverage for the products completed operations hazard. This insurance shall have annual limits of at least the following:

Each Occurrence	\$1,000,000
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury Aggregate	\$1,000,000

This insurance shall be maintained from commencement of the Work until not less than twelve (12) years after substantial completion and acceptance of the Project, or to the applicable Statute of Repose in the jurisdiction where the Project is located, whichever is longer. The General Aggregate Limits must apply on a per project/per location basis.

- (5) **Excess/Umbrella Liability insurance.** For the General Contractor, this insurance shall include annual limits of liability of not less than **\$10,000,000** Per Occurrence; Products/Completed Operations Aggregate; General Aggregate and but must be specifically endorsed such that the coverage is primary and non-contributory to any of The Commission's or other Additional Insured's other insurance or self-insurance (as set forth in greater detail below). For all other Subcontractors, this insurance shall include annual limits of liability of not less than **\$5,000,000** Per Occurrence; Products/Completed Operations Aggregate; General Aggregate and but must be specifically endorsed such that the coverage is primary and non-contributory to any of The Commission's or other Additional Insured's other insurance or self-insurance (as set forth in greater detail below). The insurance shall follow form to the Employer's Liability, Commercial General Liability, and Automobile Liability policies and "drop down" for defense and indemnity in the event of exhaustion of the underlying insurance; to the extent such insurance is used to satisfy the above requirements.
- (6) **Professional Liability Insurance.** For the General Contractor, this insurance shall include annual limits of liability of not less than **\$5,000,000** per claim, and not less than **\$5,000,000** annual aggregate, with a deductible of not greater than \$25,000 per claim. For all Subcontractors, this insurance shall include annual limits of liability of not less than **\$2,000,000** per claim, and not less than **\$2,000,000** annual aggregate, with a deductible of not greater than \$25,000 per claim. This requirement shall apply to any Subcontractor only if any Work or services required of the Subcontractors by this Agreement (including any Work or services to be provided by its Subcontractors) would be excluded from coverage as professional services: (i) for Enrolled Parties, under the OCIP or such party's CGL insurance required by this Section 9; or (ii) for Excluded Parties, under such party's Commercial General Liability Insurance required by this Section 9. This insurance must be maintained for at least **5 years** after substantial completion and acceptance of the Project, or to the applicable Statute of Repose in the jurisdiction where the Project is located, whichever is longer.
- (7) **Pollution Liability Insurance.** Such insurance shall include a combined single limit per occurrence, and general annual aggregate, of **\$5,000,000.00** for the General Contractor and if the Work or services to be provided by of any of its Subcontractors, involves removal or treatment of hazardous materials, all Subcontractors shall obtain and maintain contractor's pollution liability insurance. Such insurance shall include a combined single limit per occurrence, and general annual aggregate, of **\$2,000,000** for any Subcontractor. If General Contractor, or any of its Subcontractors, will be transporting hazardous waste/materials to or from the Project site, an appropriate MCS-90 Endorsement must be attached and supplied to The Commission on a primary basis with **\$5,000,000** limits of liability. If such coverage is secured on a

“claims made” basis, extended reporting coverage shall be secured for a minimum of (5) years following the completion of General Contractor or Subcontractor’s work. In addition to maintaining coverage for Non-Owned Disposal Site Liability, General Contractor or Subcontractor shall secure evidence of coverage from the disposal sites used under this contract. Further, remediation Subcontractors shall maintain or secure any additional required insurance, permits, licenses, and other forms of documentation as required by the applicable regulatory authorities having jurisdiction over the scope of work.

- (8) **Watercraft and Aircraft Liability.** If General Contractor or any of its Subcontractors uses commercial watercraft and/or aircraft (including helicopters) in connection with the Project, it must maintain liability insurance covering such watercraft and/or aircraft with limits of not less than **\$10,000,000** for aircraft and **\$5,000,000** for watercraft. The Commission shall not be liable for any damage to any watercraft and/or aircraft owned, leased, rented, or borrowed by General Contractor or any Subcontractor.
- (9) The OCIP does not insure, and The Commission will not be liable for, damage to any mobile equipment, vehicles, or tools and equipment. Required insurance coverage for equipment and vehicle physical damage must include a waiver of subrogation in favor of the additional insureds.

## **9.2 General Insurance Requirements.**

- (a) The Commission, the Commonwealth of Pennsylvania and the State of New Jersey, shall be listed as additional insureds on each party’s Commercial General Liability, Business Auto Liability and Umbrella/Excess policies. Each policy (including umbrella/excess) shall state that the insurance provided to the additional insureds is primary and non-contributory to any other insurance (including primary, excess, self-insurance, or on any other basis) available to the additional insureds. The insurance policies shall not eliminate or restrict coverage for claims or suits between named insureds and additional insureds. The coverage provided to the additional insureds must be at least as broad as that provided to the party who is the first named insured on each policy. In the event that any policy provided in compliance with this Exhibit states that the coverage provided to an additional insured shall be no broader than that required by contract, or words of similar meaning, the parties agree that nothing in this Agreement is intended to restrict or limit the breadth of such coverage. With respect to the Commercial General Liability policy, additional insured status must be provided using a current I.S.O. endorsement(s) or its equivalent(s). The Commercial General Liability insurance must also include additional insured coverage provided via the ISO CG 20 10 (11/85) or CG 20 10 (10/93) AND CG 20 37 (10/01) or CG 20 22 (10/01) AND CG 20 37 (10/01) additional insured endorsement(s), or its equivalent.
- (b) The limits of insurance provided by each party shall be the greater of the limits maintained in the normal course of each party’s business or the minimum limits specified in this Exhibit. The limits of insurance stated above for each type of insurance are minimum limits only; in the event any party’s policy provides greater limits, then the additional insureds shall be entitled to, or to share in, the

full limits of such policy, and this Agreement shall be deemed to require such full limits.

- (c) Prior to the commencement of any Work and prior to any personnel coming on the Project site and within three (3) days of any renewal, change in coverage, or replacement of coverage, General Contractor shall provide: (i) Certificates of Insurance ("COIs"), in duplicate; and (ii) full and complete copies of the insurance policies required under Section 9. The Certificates of Insurance should be mailed to the Commission within five (5) days of receipt of the Notice of Award, to the attention of the Chief Engineer, at 110 Wood and Grove Streets, Morrisville, Pennsylvania 19067, regardless of when work commences. A project description and job number must be shown on all Certificates of Insurance. General Contractor shall collect COIs and policies in accordance with this subparagraph from each of its Subcontractors for all insurance required by this Exhibit. General Contractor shall continue to provide to The Commission (and to collect from its Subcontractors and provide to The Commission) COIs and copies of policies annually, and in the event of any change in insurer, limits or coverage, during the entire time period for which such insurance is required under this Exhibit. General Contractor and/or a Subcontractor's failure to provide COIs and/or copies of policies shall not relieve it of its responsibility to carry and maintain the insurance required by this Exhibit. The Commission's failure to demand or inspect a COI and/or a policy, and/or The Commission's failure to identify or object to any discrepancy therein, is not a waiver of any requirement contained in this Exhibit or elsewhere in this Agreement.
- (d) All policies shall contain a provision that coverages afforded under the policies shall not be canceled, materially changed or not renewed unless at least thirty (30) days prior written notice has been given to The Commission.
- (e) All insurance General Contractor and its Subcontractors furnish in compliance with this Exhibit shall include a waiver of subrogation in favor of The Commission and the other named and additional insureds and any other party requested by The Commission.
- (f) If the insurance provided by General Contractor and/or its Subcontractors excludes or limits coverage for named insureds because an OCIP, wrap-up, or project-specific insurance policy/ies has/have been provided for this Project, such limitation or exclusion may only apply to the extent of valid and collectible insurance available from the OCIP. No such exclusion or limitation may apply to The Commission or any other named or additional insureds.
- (g) The policies General Contractor and its Subcontractors furnish in compliance with this Exhibit shall not be subject to any self-insured retention in excess of \$50,000 unless approved in writing by The Commission. Each party shall be responsible for any self-insured retention due under any insurance it provides. The coverage afforded to the additional insureds shall not be conditioned on the payment of any deductible or retention.
- (h) If General Contractor or its Subcontractors fail to furnish the required COIs or maintain the coverage required under this Exhibit or if any of the insurance is cancelled or changed such that it is no longer compliant with this Exhibit, The Commission may: (1) immediately terminate this Agreement and such party

will reimburse The Commission for any and all losses resulting from such party's failure, or (2) The Commission may procure substitute insurance and such party shall reimburse The Commission for all associated costs including insurance premiums or such costs will be offset against amounts otherwise payable to such party under this Agreement. In the event a party's failure to comply with any aspect of this Exhibit results in payment for defense or indemnity by The Commission's or any other additional insured party's insurance, such party shall indemnify The Commission or the other additional insured for the full amount such party's insurance paid, and such party shall not be entitled to an off-set for any amounts such party receives, or is entitled to receive, from other insurance. This remedy is without prejudice to or limitation of any other remedy available to The Commission under the terms of this Agreement or Applicable Law.

- (i) IN THE EVENT THAT THE LAW OF THE STATE IN WHICH THE PROJECT IS LOCATED (OR APPLICABLE LAW) LIMITS THE APPLICABILITY OF ANY OF THE INSURANCE COVERAGE THAT THE COMMISSION MAY REQUIRE FROM GENERAL CONTRACTOR OR ITS SUBCONTRACTOR, THEN GENERAL CONTRACTOR AND ITS SUBCONTRACTORS SHALL BE REQUIRED TO OBTAIN COVERAGE TO THE FULLEST EXTENT OF COVERAGE AND LIMITS ALLOWED BY APPLICABLE LAW AND THIS CONTRACT SHALL BE READ TO CONFORM TO SUCH LAW.

10. **Limitation.** The OCIP and the insurance requirements described in this Exhibit exist for the sole and exclusive benefit and protection of The Commission and the Enrolled Parties. The OCIP and required insurance described in this Exhibit are not intended to benefit any other parties including, without limitation, parties not enrolled in the OCIP, Excluded Parties or claimants (regardless of whether such claimant's claim(s) are covered by the OCIP and regardless of against whom such claimant makes claim(s)). The Commission is not responsible for enforcing any term of this Exhibit for the benefit of any party not enrolled in the OCIP.

11. **General Contractor's Representations and Warranties to The Commission.** General Contractor represents and warrants to The Commission, and shall use its best efforts to ensure that each of its Subcontractors of every tier represent and warrant to The Commission, that:

- a. All information they submit to The Commission, or to the OCIP Administrator, shall be accurate and complete.
- b. They will have the opportunity to read and analyze copies of the OCIP Policies that are on file in The Commission's office, and that once made available, they understand the OCIP Policies. Any reference or summary in the Agreement, this document, the applicable Insurance Manual, or elsewhere in any other Contract Document as to amount, nature, type or extent of OCIP Policies and/or potential applicability to any potential claim or loss is for reference only. General Contractor and its Subcontractors of all tiers have not relied upon said reference, but solely upon their own independent review and analysis of the OCIP Policies in formulating any understanding and/or belief as to amount, nature, type or extent of any OCIP Policies and/or its potential applicability to any potential claim or loss.

c. The Costs of OCIP Coverages will not be included in General Contractor's GMP proposal for the Work or the Contract Price/Contract Sum, and will not be included in any change order or any request for payment for the Work or extra work.

d. General Contractor acknowledges that The Commission shall not pay or compensate General Contractor or any Subcontractor of any tier, in any manner, for the Costs of OCIP Coverages.

12. **Audits.** General Contractor agrees that The Commission, the OCIP Administrator, and/or any OCIP Insurer may audit General Contractor or any of its Subcontractors' payroll records, books and records, insurance coverages, insurance cost information, bid estimates, pricing for any cost in the GMP, the Contract Price/Contract Sum or any subcontracted Work, or any information that General Contractor provides to The Commission, the OCIP Administrator, or the OCIP Insurers to confirm their accuracy to ensure that the Costs of OCIP Coverages are not included in any payment for the Work.
13. **The Commission's Election to Modify or Discontinue the OCIP.** The Commission may, for any reason, modify the OCIP Coverages, discontinue the OCIP, or request that General Contractor or any of its Subcontractors of any tier withdraw from the OCIP upon thirty (30) days written notice. Upon such notice General Contractor and/or one or more of its Subcontractors, as specified by The Commission in such notice, shall obtain and thereafter maintain during the performance of the Work, all (or a portion thereof as specified by The Commission) of the OCIP Coverages. The form, content, limits of liability, cost, and the insurer issuing such replacement insurance shall be subject to The Commission's approval. The cost of the replacement coverage shall be at The Commission's expense, but only to the extent of the applicable Costs of OCIP Coverages.
14. **Withholding Payments.** The Commission may withhold from any payment owed or owing to General Contractor or its Subcontractors of any tier the Costs of OCIP Policies if they are included in a request for payment. In the event of an The Commission audit of General Contractor's records and information as permitted in the Contract, this document, or in other Contract Documents reveals the inclusion of the Cost of OCIP Policies in any payment for the Work, The Commission shall have the right to full deduction from the GMP or Contract Price/Contract Sum of all such Costs of OCIP Policies and all audit costs. Audit costs shall include, but shall not be limited to, the fees of the OCIP Administrator, and the fees of attorneys and accountants conducting the audit and review. If the General Contractor or its Subcontractors fail to timely comply with the provisions of this document, The Commission may withhold any payments due to General Contractor and/or its Subcontractors of any tier until such time as they have performed the requirements of this document. Such withholding by The Commission shall not be deemed to be a default under the Contract Documents.
15. **Waiver of Claims/Subrogation.** To the extent permitted by law, General Contractor hereby waives all rights of recovery because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, or any other reason against The Commission, the OCIP Administrator, it's or their officers, agents, or employees, and any other contractor or subcontractor performing Work or rendering services on behalf of The Commission in connection with the planning, development and construction of the Project. General Contractor shall also require that all General Contractor-maintained insurance coverage related to the Work include clauses providing that each insurer shall waive all of its rights of recovery by subrogation against The Commission, the OCIP Administrator, it's or their officers, agents, or employees, or any other contractor or subcontractor performing Work or rendering

services at the Project. To the extent permitted by law, General Contractor shall require similar written express waivers and insurance clauses from each of its Subcontractors of every tier. A waiver of subrogation shall be effective as to any individual or entity, even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium, directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

**16. Other Owner Provided Insurances.**

- a. **Builder's Risk** - Unless otherwise provided, The Commission shall purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by The Commission and Contractor, until final payment has been made or until no person or entity other than The Commission has an insurable interest in the property, whichever is later. This insurance shall include The Commission, the Contractor, Subcontractors and all tier Sub-subcontractors as named insureds for in the Project.

Such insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, terrorism, hot and cold testing, resulting loss from faulty workmanship and/or faulty design, equipment breakdown, expediting expenses, pollutant clean-up, ordinance or law coverage, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements. Such insurance shall also extend to cover work stored off the site and work in transit.

Partial occupancy or use shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Commission and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

- b. **Contractor's Pollution Liability Coverage** – The Commission will, at its own expense, obtain and maintain, during the term of the project, Contractors Pollution Liability Coverage. Coverage will be provided according to the published policy which will be available for inspection on an "Occurrence" Basis and will include an endorsement extending the Completed Operations Coverage for a period of 60 months (five years) after completion of the project. The Limits of Liability are:

- \$10,000,000 Per Claim
- \$10,000,000 General Aggregate

- c. **Railroad Protective Liability** – In the event that a Railroad Protective Liability policy is required by any railway impacted by the scope of work, The Commission intends, at its own expense, to obtain and maintain, during the term of the project, a Railroad Protective Liability policy. Coverage provided by the policy will meet the requirements of the impacted railway.



**17. Review of Insurance Requirements by the Contractor's Insurance Representative**

The General Contractor WARRANTS that this Contract has been thoroughly reviewed by the General Contractor's insurance agent(s)/broker(s), who have been instructed by the General Contractor to procure the insurance coverage required by this Contract.

The amount of insurance provided in the aforementioned insurance coverages, shall not be construed to be a limitation of the liability on the part of the General Contractor or any of their subcontractors.

Any type of insurance or any increase in limits of liability not described above which the Covered

Party requires for its own protection or on account of statute shall be its own responsibility and at its own expense.

The carrying of insurance described herein shall in no way be interpreted as relieving the Covered

Party of any responsibility or liability under the Contract.

**18. Settlement of Insurance Claims:**

Make every effort to settle all claims in an expeditious and equitable manner. Provide the Commission with the name, address and telephone number of the person authorized to act on behalf of the Insurance Company for the project at the preconstruction conference. Promptly inform the Commission and the insurance company in writing, of any written or oral notification of an alleged claim.

**CONSTRUCTION CONTRACT INDEMNIFICATION CLAUSE**

To the fullest extent permitted by law, the Covered Party agrees to indemnify, defend and hold the COMMISSION, the Commonwealth of Pennsylvania, the State of New Jersey and their respective commissioners, servants, employees, agents, assigns and affiliates (collectively, the "Indemnified Parties") harmless from and against, any and all liabilities, losses, claims, damages, and expenses including, without limitation, costs of investigation and defense, expert witness fees, legal fees (e.g., fees of attorneys, paralegals and other legal professionals), expenses and diminution of value, whether or not involving a third party claim, arising out of or in any manner connected with the Work to be performed for the Indemnified Parties, including, but not limited to, Work performed under this Contract, Work performed under a Change Order, or any such other Work performed for the Indemnified Parties, even for and if caused in whole or in part by any act, omission or negligence of the Indemnified Parties.

It is expressly agreed that the indemnification contained in this Contract covers claims against the Indemnified Parties.

If there are any liabilities, losses, claims, damages or expenses of any kind or nature unsettled

when the Work under the Contract is finished, any unpaid amounts owed by the COMMISSION to the Covered Party shall be deferred until all such liabilities, losses, claims, damages or expenses are: (1) settled; (2) evidence of insurance coverage acceptable to the COMMISSION or indemnification acceptable to the COMMISSION is provided by the Covered Party's insurance carrier; or (3) a bond acceptable to the COMMISSION is provided by the Covered Party to secure payment of all liabilities, losses, claims, damages and expenses owed by the Covered Party to the COMMISSION.

The terms and conditions of this indemnification section shall survive any cancellation, expiration or termination of this Contract. The laws of the Commonwealth of Pennsylvania shall apply to the construction of the indemnification set forth above without regard to any conflicts of law's provisions.

**END OF ADDENDUM NO. 6**