

French Broad 0105 RFP Questions and Answers
October 25, 2017

Question: It appears that the language in Exhibit C - Mitigation Credit Purchase Agreement, Section 5 - Performance and Default has not been revised as in previous executed mitigation credit purchase agreements. Will NCDOT consider revising this language as previously done?

Past revised language:

“If, through any cause, Banker shall fail to fulfill in timely and proper manner the obligations under this contract, the State shall have the right to terminate this contract by giving written notice to the Banker and specifying the effective date thereof. Notwithstanding, Banker shall not be relieved of liability to the State for damages for failure to provided credits sustained by the State by virtue of any breach of this contract, and the State may withhold any payment due the Banker for the purpose of setoff until such time as the exact amount of damages due the State from such breach can be determined; provided, however, that Banker’s liability for damages shall be limited to the cost of obtaining replacement Credits and shall in no case include costs associated with delay or completion of NCDOT’s Projects. The Banker will have thirty days beyond the credit delivery dates within this contract to offer any remedies to default for consideration by NCDOT. In no event shall NCDOT be required to accept any delay that continues past June 2020 or that substantially threatens NCDOT’s ability to obtain the mitigation credits according to the current schedule. The State reserves the right to require at any time a performance bond or other acceptable alternative performance guarantees from a Banker without expense to the State.

In case of default by the Banker, the State may perform the necessary work to complete performance hereunder with its own forces, or procure performance from other sources, and hold the Banker responsible for any excess cost occasioned thereby. In addition, in the event of default by the Banker under this contract, or upon the Banker filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Banker, the State may immediately cease doing business with the Banker, immediately terminate this contract for cause, and may act to debar the Banker from doing future business with the State.”

Answer: That is correct. The final contract will reflect the clarifications made to the language in the template contract used for previous agreements. The date referenced in this section for the French Broad 0105 contract will be June 2024.