Commonwealth of Virginia

Alternative Project Delivery Division
Design-Build Standard Template Documents

Part 3 – Lump Sum Agreement
Part 4 – General Conditions of Contract
Part 5 – Division I Amendments to the Standard Specifications

November 2016

PART 3

PART 3

2016 Lump Sum Design-Build Agreement Between Department and Design-Builder

(Date of Standard Lump Sum Design-Build Agreement: November 2016)

This **AGREEMENT** is made as of the date by and between the parties, the **VIRGINIA DEPARTMENT OF TRANSPORTATION ("Department"), an agency of the Commonwealth of Virginia** and **DESIGN-BUILDER** as listed in Exhibit 1, for services in connection with the Project identified in Exhibit 1.

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In consideration of the mutual covenants and obligations contained herein, Department and Design-Builder agree as set forth herein.

Article 1

Scope of Work

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

Article 2

Contract Documents

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, amendments and work orders to this Agreement issued in accordance with *2016 General Conditions of Contract Between Department and Design-Builder* ("General Conditions of Contract");

2.1.2 This Agreement (Part 3), executed by Department and Design-Builder, inclusive of all Exhibits;

2.1.3 General Conditions of Contract (Part 4);

2.1.4 Department's Request for Proposals (RFP) dated **per Exhibit 1**, including all Addenda (track changes depicted in the Addenda have been accepted and are incorporated herein);

.1 Part 1, Instructions for Offerors

.2 Part 2, Project Technical Information and Requirements, including RFP Information Package;

2.1.5 2016 Division I Amendments (Part 5) to Standard Road and Bridge Specifications, dated January 1, 2016 ("Division I Amendments");

2.1.6 Released for Construction Plans prepared and approved in accordance with Section 2.4 of the General Conditions of Contract, and

2.1.7 Design-Builder's Proposal submitted in response to RFP, including all final modifications and approved Alternative Technical Concepts: **[PROPOSAL MODIFICATIONS AND APPROVED ALTERNATIVE TECHNICAL CONCEPTS ARE ESTABLISHED IN EXHIBIT 1].**

Article 3

Interpretation and Intent

3.1 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 above.

3.2 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in this Agreement and the General Conditions of Contract.

3.3 The Contract Documents form the entire agreement between Department and Design-Builder with respect to its subject matter and by incorporation herein are as fully binding on the parties as if repeated herein. The parties have made no oral representations or other agreements, except as specifically stated in the Contract Documents.

3.4 Except as specifically set forth in this Section 3.4, and notwithstanding anything to the contrary in Design-Builder's Proposal, Design-Builder is obligated to perform the Work in full compliance with the RFP Documents. The parties agree, however, that:

.1 Betterments and higher and/or more stringent standards or specifications and design and construction criteria, concepts, and drawings set forth in Design-Builder's Proposal (collectively referred to as "Enhancements") shall supersede the minimum requirements of the RFP Documents and Design-Builder is obligated to perform the Work in compliance with the Enhancements.

.2 Those ATCs identified in Exhibit 1 have been approved, either fully or conditionally, by Department and supersede the requirements of the RFP Documents. Design-Builder has the right to perform the Work in accordance with such ATCs, subject to Section 2.1.10 of the General Conditions of Contract.

Article 4

Ownership of Work Product

4.1 **Work Product Defined**. The term "**Work Product**" is intended to include all drawings, specifications, calculations, reports, and documentation, whether in paper copy or electronic format, produced by or through Design-Builder that is furnished to Department.

4.2 **Ownership of Work Product**. Department shall own all rights, title and interest in the Work Product upon its receipt of such Work Product. Department's ownership

rights, include without restriction or limitation, the right of Department, and anyone contracting with Department, to incorporate any ideas or information from the Work Product into: (a) any other contract awarded in reference to the Project; or (b) any subsequent procurement by Department on another project. In receiving all rights, title and interest in the Work Product, Department is deemed to own all intellectual property rights, copyrights, patents, trade secrets, trademarks, and service marks in Work Product, and Design-Builder agrees that it shall, at the request of Department, execute all papers and perform all other acts that may be necessary (if any) to ensure that Department's rights, title and interest in the Work Product are protected. The rights conferred herein to Department include, without limitation, Department's ability to use the Work Product without the obligation to notify or seek permission from Design-Builder.

4.3 **Use of Work Product at Department's Risk**. Department's use of the Work Product on any subsequent procurement by Department on another project shall be at Department's sole risk, and Design-Builder neither warrants nor represents that the Work Product is suitable for use on another project without modification. Department waives any rights to seek recovery from Design-Builder for any claims, damages, liabilities, losses and expenses arising out of or resulting from Department's use of the Work Product on another project.

Article 5

Contract Time

5.1 **Notice to Proceed.** The Work shall commence upon Design-Builder's receipt of Department's Notice to Proceed, unless the parties mutually agree otherwise in writing. Department will issue a Notice to Proceed within fifteen (15) days after the Agreement Date, unless the parties mutually agree otherwise in writing.

5.2 **Completion Dates**

5.2.1 **Final Completion Date**. Design-Builder shall finally complete the Work in accordance with the Contract Documents **per Exhibit 1** (the "**Final Completion Date**"). The Final Completion Date is the date the project has achieved Final Acceptance.

5.2.2 **Interim Milestone Dates**. In the event any identified portion of the Work is to be completed earlier than the Final Completion Date, such Work shall be identified in Exhibit 1 and the dates such Work shall be completed shall be set forth in Exhibit 1 ("**Interim Milestone Dates**"):

5.3 **Adjustments**. All of the scheduled completion dates set forth in Section 5.2 above (collectively referred to as **"Contract Times"**) shall be subject to adjustment in accordance with the General Conditions of Contract.

5.4 **Time is of the Essence**. Department and Design-Builder mutually agree that time is of the essence with respect to the Contract Times.

5.5. **Liquidated Damages**. Design-Builder understands that if the Final Completion Date or any Interim Milestone Dates are not attained, Department will suffer damages which are difficult to determine and accurately specify. To compensate Department for such damages, Design-Builder hereby agrees as follows:

5.5.1 If Final Acceptance of the Work is not attained by the Final Completion Date, Design-Builder shall pay Department **THE AMOUNTS LISTED IN EXHIBIT 1** as liquidated damages for each day that actual Final Acceptance of the Work extends beyond the Final Completion Date.

5.5.2 If Interim Milestone(s) are not attained by the Interim Milestone Date(s), Design-Builder shall pay Department **THE AMOUNTS LISTED IN EXHIBIT 1** as liquidated damages for each day that each Interim Milestone(s) extends beyond the Interim Milestone Date.

5.6 **Liquidated Damages Not Penalty**. The parties acknowledge, recognize and agree on the following:

(a) that because of the unique nature of the Project, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by Department as a result of Design-Builder's failure to complete the Work on or before the applicable Contract Time(s);

(b) that any sums which would be payable under this Article 5 are in the nature of liquidated damages, and not a penalty, and are fair and reasonable and such payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failure; and

(c) that any sums which would be payable herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Department which are occasioned by any delay in achieving the applicable Contract Times for the above-referenced Work. Notwithstanding the above, liquidated damages are not intended to excuse Design-Builder from liability for any other breach of its obligations under the Contract Documents.

Article 6

Contract Price

6.1 **Contract Price.** Department shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of **THE AMOUNTS LISTED IN EXHIBIT 1** ("**Contract Price**"), subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.2 **Markups for Changes.** If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Section 9.4.1 of the General Conditions of Contract, markups shall be allowed on such changes in accordance with requirements of Section 109.05 of the Division I Amendments to the Standard Road and Bridge Specifications.

6.3 **Adjustments to Asphalt and Fuel.** Department and Design-Builder agree to adjust prices for **THE ITEMS LISTED IN EXHIBIT 1**, in accordance with Department's pertinent special provisions, attached hereto as Exhibits 6.3(a), 6.3(b), and 6.3(c) provided Design-Builder declares its intent, in the Price Proposal, to use the provisions for price adjustments, and also submits the information required in the pertinent special provisions with its Proposal. Notwithstanding the special provisions, price adjustments for **THE ITEMS LISTED IN EXHIBIT 1** will be based on the quantities identified in the Schedule of Items in Design-Builder's Proposal, which quantities shall be specifically summarized and provided in Design-Builder's Price Proposal. Actual quantities shall be monitored and documented by Design-Builder, and submitted to Department in the monthly report required by Section 11.1.8 below, on forms provided by Department.

Article 7

Procedure for Payment

7.1 Progress Payments

7.1.1 Design-Builder shall submit to Department on the tenth (10th) day of each month, beginning with the first month after Design-Builder's receipt of Department's Notice to Proceed, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.1.2 Department shall make payment within thirty (30) days after Department's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract. Department's payment shall comply with VA. CODE §2.2-4347, et seq., which addresses prompt payment.

7.1.3 Pursuant to VA. CODE §2.2-4354, Design-Builder agrees that, within seven (7) days following receipt of monies from Department for work performed by any Subcontractor, Design-Builder shall either: (a) pay the Subcontractor for the proportionate share of the total payment received from Department attributable to the work performed by the Subcontractor; or (b) notify Department and Subcontractor, in writing, of Design-Builder's intention to withhold all or a part of the Subcontractor's payment, specifying the reason for the non-payment. Design-Builder also agrees that it shall include in all of its subcontracts a provision that: (a) obligates Design-Builder to pay interest to Subcontractors on all amounts owed by Design-Builder that remain unpaid after seven (7) days following receipt of monies from Department for work performed by

any Subcontractor, except for amounts withheld as allowed in the preceding sentence; (b) states, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month."; and (c) obligates each Subcontractor to include or otherwise be subject to the same payment and interest requirements as specified in this Section 7.1.3 with respect to each lower-tier Sub-subcontractor.

7.1.4 Design-Builder's obligations to pay an interest charge to a Subcontractor pursuant to Section 7.1.3 above shall not be construed to be an obligation of Department, nor shall any modification to this Agreement be allowed for the purpose of providing reimbursement for the interest charge. Cost reimbursement claims shall not include any amount for reimbursement for the interest charge.

7.1.5 If Design-Builder fails to make payment to the Subcontractor within the time frame and provisions specified in Sections 7.1.3 and 7.1.4 above, the Subcontractor shall notify Department and Design-Builder's bonding company in writing. Design-Builder's bonding company shall be responsible for insuring payment to the Subcontractor.

7.1.6 Pursuant to VA. CODE §2.2-4354, Design-Builder agrees to provide Department, within five (5) days of the Agreement Date, its federal employer identification number.

7.2 **Retainage on Progress Payments**. Retainage will not be withheld from Progress Payments.

7.3 **Final Payment.** Design-Builder shall submit its Final Application for Payment to Department in accordance with Section 6.6 of the General Conditions of Contract. Department shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within thirty (30) days after Department's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for Final Payment set forth in Section 6.6.2 of the General Conditions of Contract. Department's payment shall comply with VA. CODE §2.2-4347 et seq. dealing with prompt payment.

7.4 **Interest.** Payments due and unpaid by Department to Design-Builder, whether progress payments or Final Payment, shall bear interest commencing seven (7) days after payment is due in accordance with VA. CODE §2.2-4355.

7.5 **Record Maintenance and Retention of Records**. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of five (5) years after Final Payment, Department and Department's accountants shall be afforded access from time-to-time, upon reasonable notice, to Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data, including but not limited to electronic schedules and other electronic data (all collectively referred to as "Books and Records") relating to: (a) changes in the Work performed on a cost basis; or (b) any request by Design-Builder for an adjustment in the Contract Price or

Contract Times. Design-Builder shall preserve all of its Books and Records for a period of five (5) years after Final Payment.

Article 8

Termination for Convenience

8.1 Upon ten (10) days written notice to Design-Builder, Department may, for its convenience and without cause, elect to terminate all or part of the Work if Department, in its sole discretion, determines that such a termination is in Department's best interests. Department shall notify Design-Builder of the decision to terminate by delivering to Design-Builder a written notice of termination specifying the extent of termination and its effective date (a "**Notice of Termination**").

8.1.1 If Department terminates all of the Work for convenience before issuing a Notice to Proceed, Design-Builder agrees that it shall have no right to recover any monies from Department. Design-Builder specifically waives any and all rights to claim from Department for any cost, profit, overhead contribution or any other monetary relief associated with the Contract Documents or Project, including but not limited to bid and proposal costs, or any services that might have constituted Work under the Contract Documents.

8.1.2 If Department terminates all or part of the Work for convenience after issuing a Notice to Proceed, then Sections 8.2 through 8.8 below shall apply.

8.2 After receipt of a Notice of Termination, and except as directed by Department, Design-Builder shall immediately proceed as follows, regardless of any delay in determining or adjusting any amounts due under this Article 8:

(a) Stop Work as specified in the notice;

(b) Enter into no further Subcontracts and place no further orders for materials, services or facilities, except as necessary to complete the continued portion of the Work, if any, or for mitigation of damages;

(c) Unless instructed otherwise by Department, terminate all Subcontracts to the extent they relate to the Work terminated and except to the extent that continuation of the Subcontract is necessary in order to mitigate damages;

(d) Assign to Department or its designee in the manner, at the times, and to the extent directed by Department, all of the right, title, and interest of Design-Builder under the Subcontracts so terminated, in which case Department will have the right, in its sole discretion, to accept performance, settle or pay any or all claims under or arising out of the termination of such Subcontracts;

(e) Settle outstanding liabilities and claims arising out of such termination of Subcontracts, with the approval or ratification of Department, to the extent it may

require, which approval or ratification shall be final;

(f) Transfer and deliver to Department or its designee, as directed by Department: (1) possession and control of the Project; and (2) all right, title and interest of Design-Builder in and to: (i) the Work in process, completed Work, supplies and other materials produced or acquired for the Work terminated; (ii) the Released for Construction Plans and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, reports, books, samples, information and other Work Product that would have been required to be furnished to Department if the Work had been completed; and (iii) all intellectual property developed specifically for the Project; provided, however, that in the event of such transfer, Design-Builder shall not be liable for any warranties for Work which has not achieved Final Acceptance, nor shall Design-Builder have any liability with respect to any design materials produced with respect to the Project;

(g) Complete performance in accordance with the Contract Documents of all Work not terminated;

(h) Take all action that may be necessary, or that Department may direct, for the protection and preservation of the property related to the Contract Documents that is in the possession of Design-Builder and in which Department has or may acquire an interest; and

(i) As authorized by Department, use its best efforts to sell at fair market value any property of the types referred to in Section 8.3 below; provided, however, that Design-Builder: (1) shall not take any such action with respect to any items for which title has previously transferred to Department; (2) is not required to extend credit to any purchaser; and (3) may acquire the property itself, under the conditions prescribed and at prices approved by Department. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Department under the Contract Documents or paid in any other manner directed by Department.

8.3 Inventory. Design-Builder shall submit to Department a list of termination inventory not previously disposed of and excluding items authorized for disposition by Department; and within thirty (30) days of receipt of the list, Design-Builder shall deliver such inventory to Department and Department shall accept title to such inventory as appropriate.

8.4 Settlement Proposal. After termination, Design-Builder shall submit a final termination settlement proposal to Department in the form and with the certification prescribed by Department. Design-Builder shall submit the proposal promptly, but no later than thirty (30) days from the effective date of termination unless Design-Builder has requested a time extension in writing within such 30-day period and Department has agreed in writing to allow such an extension.

8.5 Amount of Termination Settlement. Design-Builder and Department shall negotiate in good faith to reach agreement on the settlement amount to be paid to Design-Builder by reason of the termination of Work pursuant to this Article 8 and any such settlement shall be subject to the provisions of the VA. CODE §2.2-514. Such negotiated settlement shall include an allowance for profit solely on Work that has been performed as of the termination date. Such agreed amount or amounts payable for the terminated Work, exclusive of demobilization costs and other shut-down costs, shall not exceed the total Contract Price as reduced by the Contract Price of Work not performed. Upon determination of the settlement amount, this Agreement will be amended accordingly, and Design-Builder will be paid the agreed amount as described in this Section 8.5. Department's execution and delivery of any settlement agreement shall not be deemed to affect any of its rights with respect to compliance of the Work which has achieved Final Acceptance with all applicable Contract requirements or any of its rights under payment and performance bonds or any of its rights against Subcontractors.

8.6 No Agreement as to Amount of Claim. In the event of failure of Design-Builder and Department to agree upon the amount to be paid Design-Builder by reason of the termination of Work pursuant to this Article 8, the amount payable (exclusive of interest charges) shall be determined in accordance with the dispute resolution procedures of the General Conditions of Contract.

8.7 Reduction in Amount of Claim. The amount otherwise due Design-Builder under this Article 8 shall be reduced by: (a) the amount of any valid claim which Department may have against Design-Builder in connection with this Agreement; and (b) the agreed price for, or the proceeds of sale of, materials, supplies or other things previously paid for by Department and to be retained by Design-Builder or sold by Design-Builder (with the proceeds being retained by Design-Builder), pursuant to the provisions of this Article 8.

8.8 Payment. Department may, from time-to-time, under such terms and conditions as it may prescribe and in its sole discretion, make partial payments on account against costs incurred by Design-Builder in connection with the terminated portion of this Agreement, whenever in the opinion of Department the aggregate of such payments shall be within the amount to which Design-Builder will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Article 8, such excess shall be payable by Design-Builder to Department upon demand together with interest at a variable rate per annum equal to the reference rate announced by Bank of America, N.A., from time–to-time, plus one percent (1%).

8.9 Inclusion in Subcontracts. Design-Builder shall insert in all Subcontracts that the Subcontractor shall stop Work on the date of and to the extent specified in a Notice of Termination from Department and shall require that Subcontractors insert the same provision in each Subcontract at all tiers. Design-Builder shall communicate, immediately upon receipt thereof, any Notice of Termination issued by Department to all affected Subcontractors.

8.10 No Consequential Damages. In the event of a termination for convenience

under this Article 8, Design-Builder acknowledges and agrees that it shall not be entitled to any compensation in excess of the value of the Work performed plus its settlement and closeout costs. Under no circumstances shall Design-Builder or any Subcontractor be entitled to anticipatory or unearned profits, unabsorbed overhead, opportunity costs, or consequential or other damages as a result of a termination for convenience under this Article 8. The payment to Design-Builder determined in accordance with this Article 8 constitutes Design-Builder's exclusive remedy for a termination hereunder.

8.11 No Waiver. Anything contained in this Agreement to the contrary notwithstanding, a termination under this Article 8 shall not waive any right or claim to damages which Department may have with respect to Work which has achieved Final Acceptance prior to the date of termination, and Department may pursue any cause of action which it may have by law or under this Agreement on account of such completed Work. Design-Builder makes no warranties with respect to Work which has not achieved Final Acceptance prior to the date of termination. Department's termination of this Agreement shall not relieve any rights Department has under any performance bonds issued on the Project.

8.12 Dispute Resolution. The failure of the parties to agree on amounts due under this Article 8 shall be a dispute to be resolved in accordance with the requirements of Article 10 of the General Conditions of Contract.

8.13 Right to Use Work Product. If Department terminates this Agreement pursuant to this Article 8, Department's rights to use the Work Product shall be as set forth in Article 4 hereof.

Article 9

Representatives of the Parties

9.1 Department's Representatives

9.1.1 Department designates the individual listed below as its Senior Representative ("Department's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.2 of the General Conditions of Contract:

[DEPARTMENT'S SENIOR REPRESENTATIVE AS LISTED IN EXHIBIT 1]

9.1.2 Department designates the individual listed below as its Department's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract:

[DEPARTMENT'S REPRESENTATIVE AS LISTED IN EXHIBIT 1]

9.2 Design-Builder's Representatives

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.2 of the General Conditions of Contract:

[DESIGN-BUILDER'S SENIOR REPRESENTATIVE AS LISTED IN EXHIBIT 1]

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract:

[DESIGN-BUILDER'S REPRESENTATIVE AS LISTED IN EXHIBIT 1]

9.3 Department and Design-Builder shall, in the spirit of cooperation, exchange information in a timely manner. While the Contract Documents establish a timeline and process for making decisions and managing communications on the Project, the parties recognize it is not possible to specify processes for all activities that may occur. The parties shall communicate in a manner consistent with the Special Provision for *Project Communication and Decision Making for Design-Build Projects* included in the RFP Information Package.

Article 10

Bonds and Insurance

10.1 Insurance. Design-Builder shall procure and maintain insurance in accordance with the Contract Documents, including Article 5 of the General Conditions of Contract and Division I Amendments.

10.2 Performance and Payment Bonds. Design-Builder shall procure and maintain performance and payment bonds executed by a surety acceptable to Department, each in the amount of one hundred percent (100%) of the Contract Price, and in accordance with all other requirements of the Contract Documents, including the Division I Amendments.

Article 11

Other Provisions

11.1 Project Management and Reporting Requirements

11.1.1 Preliminary Schedule. Unless otherwise stated in Exhibit 1, within fifteen (15) days of Design-Builder's receipt of Department's Notice to Proceed, Design-Builder shall submit to Department, for its review and approval, a Preliminary Schedule in accordance with Exhibit 11.1 (Special Provision for Design-Build Schedules). The

Preliminary Schedule shall be the basis for monitoring Design-Builder's performance of the Work until such time as a Baseline Schedule has been approved by Department in accordance with Section 11.1.2 below. Department reserves the right to withhold approval for all or part of Design-Builder's Applications for Payment until such time Design-Builder furnishes an approved Preliminary Schedule.

11.1.2 Baseline Schedule. Unless otherwise stated in Exhibit 1, within ninety (90) days of Design-Builder's receipt of Department's Notice to Proceed, Design-Builder shall submit to Department, for its review and approval, a Baseline Schedule in accordance with Exhibit 11.1.Department reserves the right to withhold approval for all or part of Design-Builder's Applications for Payment until such time Design-Builder furnishes an approved Baseline Schedule.

11.1.3 Schedule Updates. Design-Builder shall submit Schedule Updates in accordance with Exhibit 11.1. Department reserves the right to withhold approval for all or part of Design-Builder's Applications for Payment until such time Design-Builder furnishes an approved Schedule Update.

11.1.4 Revised Baseline Schedule. Design-Builder shall submit a Revised Baseline Schedule when required in accordance with Exhibit 11.1. Department reserves the right to withhold approval for all or part of Design-Builder's Applications for Payment until such time Design-Builder furnishes an approved Revised Baseline Schedule.

11.1.5 Final As-Built Schedule. Design-Builder shall submit a Final As-Built Schedule in accordance with Exhibit 11.1. Department reserves the right to withhold approval for all or part of Design-Builder's Applications for Final Payment until such time Design-Builder furnishes an approved Final As-Built Schedule.

11.1.6 Other Information and Alteration. Design-Builder shall, whenever required by Department, provide in writing a general description of the arrangements and methods which Design-Builder proposes to adopt for the execution of the Work. No significant alteration to the Baseline Schedule, or to such arrangements and methods, shall be made without informing Department and any alterations made shall reflect the requirement for coordination of the Work with the actions and obligations of Department and the work to be carried out by Department's Separate Contractors. If any alteration affects any such actions, obligations or Work, it shall not be made without the prior approval of Department. If the progress of the Work does not conform to the Baseline Schedule, as updated herein, Department may instruct Design-Builder to revise the Baseline Schedule, showing the modifications necessary to achieve completion within the Contract Times.

11.1.7 Department's Separate Contractors. Design-Builder agrees to include the activities of Department's Separate Contractors into the Baseline Schedule. Design-Builder shall reasonably cooperate with Department's Separate Contractors and coordinate its activities with those of such Separate Contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

11.1.8 **Department's Review and Approval of Schedule Submissions**. Department's review and approval of the Preliminary, Baseline Schedule or subsequent Schedule Updates and Revised Baseline Schedule shall not be construed as relieving Design-Builder of its complete and exclusive control and responsibility over the means, methods, sequences and techniques for executing the Work and does not constitute approval or acceptance of Design-Builder's ability to complete the Work within the Contract Time(s).

11.1.9 **Monthly Reports**. Monthly reports shall be prepared by Design-Builder and submitted to Department in six (6) copies. The first report shall cover the time period up to the end of the calendar month after that in which the Agreement Date occurred; reports shall be submitted monthly thereafter, on or before the tenth (10th) day of each month. Reporting shall continue until Department's determination that the Project has achieved Final Acceptance. Each report shall include:

.1 Photographs and detailed descriptions of progress, including each stage of design, right-of-way acquisition, Governmental Approvals (including but not limited to permit acquisition), procurement, delivery to Site, and construction;

.2 Charts showing the status of all design documents, purchase orders, right-of-way acquisition, Governmental Approvals (including but not limited to permit acquisition) and construction;

.3 Records of the Design-Builder's personnel and equipment;

.4 Copies of quality assurance documents, and test results;

.5 Safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations;

.6 Status of approvals for Governmental Approvals, as required by Section 2.6.1 of the General Conditions of Contract;

.7 Monthly updates to the Baseline Schedule and narrative;

.8 Unresolved claims or disputes that involve requests for extension to the Contract Time(s) or adjustment to any other date or milestone set forth in the Contract Documents or increases in the Contract Price;

.9 All required EEO documentation for federal-aid projects;

.10 Weekly work zone safety reviews, on Department-provided forms;

.11 Erosion & Sediment Control Reports, on Department-provided forms; and

.12 Actual quantities for fuel and asphalt on Department-provided forms.

Failure of Design-Builder to provide complete monthly reports, including but not limited

to the monthly schedule updates, shall be grounds for Department to withhold approval for all or part of Design-Builder's Applications for Payment until such time Design-Builder furnishes such complete reports.

11.1.10 **Project Records**. Design-Builder shall organize and maintain its project records in a manner that allows such project records to be filed by work packages, as applicable. Additionally, Design-Builder shall develop a tracking log wherein the project records are provided chronologically, with the file type, description, date received/sent, entity the documentation is from/to, pay package reference, status and electronic location. The Project Record Tracking Log shall be developed in accordance with the format outlined in Exhibit 11.1.10. If the project record relates to changes in the Work, preferably only one work package shall be referenced in such project record. If a project record relates to multiple work packages, then all related work packages shall be referenced in such project record. As a condition of Final Payment, Design-Builder shall provide Department with a complete set of all project records by and between Design-Builder and Department exchanged on the Project.

11.2 Miscellaneous

11.2.1 In executing this Agreement, Department and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary approvals to execute this Agreement and to perform the services and obligations described herein.

11.2.2 The parties acknowledge that as of the Agreement Date, the Virginia General Assembly has appropriated, and the Commonwealth Transportation Board (CTB) has allocated, funding for the Project, and Department's obligation to pay the Contract Price for the Work is subject to the appropriations and allocations.

11.3 Exhibits

11.3.1 The following exhibits, as well as any other exhibits specifically set forth in Exhibit 1 (Project Specific Terms), are made part of, and incorporated into this Agreement. (Exhibits to Part 3 are included in the RFP):

EXHIBIT 1 -- PROJECT SPECIFIC TERMS
EXHIBIT 6.3(a) -- ADJUSTMENT FOR ASPHALT
EXHIBIT 6.3(b) -- FORM C-16a (PRICE ADJUSTMENT FOR ASPHALT)
EXHIBIT 6.3(c) -- ADJUSTMENT FOR FUEL
EXHIBIT 11.1 -- SPECIAL PROVISION FOR DESIGN-BUILD SCHEDULES
EXHIBIT 11.1.10 -- EXAMPLE CORRESPONDENCE TRACKING LOG

THE PARTIES TO THE AGREEMENT SHALL SIGN EXHIBIT 1

END OF PART 3
LUMP SUM DESIGN-BUILD AGREEMENT

PART 4

PART 4

2016 General Conditions of Contract Between Department and Design-Builder

(Date of Standard General Conditions: November 2016)

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Article 1
General

1.1 Mutual Obligations

1.1.1 Department and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.2 Basic Definitions

1.2.1 For the purposes of the Contract Documents, the following words and terms shall have the meanings specified below (other words and abbreviations that have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings), provided, however, that capitalized terms defined in other Contract Documents, including but not limited to the Agreement, shall have the meanings specified in such document.

Agreement refers to the executed Lump Sum Design-Build Agreement between Department and Design-Builder.

Agreement Date is the date that the Agreement is executed by both parties.

APDD Point of Contact means Department's Alternative Project Delivery Division Point of Contact listed in Part 1, Section 2.4 of the RFP Documents.

ATC(s) mean those Alternative Technical Concepts identified in Exhibit 1 to Part 3 of the Contract Documents.

Business Day(s), whether capitalized or not, means any day(s) other than a Saturday, Sunday, Commonwealth of Virginia holiday, or a day when the New York Stock Exchange or banks are authorized or required to close in New York, New York or Richmond, Virginia.

Contract Documents refer to those documents identified in Article 2 of the Agreement.

Contractor shall mean Design-Builder.

Day or *Days*, whether capitalized or not, shall mean calendar days unless otherwise specifically noted in the Contract Documents.

Department's Project Criteria are developed by or for Department to describe Department's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Department's Project Criteria are included in the Request for Proposals and may include conceptual documents, design criteria, performance requirements and other project-specific technical materials and requirements.

Design Consultant is a qualified, licensed design professional, eligible to provide professional engineering and/or land surveying services in the Commonwealth of Virginia, who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder or Subcontractor, to furnish design services required under the Contract Documents.

Engineer shall mean the Department's Chief Engineer, who acts directly or through his duly authorized representative, the representative acts within the scope of the particular duties assigned to him or the authority given to him.

Final Acceptance is achieved when Design-Builder receives written notice from Department under Section 6.6 hereof that the Design-Builder has achieved Final Completion.

Final Completion means that all Work has been completed in accordance with the Contract Documents, including but not limited to completion of all punch list items, and obtaining Final Acceptance by the Department.

General Conditions of Contract (or General Conditions) refer to this document.

Governmental Approval means any authorization, consent, approval, license, lease, ruling, permit, certification, exemption, or registration by or with any Governmental Unit.

Governmental Unit means any national, state or local government, any political subdivision thereof, or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other entity having jurisdiction over the performance of the Work, the Project or the Parties; provided, however, that the term "Governmental Unit" shall not be construed to include Department.

Hazardous Environmental Condition means the presence at the Site of Hazardous Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto on connection with the Work.

Hazardous Materials are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements, including Hazardous Waste.

Hazardous Waste means a waste that is: (a) listed as a hazardous waste in 40 CFR Section 261.31 to 261.33; or (b) exhibits one of the following characteristics: ignitability, corrosivity, reactivity or toxicity, or is otherwise defined as a hazardous waste by the Legal Requirements.

Interim Milestone(s) is completion and delivery date(s) for parts of the Work specified by the Contract Documents.

Known Pre-Existing Hazardous Materials means Hazardous Materials identified in Part 2 (Project Technical Information and Requirements) of the RFP.

Legal Requirements are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any Governmental Unit.

Pre-Existing Hazardous Materials means Known Pre-Existing Hazardous Materials and Unknown Pre-Existing Hazardous Materials.

Proposal means that document submitted by Design-Builder pursuant to the RFP and identified in Article 2 of the Agreement.

QA Manager (QAM) is Design-Builder's designee who shall be from an independent firm that has no involvement in construction operations for the Project, and shall be responsible for the quality assurance (QA) inspection and testing of all materials used and Work performed on the Project, to include monitoring of the Design-Builder's quality control (QC) program. The QAM will ensure that all work and materials, testing, and sampling are performed in conformance with the contract requirements, and the Released for Construction Plans. This individual shall be a registered, licensed, Professional Engineer in the Commonwealth of Virginia.

QA/QC Plan is a plan that details how Design-Builder will provide quality assurance (QA) and quality control (QC) for both the design and construction elements of the project, obtain samples for Design-Builder quality control testing, perform tests for Design-Builder quality control, provide inspection, and exercise management control (e.g. quality assurance testing) to ensure the work conforms to the Contract Documents.

Remedial Actions means the management, treatment, handling, storage, monitoring, removal, transport or disposal measures carried out by Design-Builder with respect to Hazardous Materials in accordance with Section 4.1.1.2 of the General Conditions of Contract.

Remedial Action Plan means the plan developed by Design-Builder with respect to Hazardous Materials encountered by Design-Builder.

Request for Proposals (RFP) is the document identified in Article 2 of the Agreement, inclusive of all of its parts, addenda, Department's Project Criteria, and any other document that is attached thereto or incorporated therein by reference.

Request for Qualifications (RFQ) means all documents, whether attached or incorporated by reference, utilized for soliciting interested persons to apply for prequalification. The RFQ is the first phase of a two-phase selection process for the purpose of inviting interested Offerors to submit qualifications for a project.

RFP Documents refer to those documents identified in Part 1 of the RFP, Instructions for Offerors.

Separate Contractor means a contractor retained by Department other than Design-Builder to perform work or to provide services or materials in connection with the Project.

Site is the land or premises on which the Project is located.

Standard Drawings are the applicable drawings in the Virginia Department of Transportation *Road and Bridge Standards* in effect as of the Agreement Date.

Standard Specifications are the Virginia Department of Transportation *Road and Bridge Specifications* in effect as of the Agreement Date.

State means the Commonwealth of Virginia.

State Highway means any highway designated a State Highway pursuant to Title 33.1, Chapter 1, Sections 25, 48 and 67, Code of Virginia.

State Indemnitee means and includes Department, the Commissioner, the Commonwealth Transportation Board, the State and all elected representatives, appointed officials, commissioners, officers, members, employees, authorized agents and authorized representatives of any of them.

Subcontract means any and all agreements between Design-Builder and its Design Consultants, Subcontractors and other agreements between Design Consultants or Subcontractors and their respective Sub-subcontractors (and/or any other lower tier subcontractors), it being the intent that all this term encompasses all agreements deriving directly or indirectly from Design-Builder, in connection with the performance of the Work.

Subcontractor is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers, but shall not be deemed to include Design Consultants.

Sub-Subcontractor is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers, but shall not be deemed to include Design Consultants.

Unknown Pre-Existing Hazardous Materials means any Hazardous Materials present on the Site prior to the Agreement Date which are not Known Pre-Existing Hazardous Materials.

Work is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

Work Breakdown Structure (WBS) is a hierarchically-structured grouping of project elements that organizes and defines the total scope of the Project. Each descending level is an increasingly detailed definition of a project component. Project components may be products (a product-oriented WBS) or tasks (a task-oriented WBS).

Work Package is a deliverable at the lowest level of the WBS, and may be divided into activities and used to identify and control work flows in the organization.

Article 2
Design-Builder's Services and Responsibilities

2.1 General

2.1.1 Design-Builder's Representative shall be reasonably available to Department and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Department and shall be vested with the authority to act on behalf of Design-Builder.

2.1.2 Design-Builder will attend a kick-off meeting with Department to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents. Department will notify Design-Builder of the time and location of the kick-off meeting. All Design-Builder's Key Personnel shall participate in this kick-off meeting.

2.1.3 Design-Builder shall provide Department with the Preliminary Schedule, Baseline Schedule, Schedule Updates, Schedule Revisions, monthly reports and Final As-Built Schedule set forth in Section 11.1 of the Agreement.

2.1.4 Design-Builder shall, at its sole cost and expense, perform all services associated with the acquisition of any other properties that are necessary, or that Design-Builder deems necessary, to enable Design-Builder to perform the Work. Design-Builder will not be responsible for the right-of-way acquisition cost. The term "right-of-way acquisition cost" means the actual purchase price to a landowner for right of way, including fees, any and all easements, and miscellaneous fees associated with closing as part of the Project.

2.1.5 Design-Builder shall provide management for the Work in accordance with the organization chart set forth in the Proposal. Design-Builder acknowledges the importance of its "Key Personnel". "Key Personnel" shall include Design-Builder's Representative, Design-Build Project Manager, Design Manager, QA Manager, Construction Manager, and any other positions specifically identified in the RFQ, RFP and/or the Proposal as "Key Personnel" (collectively, "**Key Personnel**"). Job duties and responsibilities of Key Personnel shall not be delegated to others for the duration of the Contract. Design-Builder shall not change or substitute any Key Personnel except due to voluntary or involuntary termination of employment, retirement, death, disability, or incapacity. None of the Key Personnel may be withdrawn from the Project without prior written approval of Department, with it being understood and agreed that Design-Builder will provide Department with at least thirty (30) days written notice of any request to withdraw any Key Personnel. Department will have the right to review the qualifications of each individual to be appointed to a Key Personnel position and to approve or disapprove use of such individual in such position prior to the commencement of any Work by such individual. Design-Builder shall remove or replace, or have removed or replaced, any personnel performing the Work if Department has a reasonable objection to such person.

2.1.6 If Design-Builder wishes to deviate from the right-of-way limits shown on the RFP Conceptual Plans included in Part 2 (Project Technical Information and Requirements), such deviations will be subject to Department's prior written approval. It will be the responsibility of Design-Builder to coordinate directly with the affected property owners to acquire such right-of-way. Design-Builder shall be responsible for assuming all risks associated with exceeding such right-of-way limits, including any public hearings and any NEPA document re-evaluation that may be required, and no modifications to the Contract Price or Contract Time(s) will be granted or considered.

2.1.7 Design-Builder shall submit its QA/QC Plan to VDOT for review and approval at the kick-off meeting referenced in Section 2.1.2 above. At the kick-off meeting, Design-Builder's Design Manager and QA Manager shall provide a presentation of the QA/QC Plan for design and construction, using project-related scenarios

2.1.8 Design-Builder shall coordinate and lead all monthly progress meetings. During such meetings, progress during the prior month shall be reviewed. Design-Builder shall collect information from Design Consultants and any key Subcontractors responsible for work completed during the specified duration and work scheduled during the upcoming reporting duration. The monthly meetings shall be attended by all Key Personnel, as well as any other individuals that Department may require. Meetings will occur monthly beginning the month after Design-Builder's receipt of Department's Notice to Proceed. Design-Builder shall be responsible for preparing, maintaining and distributing minutes of the meetings to all attendees for review. The meeting minutes shall be provided to Department within two (2) days of the monthly progress meeting.

2.1.9 Design-Builder shall perform the Work in accordance with: (a) the Contract Documents; (b) applicable Legal Requirements and Governmental Approvals; and (c) the degree of skill and judgment prevailing on the Agreement Date that is expected to be exercised by prudent, skilled and experienced contractors and design professionals on similar projects in the Commonwealth of Virginia, taking into consideration safety, operational requirements, level of service, and life cycle costs. Notwithstanding the above, if any of (a), (b) or (c) in the preceding sentence conflict, Design-Builder shall be obligated to perform the Work in accordance with the more stringent standard.

2.1.10 If the Contract Documents incorporate any ATCs and Design-Builder, for whatever reason: (a) does not comply with one or more Department conditions of pre-approval for the ATC; (b) does not obtain required third-party approval for the ATC; or (c) fails to implement the ATC, then Design-Builder shall: (1) provide written notice thereof to Department; and (2) comply with the requirements in the Contract Documents that would have applied in the absence of such ATC. Such compliance shall be without any increase in the Contract Price or extension to the Contract Time(s). For the avoidance of doubt, Design-Builder shall not be entitled to any increase in the Contract Price or extension of the Contract Time(s) as a result of any delay, inability or cost associated with the acquisition of any property that may be required to implement any ATC.

2.2 Scope Validation and Identification of Scope Issues

2.2.1 **Scope Validation Period**. The term "**Scope Validation Period**" is the period of time that begins on Design-Builder's receipt of Department's Notice to Proceed and extends for one hundred twenty (120) days from such date of receipt, unless otherwise stated in Exhibit 1. During the Scope Validation Period, Design-Builder shall thoroughly review and compare all of the then-existing Contract Documents, including without limitation the RFP Documents and the Proposal, to verify and validate Design-Builder's proposed design concept and identify any defects, errors, or inconsistencies in the RFP Documents that affect Design-Builder's ability to complete its proposed design concept within the Contract Price and/or Contract Time(s) (collectively referred to as "**Scope Issues**"). The term "Scope Issue" shall not be deemed to include items that Design-Builder should have reasonably discovered prior to the Agreement Date.

2.2.2 **Scope Validation Period for Non-Accessible Areas of the Site**. The Parties recognize that Design-Builder may be unable to conduct the additional investigations contemplated by Section 4.2.2 below because it will not have access to certain areas of the Site within the Scope Validation Period set forth in Section 2.2.1 above. Design-Builder shall notify Department at the meeting set forth in Section 2.1.2 of all such non-accessible areas and the dates upon which such areas are expected to become accessible. If Department agrees that such areas are non-accessible, then, for the limited purpose of determining Scope Issues that directly arise from geotechnical evaluations for such areas, the term "**Scope Validation Period**" shall be deemed to be the thirty (30) day period after the date the specified area becomes accessible for purposes of conducting the geotechnical evaluation. If Department does not agree that such areas are non-accessible, then the Scope Validation Period shall not be extended.

2.2.3 **Submission Requirements for Scope Issues**. If Design-Builder intends to seek relief for a Scope Issue, it shall promptly, but in no event later than the expiration of the Scope Validation Period, simultaneously provide Department and the APDD Point of Contact in writing with a notice ("General Notice") of the existence of such Scope Issue, which General Notice shall generally explain the basis for such Scope Issue. Within twenty-one (21) days of the General Notice, Design-Builder shall provide Department and the APDD Point of Contact with documentation that specifically explains its support for the Scope Issue ("Supporting Documentation"). The Supporting Documentation shall include, among other things: (a) the assumptions that Design-Builder made during the preparation of its proposal that form the basis for its allegation, along with documentation verifying that it made such assumptions in developing its proposal; (b) an explanation of the defect, error or inconsistency in the RFP Documents that Design-Builder could not have reasonably identified prior to the Agreement Date: and (c) the specific impact that the alleged Scope Issue has had on Design-Builder's price and time to perform the Work. For the avoidance of doubt: (1) Design-Builder shall not be entitled to raise in its Supporting Documentation any Scope Issues that were not previously addressed in a General Notice; and (2) Design-Builder shall have no right to seek any relief for any Scope Issues that have not been specifically identified in a General Notice provided to Department during the Scope Validation Period.

2.2.4 Resolution of Scope Issues. Within a reasonable time after Department's receipt of the Supporting Documentation described in the Section 2.2.3 above, the Parties shall meet and confer to discuss the resolution of such Scope Issues. If Department agrees that Design-Builder has identified a valid Scope Issue that materially impacts Design-Builder's price or time to perform the Work, a Work Order shall be issued in accordance with Article 9 hereof. If Department disagrees that Design-Builder has identified a valid Scope Issue that materially impacts Design-Builder's price or time to perform the Work, then Design-Builder's recourse shall be as set forth in Article 10. Notwithstanding anything to the contrary in the Contract Documents or as a matter of law, Design-Builder shall have the burden of proving that the alleged Scope Issue could not have been reasonably identified prior to the Agreement Date and that such Scope Issue materially impacts its price or time to perform the Work.

2.2.5 Design-Builder's Assumption of Risk of Scope Issues. The Parties acknowledge that the purpose of the Scope Validation Period is to enable Design-Builder to identify those Scope Issues that could not reasonably be identified prior to the Agreement Date. By executing this Agreement, Design-Builder acknowledges that the Scope Validation Period is a reasonable time to enable Design-Builder to identify Scope Issues that will materially impact Design-Builder's price or time to perform the Work. After the expiration of the Scope Validation Period, with the sole exception of those Scope Issues made the subject of a General Notice during the Scope Validation Period and subject to valid requests for Work Orders in accordance with Section 2.2.3 above, the Parties agree as follows:

.1 Design-Builder shall assume and accept all risks, costs, and responsibilities of any Scope Issue arising from or relating to the Contract Documents, including but not limited to conflicts within or between the RFP Documents and Proposal;

.2 Design-Builder shall be deemed to have expressly warranted that the Contract Documents existing as of the end of the Scope Validation Period are sufficient to enable Design-Builder to complete the design and construction of the Project without any increase in the Contract Price or extension to the Contract Time(s); and

.3 Department expressly disclaims any responsibility for, and Design-Builder expressly waives its right to seek any increase in the Contract Price or extension to the Contract Time(s) for, any Scope Issue associated with any of the Contract Documents, including but not limited to the RFP Documents.

2.2.6 Waiver of Rights. The failure of Design-Builder to meet the submission requirements required under Section 2.2.3 above for a Scope Issue, including but not limited to the times for providing notice and documentation of the Scope Issue, shall conclusively constitute a waiver of Design-Builder's rights to seek relief for such Scope Issue.

2.2.7 Failure of Technical Proposal to Meet Requirements of the Contract Documents. Notwithstanding anything to the contrary in this Section 2.2 or elsewhere in the Contract Documents, Department shall have no responsibility in the event Design-Builder's Proposal fails to meet the requirements of the Contract Documents, regardless of whether: (a) Department modified the RFP Documents to permit Design-Builder to implement a technical approach; (b)

Department accepted Design-Builder's Proposal; or (c) any other action or inaction of Department is alleged by Design-Builder.

2.3 Design Professional Services

2.3.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering, surveying, and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. All design professional services shall be performed by professionals properly licensed in the Commonwealth of Virginia and who are well-versed in Department's design standards and practices.

2.3.2 No Design Consultant is intended to be, nor shall any Design Consultant be deemed to be, a third-party beneficiary of this Agreement. Department is intended to be and shall be deemed a third-party beneficiary of all contracts between Design-Builder and any Design Consultant. In the event that this Agreement is terminated, Design-Builder shall, upon the written demand of Department, assign such contracts to Department.

2.3.3 Design-Builder shall incorporate all obligations and understandings of the Contract Documents applicable to design services in its respective contracts with any Design Consultant, and require that such obligations be flowed down to lower-tiered Design Consultants, including the obligations relative to ownership of the Work Product set forth in Article 4 of the Agreement.

2.4 Design Development Services

2.4.1 Design-Builder shall be responsible for the professional quality, technical accuracy, timely completion and coordination of all drawings, specifications and other design submissions required to be developed by Design-Builder under the Contract Documents and shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such design submissions.

2.4.2 Design-Builder shall, consistent with any applicable provision of the Contract Documents, provide Department with ten (10) sets of the following interim design submissions, in accordance with Part 2 (Project Technical Information and Requirements). The submissions should generally correspond to Department's concurrent engineering process, including but not limited to: (i) Preliminary Field Inspection (PFI); (ii) Field Inspection and Right-of-Way (FI/RW); and (iii) additional interim design submissions that Department may require. On or about the time of the scheduled submissions, Design-Builder and Department shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previous design submissions. Minutes of the meetings will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Department shall review and provide comments on the interim design submissions (except that it will specifically approve or disapprove of the FI/RW submissions)

within twenty-one (21) days after receipt of the required submissions. Design-Builder shall promptly revise and modify all such submittals so as to fully reflect all comments and shall deliver to Department revised submittals for review and comment (and approval as the case may be).

2.4.3 Design-Builder shall submit to Department Released for Construction Plans setting forth in detail drawings and specifications describing the requirements for construction and QA/QC activities associated with such Work, in full compliance with the Contract Documents and all Legal Requirements and Governmental Approvals. The Released for Construction Plans shall be consistent with the latest set of interim design submissions; as such submissions may have been modified in a design review meeting, as agreed upon in writing, and shall be submitted after Design-Builder has obtained all requisite Governmental Approvals associated with the Work contained in such documents. The parties shall have a design review meeting to discuss, and Department shall review and approve, the Released for Construction Plans in accordance with the procedures set forth Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Released for Construction Plans and shall submit the approved Released for Construction Plans to Department prior to commencement of Work in accordance with Part 2 (Project Technical Information and Requirements).

2.4.4 Department's review, comment and/or approval of interim design submissions and the Released for Construction Plans are for the purpose of establishing Design-Builder's compliance with the requirements of the Contract Documents and mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Department's review, comment and/or approval of any interim or final design submission (including but not limited to the Released for Construction Plans) shall not be deemed to transfer any liability from Design-Builder to Department.

2.4.5 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may, with the prior agreement of Department, prepare design submittals and Released for Construction Plans for a portion of the Work to permit procurement and construction to proceed on that portion of the Work prior to completion of the Released for Construction Plans for the entire Work.

2.5 Legal Requirements

2.5.1 Design-Builder shall keep fully informed of and perform the Work in accordance with all Legal Requirements. Design-Builder shall provide all notices, and execute and file the documents, statements and/or affidavits applicable to the Work as required by the Legal Requirements. Design-Builder shall permit Department's examination of any records made subject to such examination by any applicable Legal Requirements.

2.5.2 Design-Builder may request, by submission of a Work Order request, that the Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the Agreement Date, affecting the performance of the Work. Such effects may include, without limitation, revisions Design-Builder is required to make to the Released for Construction Plans because of changes in Legal

Requirements. Notwithstanding anything to the contrary, the relief afforded by this Section 2.5 shall not apply to changes in any tax laws, with Design-Builder bearing the risk of such changes.

2.6 Governmental Approvals

2.6.1 Except as identified in Department's Governmental Approvals List, Exhibit 3.5.1, Design-Builder shall obtain and pay for all necessary Governmental Approvals required for the prosecution of the Work by any Governmental Unit. If any such Governmental Approval is required to be formally issued in the name of Department, Design-Builder shall undertake all efforts to obtain such Governmental Approvals subject to Department's reasonable cooperation with Design-Builder, including execution and delivery of appropriate applications and other documentation in forms approved by Department. Design-Builder shall deliver to Department, promptly after Design-Builder's receipt, a copy of each such Governmental Approval, with a listing of the status of all such Governmental Approvals included in the monthly reports required by Section 11.1 of the Agreement.

2.6.2 Design-Builder shall provide reasonable assistance to Department in obtaining those Governmental Approvals that are Department's responsibility, and no construction activity will commence until: (i) all Governmental Approvals required for the relevant construction activity (including any activity that may disturb the Site) have been obtained; (ii) Department has been notified that such Governmental Approvals have been obtained; and (iii) Department has, after reviewing the validity and scope of the Governmental Approval, authorized Design-Builder to proceed.

2.6.3 Design-Builder shall ensure that the Work conforms to the requirements and stipulations of all Governmental Approvals. Any violations of or noncompliance with any Governmental Approval, including but not limited to suspensions caused by Design-Builder violating or not being in compliance with a Governmental Approval, shall be at the sole risk of Design-Builder, and shall not be a basis for adjusting the Contract Price and/or Contract Time(s).

2.7 Design-Builder's Construction Phase Services

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Department or a Separate Contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents, and shall maintain or cause to be maintained all licenses required of Design-Builder or its employees in connection with the Work. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work lawfully in the Commonwealth of Virginia and consistent with the Contract

Documents. Design-Builder shall not use any Subcontractor to whom Department has a reasonable objection, and shall obtain Department's written consent before making any substitutions or additions to Subcontractors previously identified to Department as being members of Design-Builder's Project team, including those who may have been identified in the Proposal.

2.7.4 Design-Builder assumes responsibility to Department for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Department and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.7.5 Design-Builder shall coordinate the activities of all Subcontractors. If Department performs other work on the Project or at the Site with Separate Contractors under Department's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such Separate Contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.7.6 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Final Acceptance of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Department to occupy the Project or a portion of the Project for its intended use.

2.7.7 Design-Builder shall be responsible for the security of the Site until Final Acceptance of the Work, or a portion of the Work.

2.8 Design-Builder's Responsibility for Project Safety

2.8.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to: (i) all individuals at the Site, whether working or visiting; (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site; and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable. Design-Builder shall provide minutes of each safety meeting to Department within five (5) days of such meeting.

2.8.2 Design-Builder shall provide, for Department's review, comment and acceptance, a Health, Safety and Welfare (HS&W) plan on or before the earlier of fifteen (15) days of Design-Builder's receipt of Department's Notice to Proceed, or twenty-one (21) days before Design-Builder intends to commence any construction-related activities at the Site. Design-Builder shall not perform any construction-related activity (including any activity that disturbs the Site) until an acceptable HS&W plan is in place.

2.8.3 Design-Builder and Subcontractors shall comply with: (i) all Legal Requirements relating to safety; (ii) Design-Builder's HS&W plan; and (iii) any Department-specific safety requirements set forth in the Contract Documents, provided that such Department-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Department's Representative and, to the extent mandated by Legal Requirements, to all Governmental Units having jurisdiction over safety-related matters involving the Project or the Work.

2.8.4 Department shall have the right to immediately suspend any or all Work if Design-Builder fails to comply with its obligations hereunder.

2.8.5 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for: (i) complying with all Legal Requirements, including those related to health and safety matters; and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

2.9 Design-Builder's Warranty

2.9.1 Design-Builder warrants to Department that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, damage, alterations, or failure to maintain the Work by persons other than Design-Builder or anyone for whose acts Design-Builder may be liable. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Department with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Department with all manufacturers' warranties upon Final Acceptance.

2.10 Correction of Defective Work

2.10.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one (1) year from the date of Final Acceptance of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents or applicable Legal Requirements or Government Approvals.

2.10.2 Design-Builder shall, within seven (7) days of receipt of written notice from Department or the QA Manager that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Department, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Department will commence correction of such nonconforming Work with its own forces. If Department does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Department in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day periods identified herein shall be deemed inapplicable.

2.10.3 The one (1) year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Department may have regarding Design-Builder's other obligations under the Contract Documents.

2.11 Department's Rights to Direct Design-Builder

2.11.1 When any act, omission, or other action of Design-Builder occurs that violates the requirements, conditions, or terms of the Contract Documents; or affects the health, safety, or welfare of the public or natural resources, Department will have the right, but not the obligation, to direct Design-Builder to take prompt action to repair, replace, or restore the damage or injury within a time frame established by Department. If Design-Builder fails to make such repair, replacement, or restoration within the established time frame, Department will have the damage or injury repaired, replaced, or restored and will deduct the cost of such repair, replacement, or restoration (plus twenty five percent (25%) for supervisory and administrative personnel costs) from monies due Design-Builder.

Article 3
Department's Services and Responsibilities

3.1 Duty to Cooperate

3.1.1 Department shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Department shall provide timely reviews and (where required) approvals of submittals, interim design submissions and Released for Construction Plans consistent with the turnaround times set forth in Design-Builder's schedule, provided, however that, unless stated otherwise in the Contract Documents, Department shall have twenty-one (21) days after receipt of such submissions to act upon such submissions. This Section 3.1.2 shall not be construed to apply to the acquisition of Governmental Approvals by either Design-Builder or Department.

3.1.3 Department's Representative will participate in monthly progress meetings for the duration of the Project.

3.2 Furnishing of Services and Information

3.2.1 Department has provided RFP Information Documents in Part 2 of the RFP for Design-Builder to consider in developing the Proposal and for executing the Work. Design-Builder shall thoroughly review and compare all such documents during the Scope Validation Period and, to the extent that any Scope Issues arise, Department shall consider such issues in accordance with Section 2.2 above.

3.3 Financial Information

3.3.1 At Design-Builder's request, Department shall promptly furnish reasonable evidence satisfactory to Design-Builder that Department has adequate funds available and committed to fulfill all of Department's contractual obligations under the Contract Documents. If Department fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

3.3.2 Design-Builder shall cooperate with the reasonable requirements of Department's lenders or other financial sources. Notwithstanding the preceding sentence, after the Agreement Date, Design-Builder shall have no obligation to execute for Department or Department's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

3.4 Department's Representative

3.4.1 Department's Representative shall be responsible for providing Department-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Department's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work.

3.5 Governmental Approvals

3.5.1 Department shall obtain and pay for all necessary Governmental Approvals set forth in Department's Governmental Approval List, Exhibit 3.5.1, which is included with the RFP.

3.5.2 Department shall provide reasonable assistance to Design-Builder in obtaining those Governmental Approvals that are Design-Builder's responsibility.

3.6 Department's Separate Contractors

3.6.1 Department may at any time contract or approve concurrent contracts for performance of other work on, near, or within the same geographical area of the work specified in an existing contract. Design-Builder shall not impede or limit access to such work by others.

3.6.2 When separate contracts are awarded within the limits of one project, contractors shall not hinder the work being performed by other contractors. Design-Builder and Separate Contractor(s) working on the same project shall cooperate with each other. In case of dispute, Department's Representative will be the referee, and his decision will be binding on all parties.

3.6.3 When contracts are awarded to Separate Contractor(s) for known concurrent construction in a common area, Design-Builder and Separate Contractor(s), in conference with Department's Representative, shall establish a written joint schedule of operations. The schedule shall be based on the limitations of the individual contracts and the joining of the work of one contract with the others. The schedule shall set forth the approximate dates and sequences for the several items of work to be performed and shall ensure completion within the contract time limit. The schedule shall be submitted to Department's Representative for review and approval no later than twenty-one (21) days after the award date of the later contract and prior to the first monthly progress meeting. The schedule shall be agreeable to, signed by, and binding on each Design-Builder(s) and/or Separate Contractor(s). Department's Representative may allow modifications of the schedule when benefit to Design-Builder and/or Separate Contractor(s) and Department will result.

3.6.4 Any modification of the schedule shall be in writing, mutually agreed to and signed by Design-Builder and Separate Contractor(s), and shall be binding on Design-Builder and Separate Contractor(s) in the same manner as the original agreement.

3.6.5 If Design-Builder and Separate Contractor(s) fail to agree on a joint schedule of operations, they shall submit their individual schedules to Department's Representative, who will prepare a schedule that will be binding on Design-Builder and Separate Contractor(s).

3.6.6 The joint schedule and any modification thereof shall become a part of each contract involved. The failure of Design-Builder and Separate Contractor(s) to abide by the terms of the joint schedule will be justification for declaring Design-Builder and/or Separate Contractor(s) in default of his contract.

3.6.7 Design-Builder and each Separate Contractor shall assume all liability, financial or otherwise, in connection with his contract and shall protect and save harmless the Commonwealth from any and all damages and claims that may arise because of any inconvenience, delay, or loss he experiences as a result of the presence and operations of other Separate Contractors working in or near the work covered by his contract. Design-Builder shall also assume all responsibility for any of his work not completed because of the presence or operation of other Separate Contractors.

3.6.8 Except for an extension of the contract time limit, Department will not be responsible for any inconvenience, delay, or loss experienced by Design-Builder or Separate Contractor as a result of his failure to gain access to the work at the time contemplated. When the failure to gain access is not due to any fault or negligence of Design-Builder or Separate Contractor, an extension of the contract time limit will be allowed on the basis of the amount of time delayed.

3.6.9 Department will not assume any responsibility for acts, failures, or omissions of Design-Builder or Separate Contractor that delay the work of another except as provided herein.

Article 4
Hazardous Environmental Conditions and Differing Site Conditions

4.1 Hazardous Environmental Conditions

4.1.1 General Obligations

.1 Unless specifically stated to the contrary in Part 2 (Project Technical Information and Requirements) of the RFP, Design-Builder will be responsible for the management, treatment, handling, storage, monitoring, remediation, removal, transport and/or disposal of any Hazardous Environmental Conditions that are encountered on, in or under the Site.

.2 Design-Builder shall notify Department prior to implementing any Remedial Actions contained in Design-Builder's Environmental Management Plan for Known Pre-Existing Hazardous Materials.

.3 If Design-Builder encounters any Unknown Pre-Existing Hazardous Materials the presence of which constitutes a Hazardous Environmental Condition, then Design-Builder will promptly notify Department and, in consultation with Department, will develop a Remedial Action Plan setting out the scope of the Remedial Actions that Design-Builder proposes to take in relation to the relevant Hazardous Environmental Condition, such actions to include, but not be limited to: (i) conducting such further investigations as may be necessary or appropriate to determine the nature and extent of the Hazardous Materials and submitting copies of such data and reports to Department for its review and approval, (ii) taking reasonable steps, including in the case of excavation, construction, reconstruction or rehabilitation, modifications and/or construction techniques, to avoid or minimize excavation or dewatering in areas with Hazardous Materials, (iii) preparing and obtaining Governmental Approvals for remedial action plans, including Department approval, (iv) carrying out the Remedial Action Plan, including, as necessary, disposal of the Hazardous Materials and (v) timely informing Department of all such actions.

.4 Before any Remedial Actions for Unknown Pre-Existing Hazardous Materials are taken that would inhibit Department's ability to ascertain the nature and extent of the Hazardous Environmental Condition, Design-Builder will afford Department the opportunity to inspect areas and locations that require Remedial Actions; *provided*, that in the case of a sudden release of any Unknown Pre-Existing Hazardous Materials, Design-Builder may take all reasonable

actions necessary to stabilize and contain the release without prior notice or inspection, but will promptly notify Department of the sudden release and its location.

.5 Design-Builder will obtain all Governmental Approvals relating to all Remedial Actions. Design-Builder will be solely responsible for compliance with such Governmental Approvals and applicable Legal Requirements concerning or relating to Hazardous Materials. In carrying out Remedial Actions that are compensable by Department pursuant to Section 4.1.2 below, Design-Builder will not take any steps or actions which impair Department's potential claims for indemnity and contribution, statutory or otherwise.

.6 Unless directed otherwise by Department, Design-Builder will seek to recover costs from any available reimbursement program or from any third party responsible for generating or otherwise creating or contributing to conditions that led to the need for Remedial Action. Without limiting the preceding sentence, Design-Builder will seek pre-approval and pursue reimbursement from the Virginia Petroleum Storage Tank Fund (VPSTF) for qualifying expenses incurred during the course of investigation, containment, management, mitigation or remediation activities on petroleum storage tank releases. The parties will cooperate with and notify each other with respect to activities undertaken pursuant to this Section 4.1.1.6.

.7 Except as provided in Section 4.1.2 below, Design-Builder will bear all costs and expenses of preparing and complying with any Remedial Action Plan, of complying with Legal Requirements and obtaining and complying with Governmental Approvals pertaining to Hazardous Materials, and otherwise of carrying out Remedial Actions.

4.1.2 Pre-Existing Hazardous Materials

.1 Department will reimburse, to the extent permitted by the Legal Requirements, Design-Builder for Design-Builder's costs for Remedial Actions with respect to any Unknown Pre-Existing Hazardous Materials, the presence of which constitutes a Hazardous Environmental Condition.

.2 Department will assume, to the extent permitted by the Legal Requirements, responsibility for third-party claims against Design-Builder for personal injury, damages or harm to property or business due to any Pre-Existing Hazardous Materials, the presence of which constitutes a Hazardous Environmental Condition, and all related penalties, fines and administrative or civil sanctions arising out of or related to such Pre-Existing Hazardous Materials; except to the extent Design-Builder is obliged to indemnify Department pursuant to Section 4.1.3 below.

.3 Design-Builder will provide cost estimates with respect to such Remedial Actions which may be reimbursed by Department, for Department's review and approval prior to proceeding with any such Remedial Actions, subject to Section 4.1.1.3 above.

.4 Department reserves the right to perform Remedial Actions for Unknown Pre-Existing Hazardous Materials in lieu of, and as replacement for, Design-Builder's Remedial Action obligations subject to Section 4.1.1.2 above.

.5 Design-Builder will be entitled to submit a request for a Work Order in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence, removal or remediation of Unknown Pre-Existing Hazardous Materials that constitute a Hazardous Environmental Condition.

4.1.3 Design-Builder's Indemnification Obligations Regarding Hazardous Materials

.1 Design-Builder will indemnify, protect, defend and hold harmless and release each State Indemnitee from and against any and all claims against State Indemnitees by a person not party to the Agreement, including reasonable attorney's fees, expert witness fees and court costs suffered or incurred by such State Indemnitee, to the extent caused by:

(A) Hazardous Materials introduced to or brought onto the Site by Design-Builder or its Subcontractors;

(B) failure of Design-Builder or any of its Subcontractors to comply with any requirement of the Contract Documents relating to Hazardous Materials (including any failure to perform any Remedial Action required in accordance with Section 4.1.1 above) or to otherwise comply with applicable Legal Requirements and Governmental Approvals; or

(C) the exacerbation, release, spreading, migration, or toxicity of Hazardous Materials due to the negligence, omission, recklessness, or willful misconduct of Design-Builder or any of its Subcontractors.

.2 Design-Builder shall defend such claims in accordance with Article 7 below.

.3 Design-Builder's obligations under this Section 4.1.3 will not apply to claims to the extent caused by the negligence, recklessness, or willful misconduct of any State Indemnitee.

4.2 Inspection of Site Conditions

4.2.1 Design-Builder represents and warrants that it has, as of the Agreement Date, ascertained the nature and location of the Work, the character and accessibility of the Site, the existence of obstacles to construction, the availability of facilities and utilities, the location and character of existing or adjacent work or structures, the surface and subsurface conditions, and other general and local conditions (including labor) which might affect its performance of the Work or the cost thereof.

4.2.2 Design-Builder will, after its receipt of Department's Notice to Proceed, undertake such testing, inspections and investigations as may be necessary to perform its obligations under the Contract Documents, including but not limited to additional geotechnical evaluations or Hazardous Materials studies. If Design-Builder intends to conduct additional geotechnical evaluations to supplement or corroborate the information contained in the RFP Documents, it

shall do so during the Scope Validation Period. Any Scope Issues that arise from such evaluations shall be treated in the manner set forth in Section 2.2 above. All reports or analyses generated by Design-Builder's testing, inspections and investigations, including but not limited to additional geotechnical testing, shall be furnished to Department promptly after such reports or analyses are generated.

4.3 Differing Site Conditions

4.3.1 Concealed or latent physical conditions or subsurface conditions at the Site that: (i) materially differ from the conditions indicated in the RFP Documents (as such conditions may be further described through reports or analyses undertaken during the Scope Validation Period); or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to submit a request for a Work Order for an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition as allowed for herein.

4.3.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Department of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

4.3.3 Design-Builder shall not be entitled to any adjustment in the Contract Price and/or Contract Time(s) due to impacts of Differing Site Conditions not identified during the Scope Validation Period, unless Department, in its sole discretion, determines that the circumstances associated with the Differing Site Condition justify making such adjustment.

Article 5
Insurance and Bonds

5.1 Design-Builder's Insurance Requirements

5.1.1 Design-Builder shall procure and maintain the insurance coverages required by Section 103.06(e) of the Division I Amendments.

5.2 Bonds and Other Performance Security

5.2.1 Design-Builder shall procure performance and payment bonds executed by a surety acceptable to Department, each in the amount of one hundred percent (100%) of the Contract Price, and in accordance with all other requirements of the Contract Documents, including the Division I Amendments.

5.2.2 If Design-Builder is structured as a limited liability company, partnership or joint venture, the bonding approach used will ensure that the members of such organizations will have joint

and several liability for the performance of the Work required for the Project. A single 100% performance bond and a single 100% payment bond shall be provided regardless of any co-surety relationship.

Article 6
Payment

6.1 Schedule of Payments

6.1.1 Design-Builder shall submit to Department, for its review and approval, and as part of its submission of the Preliminary Schedule and the Baseline Schedule under Section 11.1 of the Agreement, the Earned Value Schedule indicating Design-Builder's anticipated monthly earnings schedule in accordance with Exhibit 11.1 of the Agreement (Special Provision for Design-Build Schedules) Department reserves the right to withhold approval for all or part of Design-Builder's Applications for Payment until such time Design-Builder furnishes an approved Preliminary Schedule and subsequent Baseline Schedule.

6.1.2 The parties agree that progress payments for Work performed prior to Department's approval of the Baseline Schedule is based on the Earned Value Schedule in the approved Preliminary Schedule.

6.1.3 Neither the Earned Value Schedule included in Design-Builder's Baseline Schedule nor payments made under Section 6.1.2 above shall exceed the monthly payment schedule submitted with the Proposal, unless Department specifically approves this in writing.

6.1.4 Payment for mobilization shall not be scheduled prior to the initiation of construction work. The pay item for mobilization shall be distributed between two (2) separate installments. The first installment of fifty percent (50%) of Design-Builder's total mobilization cost may be scheduled following partial mobilization and initiation of construction work. The second installment may be scheduled following completion of substantial mobilization, including erection of Design-Builder's offices and buildings, if any. Preliminary engineering items including, but not limited to, surveying, geotechnical investigations and utility coordination shall not be considered as construction work for the purpose of mobilization. Bonds and insurance premiums, and field office expenses at Project start-up will not be considered part of mobilization activities. For the avoidance of doubt, this Section 6.1.4 shall prevail over any conflicting provision of Section 513 of the Road and Bridge Specifications. In no case shall the total cost of mobilization (minus the cost of bonds and insurance premiums) exceed the amount stipulated in the table included in Section 513 of the Road and Bridge Specification.

6.2 Monthly Progress Payments

6.2.1 On the tenth (10th) day of each month, Design-Builder shall submit for Department's review and approval its Application for Payment requesting payment for all Work performed as of the first day of such month and coinciding with the progress reflected in the monthly Baseline Schedule update. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by

Section 2.1.2 hereof. Payment shall be made in accordance with the following earned value calculation:

.1 Design-Builder shall identify each activity, and the value in dollars of such activity, in accordance with Section 6.1.1 above. Applications for Payment shall be made based on the following earned values.

.1 Design-Builder shall earn twenty percent (20%) of the value of an activity upon initiation of the respective activity.

.2 Design-Builder shall earn eighty percent (80%) of the value of an activity upon completion of the respective activity.

.2 QA/QC shall be an integral part of each activity. As part of each Application for Payment that includes completed activities, Design-Builder shall submit with the Application for Payment evidence of the QA/QC reviews, including any checklists, summary data, high-level/outline calculations or design checks, and evaluations of the work and the qualifications of the responsible personnel that completed the work, etc., that the relevant QA or QC reviewer relied on to make its determination the Work is complete and conforms to the requirements of the Contract Documents. Furthermore, the QAM shall: (a) verify that the design included in each activity has been completed in accordance with the Contract Documents; (b) certify that the construction included in each activity has been completed in accordance with the Contract Documents; and (c) certify that all required QA/QC tests, measurements, permits or other requirements have been completed and all non-conformance reports relative to the respective activity have been resolved. The QAM's certification for monthly Application of Payment for construction activities shall include the following statement: *As the Quality Assurance Manager, I certify, to the best of my knowledge, information and belief based upon and to the extent of: (i) current on-site observations and field testing required to be performed; and (ii) material certifications and test reports, that each Work Package shown herein as complete has been completed in accordance with the Contract Documents, and that all required QA/QC tests, measurements, permits or other requirements have been completed and all non-conformance reports relative to a respective Work Package have been resolved except for the attached list of open issues*.

6.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that: (i) Department, in its sole discretion, agrees that it is willing to allow payment for such equipment and materials; (ii) Department is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location; (iii) the equipment and materials are protected by suitable insurance; and (iv) upon payment, Department will receive the equipment and materials free and clear of all liens and encumbrances.

6.2.3 The Application for Payment shall constitute Design-Builder's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Department free

and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

6.3 Withholding of Payments

6.3.1 On or before the date established in the Agreement, Department shall pay Design-Builder all amounts properly due. If Department determines that Design-Builder is not entitled to all or part of an Application for Payment, it will notify Design-Builder in writing at least seven (7) days prior to the date payment is due. The notice shall indicate the specific amounts Department intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Department's concerns. Design-Builder and Department will attempt to resolve Department's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Department shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

6.4 Right to Stop Work and Interest

6.4.1 If Department wrongfully fails to pay Design-Builder any amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

6.5 Design-Builder's Payment Obligations

6.5.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Department on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Department against any claims for payment and mechanic's liens as set forth in Section 7.2.1 hereof.

6.6 Acceptance

6.6.1 Until Final Acceptance of the Work by Department in accordance with the requirements of this Section, Design-Builder shall have charge and care thereof and shall take every precaution against damage to any part thereof by action of the elements or from any other cause. Design-Builder shall rebuild, repair, restore, and make good on damage to any portion of the Work occasioned by any of the foregoing causes before Final Acceptance and shall bear the expense thereof.

6.6.2 Design-Builder shall notify Department when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, has achieved Final Completion.

Within seven (7) days of Department's receipt of Design-Builder's notice, along with a certification for the QA Manager that such Work has achieved Final Completion, Department and Design-Builder will jointly inspect such Work to verify that such Work has achieved Final Completion in accordance with the requirements of the Contract Documents. If Department concludes that the applicable Work has not achieved Final Completion, it will so advise Design-Builder, whereupon the preceding process will continue until Department agrees that the applicable Work has achieved Final Completion. Once the Work is determined to have achieved Final Completion, Design-Builder will be notified in writing, of the determination of Final Acceptance.

6.6.3 Upon notification of Final Acceptance, Design-Builder will provide Department with a Final Application for Payment. Department shall make final payment by the time required in the Agreement. At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

.1 an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Department's interests;

.2 a general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Department and remaining unsettled at the time of final payment, which claims shall be specifically listed in an attachment to the general release;

.3 consent of Design-Builder's surety to final payment;

.4 all operating manuals, warranties and other deliverables required by the Contract Documents, including the project records required by Section 11.1.9 of the Agreement; and

.5 certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

6.6.4 Upon making final payment, Department waives all claims against Design-Builder except claims relating to: (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Department's interests; (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after final payment; and (iii) the terms of any special warranties and indemnifications required by the Contract Documents.

Article 7
Indemnification

7.1 Patent and Copyright Infringement

7.1.1 Design-Builder shall defend any action or proceeding brought against any State Indemnitee based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now

or hereafter issued. The State Indemnitee shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless State Indemnitees from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against State Indemnitees or Design-Builder in any such action or proceeding. Design-Builder agrees to keep the State Indemnitees informed of all developments in the defense of such actions.

7.1.2 If a State Indemnitee is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense: (i) modify the Work so as to avoid infringement of any such patent or copyright; or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright: (i) relating solely to a particular process or product of a particular manufacturer specified by Department and not offered or recommended by Design-Builder to Department; or (ii) arising from modifications to the Work by Department after acceptance of the Work.

7.2 Payment Claim Indemnification

7.2.1 Providing that Department is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless State Indemnitees from any claims or mechanic's liens brought against any State Indemnitee or against the Project as a result of the failure of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from a State Indemnitee that such a claim or mechanic's lien has been made and/or filed, Design-Builder shall commence to take the steps necessary to resolve and/or discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, the State Indemnitee will have the right to resolve and/or discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.3 Design-Builder's General Indemnification

7.3.1 Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend State Indemnitees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for: (i) bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable; and (ii) any

violation of Sections 2.5, 2.6, or 2.8 hereof by Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

7.3.2 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable, has a claim against a State Indemnitee, Design-Builder's indemnity obligation set forth in Section 7.3.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

7.4 Defense and Indemnification Procedures

7.4.1 If Department receives notice of or otherwise has actual knowledge of a claim which it believes is within the scope of Design-Builder's indemnification under the Contract Documents, it shall by writing as soon as practicable: (i) inform Design-Builder of such claim; (ii) send to Design-Builder a copy of all written materials Department has received asserting such claim and (iii) notify Design-Builder that either: (a) the defense of such claim is being tendered to Design-Builder; or (b) Department has elected to conduct its own defense for a reason set forth below.

7.4.2 If the insurer under any applicable insurance policy accepts tender of defense, Design-Builder and Department shall cooperate in the defense as required by the insurance policy. If no defense is provided by insurers under potentially applicable insurance policies, then the following provisions shall apply.

7.4.3 If the defense is tendered to Design-Builder, it shall within forty-five (45) days of said tender deliver to Department a written notice stating that Design-Builder: (i) accepts the tender of defense and confirms that the claim is subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter; (ii) accepts the tender of defense but with a "reservation of rights" in whole or in part; or (iii) rejects the tender of defense if it reasonably determines it is not required to indemnify against the claim under the Contract Documents. If such notice is not delivered within such forty-five (45) days, the tender of defense shall be deemed rejected.

7.4.4 If Design-Builder accepts the tender of defense, Design-Builder shall have the right to select legal counsel for the State Indemnitees, subject to reasonable approval of the State Attorney General, and Design-Builder shall otherwise control the defense of such claim, including settlement, and bear the fees and costs of defending and settling such claim. During such defense: (i) Design-Builder shall at Design-Builder's expense, fully and regularly inform Department of the progress of the defense and of any settlement discussions; and (ii) Department shall, at Design-Builder's expense for all of Department's reasonable out-of-pocket third party expenses, fully cooperate in said defense, provide to Design-Builder all materials and access to personnel it requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to Department and maintain the confidentiality of all communications between it and Design-Builder concerning such defense to the extent allowed by law.

7.4.5 Department shall be entitled to select its own legal counsel and otherwise control the defense of such claim if: (i) the defense is tendered to Design-Builder and it refuses the tender of defense, or fails to accept such tender within forty-five (45) days, or reserves any right to deny or disclaim such full indemnification thereafter; or (ii) Department, at the time it gives notice of the claim or at any time thereafter, reasonably determines that: (a) a conflict exists between it and Design-Builder which prevents or potentially prevents Design-Builder from presenting a full and effective defense; or (b) Design-Builder is otherwise not providing an effective defense in connection with the claim and Design-Builder lacks the financial capability to satisfy potential liability or to provide an effective defense. Department may assume its own defense pursuant to the above by delivering to Design-Builder written notice of such election and the reasons therefore.

7.4.6 If Department is entitled and elects to conduct its own defense pursuant hereto, all reasonable costs and expenses it incurs in investigating and defending and claim for which it is entitled to indemnification hereunder (and any settlements or judgments resulting therefrom) shall be reimbursed by Design-Builder after completion of the proceeding.

7.4.7 If Department is entitled to and elects to conduct its own defense, then it shall have the right to settle or compromise the claim with Design-Builder's prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court, and with the full benefit of Design-Builder's indemnity. Notwithstanding the foregoing, if Department elects to conduct its own defense and it is later determined that no indemnification obligation existed as to the particular claim, Department shall pay its own costs and expenses relating thereto. In addition, if Department elects to conduct its own defense because it perceives a conflict of interest, Department shall pay its own costs and expenses relating thereto.

Article 8
Time

8.1 Obligation to Achieve the Contract Times

8.1.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

8.2 Delays to the Work

8.2.1 If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own, Subcontractors, Design Consultants, or those for whom Design-Builder, Subcontractors, or Design Consultants are responsible, Design-Builder may submit a request for a Work Order that the Contract Time(s) for performance be reasonably extended by Work Order. By way of example, events that Department may consider for an extension of the Contract Time(s) include acts or omissions of Department or anyone under Department's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Materials, wars, floods in excess of the base flood (as defined in the Division 1 Amendment), hurricane force winds,

tornados, labor disputes, and earthquakes that cause ground accelerations in excess of AASHTO bridge design standards for the Site. It is specifically understood that other than floods in excess of the base flood, hurricane force winds and tornados, Design-Builder assumes the risk, and will not be entitled a time extension for any delays caused by weather or conditions resulting from weather.

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to submit a request of a Work Order for an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for those events set forth in Section 8.2.1 above that are beyond the control of both Design-Builder and Department, including the events of wars, floods in excess of the base flood (as defined in the Division 1 Amendment), hurricane force wind, tornados, labor disputes, and earthquakes that cause ground accelerations in excess of AASHTO bridge design standards for the Site.

8.2.3 As a condition precedent to Design-Builder receiving an extension of the Contract Time(s), Design-Builder shall demonstrate that: (i) notice has been given by Design-Builder as provided in these General Conditions; (ii) the delay impacts the critical path (as reflected on the most recent monthly Baseline Schedule update) and is outside the reasonable control of Design-Builder; (iii) Design-Builder's performance would not have been concurrently delayed or interrupted by any event other than those identified in Section 8.2.1 above; (iv) Design-Builder, in view of all the circumstances, has exercised reasonable efforts to avoid the delay and did not cause the delay; and (v) Design-Builder has complied with the requirements of Section 8.3 below. Delays of Subcontractors shall be deemed to be within the reasonable control of Design-Builder, unless such delays are themselves excusable in accordance with the provisions of Section 8.2.1 above.

8.2.4 Should Department have a reasonable belief that the Contract Time(s) will not be met for causes that do not constitute an excusable delay under Section 8.2.1 above, Department has the right, but not the obligation, to so notify Design-Builder, and Design-Builder shall then work additional overtime, engage additional personnel and take such other measures as necessary to complete the Work within the Contract Time(s). Design-Builder shall bear all costs related to such overtime, additional personnel and other measures.

8.2.5 Notwithstanding the right of Design-Builder to receive a time extension pursuant to Section 8.2.1 above, Design-Builder agrees that if it encounters an excusable delay, it will, if directed by Department, develop and implement a recovery schedule and plan to improve progress and take such measures to overcome such delay.

8.3 Schedule Impact Analysis for Proposed Time Extensions

8.3.1 If Design-Builder claims that any event, including but not limited to a change in the Work, justifies an extension to the Contract Time(s), Design-Builder shall submit to Department a written Schedule Impact Analysis (SIA) in accordance with Exhibit 11.1 of the Agreement. Upon approval by Department, the event shall be included in the next Baseline Schedule update.

8.3.2 Activity delays shall not automatically mean that an extension of the Contract Time(s) is warranted or due Design-Builder. Design-Builder recognizes that certain events will not affect existing critical activities or cause non-critical activities to become critical, and that such events may result in only absorbing a part of the available total float that may exist within an activity chain of the network, thereby not causing any effect on the Contract Time.

8.3.3 Float is not for the exclusive use or benefit of either Department or Design-Builder, but rather shall be used for the benefit of the overall Project. Activity splitting or float suppression techniques will not be permitted. Extension of the Contract Time(s) will be granted only to the extent the equitable time adjustments to the activity or activities affected by the event exceeds the total float of a critical activity or path and extends the Contract Time(s).

8.3.4 Two (2) copies of each SIA shall be submitted in accordance with the following along with a written proposal for any requested time extension:

.1 Within seven (7) days after receipt of a written change order.

.2 Within ten (10) days from the beginning of any other event claimed to give rise to a delay.

.3 Within the time period required for the filing of a written notice of claim pursuant to Article 10 Contract Adjustments and Disputes.

8.3.5 In cases where Design-Builder does not submit a SIA within the time requirements stated above, it shall be considered a waiver of any request for an extension of the Contract Time(s).

8.3.6 Approval or rejection of each SIA by Department shall be made within ten (10) days after receipt of each SIA, unless subsequent meetings and negotiations are necessary. Upon approval, a copy of the SIA signed by Department shall be returned to Design-Builder, and incorporated into the next Baseline Schedule update.

8.3.7 The SIA related to a change order shall be incorporated into and attached to the applicable change order.

Article 9
Changes to the Contract Price and Time

9.1 Work Orders

9.1.1 A **Work Order** (change order), is a written instrument on VDOT Form C-10, issued after the Agreement Date signed by Department and Design-Builder, stating their agreement upon all of the following:

.1 The scope of the change in the Work;

.2 The amount of the adjustment to the Contract Price; and

.3 The extent of the adjustment to the Contract Time(s).

9.1.2 All changes in the Work authorized by applicable Work Order shall be performed under the applicable conditions of the Contract Documents. Department and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

9.1.3 If Department requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Work Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

9.2 Contract Change Directive

9.2.1 A **Contract Change Directive** (CCD) is a written order prepared and signed by Department, directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

9.2.2 Department and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Contract Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Work Order reflecting the terms of the agreement.

9.2.3 Department may issue a CCD by unilateral Work Order using VDOT Form C-10, subject further to the terms of Section 9.4.1.3.

9.3 Minor Changes in the Work

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however that Design-Builder shall promptly inform Department and the QAM, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments

9.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods to be determined by Department:

.1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

.2 A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Department;

.3 Costs, fees and any other markups set forth in accordance with Section 109.05 of the Division 1 Amendments; and

.4 If an increase or decrease cannot be agreed to as set forth in items .1 through .3 above and Department issues a Contract Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement. If the net result of both additions and deletions to the Work is an increase in the Contract Price, overhead and profit shall be calculated on the basis of the net increase to the Contract Price. If the net result of both additions and deletions to the Work is a decrease in the Contract Price, there shall be no overhead or profit adjustment to the Contract Price. Design-Builder shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

9.4.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Department or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted. Design-Builder shall bear the burden of proving that there is a substantial inequity in the unit rates.

9.5 Emergencies

9.5.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10
Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief

10.1.1 If Design-Builder believes that it is entitled to an adjustment to the Contract Price or Contract Times or other relief for any occurrence arising out of or related to the Work or Project, including the acts or omissions of Department, it shall submit a written request to Department stating the basis for such Contract Price or Contract Time adjustment or relief. Such request shall be submitted: (a) prior to Design-Builder incurring any cost or expense, or performing any work on which the request is based; and (b) in accordance with any specific requirements contained in applicable sections of these General Conditions of Contract or, absent any specific requirement, then within a reasonable time, not to exceed twenty-one (21) days, after the time of the occurrence giving rise to the request for Contract Price or Contract Time adjustment or relief or after Design-Builder reasonably should have recognized the occurrence giving rise to the request for Contract Price or Contract Time adjustment or relief, whichever is later. Such request shall include sufficient information to advise Department of the facts and circumstances giving rise to the request for Contract Price or Contract Time adjustment or relief, the specific

contractual adjustment or relief requested and the basis for Design-Builder's entitlement to the adjustment or relief.

10.2 Dispute Avoidance and Resolution

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes and disagreements. If disputes or disagreements do arise, Design-Builder and Department each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2.2 Design-Builder and Department will first attempt to resolve all disputes or disagreements at the field level through best efforts and good faith negotiations between Design-Builder's Representative and Department's Representative. If the dispute or disagreement cannot be resolved through Design-Builder's Representative and Department's Representative, Design-Builder's Senior Representative and Department's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than forty-five (45) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving the dispute or disagreement. If the Senior Representatives determine that the dispute or disagreement cannot be resolved to the mutual satisfaction of both parties, despite their best efforts, then Design-Builder's sole remedy shall be to pursue the processes set forth in VA. CODE §33.1-386 and §33.1-387.

10.3 Duty to Continue Performance

10.3.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Department shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Department.

10.4 CONSEQUENTIAL DAMAGES

10.4.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.4.2 BELOW), NEITHER DESIGN-BUILDER NOR DEPARTMENT SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

10.4.2 The consequential damages limitation set forth in Section 10.4.1 above will not affect the payment of liquidated damages set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Department for some damages that might otherwise be deemed to be consequential.

Article 11
Stop Work and Termination for Cause

11.1 Department's Right to Stop Work

11.1.1 Department may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

11.1.2 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of work by Department, by requesting a Work Order.

11.1.3 In case of suspension of work, Department shall issue instructions and directions to Design-Builder as to the implementation of the suspension, which may include directing Design-Builder to develop a maintenance and transition plan. Unless specifically directed otherwise by Department, Design-Builder shall, during the suspension period, continue to have full responsibility for the Project, including but not limited to its obligations to take such precautions as may be necessary to prevent damage to the Work, comply with Governmental Approvals, and ensure public safety. Such obligations include, but are not limited to, erosion control and drainage and erection of any necessary temporary structures, signs, or other facilities.

11.2 Department's Right to Perform and Terminate for Cause

11.2.1 If Design-Builder persistently fails to do any of the following:

.1 begin the Work upon receipt of Department's Notice to Proceed;

.2 provide a sufficient number of skilled workers, equipment, or supply the materials required by the Contract Documents;

.3 comply with applicable Legal Requirements;

.4 timely pay, without cause, Design Consultants or Subcontractors;

.5 prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted; or

.6 perform material obligations under the Contract Documents;

then Design-Builder may be declared in default and Department, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Section 11.2.2 below.

11.2.2 If any of the conditions set forth in Section 11.2.1 above exists, Department will give written notice to Design-Builder and its surety of the condition. If, within ten (10) days after

such notice, Design-Builder or its surety fails to cure, or reasonably commence to cure, such condition to the satisfaction of Department, then Department may then, or at any time thereafter, send a second written notice to Design-Builder declaring Design-Builder in default. Upon declaring Design-Builder in default, Department shall have the right, among other things, to terminate this Agreement for default.

11.2.3 Upon terminating this Agreement for default, Department will have the right to, in addition to any other right available at law, take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Department for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. Design-Builder specifically agrees that it will assign all Subcontractors and Design Consultants to Department, upon Department's written demand that it do so. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until Final Completion. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Department in completing the Work, such excess shall be paid by Department to Design-Builder. If Department's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Department. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Department in connection with the reprocurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.4 hereof.

11.2.4 If Department improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

11.2.5 Department shall have the right, upon the occurrence of any of the conditions set forth in Section 11.2.1 above, and regardless of whether or not Design-Builder is declared in default and/or terminated, to communicate with Design-Builder's surety and compel such surety to cure such conditions.

11.3 Design-Builder's Right to Stop Work

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop work for the following reasons:

.1 Department's failure to provide financial assurances as required under Section 3.3 hereof; or

.2 Department's failure to pay amounts properly due under Design-Builder's Application for Payment.

11.3.2 Should any of the events set forth in Section 11.3.1 above occur, before exercising its rights under this section, Design-Builder shall provide Department with written notice that Design-Builder will stop work unless said event is cured within ten (10) days from Department's receipt of Design-Builder's notice. If Department does not cure the problem within such ten (10) day period, Design-Builder may stop work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

11.4 Design-Builder's Right to Terminate for Cause

11.4.1 Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

.1 The Work has been stopped for one hundred twenty (120) consecutive days, or more than one hundred eighty (180) days during the duration of the Project, because of court order, any Governmental Unit having jurisdiction over the Work, or orders by Department under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

.2 Department's failure to provide Design-Builder with any information, permits or approvals that are Department's responsibility under the Contract Documents which result in the Work being stopped for one hundred twenty (120) consecutive days, or more than one hundred eighty (180) days during the duration of the Project, even though Department has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

.3 Department's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Department that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within ten (10) days of Department's receipt of such notice. If Department fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Department of its intent to terminate within an additional ten (10) day period. If Department, within such second ten (10) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Department of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Department had terminated the Agreement for its convenience under Article 8 of the Agreement.

11.5 Bankruptcy of Design-Builder

11.5.1 If Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code, such event may impair or frustrate Department's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

.1 Design-Builder, its trustee or other successor, shall furnish, upon request of Department, adequate assurance of the ability of Design-Builder to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

.2 Design-Builder shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If Design-Builder fails to comply with its foregoing obligations, Department shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to Department under this Article 11.

11.5.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of Department to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code. It shall also not limit the ability of Department to seek recourse against Design-Builder's surety, who shall be obligated to perform notwithstanding the bankruptcy proceedings against Design-Builder.

Article 12
Miscellaneous

12.1 Assignment

12.1.1 Design-Builder shall not, without the prior written consent of Department (which consent may be withheld or denied for any reason), assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

12.2 Successorship

12.2.1 Design-Builder and Department intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

12.3 Governing Law

12.3.1 The Agreement and all Contract Documents shall be governed by the laws of the Commonwealth of Virginia, without giving effect to its conflict of law principles.

12.4 Severability

12.4.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

12.5 No Waiver

12.5.1 The failure of either Design-Builder or Department to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

12..6 No Third-Party Beneficiary Status

12.6.1 Nothing under the Contract Documents shall afford any third party to this Agreement, including members of the public, third-party beneficiary status hereunder.

12.7 Headings

12.7.1 The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

12.8 Notice

12.8.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given: (i) if delivered in person to the individual intended to receive such notice; (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement; or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient, provided, however, that the intended recipient is present to receive the facsimile and the transmittal is immediately followed by a hard copy delivered in accordance with (i) or (ii) above.

12.9 Amendments

12.9.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

12.10 Exhibits

12.10.1 The following exhibits, as well as any other exhibits specifically set forth in Exhibit 1 (Project Specific Terms), are made part of, and incorporated into these General Conditions of Contract. (Exhibits to Part 4 are included in the RFP):

EXHIBIT 1 to PART 3 -- PROJECT SPECIFIC TERMS
EXHIBIT 3.5.1 -- GOVERNMENTAL APPROVALS LIST

END OF PART 4
GENERAL CONDITIONS OF CONTRACT

PART 5

PART 5

2016 Division I Amendments to the Standard Specifications General Provisions for Design-Build Contracts Between Department and Design-Builder

(Date of Standard Division I Amendments November 2016)

These Division I Amendments supersede Division I of the Standard Specifications

SECTION 101—DEFINITIONS OF ABBREVIATIONS, ACRONYMS, AND TERMS

101.01—Abbreviations and Acronyms

Abbreviations and Acronyms shall be as stated in Section 101.01 of the Standard Specifications.

101.02—Terms

In these Division I Amendments to the Standard Specifications and other Contract Documents, the following terms and pronouns used in place of them shall be interpreted as follows, except that if such terms and pronouns are defined in the Agreement or General Conditions of Contract, such definitions shall govern:

-A-

Adjustment. An increase or decrease in the Contract Price or in the Contract Time(s), unless the context dictates otherwise.

Advertisement, Notice of. A public announcement, as required by law, inviting, in a single-phase procurement, the submission of Proposals from interested Offerors in response to a Request for Proposals, or in a two-phase procurement, Statements of Qualifications from interested Offerors in response to a RFQ by the Department for a designated design-build project. The announcement will indicate the general nature and location of the project, and the time and place for submitting the Statements of Qualifications or Proposals.

Affiliate. means: (a) any Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Design-Builder or any of its members, partners or shareholders holding an interest in Design-Builder; and (b) any Person for which ten percent (10%) or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by: (i) Design-Builder; (ii) any of Design-Builder's members, partners or ten percent (10%) or greater shareholders; or (iii) any Affiliate of Design-Builder under part (a) of this definition. For purposes of this definition the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, a trust, contract, family relationship or otherwise.

Agreement. As defined in the 2016 General Conditions of Contract Part 4 ("General Conditions").

Alkali Soil. Soil in which total alkali chlorides calculated as sodium chloride are more than 0.10 percent based on total solids.

Award. The decision of the Board to award a contract to an Offeror based on the selection processes identified in the Requests for Proposal. The award of the contract is subject to the execution and approval of a satisfactory Agreement therefore, and such other approvals and conditions as may be specified or required by law.

Award Date. The date on which the decision is made by the Board or Commissioner to accept the Proposal of an Offeror.

-B-

Backfill. Material used to replace, or the act of replacing, Material removed during construction; may also denote Material placed, or the act of placing, Material adjacent to structures.

Balance Point. The approximate point, based on estimated shrinkage or swell, where the quantity of Earthwork Excavation and borrow, if required, is equal to the quantity of Embankment Material plus any surplus Excavation material.

Base Course. A layer of material of specified thickness on which the intermediate or surface course is placed.

Base Flood. The flood or tide having a one percent (1%) chance of being exceeded in any given year.

Bid (also referred to as Proposal). The documents submitted by an Offeror in response to a Request for Proposal.

Bidder (also referred to as Offeror). Any individual, partnership, Corporation, or Joint Venture that formally submits a SOQ or Proposal for the work contemplated thereunder.

Bids, Invitation for. Used interchangeably with **"Advertisement, Notice of"** defined above.

Board. Commonwealth Transportation Board of Virginia.

Borrow. Suitable material from sources outside the Roadway that is used primarily for Embankments.

Brackish Water. Water in which total alkali chlorides calculated as sodium chloride are more than 0.10 percent (0.10%) based on total solids.

Bridge. A structure, including supports, that is erected over a depression or an obstruction, such as water, a Highway, or a railway, that has a track or passageway for carrying traffic.

Bridge Lift. A layer of fill material placed in excess of standard depth over an area that does not support the weight of hauling Equipment and for which compaction effort is not required.

Business. Any corporation, partnership, limited liability company, joint venture, firm, association, individual or sole proprietorship operated for profit.

-C-

Camber. A vertical curvature induced or fabricated into beams or girders and a deck slab or slab span formwork; a vertical curvature set in the grade line of a pipe culvert to accommodate differential settlement.

Change Order. As defined in Article 9 of the General Conditions.

Channel. A watercourse or drainage way.

Commissioner. The Chief Executive Officer of the Virginia Department of Transportation, whose title is Commissioner of Highways or as otherwise designated by the Code of Virginia.

Commonwealth. Commonwealth of Virginia.

Composite Hydrograph. A graph showing the mean daily discharge versus the day, indicating trends in high and low flow for a one-year period.

Construction Area. The area where authorized construction on this Project occurs.

Construction Limits (On-Site). The disturbed area utilized for the construction of a Project including the intersection of side slopes with the original ground plus slope rounding and slopes for Drainage Ditches, Bridges, Culverts, Channels, temporary or incidental construction, and identified by the surface planes as shown or described within the Contract Documents.

Contract. The Agreement between the Department and Design-Builder for the Project, inclusive of all Contract Documents as defined in Article 2 of the Agreement. Oral agreements, representations or promises shall not be considered a part of the Contract.

Contract Bond(s). Those documents defined in Section 103.05.

Contract Item. A specifically described unit of work for which a price is provided in the Contract's Schedule of Items.

Contract Time(s). As defined in Article 5 of the Agreement.

Corporation. A business entity organized and existing under the laws of the Commonwealth or other jurisdiction, by virtue of articles of incorporation, amendment or merger.

Cul-de-sac. An area at the terminus of a dead-end Street or Road that is constructed for the purpose of allowing vehicles to turn around.

Culvert. A structure that is not classified as a bridge which provides an opening under any Roadway.

Cut. When used as a noun with reference to Earthwork, that portion of a Roadway formed by excavating below the existing surface of the earth and limited by design.

Cut Slope. See also Fill Slope**.** A surface plane generally designated by design, which is formed during Excavation below existing ground elevations that intersects with existing ground at its termini.

-D-

Day. As defined in Section 1.2 of the General Conditions.

Deflection. The vertical or horizontal movement occurring between the supports of a Bridge superstructure, guardrail, other structure, or the components (beams, girders, and slabs) thereof that results from their own weight and from dead and live loads. Although all parts of a structure are subject to deflections, usually only those deflections that occur in the superstructure are of significance during construction.

Department. Virginia Department of Transportation.

Design-Builder. The entity that enters into the Agreement (Part 3 of the Contract Documents) with the Department to perform the Work.

Design Flood. The magnitude of flood that a given structure can convey without exceeding a designated flood level.

Disposable Material. Material generally found to be unsuitable for roadway construction or surplus material that is to be placed in a disposal area, unless specified otherwise.

Disposal Areas. Areas generally located outside of the Construction Limits identified in the Contract Documents where Disposable Material is deposited.

Disqualification. The suspension or revocation of a bidder's prequalification privileges.

Drainage Ditch. An artificial depression constructed to carry off surface water.

-E-

Earthwork. The work consisting of constructing Roadway earthwork in conformity with the specified tolerances for the lines, grades, typical sections, and cross sections shown on the Contract Documents. Earthwork shall include regular, borrow, undercut, and minor structure Excavation; constructing Embankments; disposing of surplus and Unsuitable Material; shaping; grading, compaction; sloping; dressing; and temporary erosion control work.

Easement. A grant of the right to use property for a specific use.

Embankment. A structure of soil, soil aggregate, soil-like materials, or broken rock between the existing ground and Subgrade.

Employee. Any individual working on the Project who is under the direction or control of or receives compensation from the Design-Builder or a Subcontractor at any tier.

Engineer. As defined in Section 1.2 of the General Conditions

Equipment. Machinery, tools, and other apparatus, together with the necessary supplies for upkeep and maintenance that are necessary for acceptable completion of the work.

Excavation (Excavate). The act of creating a man-made cavity in the existing soil for the removal of material necessary to obtain a specific elevation or to install a structure, material, component, or item necessary to complete a specific task or form a final surface or subsurface.

Extra Work. Any work that was not provided for or included in the Contract as awarded but the Department determines is essential to the satisfactory fulfillment of the Contract within its intended scope and authorized pursuant to Article 9 of the General Conditions.

-F-

Falsework. A temporary framework used to support work while in the process of constructing permanent structural units.

Federal Agencies or Officers. An agency or officer of the federal government and any agency or officer succeeding, in accordance with the law to the powers, duties, jurisdictions, and authority of the agency or officer mentioned.

Fill Slope (See also Cut Slope). A surface plane formed during the construction of an Embankment above existing ground elevations that intersects with existing ground at its termini.

Flood Frequency. A statistical average recurrence interval of floods of a given magnitude.

Formwork. A temporary structure or mold used to retain the plastic or fluid concrete in its designated shape until it hardens. Formwork shall be designed to resist the fluid pressure exerted by plastic concrete and additional fluid pressure generated by vibration and temporary construction loads.

Frontage Street or Road. A local Street or Road auxiliary to and located on the side of a Highway for service to abutting property and adjacent areas and control of access.

-G-

Gage. U.S. Standard Gage.

Grade Separation. Any structure that provides a Traveled Way over or under another Traveled Way or over a body of water.

-H-

Highway. The entire Right of Way reserved for use in constructing or maintaining the roadway and its appurtenances.

Historical Flood Level. The highest flood level that is known to have occurred at a given location.

Holidays. The days specifically set forth in Section 108.02 or in the Contract Documents.

Hydrologic Data Sheet. A tabulation of hydrologic data for facilities conveying a 100-year discharge equal to or greater than 500 cubic feet per second.

-I-

Incentive. If provided for in the Contract, an agreed monetary sum that the Department pays to the Design-Builder to complete work in accordance with applicable requirements within the Contract Times.

Inspector. The Department's authorized representative who is assigned to make detailed inspections of the quality and quantity of the Work and its conformance to the requirements and provisions of the Contract.

Invert. The lowest point in the internal cross-section of a pipe or other drainage structure.

-J-K-

Joint Venture. Two businesses that join together in the nature of a partnership for the purpose of bidding on and performing a contract, for which they are all jointly and individually liable to the Department.

-L-

Laboratory. The testing laboratory of the Department or any other testing laboratory that may be designated by the Contract or by the Design-Builder.

Liquidated Damages. As defined in Article 5 of the Agreement.

-M-

Major Item. Any Pay Item specifically indicated as such in the Schedule of Items included among the Contract Documents.

Material. Any substance that is used in the Work specified in the Contract.

Median. The portion of a divided Highway that separates the Traveled Ways.

-N-

Non-Contract Item. An item of work required to permit completion of the specified Work in an acceptable manner, which item of work is located within the Construction Limits but is not included in the Contract Documents as being Design-Builder's responsibility, and which item of work will be completed by others prior to, during, or after the construction of the Project.

Notice to Proceed. As defined in Section 5.1 of the Agreement.

-O-

Offeror. See the definition for the term **"Bidder."**

Ordinary High Water. A water elevation based on analysis of all daily high waters that will be exceeded approximately twenty five (25%) of the time during any twelve (12) month period.

-P-Q-

Pavement Structure. The combination of Select or stabilized materials, Subbase, Base, and surface courses, described in the typical pavement section in the Contract Documents that is placed on a Subgrade to support the traffic load and distribute it to the Roadbed.

Pay Item. See Contract Item.

Person. Any individual (including the heirs, beneficiaries, executors, legal representatives or administrators thereof), Corporation, partnership, Joint Venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association, county, district, authority, municipality, political subdivision or other entity of the Commonwealth or the United States of America, or other entity.

Plans. The approved Project plans and profiles, which may include but are not limited to survey data, typical sections, summaries, general notes, details, plan and profile views, cross-sections, special design drawings, computer output listings, supplemental drawings, or exact reproductions thereof, and all subsequently approved revisions thereto which show the location, character, dimensions, and details of the Work specified in the Contract.

Prequalification. The procedure for qualifying a Design-Builder to bid or work on Department contracts specified in the Department's Rules Governing Prequalification Privileges which are available on the Department's website at: www.virginiadot.org/business/const/prequal.asp.

Professional Engineer (PE). An engineer holding a valid license to practice engineering in the Commonwealth of Virginia.

Profile Grade. The line of a vertical plane intersecting the top surface of the proposed wearing surface, usually along the longitudinal centerline of the Roadbed.

Project. The designated section of highway, roadway or property including all Work to be performed according to the Contract Documents.

Project Showing. The scheduled event at which the Department's representative meets with prospective Offerors to describe and answer questions regarding the proposed work.

Proposal: As defined in Section 1.2 of the General Conditions.

-R-

Ramp. A connecting Roadway between two Highways or Traveled Ways or between two intersecting Highways at a Grade Separation.

Request for Proposals (RFP). As defined in Section 1.2 of the General Conditions.

RFP Documents. As defined in Section 1.2 of the General Conditions.

Request for Qualifications (RFQ). As defined in Section 1.2 of the General Conditions.

Right of Way. A general term denoting the Commonwealth's land, property, or interest therein, usually in the form of a strip, that is acquired for or devoted to a highway or other transportation facilities. As used herein, the term does not denote the legal nature of the Commonwealth's ownership.

Road. A general term denoting a public way for purposes of vehicular travel including the entire area within the Right of Way; the entire area reserved for use in constructing or maintaining the Roadway and its appurtenances.

Road and Bridge Specifications. See Specifications.

Roadbed. The graded portion of a Highway within the top and side slopes that is prepared as a foundation for the Pavement Structure and Shoulders.

Roadbed Material. The material below the Subgrade in cuts, Embankments, and Embankment foundations that extends to a depth and width that affects the support of the pavement structure.

Roadside. A general term that denotes the area within the Right of Way that adjoins the outer edges of the Roadway; extensive areas between the Roadways of a divided Highway.

Roadside Development. Items that are necessary to complete a Highway that provide for the preservation of landscape materials and features; rehabilitation and protection against erosion of areas disturbed by construction through placing seed, sod, mulch, and other ground covers; and such suitable plantings and other improvements as may increase the effectiveness, service life and enhance the appearance of the Highway.

Roadway. The portion of a Highway within the limits of construction and all structures, ditches, channels, and waterways which are necessary for the correct drainage thereof.

Rootmat. Any material that by volume, contains approximately 60 percent or more roots.

-S-

Schedule Impact Analysis (SIA). A process of analyzing a schedule to determine the impact on the Project schedule of a change in the Work or condition, or of a delay event, for the purposes of quantifying and apportioning the effects to the party responsible for the impact.

Schedule of Record (SOR). The latest accepted Baseline Schedule in accordance with Part 3, Article 11 of the Contract Documents by which all schedule references will be made and progress evaluated.

Seawater. Water in which total alkali chlorides calculated as sodium chloride are more than 0.10 percent of total solids.

Select Borrow. Borrow material that has specified physical characteristics.

Select Material. Material obtained from Roadway Cuts, Borrow areas, or commercial sources that is designated or reserved for use as a foundation for the Subbase, Subbase material, Shoulder surfacing, or other specified purposes designated in the Contract Documents.

Shoulder. The portion of the Roadway contiguous with the Traveled Way that is for the accommodation of stopped vehicles, emergency use, and lateral support of the Base and Surface courses.

Sidewalk. The portion of the Roadway constructed primarily for the use of pedestrians.

Skew. The acute angle formed by the intersection of a line normal to the centerline of the Roadway with a line parallel to the face of the abutments or, in the case of Culverts, with the centerline of the Culverts.

Special Provision (SP). See Specifications.

Special Provision Copied Note (SPCN). See Specifications.

Specialty Item. A Contract Item designated as a "Specialty Item" in the RFP Documents that requires highly specialized knowledge, abilities, craftsmanship, or Equipment not ordinarily provided by contractors prequalified to submit proposals. Specialty items are usually limited to minor components of the overall Contract.

Specifications. A general term that includes all directions, provisions, and requirements which are necessary for the proper fulfillment of the Contract. Specifications are found in the following Contract Documents:

Road and Bridge Specifications. The specifications applicable to contracts awarded by the Commonwealth Transportation Board or Commissioner.

Special Provision (SP). Specifications or requirements for a particular project that add to or modify the standard specifications.

Special Provision Copied Note (SPCN). Specific specification or requirements, usually limited in scope, for a particular project.

Supplemental Specifications (SS). Additions and revisions to the Road and Bridge Specifications.

Standard Drawings. Unless otherwise specified, applicable drawings in the Standard Specifications and such other standard drawings as are referred to in the Contract Documents.

Standard Specifications. As defined in Section 1.2 of the General Conditions.

State. As defined in Section 1.2 of the General Conditions

Statement of Qualifications (SOQ). The documents submitted by an Offeror in response to an RFQ.

Station. When used as a definition or term of measurement, 100 linear feet.

Storm Sewer System. A drainage system consisting of a series of at least two interconnecting pipes and structures (minimum of two drop inlets, manholes, junction boxes, etc.) designed to intercept and convey stormwater runoff from a specific storm event without surcharge.

Street. A general term denoting a public way for purposes of vehicular travel including the entire area within the Right of Way; the entire Right of Way reserved for use in constructing or maintaining the Roadway and its appurtenances.

Structures. Bridges, Culverts, catch basins, inlets, retaining walls, cribs, manholes, end walls, buildings, steps, fences, sewers, service pipes, underdrains, foundation drains, and other features that may be encountered in the Work and are not otherwise classed herein.

Subbase. A layer(s) of specified or selected material of designed thickness that is placed on a Subgrade to support a Base Course.

Subcontract. As defined in Section 1.2 of the General Conditions.

Subcontractor. As defined in Section 1.2 of the General Conditions.

Subcontracting. Contracting with a Subcontractor for the performance of a portion of the Work without relinquishing any of the responsibility that the Design-Builder has toward the Department for performance of the entire Contract.

Subgrade. The top Earthwork surface of a Roadbed, prior to application of Select (or stabilized) Material courses, shaped to conform to the typical section on which the Pavement Structure and Shoulders are constructed, or surface that must receive an additional material layer, such as topsoil, stone or other Select Material.

Subgrade Stabilization. The modification of Roadbed soils by admixing with stabilizing or chemical agents that will increase the load bearing capacity, firmness, and resistance to weathering or displacement.

Substructure. The part of a structure that is below the bearings of simple and continuous spans, skewbacks of arches, and tops of footings of rigid frames, together with the back walls, wingwalls, and wing protection railings.

Successful Offeror. The Offeror that will be recommended for Award of the Contract in accordance with the RFP.

Superstructure. The portion of a structure that is not defined as Substructure.

Supplemental Specifications (SS). See Specifications.

Supplier. Any business who manufactures, fabricates, distributes, supplies or furnishes materials or equipment, but not on-site labor, for use in performing the Work on or for the Project according to the requirements of the Contract Documents including, but not limited to, Sections 102 and 106.

Surety. A business bound with and for the Design-Builder for full and complete fulfillment of the Contract and for payment of debts pertaining to the Work. When applied to the Proposal guaranty, it refers to the business that engages to be responsible in the execution by the Offeror, within the specified time, of a satisfactory Contract and the furnishing of an acceptable payment and Contract bond.

Surface Course (See Wearing Course). One or more top layers of a Pavement Structure designed to accommodate the traffic load, which is designed to resist skidding, traffic abrasion, and disintegrating effects of weather.

Surplus Material. Material that is present on the Project as a result of unbalanced Earthwork quantities, excessive swell, slides, undercutting, or other conditions beyond the control of the Design-Builder, or is designated as surplus material in the Contract Documents.

Suspension. A written notice issued by the Engineer to the Design-Builder that orders the Work on the Project to be stopped wholly or in part as specified. The notice will include the reason for the suspension.

-T-

Temporary Structure. Any structure that is required to maintain traffic while permanent structures or parts of structures specified in the Contract are constructed or reconstructed. The Temporary Structure shall include earth approaches.

Theoretical Maximum Density. The maximum compaction of materials that can be obtained in accordance with the values established VTM-1.

Tidewater, Virginia. Areas within the State as defined in the Department of Conservation and Recreation Erosion and Sediment Control Manual.

Ton. A short ton; 2,000 pounds avoirdupois.

Top of earthwork. The uppermost surface of the regular or embankment excavation, not including select material that is shaped to conform to the typical section shown in the plans or directed by the Department.

Topsoil: The uppermost original layer of material that will support plant life and contains more than five percent (5%) organic material and is reasonably free from roots exceeding 1 inch in diameter, brush, stones larger than 3 inches in the largest dimension, and toxic contaminants.

Traveled Way. The portion of the Roadway for the movement of vehicles, not including Shoulders.

U-

Unsuitable Material. As defined in Part 2 of the Contract Documents ("Technical Requirements"). All unsuitable material shall be disposed of and/or treated as discussed in Section 106.04 at no additional cost to the Department.

Utilities. Private, county, city, municipal or public facilities structure or infrastructure, designed, owned, and maintained for public use, or to provide a public service such as electricity, water, sanitary sewer, storm sewer, drainage culverts, telecommunications, conduits, gas, oil, fiber optics, and cable television that are not identified as a Pavement Structure, Roadway, Highway, Street, or Traveled Way.

-V-

Vouchered. The action of approval by the Department; constitutes the date of release to the State Comptroller for payment.

-W-X-Y-Z-

Wearing Course (See Surface course). The top and final layer of any pavement

Work. As defined in Section 1.2 of the General Conditions

Working Drawings. Stress sheets, shop drawings, erection plans, Falsework plans, framework plans, cofferdam plans, bending diagrams for reinforcing steel, or any other supplementary plans or similar data the Design-Builder is required to submit to the Department's Representative for record purposes.

SECTION 102—BIDDING REQUIREMENTS AND CONDITIONS

102.01—Prequalification

(a) Prospective Offerors and construction contractors at all tiers shall prequalify in accordance with the instructions in the RFQ or the RFP for each design-build project. When required, prospective Offerors and construction contractors at all tiers shall prequalify with the Department and shall have received a certification of qualification in accordance with the rules and regulations adopted by the Board.

Unless otherwise designated by the Offeror, the Proposal Price submitted by a Joint Venture will be divided equally among the Joint Venture members to determine if the maximum capacity rating for each member is within that member's range.

When an individual is prequalified to submit a proposal jointly only with a specific company, the Joint Venture will be considered a unified entity for qualification purposes.

Offerors seeking new Prequalification must complete and submit the Prequalification package.

Temporary disqualification of a Design-Builder as provided herein will result in the temporary disqualification of each member of a Joint Venture and any affiliate having substantially the same operational management or drawing from the same equipment or labor resource pool. Temporary disqualification will also result in non-approval of the Design-Builder and each member of a Joint Venture and affiliates as defined herein for performance of Work as Subcontractors, which, in the opinion of the Department, could adversely affect other work under contract to the Department.

(b) Prequalified Offerors shall be subject to disqualification/removal from the Department's List of Prequalified Vendors in accordance with Section 102.08, the Rules Governing Prequalification Privileges, and other applicable laws.

102.02—Contents of RFQ and RFP (Not Used)

102.03—Interpretation of Quantities in RFP (Not Used)

102.04—Examination of Site of Work and Proposal

(a) Evidence of Examination of Site of Work and Proposal (Refer to General Conditions, Section 4.2)

(b) Subsurface Data

Subsurface data may be included in the RFP Documents or may be made available for review by the Offeror in the office of the District Materials Engineer or State Materials Engineer or as stated elsewhere in the RFP Documents. Data not included in the RFP Documents are not part of the Contract, but are made available to the Offeror in good faith to notify the Offeror of information in possession of the Department. Consequently, the Department does not warrant the accuracy of any such data, and the Offeror is at sole risk for any conclusions drawn from such data, either expressly or by implication. Prior to submitting a Proposal, the Offeror shall make his own interpretation of the subsurface data that may be available and satisfy himself with regard to the nature, condition, and extent of the material to be excavated, graded, or driven through. After the Date of Commencement, the Successful Offeror shall comply with Section 4.2.2 of the General Conditions.

(c) Notice of Alleged Ambiguities, Conflicts, Errors or Omissions

If a word, phrase, clause, or any other portion of the RFQ or RFP is alleged to be ambiguous, the Offeror shall submit written notice of the same in accordance with the requirements of and within the time periods specified in the RFQ or RFP. Responses by the Department will be provided accordingly. The Department's responsibility for answering the notice will be limited to the processes defined by the RFQ or RFP.

The Department will not be responsible for any other explanations or interpretations of the alleged ambiguities except those brought to the attention of and responded to by the Department point of contact (POC) as identified in the RFQ or RFP. No employee or agent of the Department shall have the authority to furnish any explanation or interpretation, verbal or written, of alleged ambiguities.

If the Offeror fails to give written notice and request an interpretation of the alleged ambiguity within the specified time, he shall waive any right he may have had to his own interpretation of the alleged ambiguity. The true meaning of the alleged ambiguity will be as interpreted by the Department through the POC.

(d) Utilities (Refer to RFP)

102.05—Preparation of Proposal

(a) General (Refer to RFP)

(b) Design Options (Refer to RFP)

(c) Debarred Suppliers

The Offeror is cautioned against utilizing price quotes for materials for use in the preparation of proposals from suppliers that are debarred by the Department. The Department will not approve for use any material furnished by a supplier debarred by the Department. The Offeror shall ascertain from the Department's listings which suppliers are debarred. Lists of approved suppliers can be found on the Department's Materials Division web site.

If a previously debarred supplier is reinstated to eligibility subsequent to the Award of a contract, the Department may approve the use of the supplier when requested by the Contractor.

(d) Required Certifications (Not Used)

(e) Acknowledgement of Receipt of Revisions (Refer to RFP)

(f) Signing the Proposal (Refer to RFP)

(g) Additional Proposal Requirements

Offeror shall also comply with the requirements as set forth in the following exhibits included with the RFP:

.1 Exhibit 102.05(g.1) *Special Provision for Use of Domestic Material*

.2 Exhibit 102.05(g.2) *FHWA-1273 Required Contract Provisions Federal-Aid Construction Contracts*

.3 Exhibit 102.05(g.3) *Notice of Requirement For Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)*

102.06—Irregular Proposals

Proposals will be considered irregular and may be rejected for *any* of the reasons below:

(a) The Offeror fails to comply with the requirements of Sections 102.05 and 102.07;

(b) The Proposal is not written in ink or typed;

(c) The Offeror adds any provisions reserving the right to accept or reject an Award or enter into a contract pursuant to an Award except as otherwise permitted in the RFP;

(d) The Price Proposal is not in compliance with the RFP;

(e) The Proposal is not properly signed;

(f) Erasures or alterations in the Offeror's entries are not initialed by the Offeror;

(g) The Offeror fails to provide a complete Acknowledgment of Revision Sheet (C-78);

(h) There are unauthorized additions, conditional or alternate proposals, or irregularities of any kind that may make the Proposal incomplete, indefinite, or ambiguous;

(i) The unit prices in the Proposal are obviously mathematically and materially unbalanced, or either in excess or below the cost analysis values as determined by the Department. A mathematically unbalanced Proposal is a Proposal containing lump sum or unit price items that do not include reasonable labor, equipment, and material costs plus a reasonable proportionate share of the Offeror's overhead costs, other indirect costs, and anticipated profit. A materially unbalanced Proposal is when the Department determines that an award to the Offeror submitting a mathematically unbalanced Proposal will not result in the lowest ultimate cost to the Department;

(j) Any papers included in the Proposal are detached or altered when the Proposal is submitted except as otherwise provided for herein;

(k) Proposals are submitted in envelopes showing a designation for a project other than the Project for which the Proposal is made;

(l) The Offeror fails to submit a statement concerning collusion;

(m) The Proposal contains any other deviation from the RFP; or

(n) The Offeror fails to register with "eVA Internet e-procurement solution" prior to the Award of the Contract.

(o) The Offeror, if required, fails to register with "E-Verify" program prior to award of the Contract.

(p) The Offeror, if required, fails to register or obtain authorization to transact business in Virginia from the State Corporation Commission prior to bidding.

102.07—Proposal Guaranty (Proposal Bond)

A Proposal in excess of $250,000.00 will be rejected unless accompanied by a Proposal guaranty (also known as a Proposal bond) made payable to the Commonwealth of Virginia, executed on the Department's form (Form C-24), or a form that contains the exact same wording as the Department's form. The amount of the Proposal guaranty shall be five percent (5%) of the Proposal Price.

When the principal is a Joint Venture, each party thereof shall be named and shall execute the Proposal guaranty. Each surety to the Proposal bond shall be named and shall execute the Proposal bond. The Proposal bond shall be accompanied by a certified copy of the power of attorney for the surety's attorney-in-fact.

102.08—Disqualification of Offeror

(a) *Any* of the reasons set out in the rules Governing Prequalification Privileges may be considered sufficient for the disqualification of an Offeror or the rejection of a Proposal, or both. Such reasons for disqualification are not exclusive and disqualification may occur based on other requirements within these specifications.

1. The Offeror does not have sufficient financial ability to perform the Contract. If a bond is required to ensure performance of a Contract, evidence that the Offeror can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the public body shall be sufficient to establish the financial ability of the Offeror to perform the Contract.

2. The Offeror or any current officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted of, or pled guilty or nolo contendere within the past 10 years to a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Ethics in Public Contracting Statutes, § 2.2-4367 et seq. of the Code of Virginia, (ii) the Virginia Governmental Frauds Act, § 18.2-498.1 et seq. of the Code of Virginia, (iii) Conspiracy to Rig Bids to Government statutes § 59.1-68.6 et seq. of the Code of Virginia, (iv) any substantially similar law of the United States or another state, or (v) any criminal offense indicating a lack of moral or ethical integrity as may reasonably be perceived to relate to or reflect upon the bidder's business practices.

3. The Offeror or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government.

4. The Offeror failed to respond to the Department's request for clarifying information requested relevant to the preceding paragraphs 1 through 3.

5. The Offeror fails to register and participate in the E-Verify program as required by § 2.2-4308.2 et seq. of the Code of Virginia.

6. The Offeror or any officer, director, or owner thereof has had a judgement entered against them for violation of the Virginia Fraud Against Taxpayers Act (Code of Virginia § 8.01-2161 et seq.).

7. More than one Proposal for the same work is submitted by an individual, partnership, Corporation, or Joint Venture under the same or different name. A Proposal submitted by an Affiliate of an individual, partnership, Corporation, or any party of a Joint Venture will be considered as more than one Proposal submitted for the same work. Affiliate as used herein shall conform to the definition in Section 101.02—Terms, with the term "Offeror" being used in lieu of the term "Design-Builder".

8. Evidence of collusion among Offerors in which case the participants in such collusion will not be considered for future bids until new applications for prequalification are approved according to the Rules Governing Prequalification Privileges.

9. Incompetency or inadequate machinery, plants, or other Equipment as revealed by the Offeror's financial and experience statements required by the RFP and Contract Documents and the Rules Governing Prequalification Privileges.

10. Unsatisfactory workmanship or unsatisfactory progress toward timely completion of the Work as demonstrated by performance records of current or past work for the Department, other agencies or departments of the Commonwealth, other public bodies in the Commonwealth, or agencies or departments of other states in the United States or federal government.

11. The Design-Builder may be temporarily disqualified from bidding on contracts with the Department when progress on the Work is determined by the VDOT Project Manager to be unsatisfactory according to Exhibit 11.1. If its name is removed from the list of prequalified Offerors, the Design-Builder will not be reinstated as a prequalified Offeror until the Department deems that progress of the Work has improved to the extent that the Work can be completed within the Contract Time or until Final Acceptance of the Project.

12. Uncompleted work under contract with the Department that in the judgment of the Department might hinder or prevent prompt completion of additional work if awarded.

13. Failure to promptly pay or settle satisfactorily all undisputed bills for Materials, labor, Equipment, supplies, or other items specified in contracts in force at the time the new work comes before the Board for Award.

14. Failure to comply with any Prequalification rule or regulation of the Department.

15. Failure to cooperate properly with representatives of the Commonwealth inspecting, monitoring, or administering construction or disorderly conduct toward any such representative in previous contracts.

16. Default under a previous contract with the Commonwealth.

17. Failure to pay amounts owed to the Department as specified in Section 103.08.

18. Making materially false statements in a bid or certified statement submitted to the Department.

19. Documentation of the failure to meet SWaM or DBE requirements on the Department's projects according to Section 107.

(b) Temporary disqualification of an Offeror as provided herein will result in the temporary disqualification of each member of a Joint Venture and any Affiliate. Temporary disqualification will also result in disqualification of the Offeror, each member of a Joint Venture, and Affiliates as defined herein, for performance of work as Subcontractors that in the opinion of the VDOT Project Manager could adversely affect other work under contract to the Department.

(c) The above listed reasons for possible disqualification are not exclusive and disqualification may also occur based on other requirements within the RFP or Contract Documents and in the Rules Governing Prequalification Privileges.

(d) Disqualified Offerors may challenge and appeal their disqualification according to the Rules Governing Prequalification Privileges. Disqualified Offerors may be allowed to re-apply for prequalification and be reinstated on the List of Prequalified Vendors at the discretion of the State Contract Engineer, upon satisfactory compliance with the requirements of the RFP. In addition the disqualified Offeror shall submit a new prequalification application package and satisfy all prequalification requirements of these specifications and the Rules Governing Prequalification Privileges.

102.09—Submission of Proposal

Proposals shall be delivered in accordance with the instructions in the RFP. Unless clearly stated otherwise, Proposals shall be submitted in two (2) separate, sealed parcels containing the Technical Proposal in one and the Price Proposal in the other. Parcels shall be clearly marked to identify the Project and the Offeror, and to

identify the contents as Technical Proposal or Price Proposal. Proposals shall be sealed in an envelope and addressed to the Point of Contact identified in the RFP for receipt of Proposals, and shall be filed prior to the time and at the place specified in the RFP. Proposals received after that time will be returned to the Offeror unopened. The Department may defer the date for the opening of Proposals in which case the Offerors will be notified.

If the Department so elects, RFPs may be issued for projects in combination or separately. Proposals may be submitted for either the combination or separate units of the combination. The Department may make Awards on combination Proposals or separate Proposals to its best advantage. Combination Proposals other than those set up in the RFP by the Department will not be considered.

Conditional Proposals will be considered only when so stated in the RFP.

102.10—Withdrawal of Proposal (Not Used)

102.11—eVA Business-To-Government Vendor Registration

Offerors are not required to be registered with "eVA Internet e-procurement solution" at the time Proposals are submitted, however, prior to award of a contract, the Successful Offeror must be registered with "eVA Internet e-procurement solution" or the Proposal may be rejected. Registration shall be performed by accessing the eVA website portal www.eva.virginia.gov, following the instructions and complying with the requirements therein.

When registering with eVa it is the Offeror's responsibility to enter or have entered their correct payment address and physical addresses in eVa in order to receive payments on any contracts that the Department may award to them as the Successful Offeror. The Offeror shall also ensure their prequalification address(es) match those registered with eVa. Failure on the part of the Successful Offeror to meet either of these requirements may result in late payment of monthly estimates.

102.12—Public Opening of Proposals.

Price Proposals will be opened in accordance with the instructions in the RFP. Interested parties are invited to be present.

102.13—"E-Verify" – Verification of Work Authorization

By signing and submitting the Proposal, the Offeror certifies that it does not, and shall not during the performance of the Contract knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

(a) "E-Verify program" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, § 403(a), as amended, operated by the U.S. Department of Homeland Security, or a successor work authorization program designated by the U.S. Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603).

(b) Offerors with more than an average of 50 employees for the previous 12 months entering into a contract in excess of $50,000 with the Department shall register and participate in the E-Verify program to verify information and work authorization of their newly hired employees performing work pursuant to such contract. Offerors are not required to be registered with E-Verify program at the time Proposals are submitted, however; prior to award, the Successful Offeror must be registered with E-Verify program or the Proposal will be rejected.

(c) Offerors who fail to comply with the provisions of this Section 102.13(b) shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon registration and participation in the E-Verify program.

SECTION 103—AWARD AND EXECUTION OF DESIGN-BUILD CONTRACTS

103.01—Consideration of Proposals

After Price Proposals have been opened and read, they will be evaluated in accordance with the RFP for the design-build contract.

The Board reserves the right to reject any or all Proposals, waive informalities, advertise for new Proposals, or proceed to do the Work otherwise if it deems that the best interest of the Commonwealth would be promoted thereby.

103.02—Award of Contract (Not Used)

103.03—Cancellation of Award

The Board or the Commissioner, where permitted by law, may cancel the Award of any contract at any time before the execution of the contract by all parties without liability to the State.

103.04—Return of Proposal Guaranty

Proposal guaranties, except those of the two (2) highest ranked Offerors, will be returned immediately after the evaluation of Proposals, if requested. The Proposal guaranties of the two (2) highest ranked Offerors will be returned within five (5) days after the Contract has been duly executed by both the Successful Offeror and Department, if requested. If the Successful Offeror withdraws his Proposal prior to Award, the Proposal guaranty will be forfeited according to the forfeiture provisions in the Code of Virginia (§ 2.2-4336) and the Proposal guaranty. The apparent Successful Offeror's refusal to sign a Memorandum of Understanding shall not be grounds for Proposal guaranty forfeiture.

103.05—Requirements of Contract Bond

Within fifteen (15) days after Notice of Intent to Award of a contract, the Successful Offeror shall furnish the following bonds ("Contract Bonds") for contracts in excess of $250,000.00:

(a) A performance bond in the sum of one hundred percent (100%) of the Contract Price conditioned upon the faithful performance of the Work in strict conformity with the Contract Documents, and

(b) A payment bond in the sum of one hundred percent (100%) of the Contract Price conditioned upon the prompt payment for all labor, materials, public utility services, and rental of equipment used in the prosecution of the Work.

Offerors will not be awarded an unbonded contract when their Proposal plus the balance of other unbonded contracts exceeds $250,000.00 or if their current Ability Factor is less than 8.0 as determined by their Prequalification status.

The Contract Bonds shall be made on official forms furnished by the Department and shall be executed by the Offeror and a Surety company authorized to do business in Virginia in accordance with the laws of Virginia and the rules and regulations of the State Corporation Commission. To be considered properly executed, the Contract Bonds shall include authorized signatures and titles.

In lieu of payment or performance bonds, the Offeror may furnish a certified check or cash escrow in the face amount required for each of the bonds, which will be held for the full statutory period as applicable for each bond.

Upon written request from the Offeror, the Contract Bonds may be reduced on Contracts having planting items with an establishment period after acceptance of all Contract Work and during the establishment period. The amount of Contract Bonds for the duration of the remaining establishment period shall be equal to thirty five percent (35%) of the total contract price of the planting items.

If the Design-Builder is structured as a limited liability company, partnership or joint venture, the bonding approach used will ensure that the members of such organizations will have joint and several liability for the performance of the Work required for the Project.

103.06—Documents Required as a Condition to Award

The Contract shall include the following documents, unless otherwise specified by the RFP or Contract Documents, provided, however notwithstanding anything to the contrary in the Contract Documents, that the submission of an executed Agreement and Contract Bonds shall always be a precondition to Award

(a) **Contract:** The Agreement executed by the Successful Offeror.

(b) **Contract Performance and Payment Bonds:** Contract Bonds shall conform to the requirements of Section 103.05.

(c) **Affidavits and Documents:** Affidavits and documents set forth in the RFP and executed by the Successful Offeror.

(d) **Progress Schedule:** (Not Used)

(e) **Insurance Coverages and Certificates of Insurance:** The Design-Builder shall procure and maintain the insurance coverages required below, in accordance with Paragraph (f) below. Design-Builder shall file certificates of insurance with the Department evidencing the coverages and limits within fifteen (15) days after Notice of Intent to Award of the Contract.

.1 Workers' Compensation and Employer's Liability Insurance, with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of $1 million bodily injury by accident or disease, each employee. If necessary, coverage shall be extended to cover any claims under the United States Longshoreman's Act and Harbor Workers Act and Jones' Act as may be appropriate for the Work.

.2 Commercial General Liability Insurance, including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and broad form contractual liability with limits of at least $1 million per occurrence and $2 million aggregate, applicable on a per project basis.

.3 Automobile Liability Insurance, with a limit of at least $1 million combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired or borrowed vehicles on-site or off.

.4 Umbrella/Excess Liability Insurance in excess of the underlying limits noted above for employer's liability, commercial general liability, and automobile liability in the amount of $20 million per occurrence and in the annual aggregate.

.5 Architects/Engineers Professional Liability Insurance, covering Design-Builder's lead design engineer for acts, errors or omissions arising in connection with the Work for not less than $5 million any one

claim and in the aggregate. If a particular project's features requires, in the discretion of the Department, higher limits, such limits will be identified in the RFP. This insurance shall be maintained throughout the duration of any warranty period and for at least three years after the expiration of any warranty period.

.6 Contractor's Pollution Liability Insurance, to indemnify for bodily injury or property damage or amounts which Design-Builder or its agents, Subcontractors, or employees are legally obligated to pay for clean-up/remediation arising out of the work undertaken pursuant to the Contract Documents. Such insurance shall have minimum limits of $2 million any one claim and in the aggregate and shall remain in full force and effect for five years following Final Completion.

.7 Unless specifically excluded in the RFP, Builder's Risk Insurance, to provide coverage for physical loss, destruction or physical damage to the work. Such insurance shall cover Design-Builder, the Department, and all Subcontractors and shall be maintained with a minimum limit of one hundred percent (100%) of the Contract Price. If Design-Builder would like to reduce this limit to the Maximum Probable Loss (MPL), then it shall conduct an MPL study by a third party builder's risk advisor. If the Department agrees with the MPL study, then the minimum limits shall be in the amount of the MPL. Such insurance shall include replacement cost coverage for materials, supplies, equipment, machinery, and fixtures that are or will be part of the Project. Coverages shall include but are not limited to the following: right to partial occupancy, earthquake, earth movement, flood, transit, temporary and permanent works, expediting expenses, debris removal, offsite storage, soft costs and commissioning and start-up. If the Department, in its sole discretion, determines that it the Builder's Risk Insurance should include Loss of Income/Delayed Opening coverage, it shall specify such in the RFP.

.8 Additional Insurance Coverage. Design-Builder shall provide such other insurance as may be required by the Department depending upon the nature of the Project, including but not limited to:

- Protection and Indemnity Insurance (i.e., marine insurance).
- U.S. Longshore and Harborworker's Act and Jones Act endorsements under the Worker's Compensation Insurance.
- Railroad Protective Insurance, as set forth in Section 107.19 below.

Any such insurance requirements will be set forth in this Part 5 or in the RFP.

(f) **Insurance Requirements**. Design-Builder shall ensure that all insurances required in Paragraph (e) above contain the following provisions:

.1 With the exception of workers' compensation and architect/engineers' professional liability insurance, the Department shall be named, through specific policy endorsements, as an additional insured on all policies. Each such policy shall also include the appropriate severability of interest and cross-liability clauses to allow one insured to bring claim against another insured party.

.2 All insurance coverages shall be considered primary and non-contributory with regard to other insurances that might be available to Design-Builder or the Department.

.3 All insurers shall waive rights of subrogation against the Department for any claims covered by insurance required herein.

.4 Any inadvertent errors or omissions by Design-Builder in procuring the insurance required herein shall in no way prejudice the rights of the Department to collect under such policies.

.5 Any deductibles shall be the sole responsibility of Design-Builder.

.6 The insurance shall remain in full force and in effect and will remain in effect for the duration required by the Contract Documents;

.7 No insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Department; and

.8 With the exception of workers' compensation and automobile liability insurance, the insurance policies shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

(g) **Additional Insurance Requirements**

.1 Design-Builder shall require all Subcontractors to carry the same insurance, and in the same amounts, required by Paragraphs (e)(1), (e)(2) and (e)(3) above.

.2 Design-Builder shall file certificates of insurance with the Department evidencing the coverages and limits described above within the times required by Paragraph (e) above. The certificates shall be executed by approved insurance companies authorized to do business in Virginia with a minimum "Best Rating" of "B +" or greater, and shall cover the Contract.

.3 The insurance coverage limits shall not be construed to relieve Design-Builder or Subcontractor(s) of liability in excess of such coverage, nor shall it preclude the Department from taking such actions as are available to it under any other provision of the Contract Documents or otherwise in law.

103.07—Failure to Furnish Bonds or Certificate of Insurance

The Successful Offeror's failure to furnish to the Department acceptable bonds or certificates of insurance within 15 days after Notice of Intent to Award of the Contract shall be considered just cause for cancellation of Award and forfeiture of the Proposal guaranty. In such event, the Proposal guaranty shall become the property of the Commonwealth, not as a penalty but in liquidation of damages sustained. The Contract may then be awarded to the next highest-ranked responsible and responsive Offeror, or the Work may be re-advertised or constructed otherwise, as determined by the Board or the Department.

No plea of mistake in the Proposal shall be available to the Offeror for the recovery of his Proposal guaranty or in defense of action taken by the Department as a result of his neglect or refusal to execute a contract.

In the event the Successful Offeror on an unbonded contract is unwilling or unable to fulfill a contract and fails to notify the Department prior to execution of a contract by the Department, the Offeror will be declared in default in accordance with the requirements of Section 108.07.

103.08—Contract Audit

The Design-Builder shall permit the Department to audit, examine, and copy all documents, computerized records, electronic mail, or other records of the Design-Builder during the life of the Contract and for a period of not less than five (5) years after the date of final payment, or the date the Design-Builder is declared in default of Contract, or the date of termination of the Contract. The documents and records shall include, but not be limited to:

(a) Those that were used to prepare and compute the Proposal, prepare all schedules used on the Project, record the progress of Work on the Project, accounting records, purchasing records, personnel payments or records necessary to determine Employee credentials, vendor payments and written policies and procedures used to record, compute and analyze all costs incurred on the Project, including those used in the preparation or presentation of claims to the Department.

(b) Records pertaining to the Project as the Department may deem necessary in order to permit adequate evaluation and verification of Design-Builder's compliance with Contract requirements, compliance with the Department's business policies, and compliance with provisions for pricing Change Orders or claims submitted by the Design-Builder or Subcontractors, shall be made available to the auditor(s) at the Department's request. The Design-Builder shall make his personnel available for interviews when requested by the Department.

(c) Upon request, the Design-Builder shall provide the Department with data files on data disks, or other suitable alternative computer data exchange format. Data furnished by the Design-Builder that cannot be verified will be subject to a complete audit by the Department.

The Design-Builder shall ensure that the requirements of this provision are made applicable to Subcontractors. The Design-Builder shall cooperate and shall cause all related parties to furnish or make available in an expeditious manner all such information, materials, and data.

The Design-Builder shall provide immediate access to records for the audit and provide immediate acceptable facilities for the audit. Failure on the part of the Design-Builder to afford the Department immediate access or proper facilities for the audit will be considered failure to cooperate and will result in disqualification as an Offeror in accordance with Section 102.08.

Upon completion of the Contract audit, any adjustments or payments the Design-Builder owes to the Department as a result of the audit shall be made to the Department within sixty (60) days from presentation of the Department's findings to the Design-Builder. Failure on the part of the Design-Builder to make such payment may result in disqualification as an Offeror in accordance with Section 102.08.

If the Design-Builder disagrees with the findings of the Department's audit, the Design-Builder may dispute the findings in accordance with provisions of Section 105.19 or the *Code of Virginia* as amended and as applicable, except that if the time provided for the Design-Builder to submit a claim within sixty (60) days after final payment has expired, the Design-Builder shall instead submit a written claim to dispute the findings to the VDOT Project Manager within sixty (60) days from the date the Design-Builder received the findings. Failure on the part of the Design-Builder to submit a claim disputing the Department's findings within such 60-day period shall constitute a waiver and release of any claim disputing the Department's findings.

103.09—Execution of Contract

(a) The Proposal as submitted, including the Contract Documents specified in Section 103.06, shall be deemed accepted by the Department upon submittal of the Contract bond, Design-Builder's bodily injury and property damage liability insurance certificates, and workers' compensation insurance certificate, and the Department's final execution of the Contract. After the Department has recommended the Proposal for Award, the Successful Offeror shall be required to sign and return a paper copy of such documents to the Contract Engineer. Failure to sign and return such documents will result in forfeiture of the Proposal bond. If a contract is not awarded within the time limit specified in Section 103.02, the Offeror may withdraw his Proposal without penalty or prejudice unless the time limit is extended by mutual consent. No contract shall be considered effective until it has been fully executed by all parties.

(b) **Notice of Contract Execution.** The Contract Engineer will notify the Design-Builder of the date that the Department has executed the Contract. The Contract Engineer or his designee will confirm the Contract execution date in such notice. The notice will identify the Department's authorized representative responsible for written directives and changes to the Contract, who will contact the Design-Builder to arrange a pre-construction and scheduling conference.

103.10—Assignments, Transfers, or Assumptions of the Contract

The Design-Builder shall not assign, transfer, convey, or allow any person or business to assume or take over, in whole or in part, the Contract, the Design-Builder's duties, or performance obligations, arising under, from or relating to the Contract, except for subcontracting as provided in Section 105.06 or the rights of a surety issuing a performance bond for the Contract, without the Department's specific written authorization. Any such unauthorized assignment, transfer, conveyance, assumption or take over agreement shall be void and shall constitute a material breach of the Contract. No assignment, transfer, conveyance, assumption or take over agreement shall relieve the Design-Builder from its duties and obligations under the Contract, or release the Design-Builder of any liability under the Contract bonds.

SECTION 104—SCOPE OF WORK

104.01—Intent of Contract

The intent of the Contract is to provide for completion of the Work specified therein in accordance with the Contract for the Contract Price and within the Contract Times. Further, it is understood that the Design-Builder shall perform the Work under the Contract as an independent contractor and not as an agent of the Department, the Commissioner, or the Board.

104.02—Changes in Quantities or Alterations in the Work

(a) General

The Department reserves the right to make, in writing, at any time during the Work, such changes in quantities and such alterations in the Work as are necessary to complete the Project satisfactorily. Such changes shall be administered under Article 9 of the General Conditions, and shall not invalidate the Contract or release the Surety, and the Design-Builder shall agree to perform the Work as altered. No change, alteration, or modification in or deviations from the Contract Documents, or the giving by the Department of any extension of time for the performance of the Work, or the forbearance on the part of the Department shall release or exonerate in whole or in part either the Design-Builder or any Surety on the obligations of any bond given in connection with the Contract. Neither the Department nor the Design-Builder shall be under any obligation to notify the Surety or sureties of any such alteration, change, extension, or forbearance notice thereof being expressly waived. Any increase in the Contract Price shall automatically result in a corresponding increase in the penal amount of the bonds without notice to or consent from the Surety, such notice and consent being hereby waived. Decreases in the Contract Price shall not, however, reduce the penal amount of the bonds unless specifically provided in any Change Order as authorized in accordance with the provisions of Section 109.05 decreasing the scope of the Work.

(b) **Value Engineering Proposals**

The Design-Builder may submit to the Department written Value Engineering Contractor Proposals (VECP) for modifying the requirements of Contract Documents for the purpose of reducing the total Contract Price or Contract Times without reducing the design capacity or quality of the finished product. If the Department accepts VECP, the Department and the Design-Builder will equally divide the net savings or Contract Time, or both.

Each VECP shall result in a net savings over the Contract Price or Contract Times, or both without impairing essential functions and characteristics of the item(s) or of any other part of the Project, including, but not limited to, service life, reliability, economy of operation, ease of maintenance, aesthetics, and safety. At least the following information shall be submitted with each VECP:

- Statement that the proposal is submitted as a VECP

- Statement concerning the basis for the VECP benefits to the Department and an itemization of the pay items and requirements affected by the VECP

- Detailed estimate of the cost under the existing Contract and under the VECP

- Proposed specifications and recommendations as to the manner in which the VECP changes are to be accomplished

- Statement as to the time by which a contract Change Order adopting the VECP must be issued so as to obtain the maximum cost-effectiveness

The Department will process the VECP in the same manner as prescribed for any other proposal that would necessitate issuance of a Change Order. The Department may accept a VECP in whole or part by issuing a Change Order that will identify the VECP on which it is based. The Department will not be liable to the Design-Builder for failure to accept or act on any VECP submitted pursuant to these requirements or for delays in the Work attributable to any VECP. Until a VECP is put into effect by a Change Order, the Design-Builder shall remain obligated to the terms and conditions of the existing Contract. If an executed Change Order has not been issued by the date on which the Design-Builder's proposal specifies that a decision should be made or such other date as the Design-Builder may subsequently have specified in writing, the VECP shall be deemed rejected.

The Change Order effecting the necessary modification of the Contract will establish the net savings agreed on, and provide for adjustment of the Contract Price, or Contract Time, or both. The Design-Builder shall absorb all costs incurred in preparing a VECP. Costs for reviewing and administering a VECP will be borne by the Department. The Department may include in the agreement any conditions it deems appropriate for consideration, approval, and implementation of the VECP. The Design-Builder's fifty percent (50%) share of the net savings or Contract time or both shall constitute full compensation to him for effecting all changes pursuant to the VECP Change Order.

Unless specifically provided for in the Change Order authorizing the VECP, acceptance of the VECP and performance of the work thereunder will not change the Contract Time.

The Department may adopt a VECP for general use in contracts the Department administers if it determines that the VECP is suitable for application to other contracts. VECPs identical with or similar to previously submitted VECPs will be eligible for consideration and compensation under these provisions if the Department has not previously adopted the VECPs for general application to other contracts administered by the Department. When a VECP is adopted for general use, compensation pursuant to these requirements will be applied only to those awarded contracts for which the VECP was submitted prior to the date of adoption of the VECP.

Proposed changes in the basic design of a Bridge or pavement type or those changes that require different right of way limits will not normally be considered an acceptable VECP. If a VECP is based on or is similar to a change in the Contract Documents prior to submission of the VECP, the Department will not accept the VECP.

The Department will be the sole judge of the acceptability of a VECP. The requirements herein apply to each VECP initiated, developed, and identified as such by the Design-Builder at the time of its submission to the Department. However, nothing herein shall be construed as requiring the Department to approve a VECP.

Subject to the provisions herein, the Department or any other public agency shall have the right to use all or part of an accepted VECP without obligation or compensation of any kind to the Design-Builder.

104.03—Differing Site Conditions (Refer to Part 4 – General Conditions – Section 4.3, Differing Site Conditions)

SECTION 105—CONTROL OF WORK

105.01—Notice to Proceed

The Department will issue a Notice to Proceed in accordance with the RFP, whereupon the Contract Times will start. The Design-Builder shall notify the Department at least three (3) days prior to the date on which it will begin any Work at the Site.

The Letter of Contract Execution will identify the Engineer's authorized representative who is responsible for written directives and changes to the Contract. The Department will contact the Design-Builder after notice of Award to arrange a pre-construction conference.

In the event the Design-Builder, for matters of his convenience, wishes to begin work later than fifteen (15) days from the date of Notice to Proceed he shall make such a request in writing to the Engineer promptly after the execution of the Contract. If the Design-Builder's requested start date is acceptable to the Engineer, the Design-Builder will be notified in writing; however, the Contract Time will not be adjusted but will remain binding. The Design-Builder's request to adjust the start date for the Work on the Contract will not be considered as a basis for claim that the time resulting from Design-Builder's requested start date, if accepted by the Engineer, is insufficient to accomplish the Work nor shall it relieve the Design-Builder of his responsibility to perform the Work in accordance with the scope of work and Contract requirements. In no case shall work begin before the Engineer executes the Contract. The Design-Builder shall notify the Department at least three (3) days prior to the date on which he plans to begin the Work.

105.02—Pre-Construction Conference (Not Used)

105.03—Authorities of Project Personnel, Communication and Decision Making

(a) Authority of Department

During prosecution of the Work, the Department will answer all questions that may arise as to the quantity, quality, and acceptability of Materials furnished and work performed; rate of progress of the Work; interpretation of the Contract Documents; the Design-Builder's acceptable fulfillment of the Contract; disputes and mutual rights between contractors; and the Design-Builder's compensation.

The Department has the authority to suspend the Work wholly or in part if the Design-Builder has created conditions that are unsafe or fails to correct conditions that are unsafe for workers or the general public or fails to carry out the provisions of the Contract. The Department may also suspend the Work for such periods as it may deem necessary because of catastrophic or extraordinary weather as defined in Section 108.04, conditions considered unsuitable for prosecution of the Work, or any other condition or reason deemed to be in the public interest.

The Department may issue written clarifications or directives that either enhance or alter the Contract. The Department may issue written orders for such work as may be necessary to complete the Contract satisfactorily.

(b) Authority of Inspector

Inspectors representing the Department are authorized to inspect all Work performed and Materials furnished. Inspection may extend to all or any part of the Work and to the preparation, fabrication, and manufacture of the Materials to be used. The Inspectors are not authorized to alter or waive the provisions of the Contract Documents, or make changes to the Contract Documents.

The Inspectors are not authorized to make Final Acceptance of the Project, approve any operation or item, or act as foreman for the Design-Builder. However, the Inspectors will have the authority to

reject defective work and material and suspend work that is being improperly performed, subject to the concurrence of the Department. Such inspections shall not relieve the Design-Builder of any obligation to furnish acceptable Materials or provide completed construction that is in accordance with the Contract requirements.

The Inspectors will exercise only such additional authority as the Department may delegate. The Department will advise the Design-Builder in writing of delegations of authority that will affect his operations.

(c) The Design-Builder

The Design-Builder shall not construe reviews, approvals, or inspections by the Department, the Department's inspectors, agents, and employees as a waiver, release, warranty, or assumption of liability on the part of the Department. The Design-Builder understands and agrees that reviews, approvals, and inspections are for the Department's sole use and benefit. Any such reviews, approvals, and inspections shall not relieve the Design-Builder of its contractual duties and obligations or be conclusive as to the acceptability of the Design-Builder‘s performance.

105.04—Gratuities

Gifts, gratuities, or favors shall not be given or offered by the Design-Builder to personnel of the Department. A gift, gratuity, or favor of any nature whatsoever or offer of such by the Design-Builder to personnel of the Department shall be a violation of this provision.

The Design-Builder shall not employ any personnel of the Department for any services without the prior written consent.

If the Department determines after investigation that the Design-Builder or the Design-Builder’s Employees, representatives, or agents of any Person acting in his behalf have violated this Section, the Engineer may, at its discretion, disqualify the Design-Builder from bidding on future contracts with the Engineer for a period of six (6) months from the date of the Department’s determination of such a violation. Any implicated Employees, agents, or representatives of the Design-Builder may be prohibited from working on any contract the Department awards for the period of the Design-Builder’s disqualification.

105.05—Character of Workers, Work Methods, and Equipment

(a) Workers

Workers shall have sufficient skill and experience to perform properly the Work assigned to them. Workers engaged in special or skilled work shall have sufficient experience in such work and in the operation of Equipment required to perform it properly and satisfactorily. The term "workers" means the Design-Builder's employees, its Subcontractors at any tier, or any of their respective employees.

The Design-Builder shall immediately remove from the Project any workers who, in the Department's opinion, do not perform their work in a proper, skillful and satisfactory manner or are intemperate or disorderly. The Department shall direct the Design-Builder to do so in writing and such workers shall not be employed again on any portion of the Work without the Department’s written approval. If the Design-Builder fails to immediately remove the workers, or furnish suitable and sufficient workers for satisfactory prosecution of the Work, the Department may withhold all monies that are or may become due the Design-Builder and may suspend the Work until the Design-Builder has complied with the Department’s directive.

(b) Equipment

Equipment shall be of sufficient size and quantity, and in such good mechanical condition as to comply with the Contract requirements and to produce a satisfactory quality of work. Equipment shall be such that no damage to the Roadway, adjacent property, or other Highways, or no danger to the public will result from its use. The Department may order the removal and require replacement of unsatisfactory Equipment.

(c) Work Methods

When methods and Equipment to be used by the Design-Builder are not prescribed in the Contract, the Design-Builder is free to use whatever methods or Equipment he feels will accomplish the Work in conformity with the Contract requirements.

When the Contract specifies that construction be performed by the use of particular methods and Equipment, they shall be used unless others are authorized by the Department. If the Design-Builder desires to use a different method or type of Equipment, he may request permission from the Department to do so. The request shall be in writing and shall include a full description of the methods and Equipment he proposes to use and an explanation of the reasons for desiring to make the change. If permission is not given, the Design-Builder shall use the specified methods and Equipment. If permission is given, it will be on the condition that the Design-Builder shall be fully responsible for producing construction work in conformity with contract requirements. If, after trial use of the substituted methods or Equipment, the Department determines that the work produced does not conform to the Contract requirements, the Design-Builder shall discontinue the use of the substitute method or Equipment and shall complete the remaining construction with the specified methods and Equipment. The Design-Builder shall remove any deficient work and replace it with work of the specified quality or take such other corrective action as the Department may direct. No change will be made in the basis of payment for the construction items involved or the Contract Times as the result of authorizing or denying a change in methods or Equipment under these provisions.

105.06—Subcontracting

(a) The Design-Builder shall notify the Department of the name of the firm to whom the work will be subcontracted, and the amount and items of work involved. Such notification shall be made and verbal approval given by the Department prior to the Subcontractor beginning work.

(b) The Design-Builder shall perform with his own organization work amounting to not less than thirty percent (30%) percent of the total original Contract Price unless otherwise indicated in the Contract.

The term “perform work with its own organization” refers to workers employed or leased by the Design-Builder, and equipment owned or rented by the Design-Builder, with or without operators. Such term does not include employees or equipment of a Subcontractor or lower tier Subcontractor, agents of the Design-Builder, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the Design-Builder meets all of the following conditions:

1. The Design-Builder maintains control over the supervision of the day-to-day activities of the leased employees;

2. The Design-Builder remains responsible for the quality of the work of the leased employees;

3. The Design-Builder retains all power to accept or exclude individual employees from work on the Project; and

4. The Design-Builder remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

(c) The Design-Builder shall not subcontract any part of the Contract work to a contractor who is not prequalified with the Department in accordance with Section 102.01, unless otherwise indicated in the Contract. This restriction does not apply to service providers, Design Consultants, consultants, manufacturers, suppliers, or haulers. Consent to subcontract or otherwise dispose of any portion of the Contract work shall not relieve the Design-Builder of any responsibility for the satisfactory fulfillment of the entire Contract. All subcontracts shall be evidenced by written binding agreements that shall be available to the Department upon request, before, during, and after their approval.

105.07—Cooperation of Design-Builder

The Design-Builder shall give the Work the constant attention necessary to facilitate quality and progress and shall fully cooperate with the Department, and other contractors involved in the prosecution of the Work. If any portion of the Project is located within the limits of a municipality, military installation, or other federally owned property, the Design-Builder shall cooperate with the appropriate officials and their agents in the prosecution of the Work to the same extent as with the Department.

The Design-Builder shall have on the Project at all times during prosecution of the Work a competent Construction Manager who is capable of reading and understanding the Contract Documents, experienced in the type of work being performed, and who shall receive instructions from the Design-Builder or the Department or the Department's authorized representatives. The Construction Manager shall have full authority to execute the orders and directions of the Department without delay and supply promptly such Materials, Equipment, tools, labor, and incidentals as may be required.

105.08—Cooperation With Regard to Utilities

The adjustment of utilities consists of the relocation, removal, replacement, rearrangement, reconstruction, improvement, disconnection, connection, shifting, or altering of an existing utility in any manner.

Existing private and public utilities within the Department's knowledge prior to the issuance of the RFP will be indicated in RFP Documents. To the extent such existing utilities require adjustment, they will be adjusted by the utility owner or, if denoted in the Contract as the responsibility of the Design-Builder, then they will be adjusted by the Design-Builder. The location of the adjustment will not normally be shown in the RFP Documents, and Design-Builder is on notice that some of the utilities may be adjusted within the construction limits simultaneously with Project construction operations.

The Design-Builder shall coordinate Project construction with planned utility adjustments and take all necessary precautions to prevent disturbance of the utilities. The Design-Builder shall report to the Department any failure on the part of the utility owner to cooperate or proceed with the planned utility adjustments.

The Design-Builder shall perform utility work under the Contract in a manner that will cause the least inconvenience to the utility owner and those being served by the utility owner.

The Design-Builder shall protect existing, adjusted, or new utilities that are shown on the RFP Conceptual Plans, marked by Miss Utility, or otherwise known to the Design-Builder that are to remain within the Right of Way so as to prevent disturbance or damage resulting from construction operations. If during prosecution of the Work the Design-Builder encounters an existing utility that requires adjustment, he shall not interfere with the utility but shall take the proper precautions to protect the utility and shall promptly notify the Department of the need for adjustment.

Prior to preparing a Proposal, the Design-Builder shall contact known utility owners to determine the nature, extent, and location of existing, adjusted, or new utility facilities. Any additional cost resulting therefrom shall be reflected in the Proposal.

If the Design-Builder desires the temporary or permanent adjustment of utilities for his own benefit, he shall conduct all negotiations with the utility owners and pay all costs in connection with the adjustment.

Except as provided in the General Conditions, the Department will not be responsible for any claims for additional compensation from the Design-Builder resulting from delays, inconvenience, or damage sustained by him attributable to interference by utility appurtenances or the operation of moving the same.

105.09—Cooperation among Contractors

Section 3.6 of the General Conditions of Contract has precedence.

105.10—Plans and Working Drawings

(a) General

Refer to Article 2 of the General Conditions for Required Submittals.

(b) Plans

Design-Builder shall furnish all plans consisting of general drawings and showing such details as are necessary to give a comprehensive understanding of the work specified. Except as otherwise shown on the plans, dimensions shown on the plans are measured in the respective horizontal or vertical planes. Dimensions that are affected by gradients or vertical curvatures shall be adjusted as necessary to accommodate actual field conditions and shall be specifically denoted on the Working Drawings.

(c) Working Drawings

The Design-Builder shall furnish Working Drawings and maintain a set for the Department as may be required. Working drawings shall not incorporate any changes from the requirements of the Contract unless the changes are specifically denoted, together with justification, and are approved in writing by the Department. The Design-Builder shall identify Working Drawings and submittals by the complete state project and job designation numbers. Items or component materials shall be identified by the specific Contract Item number and Specification reference in the Contract.

A PE shall certify Working Drawings for Falsework supporting a Bridge superstructure.

The Design-Builder shall provide four (4) sets of any submittal. If a railroad, municipality, or other entity as specified in the Contract Documents is required to review the Working Drawings, the reviewed Working Drawings will be returned within forty five (45) days from the date of receipt by the Department. If the Working Drawings are not returned by the time specified, no additional compensation will be allowed, but Design-Builder may submit, in accordance with the applicable requirements of the Contract Documents, a request for a time extension. Upon completion of the work, the original tracings, if required, shall be supplied to the Department.

Deviations from the Contract requirements initiated by the Design-Builder shall be requested in writing and clearly identified on the Working Drawings. Explicit supporting justification shall be furnished specifically describing the reason for the requested deviations as well as any impact such deviations shall have on the schedule of Work. Failure to address time or other impacts associated with the Design-Builder's request will be cause for rejection of the Design-Builder's request. Deviations from the Contract requirements shall not be made unless authorized by the Engineer. If authorized by the Engineer, such authorization shall not relieve the Design-Builder from the responsibility for

complying with the requirements of the Contract for a fully functional finished work item as specified or designed.

The Design-Builder shall submit as-built working drawings upon completion of the Work, if required, by the Contract.

The Design-Builder may authorize the fabricator in writing to act for him in matters relating to Working Drawings. Such authorization shall have the force and effect of any other representative of the Design-Builder's organization.

1. Steel Structures

Working drawings for steel structures, including metal handrails, shall consist of shop detail, erection, and other working drawings showing details, dimensions, sizes of units, and other information necessary for the fabrication and erection of metal work. Such drawings shall be signed and sealed by a PE.

2. Falsework

Working drawings for Falsework supporting a Bridge Superstructure shall be signed and sealed by a PE.

3. Concrete Structures and Prestressed Concrete Members

Working drawings for concrete structures and prestressed concrete members shall provide such details as required for the successful prosecution of the Work and which are not included in the RFP Documents furnished by the Department. Drawings shall include plans for items such as prestressing strand details and elongation calculations, location of lift points, Falsework, bracing, centering, form work, masonry, layout diagrams, camber management plan for prestressed members, and bending diagrams for reinforcing steel when necessary or when requested. Such drawings shall be signed and sealed by a PE.

4. Lighting, signal and pedestal poles, overhead and Bridge mounted sign structures, breakaway support systems, anchor bolts, framing units, panels, and foundations.

Prior to fabrication or construction, the Design-Builder shall submit for review one original and six (6) copies of each Working Drawing and design calculation for lighting, signal and pedestal poles, overhead and Bridge mounted sign structures, breakaway support systems, anchor bolts, framing units, panels, and foundations. All sheets of these submittals shall include the PE's signature and seal. Certification for foundations will be required only when the designs are furnished by the Design-Builder. The designs shall be in accordance with the specific editions of the AASHTO *Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals* as required in Section 700. Such designs shall be signed and sealed by a PE.

5. Reinforced Concrete Pipe

When specified, and prior to manufacture of reinforced concrete pipe, the Design-Builder shall furnish to the Department a certification of the acceptability of the design of such pipe, as determined from a review that has been signed and sealed by a PE. Such certification shall cover all design data, supporting calculations, and materials. Pipe designs previously certified or approved by the Department will not require recertification.

105.11—Conformity with Contract Documents

All Materials to be used in the Work shall conform to the qualities, technical requirements, values or range of values specified in the Contract. Less than complete conformity may be tolerated if obtaining exact or complete conformity would not be feasible and if authorized in writing by the Department.

Permissible tolerances for the elevation of Subgrade and finished grade and for the thickness of the various courses of Pavement Structure are specified in the Contract Documents. If permissive tolerances are exceeded or if consistent deviations from the Contract Documents or abrupt changes in grade occur, even though within the tolerances, the affected areas shall be reconstructed to conform to the specified tolerance and provide a smooth riding surface.

When the Contract Documents require the finished surface to tie into any structural item whose elevation is fixed, the elevation of the finished surface must coincide with the elevation of the structural item.

105.12—Coordination of Contract Documents

The Design-Builder shall be responsible for the coordination of the Contract Documents. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, such inconsistency, conflict or ambiguity shall be interpreted as set forth in Section 3.1 of the Agreement.

The Design-Builder shall not take advantage of any obvious or apparent ambiguity, conflict, error, or omission in the Contract Documents. If after beginning work the Design-Builder discovers an ambiguity, conflict, error, or omission in the Contract Documents, he shall immediately notify the Department of the corrections in accordance with the Contract Documents and make such corrections as necessary for fulfilling the intent of the Contract Documents before proceeding further with the effected work.

105.13—Construction Stakes, Lines, and Grades

The Design-Builder shall perform all construction and other surveying that the Design-Builder deems necessary to construct this Project in accordance with the Contract Documents. The cost for all surveying performed by the Design-Builder is included in the Contract Price. All construction surveys shall be performed under the direct supervision of a land surveyor duly registered and licensed in the State.

105.14—Maintenance During Construction

(a) **Traffic Control**

1. The Design-Builder shall have at least one person on the Project site during all work operations who is currently verified either by the Department's Intermediate Work Zone Traffic Control training or by the American Traffic Safety Services Association (ATSSA) Virginia Intermediate Traffic Control Supervisor (TCS) training by a Department approved training provider. This person must have their verification card with them while on the Project site. This person shall be responsible for the oversight of work zone traffic control within the Project limits in compliance with the Contract requirements, the VWAPM, and the MUTCD. This person's duties shall include the supervision of the installation, adjustment (if necessary), inspection, maintenance, and removal when no longer required, of all work zone traffic control devices on the Project.

   If none of the Design-Builder's on-site personnel responsible for the supervision of such work have the required verification with them or if they have an outdated verification card showing they are not currently verified as a Traffic Control Supervisor (TCS) either by the Department in Intermediate Work Zone Traffic Control, or by the ATSSA, the Department will suspend all work on the Project until the Work is appropriately supervised in accordance with the requirements herein.

2. The Design-Builder shall have at least one person on site who is, at a minimum, verified in Basic Work Zone Traffic Control by the Department for each construction and/or maintenance operation that involves installing, maintaining, or removing work zone traffic control devices. This person shall be responsible for the placement, maintenance and removal of work zone traffic control devices.

   In the event none of the Design-Builder's on-site personnel for any construction and/or maintenance operation have, at a minimum, the required verification in Basic Work Zone Traffic Control, the Department will suspend that construction/maintenance operation until that operation is appropriately staffed in accordance with the requirements herein.

3. **Flagging Traffic:** Certified flaggers shall be provided in sufficient number and locations as necessary for control and protection of vehicular and pedestrian traffic in accordance with the VWAPM. Flaggers shall be able to communicate to the traveling public in English while performing the job duty as a flagger at the flagger station. Flaggers shall use sign paddles to regulate traffic in accordance with the VWAPM.

   Certification for flaggers will be awarded upon a candidate's satisfactory completion of an examination. Certification cards shall be carried by flaggers while performing flagging duties. Flaggers found not to be in possession of their certification card shall be removed from the flagging site and operations requiring flagging will be suspended by the Department until a certified flagger is on-site to perform flagging duties in accordance with the requirements herein. Further, flaggers performing duties improperly will have their certifications revoked.

(b) **Maintenance of Traffic**

1. The Design-Builder shall prosecute the Work so as to avoid obstructions to traffic to the greatest extent practicable. The Design-Builder shall provide for the safety and convenience of the general public and residents along the roadway, and for the protection of persons and property.

   Highways closed to traffic shall be protected by barricades and other warning devices as required by the Contract, the VWAPM, and the MUTCD. Barricades and warning devices shall be illuminated where required during periods of darkness and low visibility. The Design-Builder shall erect warning devices in advance of a location on the Project where operations or obstructions may interfere with the use of the road by traffic and at all intermediate points where the new work crosses or coincides with an existing roadway. The Design-Builder shall maintain sign faces and reflective surfaces of warning devices in a clean and visible condition. The Design-Builder shall cover or remove signs when the messages thereon are not applicable. Barricades, warning signs, lights, temporary signals, and other protective devices shall conform to Section 512.

2. The road shall be kept open to all traffic while undergoing improvements, unless otherwise permitted in the Contract. The Design-Builder shall keep the portion of the Project being used by public, pedestrian, and vehicular traffic in such condition that all such traffic will be safely and adequately accommodated. However, removal of snow and control of ice on roads open to public travel will be performed by the Department.

   The Design-Builder shall keep the portions of the road being used by the public free from irregularities and obstructions that could present a hazard or annoyance to traffic. When directed by the Department, allaying of dust shall be performed in accordance with Section 511. Holes in hard surface pavements shall be filled with approved asphalt patching material. Where such work is not specified in the Contract and determined to be required by the Department, and not the result of any failure or fault of the Design-Builder and due to causes beyond the Design-Builder's control, the cost to remedy such hazards will be handled according to Section 109.05.

   If any damage is sustained by an accepted unit or portion of the Project attributable to causes beyond the control of the Design-Builder, the Department may authorize the Design-Builder to make the

necessary repairs. These repairs will be paid for at the Contract price for the items requiring repair. In the absence of Contract prices covering the items of repair, the repair work will be paid for in accordance with Section 109.05.

3. **Detours**: Detours may be indicated on the plans or in the special provisions or may be used with the Department's approval. Unless otherwise designated in the Contract, the Design-Builder shall furnish, install and maintain all directional markings, for through-traffic on off-Project detours authorized or requested by the Department with the exception of municipalities. Municipalities shall be responsible for off-Project roadway maintenance within their own corporate limits. Detours over existing state roads shall be designated, marked, and maintained by the Design-Builder. Directional markings for detours shall include signs. Responsibility for installation and maintenance of the signs shall be in accordance with Section 512.03(a). If any project is located wholly or in part within a municipality's corporate limits and through traffic is to be detoured at the municipality's request, the municipality will provide and maintain the detours within the corporate limits and will furnish, install and maintain all directional markings. The provision of detours and marking of alternate routes will not relieve the Design-Builder of the responsibility for ensuring the safety of the public or from complying with any Contract requirements affecting the rights of the public within his Contract area of operations, including those concerning lights and barricades. Maintenance of all other detours shall be the Design-Builder's responsibility.

   The Department will furnish the right of way for temporary highways, vehicular watercourse crossings, diversion channels, sediment and erosion control features or bridges required by the Contract.

4. **Maintenance of Traffic During Suspension of Work**: During any suspension of work, the Design-Builder shall temporarily open to traffic such portions of the Project and temporary roadways as may be agreed upon by the Design-Builder and the Department.

5. **Minimizing Traffic Delays**: Two-way traffic shall be maintained at all times unless the Contract or the Department permits one-way traffic. The Design-Builder shall not stop traffic without the Department's permission.

   If one-way traffic is permitted, the Design-Builder shall provide certified flaggers to direct the traffic. When specified in the Contract, pilot vehicles shall be furnished in accordance with Section 512. Upon the Design-Builder's request and where deemed appropriate by the Department, the Department will install traffic signals that may be used for the control of one-way traffic. The Design-Builder shall pay the costs of installation, electrical service, maintenance or repair work, and a predetermined rental charge per day for the signals and removal when no longer needed.

6. **Connections and Entrances**: Connections with other roads and public and private entrances shall be kept in a reasonably smooth condition at all times.

   Stabilization or surfacing material shall be applied to connections and entrances. Where such material is not specified in the Contract and determined to be required by the Department, the cost for stabilization or surfacing material will be handled in accordance with Section 109.05.

   The Design-Builder shall schedule construction operations so that approved continuous access is provided for all property adjacent to the construction when the property is shown on the plans to require access. When frontage roads are shown on the plans, they shall be constructed prior to the closing of any access routes unless other approved access is provided and is acceptable to the property owner.

   The Design-Builder shall not disturb connections or entrances until necessary. Once disturbed, the Design-Builder shall maintain and complete connections or entrances as follows:

a. **Connections**: Connections that had an original paved surface shall be brought to a grade that will smoothly and safely accommodate vehicular traffic through the intersection, using temporary pavement as soon as practicable after connections are disturbed. Connections that had an original unpaved surface shall be brought to a grade that will smoothly and safely accommodate vehicular traffic through the intersection, using either the required material or a temporary aggregate stabilization course that shall be placed as soon as practicable after connections are disturbed.

   If there are delays in prosecution of work for connections, connections that were originally paved shall have at least two lanes maintained with a temporary paved surface. Those that were not originally paved shall be maintained with a temporary aggregate stabilization course.

b. **Entrances**: Entrances shall be graded concurrently with the roadway with which they intersect. Once an entrance has been disturbed, it shall be completed as soon as is practicable, including placing the required base and surface course or stabilization. If the entrance must be constructed in stages, such as when there is a substantial change in the elevation of the roadway with which it intersects, the surface shall be covered with a temporary aggregate stabilization course or other suitable salvaged material until the entrance can be completed and the required base and surface or stabilization course can be placed.

7. **Obstruction Crossing Roadways**: Where the Design-Builder places obstructions such as suction or discharge pipes, pump hoses, steel plates, or any other obstruction that must be crossed by vehicular traffic, they shall be bridged as directed by the Department at the Design-Builder's expense. Traffic shall be protected by the display of warning devices both day and night. If operations or obstructions placed by the Design-Builder damage an existing traveled roadway, the Design-Builder shall cease operations and repair damages to the roadway at no additional cost to the Department.

8. **Patching Operations**: Where existing hydraulic cement concrete pavement is to be patched, the operation of breaking and excavating old pavement shall extend for a distance of not more than two miles. Patching shall be coordinated with excavating so that an area of not more than one-half mile in which excavated patches are located shall be left at the end of any day's work. Necessary precautions shall be taken to protect traffic during patching operations**.**

9. **Temporary Structures**: The Design-Builder shall construct, maintain, and remove temporary structures and approaches necessary for use by traffic. After new structures have been opened to traffic, temporary structures and approaches shall be removed. The materials contained therein shall remain the property of the Design-Builder.

   The proposed design of temporary structures shall be submitted to the Department prior to the beginning of construction in accordance with Section 105.10.

10. **Haul Route**: The Design-Builder shall select haul routes between the Project and material source(s) that will minimize disturbance to the community. The Design-Builder shall furnish to the Department, for review, his plan for the haul route and for minimizing the adverse effects of hauling operations on persons who reside adjacent to the haul route or persons who otherwise use a portion of the haul route for ingress or egress to their residential or work area. The Department may select alternate haul routes, divide the hauling traffic over several routes, and impose other restrictions deemed necessary to minimize the impact of the hauling operation on local residents.

11. **Opening Sections of Projects to Traffic**

    Certain sections of the Work may be opened to traffic when specified in the Contract or when directed by the Department. Such opening shall not constitute acceptance of the Work or any part thereof or a waiver of any provision of the Contract.

On any section of the Work opened by order of the Department where the Contract does not provide for traffic to be carried through the Work, the Design-Builder will not be required to assume any expense entailed in maintaining the road for traffic. The Department will pay such expense or will compensate the Design-Builder in accordance with Section 109.05. Repair of slides and repair of damage attributable to traffic will be compensated for in accordance with Section 109.05. Slides shall be removed by the Design-Builder in accordance with Section 303.

On any section of the Work opened by order of the Department where the Contract does not provide for traffic to be carried through the Work, any additional cost incurred to complete other items of work solely because of the changed working conditions will be compensated according Section 109.05.

If the Design-Builder is not continuously prosecuting the Work to the Department's satisfaction as determined by the Schedule of Record, the Design-Builder shall not be relieved of the responsibility for maintenance of the completed work during the period that the section of the Work is opened to traffic prior to Final Acceptance. The Design-Builder shall be responsible for any expense resulting from the opening of such portions of the Work under these circumstances, except for slides. The Design-Builder shall conduct the remainder of the construction operations so as to cause the least obstruction to traffic.

(c) **Maintenance of Work**

1. The Design-Builder shall maintain the Work, the project site, construction area and roadway from the beginning of construction operations until Final Acceptance with adequate equipment and forces to keep the roadway and structures in a safe and satisfactory condition at all times and to ensure the continuous and effective day by day prosecution of the Work.

   If any damage is sustained by an accepted unit or portion of the Project attributable to causes beyond the control of the Design-Builder, the Department may authorize the Design-Builder to make the necessary repairs. These repairs will be paid for at the Contract price for the items requiring repair. In the absence of Contract prices covering the items of repair, the repair work will be paid for in accordance with Section 109.05.

2. Where the Contract specifies placing a course on another course or subgrade of embankment, base, subgrade, concrete, asphalt pavement, or other courses previously constructed, the Design-Builder shall maintain the courses or subgrades previously constructed in accordance with the Contract requirements when placing such course. This maintenance includes, but is not limited to draining, re-compacting, re-grading, or, if unacceptable or destroyed, the removal of work the Department previously accepted.

3. **Grading Operations**: When the Design-Builder elects to complete the rough grading operations for the entire Project or exceed the length of one full day's surfacing operations, the rough grade shall be machined to a uniform slope from the top edge of the existing pavement to the ditch line.

   When the surface is to be widened on both sides of the existing pavement, construction operations involving grading or paving shall not be conducted simultaneously on sections directly opposite each other.

   The surface of pavement shall be kept free from soil and other materials that might be hazardous to traffic. Prior to opening of new pavement to traffic, shoulders shall be roughly dressed for a distance of three (3) feet from the edge of the paved surface.

(d) **Maintenance Cost**

The Design-Builder shall bear all costs of performing maintenance work before Final Acceptance, and of constructing and maintaining necessary approaches, crossings, intersections, and other features without

direct compensation except as provided for herein. When the Design-Builder confines his operation to the surface of the roadway and reasonable width of the shoulder and the surface is disturbed or damaged by his operations or equipment, he shall be responsible for the restoration and maintenance of the surface that is disturbed or damaged.

(e) **Failure to Maintain Roadway or Structures:** If the Design-Builder fails to remedy unsatisfactory maintenance immediately after receipt of a notice by the Department, the Department may proceed with adequate forces, equipment, and material to maintain the Project. The cost of the maintenance, plus twenty five percent (25%) for supervisory and administrative personnel, will be deducted from monies due the Design-Builder for the Project.

105.15—Removing and Disposing of Structures and Obstructions

The Design-Builder shall remove and dispose of or store, as directed by the Department, fences, buildings, structures, or encumbrances within the construction limits. Materials so removed, including existing drains or pipe culverts, shall become the property of the Design-Builder, with the exception of those materials to be stored or delivered to the Department or others as designated in the Contract.

(a) **Signs:** The Design-Builder shall relocate all signs within the construction limits that conflict with construction work as approved by the Department. Signs that are not needed for the safe and orderly control of traffic during construction as determined by the Department shall be removed and stored at a designated location within the Project limits. The removed signs shall be stored above ground in a manner that will preclude damage and shall be reinstalled in their permanent locations prior to Final Acceptance. If any of the removed signs are not to be reinstalled, the Design-Builder shall notify the Department at the time the signs have been properly stored. Such signs will be removed from the storage area by the Department. Any sign that is damaged or lost because of the fault of the Design-Builder shall be repaired or replaced at his expense. Costs for removing, storing, protecting, and reinstalling such signs shall be included in the Contract Price and no additional compensation will be made.

(b) **Mailboxes and Newspaper Boxes:** When removal of existing mailboxes and newspaper boxes is made necessary by construction operations, the Design-Builder shall place them in temporary locations so that access to them will not be impaired. Prior to Final Acceptance, boxes shall be placed in their permanent locations as designated by the Department and left in the same condition as when found. Boxes or their supports that are damaged through negligence on the part of the Design-Builder shall be replaced at his expense. The cost of removing and resetting existing boxes shall be included in other pay Contract items. New mailboxes designated in the plans shall be paid for in accordance with Section 521 of the Specifications.

105.16—Cleanup

Removal from the Project of rubbish, scrap material, and debris caused by the Design-Builder's personnel or construction operations shall be a continuing process throughout the course of the Work. The work site shall be kept in a neat, safe and orderly condition at all times.

Before Final Acceptance, the Highway, Borrow pits, quarries, Disposal Areas, storage areas, and all ground occupied by the Design-Builder in connection with the Work shall be cleaned of rubbish, surplus materials, and Temporary Structures, except where the Design-Builder owns or controls the property. All parts of the Work and the Construction Area shall be left in a neat, safe, and orderly condition.

Within thirty (30) days after Final Acceptance, the Design-Builder shall remove his Equipment, Materials and debris from the Right of Way and from property adjacent to the Project that he does not own or control.

105.17—Inspection of Work

The Design-Builder is responsible for continuous quality control and quality assurance in accordance with the QA/QC Plan. However, all stages, Materials, and details of the Work are subject to inspection. The Design-Builder shall provide the Department full and safe access to all parts of the Work. The Design-Builder shall furnish the Department such information and assistance as required to make a complete, timely, and detailed inspections. The Department and its appointed representatives shall have ready access to machines, plants and plant Equipment used in processing or placing Materials.

Prior to the beginning of operations, the Department will meet with the Design-Builder to establish an understanding of the critical stages of Work that shall be performed in the presence of the Inspector. In order for the Department to schedule inspection of the critical stages of Work, the Design-Builder shall keep the Department informed of planned operations in accordance with Section 108.03. The Design-Builder shall advise the Department at least twenty four (24) hours in advance of any changes in the Design-Builder's planned operations or critical stage work requiring Department inspection.

If the Department requests it, the Design-Builder shall remove or uncover such portions of the finished work as may be directed at any time before Final Acceptance. The Design-Builder shall restore such portions of the finished Work to comply with the appropriate requirements of the Contract Documents. If the work exposed is acceptable, the uncovering or removing and replacing the covering or making good the parts removed will be paid for as Extra Work in accordance with the General Conditions of the Contract. If the work is unacceptable, the cost of uncovering or removing and replacing the covering or making good the parts removed shall be borne by the Design-Builder.

When any unit of government, political subdivision, or public or private Corporation is to pay a portion of the cost of the Work specified in the Contract, its representatives shall have the right to inspect such work. The exercise of this right shall not be construed as making them a party or parties to the Contract or conferring on them the right to issue instructions or orders to the Design-Builder.

If Materials are used or work is performed without inspection by Independent Quality Control staff and certified by the Quality Assurance Manager, the Department may order the Design-Builder to remove and replace the work or Material at his own expense.

If an inspection reveals that work has not been properly performed, or materials used are unacceptable, the Design-Builder will be so advised and he shall immediately inform the Department of his schedule for correcting such work and materials, and the time when a reinspection can be made.

105.18—Removal of Unacceptable Work

Work will be considered as unacceptable if it: (a) does not conform to the requirements of the Contract Documents; (b) is performed contrary to the instructions of the Department; or (c) is performed without the authorization of the Department. Unacceptable work shall be remedied or removed immediately unless otherwise determined by the Department, and replaced in an acceptable manner at the Design-Builder's expense. The Department may elect, in its sole discretion, to accept otherwise unacceptable work at a reduced price and a warranty extended to five (5) years for the subject portion of the work when acceptance is considered to be in the best interest of the public.

The Design-Builder shall not perform destructive sampling or testing of the Work without written authorization of the Department. Unauthorized destructive sampling or testing will cause the Work to be considered unacceptable.

In the event the Design-Builder is granted authorization to perform destructive sampling or testing, the Design-Builder shall obtain the approval of the Department for the method and location of each test prior to beginning

such sampling or testing. In addition, destructive sampling and testing shall be performed in the presence of the Department.

If the Design-Builder fails to comply immediately with any order of the Engineer made under this Section, the Engineer will have the authority to cause unacceptable or unauthorized work to be removed and replaced and to deduct the cost from any monies due or to become due the Design-Builder.

105.19—Submission and Disposition of Claims (Refer to Part 4 – General Conditions – Article 10 Contract Adjustments and Disputes)

SECTION 106—CONTROL OF MATERIAL

106.01—Source of Supply and Quality Requirements

The Materials used throughout the Work shall conform to the requirements of the Contract. The Design-Builder shall regulate his supplies so that there will be a sufficient quantity of tested Material on hand at all times to prevent any delay of Work. Except as otherwise specified, Materials, Equipment, and components that are to be incorporated into the finished work shall be new and fit for their intended purpose.

At the option of the Department, Materials may be approved at the source of supply. If it is found during the life of the Contract that previously approved sources of supply do not supply Materials or Equipment conforming to the Contract requirements, do not furnish the valid test data required to document the quality of the Material or Equipment, or do not furnish documentation to validate quantities to document payment, the Design-Builder shall change the source of supply and furnish Material or Equipment from other approved sources. The Design-Builder shall notify the Department of this change, and provide the same identifying information noted in this Section, at least sixty (60) days prior to their use on the Project, but not less than two weeks prior to delivery.

Materials shall not contain toxic, hazardous, or regulated solid wastes or be furnished from a source containing toxic, hazardous or regulated solid wastes.

When optional Materials are included in the Contract, the Design-Builder shall advise the Department in writing of the specific Materials selected. Thereafter, the Design-Builder shall use the selected Materials throughout the Project unless a change is authorized in writing by the Department. However, when the Design-Builder has an option as to the type of pipe that may be used, he may use any of the approved types for each size of pipe, but he shall use the same type for a particular line. The Department may authorize other types and sources in an emergency that will not unreasonably delay delivery of the selected Material.

Equipment and Material guaranties or warranties that are normally given by a manufacturer or supplier, or are otherwise required in the Contract, shall be obtained by the Design-Builder and assigned to the Commonwealth in writing. The Design-Builder shall also provide an in-service operation guaranty on all mechanical and electrical Equipment and related components for a period of at least six (6) months beginning on the date of partial acceptance of that specific item(s) or Final Acceptance of the Project.

106.02—Material Delivery

The Design-Builder shall advise the Quality Assurance Manager and the Department at least two (2) weeks prior to the delivery of any Material from a commercial source. Upon delivery of any such Material to the Project, the Design-Builder shall provide the Department with one copy of all invoices (prices are not required). The following Materials shall also comply with Section 109.01: asphalt concrete; dense graded aggregate, to include aggregate base, Subbase, and Select Material; fine aggregate; open graded coarse aggregate; crusher run aggregate; and Road stabilization aggregate. The printed weights of each load of these Materials, as specified in Section 109.01, shall accompany the delivery, and such information shall be furnished to the Lead QA Inspector at the Project.

106.03—Local Material Sources (Pits and Quarries)

The requirements set forth herein apply exclusively to non-commercial pits and quarries from which Materials are obtained for use on contracts awarded by the Department.

(a) Local Material sources shall be concealed from view from the completed Roadway and any existing public Roadway. Concealment shall be accomplished by selectively locating the pit or quarry and spoil pile, providing environmentally compatible screening between the pit or quarry site and the Roadway, or using the site for another purpose after removal of the Material, or restoration equivalent to the original use (such as farm land, pasture, turf, etc.). The foregoing requirements shall also apply to any pit or quarry opened or reopened by a Subcontractor. However, the requirements will not apply to commercial sand and gravel and quarry operations actively processing Material at the site prior to the date of the execution of the Contract.

(b) The Design-Builder shall furnish the Department a statement signed by the property owner in which the property owner agrees to the use of his property as a source of Material for the Project. Upon completion of the use of the property as a Material source, the Design-Builder shall furnish the Department a release signed by the property owner indicating that the property has been satisfactorily restored. The requirements for a signed statement and release will not apply to commercial sources, sources owned by the Design-Builder, and sources furnished by the Department.

(c) Local Material pits and quarries that are not operated under a local or State permit shall not be opened or reopened without authorization by the Department. The Design-Builder shall submit for approval a site plan, including, but not limited to, the following:

1. The location and approximate boundaries of the Excavation; with a slope gradient of 3:1 or greater;

2. Procedures to minimize erosion and siltation;

3. Provision of environmentally compatible screening;

4. Restoration;

5. Cover vegetation;

6. Other use of the pit or quarry after removal of Material, including the spoil pile;

7. The drainage pattern on and away from the area of land affected, including the directional flow of water and a certification with appropriate calculations that verify all receiving Channels are in compliance with Minimum Standard 19 of the Virginia Erosion and Sediment Control Regulations;

8. Location of haul Roads and stabilized construction entrances if construction Equipment will enter a paved Roadway;

9. Constructed or natural waterways used for discharge;

10. A sequence and schedule to achieve the approved plan;

11. The total drainage area for temporary sediment traps and basins shall be shown. Sediment traps are required if the runoff from a watershed area of less than three acres flows across a disturbed area. Sediment basins are required if the runoff from a watershed area of three (3) acres or more flows across a disturbed area. The Design-Builder shall certify that the sediment trap or basin design is in compliance with the Contract Documents and all Legal Requirements. Once a sediment trap or basin is constructed, the dam and all outfall areas shall be immediately stabilized.

The Design-Builder's design and restoration shall be in accordance with the Contract Documents and all Legal Requirements.

If the approved plan provides for the continued use or other use of the pit or quarry beyond the date of Final Acceptance, the Design-Builder shall furnish the Department a bond made payable to the Commonwealth of Virginia in an amount equal to the Engineer's estimate of the cost of performing the restoration work. If the pit or quarry is not used in accordance with the approved plan within eight months after Final Acceptance, the Design-Builder shall perform restoration work as directed by the Department, forfeit his bond, or furnish the Department with evidence that he has complied with the applicable requirements of the State Mining Law.

(d) Topsoil on Department owned or furnished Borrow sites shall be stripped and stockpiled as directed by the Department for use as needed within the construction limits of the Project or in the reclamation of Borrow and Disposal Areas.

(e) If payment is to be made for Material measured in its original position, Material shall not be removed until Digital Terrain Model (DTM) or cross-sections have been taken. The Material shall be reserved exclusively for use on the Project until completion of the Project or until final DTM or cross-sections have been taken.

(f) If the Design-Builder fails to provide necessary controls to prevent erosion and siltation, if such efforts are not made in accordance with the approved sequence, or if the efforts are found to be inadequate the Department will withdraw approval for the use of the site and may cause the Design-Builder to cease all contributing operations and direct his efforts toward corrective action or may perform the Work with State forces or other means as determined by the Department. If the Design-Builder does not perform such work, the cost of performing the Work plus twenty five percent (25%) for supervisory and administrative personnel will be deducted from monies due the Design-Builder.

(g) Costs for applying seed, fertilizer, lime, mulch, and for restoration, drainage, erosion and siltation control, regrading, haul Roads, and screening shall be included in the Contract price for the type of Excavation or other appropriate Contract items.

(h) If the Design-Builder fails to fulfill the provisions of the approved plan for screening or restoring Material sources, the Department may withhold and use for the purpose of performing such work any monies due the Design-Builder. The Design-Builder shall be held liable for penalties, fines, or damages incurred by the Department as a result of his failure to prevent erosion or siltation and take restorative action.

(i) After removing all the Material from the local material sources, the Design-Builder shall remove metal, lumber, and other debris resulting from his operations and shall shape and landscape the area in accordance with the approved plan for such work.

(j) **Sources Furnished by the Department**: Sources furnished by the Department will be made available to the Design-Builder together with the right to use such property as may be required for a plant site, stockpiles, and haul roads. The Design-Builder shall confine his Excavation operations to those areas of the property specified in the Contract. The Design-Builder shall be responsible for Excavation that shall be performed in order to furnish the specified Material.

(k) **Sources Furnished by the Design-Builder**: When the Design-Builder desires to use local Material from sources other than those furnished by the Department, he shall first secure the approval of the Department. The use of Material from such sources will not be permitted until test results have been approved by the Department and written authority for its use has been issued by the appropriate agency, organization or individual.

The Design-Builder shall acquire the necessary rights to take Material from sources he locates and shall pay all related costs, including costs that may result from an increase in the length of the haul. Costs of exploring, sampling, testing, and developing such sources shall be borne by the Design-Builder. The Design-Builder shall obtain representative samples from at least two (2) borings in parcels of ten (10) acres

or less and at least three (3) additional borings per increment of five (5) acres or portion thereof to ensure that lateral changes in Material are recorded. Drill logs for each test shall include a soil description and the moisture content at intervals where a soil change is observed or at least every five (5) feet of depth for consistent Material. Samples obtained from the boring shall be tested by an approved Laboratory for grading, Atterberg limits, CBR, maximum density, and optimum moisture. The Department will review and evaluate the Material based on test results provided by the Design-Builder. The Department will reject any Material from a previously approved source that fails a visual examination or whose test results show that it does not conform to the Contract Documents.

106.04—Disposal Areas

The Design-Builder shall dispose of unsuitable or Surplus Material shown in the Contract Documents according to Contract requirements as specified herein. Material not used on the Project shall be disposed of by the Design-Builder off the Right of Way. The Design-Builder shall obtain the necessary rights to property to be used as an approved Disposal Area. For the purpose of these Division I Amendments to the Standard Specifications an approved Disposal Area is defined as that which is owned privately, not operated under a local or State permit, and has been approved by the Department for use in disposing of Material not used on the Project.

The Design-Builder shall furnish the Department a statement signed by the property owner in which the owner agrees to the use of his property for the deposit of Material from the Project. Upon completion of the use of the property as an approved Disposal Area, the Design-Builder shall furnish the Department a release signed by the property owner indicating that the property has been satisfactorily restored. This requirement will be waived for commercial sources, sources owned by the Design-Builder, and sources furnished by the Department.

If an approved Disposal Area is not designated in the Contract, the Design-Builder shall obtain the necessary rights to property to be used as an approved Disposal Area.

If the Design-Builder, having shown reasonable effort, is unsuccessful in obtaining the necessary rights to property to be used as an approved Disposal Area, the Department will obtain rights for a disposal area unless otherwise provided for in the Contract. If not shown in the Contract, compensation will be in accordance with Sections 104.02 and 109.05.

Prior to the Department approving the Design-Builder's Disposal Area, the Design-Builder shall submit a site plan that shall show:

1. The location and approximate boundaries of the Disposal Area.

2. Procedures to minimize erosion and siltation.

3. Provision of environmentally compatible screening.

4. Restoration.

5. Cover vegetation.

6. Other use of the Disposal Area.

7. The drainage pattern on and away from the area of land affected, including the directional flow of water and a certification with appropriate calculations that verify all receiving Channels are in compliance with Minimum Standard 19 of the Virginia Erosion and Sediment Control Regulations.

8. Location of haul roads and stabilized construction entrances if construction Equipment will enter a paved Roadway.

9. Constructed or natural waterways used for discharge.

10. A sequence and schedule to achieve the approved plan.

11. The total drainage area for temporary sediment traps and basins shall be shown. Sediment traps are required if the runoff from a watershed area of less than three (3) acres flows across a disturbed area. Sediment basins are required if the runoff from a watershed area of three acres or more flows across a disturbed area. The Design-Builder shall certify that the sediment trap or basin design is in compliance with the Contract Documents and all Legal Requirements. Once a sediment trap or basin is constructed, the dam and all outfall areas shall be immediately stabilized. Costs for the work described herein shall be included in the Contract Price. The Design-Builder shall certify that the sediment basin design is in compliance with the Virginia Erosion and Sediment Control Regulations, all local, state, and federal ordinances, and Section 107.16.

Disposal Areas shall be cleared but need not be grubbed. The clearing work shall not damage grass, shrubs, or vegetation outside the limits of the approved area and haul roads thereto. After the Material has been deposited, the area shall be shaped to minimize erosion and siltation of nearby streams and landscaped in accordance with the approved plan for such work or shall be used as approved by the Department. The Design-Builder's design and restoration shall conform to the Contract requirements and federal, state, and local laws and regulations.

Excavated rock in excess of that used in Embankments in accordance with the requirements of Section 303 shall be deposited off the Right of Way in an approved Disposal Area. Deposits whose surface is composed largely of rock shall be leveled by special arrangement of the Material or reduction of the irregularity of the surface by crushing projections to create a reasonably uniform and neat appearance.

The Design-Builder's design and restoration shall be in accordance with the requirements of the Contract Documents and Legal Requirements.

If the Design-Builder fails to provide and maintain necessary controls to prevent erosion and siltation, if such efforts are not made in accordance with the approved sequence, or if the efforts are found to be inadequate, the Department will withdraw approval for the use of the site and may cause the Design-Builder to cease all contributing operations and direct his efforts toward corrective action or may perform the Work with State forces or other means as determined by the Department, and deduct the cost of performing the Work plus twenty five percent (25%) for supervisory and administrative personnel from monies due or to be become due the Design-Builder.

Costs for applying seed, lime, fertilizer, and mulch; reforestation; drainage; erosion and siltation control; regrading; haul roads; and screening shall be included in the Contract Price.

(a) **Materials encountered by the Design-Builder** shall be handled and disposed of as follows:

1. **Unsuitable Material** -. The Design-Builders' geotechnical engineer shall confirm that slopes, earthwork, pavement, and foundation subgrades satisfy the design and Contract Document requirements. The Design-Builders' geotechnical engineer shall perform an inspection of all embankment and pavement subgrades and minor structure excavations immediately prior to placement of embankment fill, aggregate base, subbase or bedding materials to identify excessively soft, loose, dry or saturated soils that exhibit excessive pumping, weaving or rutting under the weight of the construction equipment. Materials unsuitable for use in the Work, as defined in Part 2 of the Contract, shall be disposed of at an approved Disposal Area or landfill licensed to receive such Material unless the materials can be adequately treated in place through chemical and/or mechanically stabilized method that shall be approved by the Department. Such method shall be approved prior to use in the Work. All Unsuitable Materials shall be disposed of off-site and/or treated in place at no cost to the Department. Design-Builder shall identify unsuitable Materials and methods of treatment on the plans and cross sections.

2. **Surplus Material** as shown in the Contract Documents that is not classified as unsuitable may be used to flatten slopes, to fill in ramp gores and medians provided the material is placed in accordance with the earthwork specifications. Surplus Material that is not needed shall be disposed of at an approved Disposal Area, a landfill licensed to receive such Material, or as directed by the Department in writing.

   Surplus Material stockpile areas on the right-of-way shall be cleared but need not be grubbed. The clearing work shall not damage grass, shrubs, or vegetation outside the limits of the approved area and the haul Roads thereto. Placement of fill material shall not adversely affect existing drainage structures. If necessary, modified existing drainage structures, as approved by the Department, shall be paid for in accordance with Section 109.05. Within seven (7*)* days after the material has been deposited, the area shall be shaped and stabilized to minimize erosion and siltation.

3. **Organic materials** such as, but not limited to, tree stumps and limbs (not considered merchantable timber), roots, rootmat, leaves, grass cuttings, or other similar materials shall be chipped or shredded and used on the Project as mulch, given away, sold as firewood or mulch, burned at the Design-Builder's option if permitted by local ordinance, or disposed of at a facility licensed to receive such materials. Organic material shall not be buried in State Rights of Way or in an approved Disposal Area.

4. **Inorganic materials** such as brick, cinder block, broken concrete without exposed reinforcing steel, or other such material may be used in accordance with Section 303.04 or shall be disposed of at an approved Disposal Area or landfill licensed to receive such materials. If disposed of in an approved Disposal Area, the material shall have enough cover to promote soil stabilization in accordance with Section 303 and shall be restored in accordance with other provisions of this Section.

   Concrete without exposed reinforcing steel, may be crushed and used as rock in accordance with Section 303. If approved by the Department, these materials may be blended with soils that meet AASHTO M57 requirements and deposited in fill areas within the right-of-way in accordance with the requirements of Section 303 as applicable.

5. **Excavated rock** in excess of that used within the Project site in accordance with Section 303 shall be treated as surplus material.

6. **Other materials** such as, but not limited to, antifreeze, asphalt (liquid), building forms, concrete with reinforcing steel exposed, curing compound, fuel, Hazardous Materials, lubricants, metal, metal pipe, oil, paint, wood or metal from building demolition, or similar materials shall not be disposed of at an approved Disposal Area but shall be disposed of at a landfill licensed to receive such material.

7. Coal or other valuable materials uncovered during prosecution of the Work that are not specifically addressed by the Contract shall be disposed of as the Department directs in writing.

If the Design-Builder fails to fulfill the provisions of the approved plan for screening or restoring Disposal Areas, the Department may withhold and use for the purpose of performing such work any moneys due the Design-Builder. The Design-Builder shall be held liable for all penalties, fines, or damages incurred by the Department as a result of his failure to prevent erosion or siltation.

106.05—Rights For and Use of Materials Found on Project

With the approval of the Department, the Design-Builder may use in the Project any materials found in the Excavation that comply with the requirements of the Contract Documents. The Design-Builder shall replace at his own expense with other acceptable material the Excavation material removed and used that is needed for use in Embankments, Backfills, approaches, or otherwise. The Design-Builder shall not excavate or remove any material from within the construction limits that is not within the grading limits, as indicated by the slope and

grade lines. The Design-Builder shall not own and shall not have the right to sell, trade or exchange, any coal or other valuable materials uncovered during the prosecution of the work without the Department's specific written authorization.

106.06—Samples, Tests, and Cited Specifications

The Design-Builder shall inspect and test materials in accordance with the QA/QC Plan. Unless reference is made to a specific dated specification or special provision, references in the Contract Documents to AASHTO, ASTM, VTM, and other standard test methods and materials requirements shall refer to either the test specifications that have been formally adopted or the latest interim or tentative specifications that have been published by the appropriate committee of such organizations as of the date of the Notice of Advertisement.

Where permitted by the Special Provision for Use of Domestic Material, the inspection cost of structural steel items, precast concrete items, and prestressed concrete items fabricated in a country other than the continental United States shall be borne by the Design-Builder. Inspection of structural fabrication shall be performed in accordance with the requirements of the appropriate VTM by a commercial Laboratory approved by the Department. Additional cleaning or repair necessary because of environmental conditions in transit shall be at the Design-Builder's expense. Materials requiring an MSDS will not be accepted at the Project site for sampling without the document.

106.07—Plant Inspection

If the Department inspects materials at the source, the following conditions shall be met:

(a) The Department shall have the cooperation and assistance of the Design-Builder and producer of the Materials.

(b) The Department shall have full access to parts of the plant that concern the manufacture or production of the Materials being furnished.

(c) For Materials accepted under a quality assurance plan, the Design-Builder or producer shall furnish equipment and maintain a plant laboratory at locations approved for plant processing of Materials. The Design-Builder or producer shall use the laboratory and equipment to perform quality control testing.

The laboratory shall be of weatherproof construction, tightly floored and roofed, and shall have adequate lighting, heating, running water, ventilation, and electrical service. The ambient temperature shall be maintained between 68 degrees F and 86 degrees F and thermostatically controlled. The laboratory shall be equipped with a telephone, intercom, or other electronic communication system connecting the laboratory and scale house if the facilities are not in close proximity to each other. The laboratory shall be constructed in accordance with the requirements of local building codes.

The Design-Builder or producer shall furnish, install, maintain, and replace, as conditions necessitate, testing equipment specified by the appropriate ASTM, AASHTO method, or VTM being used and provide necessary office equipment and supplies to facilitate keeping records and generating test reports. The Design-Builder or producer's technician shall maintain current copies of test procedures performed in the laboratory. The Design-Builder shall calibrate or verify all balances, scales, and weights associated with testing performed as specified in AASHTO R18. The Design-Builder or producer shall also provide and maintain an approved test stand for accessing truck beds for the purpose of sampling and inspection. Cast iron grinding pots and rubber mauls will be furnished by the Department where required. The Department may approve a single laboratory to service more than one plant belonging to the same Design-Builder or producer.

For crushed glass, the plant equipment requirements are waived in lieu of an independent third-party evaluation and certification of crushed glass properties by an AASHTO Materials Reference Laboratory (AMRL)-

accredited commercial soil testing Laboratory demonstrating that the supplied Material conforms to Section 203 requirements. Random triplicate samples will be evaluated and analyzed for every 1,000 tons of Material supplied to the Project. The averaged results will be used for evaluation purposes. Suppliers of crushed glass shall maintain third party certification records for a period of three years.

(d) Adequate safety measures shall be provided and maintained.

(e) Design-Builder shall inspect all Materials upon delivery to the site for compliance with Contract requirements. All non-conforming Materials shall be rejected and removed from the site.

106.08—Storing Materials

Materials shall be stored in a manner so as to ensure the preservation of their quality and fitness for the Work. When considered necessary by the Department, Materials shall be stored in weatherproof buildings on wooden platforms or other hard, clean surfaces that will keep the Material off the ground. Materials shall be covered when directed by the Department. Stored Material shall be located so as to facilitate their prompt inspection. Approved portions of the Right of Way may be used for storage of Material and Equipment and for plant operations. However, Equipment and Materials shall not be stored within the clear zone of the travel lanes open to traffic.

The Design-Builder shall provide additional required storage space at his expense. Private property shall not be used for storage purposes without the written permission of the owner or lessee. The Design-Builder shall furnish copies of the owner's written permission to the Department. Upon completion of the use of the property, the Design-Builder shall furnish the Department a release signed by the property owner indicating that the property has been satisfactorily restored.

Chemicals, fuels, lubricants, bitumens, paints, raw sewage, and other harmful materials as determined by the Department and the VPDES *General Permit for Discharge of Stormwater from Construction* Activities shall not be stored within any floodplain unless no other location is available and only then shall the material be stored in a secondary containment structure(s) with an impervious liner. Also, any storage of these materials in proximity to natural or man-made drainage conveyances or otherwise where the materials could potentially reach a waterway if released under adverse weather conditions, must be stored in a bermed or diked area or inside a container capable of preventing a release. Double-walled storage tanks shall meet the berm/dike containment requirement except for storage within flood plains. Any spills, leaks, or releases of such materials shall be addressed in accordance with Section 107.16(b) and (e). Accumulated rain water may also be pumped out of the impoundment area into approved dewatering devices. All proposed pollution prevention measures and practices must be identified by the Design-Builder in his Pollution Prevention Plan as required by the Specifications, other Contract Documents and/or the VDPES *General Permit for Discharge of Stormwater from Construction Activities*.

106.09—Handling Materials

Materials shall be handled in a manner that will preserve their quality, integrity, and fitness for the Work. Aggregates shall be transported in vehicles constructed to prevent loss or segregation of materials.

106.10—Unacceptable Materials

Materials that do not conform to the requirements of the Contract Documents shall be considered unacceptable. Such Materials, whether in place or not, will be rejected and shall be removed from the site of the Work and replaced at no additional cost to the Department. If it is not practical for the Design-Builder to remove rejected Material immediately, the Department will mark the rejected Material for identification. Rejected Material whose defects have been corrected shall not be used until the Department gives written approval for its use. Upon the Design-Builder's failure to comply promptly with any order of the Department made under this Section, the Department may, in addition to other rights and remedies, have the unacceptable material removed and replaced, and deduct the cost of such removal and replacement from monies due or to become due the

Design-Builder. The Department shall file documentation of the correction with resolution of the Non-conformance report (NCR).

106.11—Material Furnished by the Department

The Design-Builder shall furnish all Materials required to complete the Work except those specified to be furnished by the Department.

Material furnished by the Department will be delivered or made available to the Design-Builder at the points specified in the Contract. The cost of handling and placing Materials after delivery to the Design-Builder shall be included in the Contract Price

After receipt of the Materials, the Design-Builder shall be responsible for Material delivered to him, including shortages, deficiencies, and damages that occur after delivery, and any demurrage charges.

106.12—Critical Materials (Not Used)

SECTION 107—LEGAL RESPONSIBILITIES

107.01—Legal Requirements to Be Observed (Refer to Part 4 - General Conditions – Section 2.5, Legal Requirements)

107.02—Permits, Certificates, and Licenses. (Refer to Part 4 - General Conditions – Section 2.6, Governmental Approvals, and Section 3.5, Governmental Approvals)

107.03—Federal-Aid Provisions

When the U.S. Government pays all or any portion of the cost of a project, the Design-Builder shall comply with all applicable federal Legal Requirements applicable to the project. The Work shall be subject to inspection by the appropriate federal agency. Such inspection shall in no sense make the federal government a party of the Contract and will in no way interfere with the rights of either party to the Contract. For Federally-aided projects, the provisions contained in Form FHWA-1273 and other federal provisions incorporated into the Contract must be made a part of, and physically incorporated into all subcontracts so as to be binding in those agreements.

107.04—Furnishing Right of Way

The Design-Builder shall secure necessary rights of way and easements in advance of construction, in accordance with the provisions of the Contract. The Department will not be responsible for any delay in the acquisition of a Right of Way other than consideration of an extension of time. Easements for temporary uses and detours requested by the Design-Builder and approved by the Department in lieu of a detour within the Right of Way or Easement area shall be acquired by the Design-Builder without the Department being a party to the agreement, unless otherwise expressly stated in Part 2 of the Contract Documents.

107.05—Patented Devices, Materials, and Processes (Refer to Part 4 - General Conditions – Article 7, Indemnification)

107.06—Personal Liability of Public Officials

In carrying out any of the provisions of the Contract Documents, or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability upon the Board, Commissioner, Department, or their authorized representatives, either personally or as officials of the Commonwealth. In all such matters, they act solely as agents and representatives of the Commonwealth.

107.07—No Waiver of Legal Rights

The Department shall not be precluded or estopped by any measurement, estimate, approval, acceptance, or certificate made either before or after Final Acceptance of the Work, or payment therefore from showing (1) the true amount and character of the work performed and Materials furnished by the Design-Builder, (2) that any such measurement, estimate, acceptance, certificate, or payment is untrue or incorrectly made, or (3) that the work or Materials do not comply with the Contract requirements. The Department shall not be precluded or estopped, notwithstanding any such measurement, estimate, approval, acceptance, certificate, or payment in accordance therewith, from recovering from the Design-Builder or his Surety, or both, such cost or damage as the Department may sustain by reason of the Design-Builder's failure to comply with the Contract requirements. The Department's acceptance of the whole or any part of the Work, or the Department's payment for the whole or any part of the Work, or the Department's granting of any extension of time, or the Department's taking any possession of any part of the Work, shall not operate as a waiver of any portion of the Contract or of any right of power herein reserved or of any right to costs or damages. The Department's express written waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

107.08—Protecting and Restoring Property and Landscape

The Design-Builder shall preserve property and improvements along the boundary lines of and adjacent to the Work unless their removal or destruction is specified in the Contract Documents. The Design-Builder shall use suitable precautions to prevent damage to such property.

When the Design-Builder finds it necessary to enter on private property, beyond the limits of the construction Easement shown in the Contract Documents, he shall secure from the owner or lessee a written permit for such entry prior to moving thereon. An executed copy of this permit shall be furnished to the Department.

The Design-Builder shall be responsible for any damage or injury to property during the prosecution of the Work resulting from any act, omission, neglect, or misconduct in the Design-Builder's method of executing the Work or attributable to defective work or Materials. This responsibility shall not be released until Final Acceptance of the Project and a written release from the owner or lessee of the property is obtained.

When direct or indirect damage is done to property by or on account of any act, omission, neglect, or misconduct in the Design-Builder's method of executing the Work or in consequence of the non-execution thereof on the part of the Design-Builder, the Design-Builder shall restore such property to a condition similar or equal to that existing before such damage was done by repairing, rebuilding, or restoring, as may be directed by the Department, or shall make a settlement with the property owner for such property damage. The Design-Builder shall secure from the owner a written release from any claim against the Department without additional compensation therefore. A copy of this release shall be furnished the Department.

107.09—Design-Builder's Responsibility for Utility Property and Services

At points where the Design-Builder's operations are on or adjacent to the properties of any utility, including railroads, and damage to which might result in expense, loss, or inconvenience, work shall not commence until arrangements necessary for the protection thereof have been completed.

The Design-Builder shall cooperate with owners of utilities so that removal and adjustment operations may progress in a timely, responsible, and reasonable manner, duplication of adjustment work may be reduced to a minimum, and services rendered by those parties will not be unnecessarily interrupted.

If any utility service is interrupted as a result of accidental breakage or of being exposed or unsupported, the Design-Builder shall promptly notify the proper authority and shall cooperate fully with the authority in the restoration of service. If utility service is interrupted, repair work shall be continuous until service is restored. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority. When the Design-Builder's work operations require the disconnection of "in service" fire hydrants, the Design-Builder shall notify the locality's fire department or communication center at least twenty four (24) hours prior to disconnection. In addition, the Design-Builder shall notify the locality's fire

department or communications center no later than twenty four (24) hours after reconnection of such hydrants. The Design-Builder shall be responsible for any damage to utilities that, in the investigation and determination of the Department, is found to be attributable to the Design-Builder's neglect, means, or methods of performing the Work.

Nothing in this Section shall be construed to be in conflict with Section 107.08.

The Design-Builder shall comply with all requirements of the *Virginia Underground Utility Damage Prevention Act* (the Miss Utility law). The Design-Builder shall not make or begin any Excavation or demolition without first notifying the Miss Utility notification center for the area where the Project is located. The Design-Builder shall wait to begin its Excavation or demolition until 7:00 a.m. on the third working day following the Design-Builder's notice to the notification center, unless the underground utilities cannot be marked within that time due to extraordinary circumstances. The Design-Builder may commence Excavation or demolition work only if confirmed through the Ticket Information Exchange (TIE) System, or the Design-Builder is notified directly, that all applicable utilities have either marked their underground line locations or reported that no lines are present in the Work vicinity.

107.10—Restoration of Work Performed by Others

The Department may construct or reconstruct any utility service within the construction limits or grant a permit for the same at any time. The Design-Builder shall not be entitled to any damages occasioned thereby other than a consideration of an extension of time, unless the Design-Builder's Work is damaged, altered or impeded by the condition.

When authorized by the Department, the Design-Builder shall allow any Person to make an opening in the Highway within the limits of the Project upon presentation of a duly executed permit from the Department or any municipality for sections within its corporate limits. When directed by the Department, the Design-Builder shall satisfactorily repair portions of the Work disturbed by the openings. The work for such repairs as authorized and directed by the Department will be paid for in accordance with Section 109.05 and shall be subject to the same conditions as the original work performed.

107.11—Use of Explosives

The Design-Builder shall be responsible for damage resulting from the use of explosives. Explosives shall be stored in a safe and secure manner in compliance with federal, state, and local laws and ordinances.

The Design-Builder shall notify each property and utility owner having a building, structure, or other installation above or below ground in proximity to the site of the Work of his intention to use explosives. Notice shall be given sufficiently in advance to enable the owners to take steps to protect their property. The review of the Design-Builder's plan of operations, blasting plan and the notification of property owners shall in no way relieve the Design-Builder of his responsibility for damage resulting from his blasting operations.

107.12—Responsibility for Damage Claims (Refer to General Conditions, Article 7 Indemnification)

107.13—Labor and Wages

The Design-Builder shall comply with the provisions and requirements of the workers' compensation law and public statutes that regulate hours of employment on public work.

(a) **Predetermined Minimum Wages:** The provisions of laws requiring the payment of a minimum wage of a predetermined minimum wage scale for the various classes of laborers and mechanics, when such a scale is incorporated in the Contract, shall be expressly made a part of any Contract hereunder. The Design-Builder and his agents shall promptly comply with all such applicable provisions.

Any classification not listed and subsequently required shall be classified or reclassified in accordance with the wage determination. If other classifications are used, omission of classifications shall not be cause for additional compensation. The Design-Builder shall be responsible for determining local practices with regard to the application of the various labor classifications. For additional details of predetermined minimum wage rates, see Exhibit 107.13 included with the RFP.

(b) **Labor Rate Forms:** The Design-Builder shall complete Form C-28, indicating by classification the total number of Employees, excluding executive and administrative Employees, employed on the Project. The Design-Builder shall also indicate on the form the compensation rate per hour for each classification. The Design-Builder shall submit an original and two copies of the form prior to the due date of the second estimate for payment and for each 90-day period thereafter until the Work specified in the Contract has been completed.

If at the time of Final Acceptance the period since the last labor report is 30 days or more, the Design-Builder shall furnish an additional labor report as outlined herein prior to payment of the final estimate.

(c) **Job Service Offices**: In advance of the Contract starting date, the Design-Builder may contact the Job Service Office of the Virginia Employment Commission at the nearest location to secure referral of available qualified workers in all occupational categories. The closest office may be obtained by accessing the VEC website at http://www.vec.virginia.gov and "clicking" on "VEC Local Offices" to access "**VEC Workforce Centers**".

107.14—Equal Employment Opportunity

(a) The Design-Builder shall comply with the applicable provisions of presidential executive orders and the rules, regulations, and orders of the President's Committee on Equal Employment Opportunity.

(b) The Design-Builder shall maintain the following records and reports as required by the contract EEO provisions:

1. Record of all applicants for employment
2. New hires by race, work classification, hourly rate, and date employed
3. Minority and non-minority Employees employed in each work classification
4. Changes in work classifications
5. Employees enrolled in approved training programs and the status of each
6. Minority Subcontractor or Subcontractors with meaningful minority group representation
7. Copies of Form C-57 submitted by Subcontractors

(c) If the Contract has a stipulation or requirement for trainees, the Design-Builder shall submit semiannual training reports in accordance with the instructions shown on the forms furnished by the Department. If the Design-Builder fails to submit such reports in accordance with the instructions, his monthly progress estimate for payment may be delayed.

(d) The Design-Builder shall cooperate with the Department in carrying out EEO obligations and in the Department's review of activities under the Contract. The Design-Builder shall comply with the specific EEO requirements specified herein and shall include these requirements in every subcontract of $10,000 or more with such modification of language as may be necessary to make them binding on the Subcontractor.

(e) **EEO Policy:** The Design-Builder shall accept as operating policy the following statement:

It is the policy of this Company to assure that applicants are employed and that Employees are treated during employment without regard to their race, religion, sex, color, or national origin. Such action shall include employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship or on-the-job training.

(f) **EEO Officer:** The Design-Builder shall designate and make known to the Department an EEO Officer who can effectively administer and promote an active contractor EEO program and who shall be assigned adequate authority and responsibility to do so.

(g) **Dissemination of Policy:**

1. Members of the Design-Builder's staff who are authorized to hire, supervise, promote, and discharge Employees or recommend such action or are substantially involved in such action shall be made fully aware of and shall implement the Design-Builder's EEO policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. The following actions shall be taken as a minimum:

    a. Periodic meetings of supervisory and personnel office Employees shall be conducted before the start of work and at least once every six (6) months thereafter, at which time the Design-Builder's EEO policy and its implementation shall be reviewed and explained. The meetings shall be conducted by the EEO Officer or another knowledgeable company official.

    b. New supervisory or personnel office Employees shall be given a thorough indoctrination by the EEO Officer or another knowledgeable company official covering all major aspects of the Design-Builder's EEO obligations within thirty (30) days following their reporting for duty with the Design-Builder.

    c. The EEO Officer or appropriate company official shall instruct Employees engaged in the direct recruitment of Employees for the Project relative to the methods followed by the Design-Builder in locating and hiring minority group Employees.

2. In order to make the Design-Builder's EEO policy known to all Employees, prospective Employees, and potential sources of Employees such as, but not limited to, schools, employment agencies, labor unions where appropriate, and college placement officers, the Design-Builder shall take the following actions:

    a. Notices and posters setting forth the Design-Builder's EEO policy shall be placed in areas readily accessible to Employees, applicants for employment, and potential employees.

    The Design-Builder shall furnish, erect, and maintain at least two (2) bulletin boards having dimensions of at least forty eight (48) inches in width and thirty six (36) inches in height at locations readily accessible to all personnel concerned with the Project. The boards shall be erected immediately upon initiation of the Work and shall be maintained until the completion of such Work, at which time they shall be removed from the Project. Each bulletin board shall be equipped with a removable glass or plastic cover that, when in place, will protect posters from weather or damage. The Design-Builder shall promptly post official notices on the bulletin boards.

    b. The Design-Builder's EEO policy and the procedures to implement such policy shall be brought to the attention of Employees by means of meetings, employee handbooks, or other appropriate means.

(h) **Recruitment:**

1. When advertising for employees, the Design-Builder shall include in all advertisements for employees the notation "An Equal Opportunity Employer" and shall insert all such advertisements in newspapers or other publications having a large circulation among minority groups in the area from which the Project work force would normally be derived.

2. Unless precluded by a valid bargaining agreement, the Design-Builder shall conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges, and minority group organizations. The Design-Builder shall identify sources of potential minority group employees and shall establish procedures with such sources whereby minority group applicants may be referred to him for employment consideration.

3. The Design-Builder shall encourage his Employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all Employees. In addition, information and procedures with regard to referring minority group applicants shall be discussed with Employees.

(i) **Personnel Actions:** Wages, working conditions, and Employee benefits shall be established and administered, and personnel action of any type shall be taken without regard to race, color, religion, sex, or national origin.

1. The Design-Builder shall conduct periodic inspections of the Project sites to ensure that working conditions and Employee facilities do not indicate discriminatory treatment of personnel.

2. The Design-Builder shall periodically evaluate the spread of wages paid within each classification to determine whether there is evidence of discriminatory wage practices.

3. The Design-Builder shall periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Design-Builder shall promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, corrective action shall include all affected individuals.

4. The Design-Builder shall investigate all complaints of alleged discrimination made to him in connection with obligations under the Contract, attempt to resolve such complaints, and take appropriate corrective action. If the investigation indicates that the discrimination may affect Persons other than the complainant, corrective action shall include those individuals. Upon completion of each investigation, the Design-Builder shall inform every complainant of all avenues of appeal.

(j) **Training:**

1. The Design-Builder shall assist in locating, qualifying, and increasing the skills of minority group and women employees and applicants for employment.

2. Consistent with work force requirements and as permissible under federal and State regulations, the Design-Builder shall make full use of training programs, i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance. Where feasible, twenty five percent (25%) of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

3. The Design-Builder shall advise Employees and applicants for employment of available training programs and the entrance requirements for each.

4. The Design-Builder shall periodically review the training and promotion potential of minority group Employees and shall encourage eligible Employees to apply for such training and promotion.

5. If the Contract does not provide a separate Pay Item for trainees, the cost associated with the training specified herein shall be included in the contract price.

6. If the Contract requires trainees, training shall be in accordance with Section 518.

(k) **Unions:** If the Design-Builder relies in whole or in part on unions as a source of employees, best efforts shall be made to obtain the cooperation of such unions to increase opportunities for minority groups and women in the unions and to effect referrals by such unions of minority and women employees. Actions by the Design-Builder, either directly or through his Design-Builder's Association acting as agent, shall include the following procedures:

1. In cooperation with the unions, best efforts shall be used to develop joint training programs aimed toward qualifying more minority group members and women for membership in the unions and to increase the skills of minority group employees and women so that they may qualify for higher-paying employment.
2. Best efforts shall be used to incorporate an EEO clause into union agreements to the end that unions shall be contractually bound to refer applicants without regard to race, color, religion, sex, or national origin.

3. Information shall be obtained concerning referral practices and policies of the labor union except that to the extent the information is within the exclusive possession of the union. If the labor union refuses to furnish the information to the Design-Builder, the Design-Builder shall so certify to the Department and shall set forth what efforts he made to obtain the information.

4. If a union is unable to provide the Design-Builder with a reasonable flow of minority and women referrals within the time limit set forth in the union agreement, the Design-Builder shall, through his recruitment procedures, fill the employment vacancies without regard to race, color, religion, sex, or national origin, making full efforts to obtain qualified or qualifiable minority group individuals and women. If union referral practice prevents the Design-Builder from complying with the EEO requirements, the Design-Builder shall immediately notify the Department.

(l) **Subcontracting:** The Design-Builder shall use best efforts to use minority group Subcontractors or Subcontractors with meaningful minority group and female representation among their employees. Design-Builders shall obtain lists of SWaM and DBE construction firms from the Department. If SWaM and DBE goals are established in the RFP Documents, the Design-Builder shall comply with Section 107.15.

The Design-Builder shall use best efforts to ensure Subcontractor compliance with his EEO obligations.

(m) **Records and Reports:** The Design-Builder shall keep such records as are necessary to determine compliance with his EEO obligations. The records shall be designed to indicate the following:

1. the number of minority and non-minority group members and females employed in each work classification on the Project.

2. the progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and females if unions are used as a source of the work force.

3. the progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female Employees.

4. the progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority group and female representation among their Employees.

Records shall be retained for a period of three (3) years following Final Acceptance and shall be available at reasonable times and places for inspection by authorized representatives of the Department.

Each month for the first three (3) months after construction begins and every month of July thereafter for the duration of the Project, Form C-57 shall be completed to indicate the number of minority, non-minority, and female Employees currently engaged in each work classification shown on the form. The completed Form C-57 shall be submitted within three (3) weeks after the reporting period. Failure to do so may result in delay of approval of the Design-Builder's monthly progress estimate for payment.

107.15—Use of Small, Women-Owned, and Minority Business Enterprises (MBEs)

Design-Builder shall comply with all requirements of Exhibit 107.15, included with the RFP. This Exhibit is a Special Provision from the Department.

107.16—Environmental Stipulations

By signing the Proposal, the Offeror shall have stipulated (1) that any facility to be used in the performance of the Contract (unless the Contract is exempt under the Clean Air Act as amended [42 U.S.C. 1857, et seq., as amended by P.L. 91-604], the Federal Water Pollution Control Act as amended [33 U.S.C. 1251 et seq. as amended by P.L. 92-500], and Executive Order 11738 and regulations in implementation thereof [40 C.F.R., Part 15]) is not listed on the EPA's List of Violating Facilities pursuant to 40 C.F.R. 15.20; and (2) that the Department will be promptly notified prior to the Award of the Contract if the Offeror receives any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be used for the Contract is under consideration to be listed on the EPA's List of Violating Facilities.

No separate payment will be made for the Work or precautions described herein.

Reference is made in various subsections of this section to Tidewater, Virginia. For the purposes of identifying the affected regions assigned to this designation and the requirements therein Tidewater, Virginia is defined as the Counties of Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland and York and the Cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach and Williamsburg.

(a) **Erosion and Siltation**: The Design-Builder shall exercise every reasonable precaution, including temporary and permanent soil stabilization measures, throughout the duration of the Project to control erosion and prevent siltation of adjacent lands, rivers, streams, wetlands, lakes, and impoundments. Soil stabilization or erosion control measures shall be applied to erodible soil or ground materials exposed by any activity associated with construction, including clearing, grubbing, and grading, but not limited to local or on-site sources of materials, stockpiles, Disposal Areas and haul roads.

The Design-Builder shall comply with Sections 301.02 and 303.03 of the Specifications. Should the Design-Builder as a result of negligence or noncompliance fail to provide soil stabilization in accordance with these specifications, the cost of temporary soil stabilization in accordance with the provisions of Section 303 shall be at the Design-Builder's expense.

Temporary measures shall be coordinated with the Work to ensure effective and continuous erosion and sediment control. Permanent erosion control measures and drainage facilities shall be installed as the Work progresses.

For projects that disturb 10,000 square feet or greater of land or 2,500 square feet or greater in Tidewater, Virginia, the Design-Builder shall have within the limits of the project during land disturbance activities, an employee certified by the Department in Erosion and Sediment control who shall inspect erosion and sediment control and pollution prevention practices, devices and measures for proper installation and operation and promptly report their findings to the Inspector. Failure on the part of the Design-Builder to

maintain appropriate erosion and sediment control or pollution prevention devices in a functioning condition may result in the Department notifying the Design-Builder in writing of specific deficiencies. Deficiencies shall be corrected immediately or as otherwise directed by the Department. If the Design-Builder fails to correct or take appropriate actions to correct the specified deficiencies within twenty four (24) hours (or as otherwise directed) after receipt of such notification, the Department may do one or more of the following: require the Design-Builder to suspend work in other areas and concentrate efforts towards correcting the specified deficiencies, withhold payment of monthly progress estimates, or proceed to correct the specified deficiencies and deduct the entire cost of such work from monies due the Design-Builder. Failure on the part of the Design-Builder to maintain a Department certified erosion and sediment control employee within the Project limits when land disturbance activities are being performed will result in the Department suspending work related to any land disturbance activity until such time as the Design-Builder is in compliance with this requirement.

(b) **Pollution:**

1. **Water:** The Design-Builder shall exercise every reasonable precaution throughout the duration of the Project to prevent pollution of rivers, streams, and impoundments. Pollutants such as, but not limited to, chemicals, fuels, lubricants, bitumens, raw sewage, paints, sedimentation, and other harmful material shall not be discharged into or alongside rivers, streams, or impoundments or into Channels leading to them. The Design-Builder shall provide the Department a contingency plan for reporting and immediate actions to be taken in the event of a dump, discharge, or spill within eight hours after he has mobilized to the Project site.

   Construction discharge water shall be filtered to remove deleterious materials prior to discharge into State waters. Filtering shall be accomplished by the use of a standard dewatering basin or a dewatering bag or other measures approved by the Department. Dewatering bags shall conform to Section 245. During specified spawning seasons, discharges and construction activities in spawning areas of State waters shall be restricted so as not to disturb or inhibit aquatic species that are indigenous to the waters. Neither water nor other effluence shall be discharged onto wetlands or breeding or nesting areas of migratory waterfowl. When used extensively in wetlands, heavy Equipment shall be placed on mats. Temporary construction fills and mats in wetlands and flood plains shall be constructed of approved non-erodible materials and shall be removed by the Design-Builder to natural ground when the Department so directs.

   If the Design-Builder dumps, discharges, or spills any oil or chemical that reaches or has the potential to reach a waterway, he shall immediately notify all appropriate jurisdictional Governmental Units in accordance with the requirements of the Contract and the VPDES *General Permit For Discharge of Stormwater From Construction Activities* and shall take immediate actions to contain, remove, and properly dispose of the oil or chemical.

   Solids, sludges, or other pollutants removed in the course of the treatment or management of pollutants shall be disposed of in a manner that prevents any pollutant from such materials from entering surface waters in compliance with all applicable state and federal laws and regulations.

   Excavation material shall be disposed of in approved areas above the mean high water mark shown in the Contract Documents in a manner that will prevent the return of solid or suspended materials to State waters. If the mark is not shown on the Plans, the mean high water mark shall be considered the elevation of the top of stream banks.

   Constructing new Bridge(s) and dismantling and removing existing Bridge(s) shall be accomplished in a manner that will prevent the dumping or discharge of construction or Disposable Materials into rivers, streams, or impoundments.

   Construction operations in rivers, streams, or impoundments shall be restricted to those areas where identified on the Plans and to those that must be entered for the construction of structures. Rivers,

streams, and impoundments shall be cleared of Falsework, piling, debris, or other obstructions placed therein or caused by construction operations. Stabilization of the streambed and banks shall occur immediately upon completion of work if work is suspended for more than fourteen (14) days.

The Design-Builder shall prevent stream constriction that would reduce stream flows below the minimum, as defined by the State Water Control Board, during construction operations.

If it is necessary to relocate an existing stream or drainage facility temporarily to facilitate construction, the Design-Builder shall design and provide temporary Channels or culverts of adequate size to carry the normal flow of the stream or drainage facility. The Design-Builder shall submit a temporary relocation design to the Department for review and acceptance in sufficient time to allow for discussion and correction prior to beginning the Work the design covers. Costs for the temporary relocation of the stream or drainage facility shall be included in the Contract. Stabilization of the streambed and banks shall occur immediately upon completion of, or during the Work, if the Work is suspended for more than fourteen (14) days.

Temporary Bridges or other minimally invasive structures shall be used wherever the Design-Builder finds it necessary to cross a stream more than twice in a six (6) month period unless otherwise authorized by water quality permits issued by the U. S. Army Corps of Engineers, Virginia Marine Resources Commission, or the Virginia Department of Environmental Quality for the Contract.

Conduct all operations near rivers, streams, or impoundments in accordance with applicable water quality permits. Do not conduct clearing or grubbing within one hundred (100) feet of the limits of Ordinary High Water or a delineated wetland until authorized by the Department.

2. **Air:** The Design-Builder shall comply with the provisions of the Contract and the State Air Pollution Control Law and Rules of the State Air Pollution Control Board, including notifications required therein.

   Burning shall be performed in accordance with all applicable local laws and ordinances and under the constant surveillance of watchpersons. Care shall be taken so that the burning of materials does not destroy or damage property or cause excessive air pollution. The Design-Builder shall not burn rubber tires, asphalt, used crankcase oil, or other materials that produce dense smoke. Burning shall not be initiated when atmospheric conditions are such that smoke will create a hazard to the motoring public or airport operations. Provisions shall be made for flagging vehicular traffic if visibility is obstructed or impaired by smoke. At no time shall a fire be left unattended.

   Asphalt mixing plants shall be designed, equipped, and operated so that the amount and quality of air pollutants emitted will conform to the rules of the State Air Pollution Control Board.

   a. **VOC Emission Control Areas** - The Design-Builder is advised that when the Project is located in a volatile organic compound (VOC) emissions control area identified in the State Air Control Board Regulations (9 VAC 5-20-206) and in the Table I-3 below the following limitations shall apply:

      (1) Open burning is prohibited during the months of May, June, July, August, and September in VOC Emissions Control areas

      (2) Cutback asphalt is prohibited April through October except when use or application as a penetrating prime coat or tack is necessary in Virginia Department of Environmental Quality Volatile Organic Compound (VOC) Emissions Control Areas.* See the 9 VAC 5-40, Article 39 (Emission Standards for Asphalt Paving Operations) and 9 VAC 5-130 (Regulation for Open Burning) for further clarification.

TABLE I-3			
VOC Emissions Control Area	**VDOT District**	**Jurisdiction**	
Northern Virginia	NOVA	Alexandria City Arlington County Fairfax County Fairfax City Falls Church City Loudoun County Manassas City Manassas Park City Prince William County	
Northern Virginia	Fredericksburg	Stafford County	
Fredericksburg	Fredericksburg	Spotsylvania County Fredericksburg City	
Hampton Roads	Fredericksburg	Gloucester County	
Hampton Roads	Hampton Roads	Chesapeake City Hampton City Isle of Wight County James City County Newport News City Norfolk City Poquoson City Portsmouth City Suffolk City Virginia Beach City Williamsburg City York County	
Richmond	Richmond	Charles City County Chesterfield County Colonial Heights City Hanover County Henrico County Hopewell City Petersburg City Prince George County Richmond City	
Western Virginia	Staunton	Frederick County Winchester City	
Western Virginia	Salem	Roanoke County Botetourt County Roanoke City Salem City	

* Regulations for the Control and Abatement of Air Pollution (9 VAC 5-20-206)

(3) Emission standards for asbestos incorporated in the EPA's National Emission Standards for Hazardous Air Pollutants apply to the demolition or renovation of any institutional, commercial, or industrial building, structure, facility, installation, or portion thereof that

contains friable asbestos or where the Design-Builder's methods for such actions will produce friable asbestos.

The Design-Builder shall submit demolition notification the United States Environmental Protection Agency (USEPA) and the Virginia Department of Labor and Industry a minimum of 10 business days prior to starting work on the following bridge activities:

a) Dismantling and removing existing structures

b) Moving an entire structure

c) Reconstruction and repairs involving the replacement of any load-bearing component of a structure

Address notifications to:

Virginia Department of Labor and Industry
Asbestos Program
Powers-Taylor Building
13 South Thirteenth Street
Richmond, VA 23219

Land and Chemical Division
EPA Region III
Mail Code LC62
1650 Arch St.
Philadelphia, PA 19103-2029

3. **Noise:** The Design-Builder's operations shall be performed so that exterior noise levels measured during a noise-sensitive activity shall not exceed 80 decibels. Such noise level measurements shall be taken at a point on the perimeter of the construction limit that is closest to the adjoining property on which a noise sensitive activity is occurring. A *noise-sensitive activity* is any activity for which lowered noise levels are essential if the activity is to serve its intended purpose and not present an unreasonable public nuisance. Such activities include, but are not limited to, those associated with residences, hospitals, nursing homes, churches, schools, libraries, parks, and recreational areas.

   The Design-Builder shall monitor construction-related noise. If construction noise levels exceed 80 decibels during noise sensitive activities, the Design-Builder shall take corrective action before proceeding with operations. The Design-Builder shall be responsible for costs associated with the abatement of construction noise and the delay of operations attributable to noncompliance with these requirements.

   The Department may prohibit or restrict to certain portions of the Project any work that produces objectionable noise between 10 PM and 6 AM If other hours are established by local ordinance, the local ordinance shall govern.

   Equipment shall in no way be altered so as to result in noise levels that are greater than those produced by the original equipment.

   When feasible, the Design-Builder shall establish haul routes that direct his vehicles away from developed areas and ensure that noise from hauling operations is kept to a minimum.

   These requirements shall not be applicable if the noise produced by sources other than the Design-Builder's operation at the point of reception is greater than the noise from the Design-Builder's operation at the same point.

(c) **Forest Fires:** The Design-Builder shall take all reasonable precautions to prevent and suppress forest fires in any area involved in construction operations or occupied by him as a result of such operations. The Design-Builder shall cooperate with the proper authorities of Governmental Units in reporting, preventing, and suppressing forest fires. Labor, tools, or equipment furnished by the Design-Builder upon the order of any forest official issued under authority granted the official by law shall not be considered a part of the Contract. The Design-Builder shall negotiate with the proper forest official for compensation for such labor, tools, or equipment

(d) **Archeological, Paleontological, and Rare Mineralogical Findings:** In the event of the discovery of prehistoric ruins, Indian or early settler sites, burial grounds, relics, fossils, meteorites, or other articles of archeological, paleontological, or rare mineralogical interest during the prosecution of Work, the Design-Builder shall act immediately to suspend work at the site of the discovery and notify the Engineer. The Engineer will immediately notify the proper State authority charged with the responsibility of investigating and evaluating such finds. The Design-Builder shall cooperate and, upon the request of the Engineer, assist in protecting, mapping, and removing the findings. Labor, tools, or Equipment furnished by the Design-Builder for such work will be paid for in accordance with the requirements of Section 104.03. Findings shall become the property of the Commonwealth unless they are located on federal lands, in which event they shall become the property of the U.S. government.

When such findings delay the progress or performance of the Work, the Design-Builder shall notify the Department in accordance with Sections 108.03 and Section 109.05.

(e) **Storm Water Pollution Prevention Plan and VPDES General Permit for the Discharge of Stormwater from Construction Activities**

A Stormwater Pollution Prevention Plan (SWPPP) identifies potential sources of pollutants which may reasonably be expected to affect the stormwater discharges from the construction site and any off site support facilities located on VDOT rights of way and easements. The SWPPP also describes and ensures implementation of practices which will be used to minimize or prevent pollutants in such discharges.

The SWPPP shall include, but not be limited to, the approved Erosion and Sediment Control (ESC) Plan, the approved Stormwater Management (SWM) Plan (if applicable), the approved Pollution Prevention Plan, and all related Specifications, Standards, and requirements contained within the Contract Documents and shall be required for all land-disturbing activities that disturb 10,000 square feet or greater, or 2,500 square feet or greater in Tidewater, Virginia."

Land-disturbing activities that disturb one (1) acre or greater require coverage under the Department of Environmental Quality's VPDES General Permit for the Discharge of Stormwater from Construction Activities (hereafter referred to as the VPDES Construction Permit) According to IIM-LD-242, VDOT will apply for and secure VPDES Construction Permit coverage for all applicable land disturbing activities on VDOT rights of way or easements for which it has contractual control, including off-site (outside the Project limits) support facilities on VDOT rights of way or easements that directly relate to the construction activity.

The Design-Builder shall be responsible for securing VPDES Construction Permit coverage and complying with all permit conditions for all support facilities that are not located on VDOT rights of way or easements.

The required contents of a SWPPP for those land disturbance activities requiring coverage under the VPDES Construction Permit are found in Section II of the permit. While a SWPPP is an important component of the VPDES Construction Permit, it is only one of the many requirements for the land disturbing activity that must be addressed in order to be in full compliance with the conditions of this

permit. The requirements of this permit will be satisfied by the Design-Builder's compliance with the Project's SWPPP terms and conditions.

The Design-Builder and all other persons that oversee or perform activities covered by the VPDES Construction Permit shall be responsible for reading, understanding, and complying with all of the terms, conditions and requirements of the permit and the Project's SWPPP including, but not limited to, the following:

1. Project Implementation Responsibilities

The Design-Builder shall be responsible for the installation, maintenance, inspection, and, on a daily basis, ensuring the functionality of all erosion and sediment control measures on a daily basis and all other stormwater runoff control and pollution prevention measures identified within or referenced within the SWPPP, the construction plans, the specifications, all applicable permits, and all other Contract Documents or applicable governmental approvals.

The Design-Builder shall be solely responsible for the temporary erosion and sediment control protection and permanent stabilization of all borrow areas and soil disposal areas located outside of VDOT right of way or easement.

The Design-Builder shall prevent or minimize any storm water or non-storm water discharge that will have a reasonable likelihood of adversely affecting human health or public and/or private properties.

2. Certification Requirements

In addition to satisfying the Section 107.16(a) personnel certification requirements, the Design-Builder shall certify his activities by completing, signing, and submitting Form C-45 VDOT SWPPP Design-Builder Certification Statement to the Department at least seven (7) days prior to commencing any Project-related land-disturbing activities, both within the Project limits and any support facilities located on VDOT rights of way or easements outside the Project limits.

3. SWPPP Requirements for Support Facilities

VDOT will secure VSMP Construction Permit coverage for support facilities located on VDOT rights of way or easements according to IIM-LD-242. VDOT shall also be responsible for securing separate VSMP Construction Permit coverage for support facilities that are not located on VDOT rights of way or easements.

Support facilities shall include, but not be limited to, off-site Borrow and Disposal Areas, construction and waste materials or Equipment storage areas, equipment and vehicle washing, maintenance, storage and fueling areas, storage areas for fertilizers, fuels, or chemicals, concrete wash out areas, sanitary waste facilities and any other areas that may generate a storm water or non-stormwater discharge directly related to the construction site.

Support Facilities located on VDOT rights of way or easements:

a. For those support facilities located within the Project limits but not included in the construction plans for the Project, the Design-Builder shall develop a SWPPP in accordance with Chapter 10 of the VDOT Drainage Manual which shall include, where applicable, an erosion and sediment control plan, a stormwater management plan according to IIM-LD-195, and a pollution prevention plan according to these Specifications and the SWPPP General Information Sheet notes in the construction plans or other such contract documents. All plans developed shall be reviewed and approved by appropriate personnel certified through DEQ's ESC and SWM Certification program and shall be developed according to Section 105.10 and shall be submitted to the Department for review and approval. Once approved, the Department will notify the Design-Builder in writing that the plans are accepted as a component of the Project's SWPPP and VPDES Construction

Permit coverage (where applicable) and shall be subject to all conditions and requirements of the VPDES Construction Permit and all other contract documents. No land disturbing activities can occur in the support area(s) until written notice to proceed is provided by the Department.

b. For support facilities located outside the Project limits and not included in the construction plans for the Project, the Design-Builder shall develop a SWPPP in accordance with Chapter 10 of the VDOT Drainage Manual which shall include, where applicable, an erosion and sediment control plan, a stormwater management plan (where applicable) according to IIM-LD-195, a pollution prevention plan according to these specifications and the SWPPP General Information Sheet notes in the construction plans or other such contract documents and all necessary documents for obtaining VPDES Construction Permit coverage according to IIM-LD-242. All plans developed shall be reviewed and approved by appropriate personnel certified through DEQ's ESC and SWM Certification program and shall be developed according to Section 105.10 and shall be submitted to the Department for review and approval. Once approved by the Department, VDOT will secure VPDES Construction Permit coverage according to IIM-LD-242. After VDOT secures VPDES Construction Permit coverage for the support facility, the Department will notify the Design-Builder in writing. The support facility shall be subject to all conditions and requirements of the VPDES Construction Permit and all other contract documents. No land disturbing activities can occur in the support area(s) until written notice to proceed is provided by the Department.

4. Inspection Procedures

a. Inspection Requirements

The Design-Builder shall be responsible for conducting site inspections in accordance with the requirements herein. Site inspections shall include erosion and sediment control and pollution prevention practices and facilities. The Design-Builder shall document such inspections by completion of Form C-107, Construction Runoff Control Inspection Form, in strict accordance with the directions contained within the form. Inspections shall include all areas of the site disturbed by construction activity, all on-site support facilities and all off site support facilities within VDOT right of way or easement. Inspections shall be conducted at least once every 7 calendar days (equivalent to once every five (5) business days) and within forty eight (48) hours following any measureable storm event. In the event a measureable storm event occurs when there are more than forty eight (48) hours between business days, the inspection shall occur no later than the next business day. A business day is defined as Monday through Friday excluding State holidays. A measurable storm event is defined as one producing 0.25 inches of rainfall or greater over a twenty four (24) hour time period. The Design-Builder shall install a rain gage at a central location on the Project site for the purposes of determining the occurrence of a measureable storm event. Where the Project is of such a length that one rain gage may not provide an accurate representation of a the occurrence of a measurable storm event over the entire Project site, the Design-Builder shall install as many rain gages as necessary to accurately reflect the amount of rainfall received over all portions of the Project. The rain gage shall be observed no less than once each business day at the time prescribed in the SWPPP General Information Sheet notes in the construction plans or other contract documents to determine if a measureable storm event has occurred. The procedures for determining the occurrence of a measurable storm event are identified in the SWPPP General Information Sheet notes in the construction plans or other contract documents. For those areas of the site that have been temporarily stabilized or where land disturbing activities have been suspended due to continuous frozen ground conditions and stormwater discharges are unlikely, the inspection schedule may be reduced to once per month. If weather conditions (such as above freezing temperatures or rain or snow events) make stormwater discharges likely, the Design-Builder shall immediately resume the regular inspection schedule. Those definable areas where final stabilization has been achieved will not require further inspections provided such areas have been identified in the Project's Stormwater Pollution Prevention Plan.

b. Corrective Actions

If a site inspection identifies an existing control measure that is not being maintained properly or operating effectively; an existing control measure that needs to be modified; locations where an additional control measure is necessary; or any other deficiencies in the erosion and sediment control and pollution prevention plan, corrective action(s) shall be completed as soon as practical and prior to the next anticipated measurable storm event but no later than seven days after the date of the site inspection that identified the deficiency.

5. Unauthorized Discharges and Reporting Requirements

The Design-Builder shall not discharge into State waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances nor shall otherwise alter the physical, chemical, or biological properties of such waters that render such waters detrimental for or to domestic use, industrial consumption, recreational or other public uses.

a. Notification of non-compliant discharges

The Design-Builder shall immediately notify the Department upon the discovery of or the potential of any unauthorized, unusual, extraordinary, or non-compliant discharge from the land construction activity or any of support facilities located on VDOT right of way or easement. Where immediate notification is not possible, such notification shall be not later than twenty four (24) hours after said discovery.

b. Detailed report requirements for non-compliant discharges

The Design-Builder shall submit to the Department within five (5) days of the discovery of any actual or potential non-compliant discharge a written report describing details of the discharge to include a description of the nature and location of the discharge; the cause of the discharge; the date of occurrence; the length of time that the discharge occurred, the volume of the discharge; the expected duration and total volume if the discharge is continuing; a description of any apparent or potential effects on private and/or public properties and State waters or endangerment to public health; and any steps planned or taken to reduce, eliminate, and prevent a recurrence of the discharge. A completed Form C-107 shall be used for such reports.

6. Changes and Deficiencies

The Design-Builder shall report to the Department when: (a) any planned physical alterations or additions are made to the land disturbing activity; or (b) deficiencies in the Project plans or Contract are discovered that could significantly change the nature of or increase potential for pollutants discharged from the land disturbing activity to surface waters and that have not previously been addressed in the SWPPP.

7. Amendments, Modifications, Revisions and Updates to the SWPPP

a. The Design-Builder shall amend the SWPPP whenever site conditions, construction sequencing or scheduling necessitates revisions or modifications to the erosion and sediment control plan, the pollution prevention plan, or any other component of the SWPPP for the land disturbing activity or onsite support facilities,

b. The Design-Builder shall amend the SWPPP to identify any additional or modified erosion and sediment control and pollution prevention measures implemented to correct problems or deficiencies identified through any inspection or investigation process.

c. The Design-Builder shall amend the SWPPP to identify any new or additional person(s) or contractor(s) not previously identified that will be responsible for implementing and maintaining erosion and sediment control and pollution prevention devices.

d. The Design-Builder shall update the SWPPP to include:

(1) A record of dates when major grading activities occur, construction activities temporarily or permanently cease on a portion of the site, and stabilization measures are initiated.

(2) Documentation of replaced or modified erosion and sediment control and pollution prevention controls where periodic inspections or other information have indicated that the controls have been used inappropriately or incorrectly.

(3) Identification of areas where final stabilization has occurred and where no further SWPPP or inspection requirements apply.

(4) The date of any prohibited discharges, the discharge volume released, and what actions were taken to minimize the impact of the release.

(5) A description of any measures taken to prevent the reoccurrence of any prohibited discharge.

(6) A description of any measures taken to address any issues identified by the required erosion and sediment control and pollution prevention inspections.

e. The Design-Builder shall update the SWPPP no later than seven (7) days after the implementation and/or the approval of any amendments, modifications, or revisions to the erosion and sediment control plan, the pollution prevention plan, or any other component of the SWPPP.

f. Revisions or modifications to the SWPPP shall be approved by the Department and shall be documented by the Design-Builder on a designated plan set (Record Set) in accordance with Chapter 10 of the VDOT Drainage Manual. All updates to the SWPPP shall be signed by the delegated authority as identified on the SWPPP.

g. The record set of plans shall be maintained with other SWPPP documents on the Project site or at a location convenient to the Project site where no on site facilities are available.

107.17—Construction Safety and Health Standards

(a) In the performance of this Contract the Design-Builder shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The Design-Builder, Subcontractors at any tier, and their respective employees, agents and invitees, shall at all times while in or around the Project site comply with all applicable laws, regulations, provisions, and policies governing safety and health under the Virginia Occupational Safety and Health (VOSH) Standards adopted under the Code of Virginia, and any laws, regulations, provisions, and policies incorporated by reference including but not limited to the Federal Construction Safety Act (Public Law 91-54), 29 CFR Chapter XVII, Part 1926, Occupational Safety and Health Regulations for Construction, and the Occupation Safety and Health Act (Public Law 91-596), 29 CFR Chapter XVII, Part 1910 Occupational Safety and Health Standards for General Industry, and subsequent publications updating these regulations.

(b) The Design-Builder shall provide all safeguards, safety devices and protective equipment, and take any other needed actions as it determines, or as the Engineer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public, and to protect property in connection with the performance of the Work. The Design-Builder shall be responsible for maintaining and supervising all safety and health protections and programs to ensure compliance with this Section. The Design-Builder shall routinely inspect the Project site for safety and health violations. The Design-Builder

shall immediately abate any violations of the safety and health requirements or duties at no cost to the Department.

(c) It is a condition of this Contract, and shall be made a condition of each subcontract ,which the Design-Builder enters into pursuant to this Contract, that the Design-Builder and any Subcontractor shall not permit any employees in performance of the Contract, to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to their health or safety as determined by the Virginia Work Area Protection Manual or under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

(d) VOSH personnel, on all Federal-aid construction contracts and related subcontracts, pursuant to 29 CFR 1926.3, the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out their duties.

107.18—Sanitary Provisions

The Design-Builder shall provide and maintain in a neat, sanitary condition such accommodations for the use of Employees as may be necessary to comply with the requirements of the State and local Board of Health or other bodies or tribunals having jurisdiction.

107.19—Railway-Highway Provisions

If the Design-Builder's work requires hauling materials across the tracks of a railway, he shall make arrangements with the railway for any new crossing(s) required. Access to existing rail crossings with off-road heavy Equipment shall also be arranged by the Design-Builder. Charges made by the railway company for the construction or use of new or existing crossings and their subsequent removal and for watchperson or flagger service at such crossings shall be reimbursed by the Design-Builder directly to the railway company under the terms of their separate individual arrangements before Final Acceptance.

Work to be performed by the Design-Builder in construction on or over the railway Right of Way shall be performed at times and in a manner that will not unnecessarily interfere with the movement of trains or traffic on the railway track. The Design-Builder shall use care to avoid accidents, damage, or unnecessary delay or interference with the railway company's trains or other property. If any interruption of railway traffic is required by the Design-Builder's actions, he shall obtain prior written approval from the railway company.

The Design-Builder shall conduct operations that occur on or over the Right of Way of any railway company fully within the rules, regulations, and requirements of the railway company and in accordance with the requirements of any agreements made between the Department and the railway company. The applicable portions of such agreements shall be provided by Department to Design-Builder upon Design-Builder's request, unless the Contract Documents require the Design-Builder to obtain such agreement.

(a) **Flagger or Watchperson Services:** Flagger or watchperson services required by the railway company for the safety of railroad operations because of work being performed by the Design-Builder or incidental thereto will be provided by the railway company. The cost for such services as required for work shown in the Contract Documents will be borne by the Design-Builder. Any cost of such services resulting from work not shown in the Contract Documents or for the Design-Builder's convenience shall be borne by the Design-Builder and shall be paid directly to the railway company(s) under the terms of their separate individual agreement.

No work shall be undertaken on or over the railway Right of Way until the watchpersons or flaggers are present at the Project site. The Design-Builder shall continuously prosecute the affected work to completion

to minimize the need for flagger or watchperson services. Costs for such services that the Department determines to be unnecessary because of the Design-Builder's failure to give notice as required herein before initially starting, intermittently continuing, or discontinuing work on or over the railway Right of Way shall be borne by the Design-Builder and will be deducted from monies due him.

(b) **Approval of Construction Methods on Railway Right of Way:** The Design-Builder shall submit to the Department a plan of operations showing the design and method of proposed structural operations and shall obtain its approval before performing any work on the railway company's Right of Way unless otherwise indicated in the railroad agreement. The plan shall be clear and legible and details shall be drawn to scale. The plan shall incorporate any stipulations or requirements the railroad may impose for the evaluation of the Design-Builder's contemplated operations. The plan shall show, but not be limited to, the following:

1. proximity of construction operations to tracks.

2. depth of Excavation with respect to tracks.

3. description of structural units.

4. vertical and horizontal clearances to be afforded the railroad during installation and upon completion of Excavation.

5. sheeting and bracing.

6. method and sequence of operations.

Approval shall not relieve the Design-Builder of any liability under the Contract. The Design-Builder shall arrange the Work so as not to interfere with the railway company's operation except by agreement with the railway company.

(c) **Insurance:** In addition to insurance or bonds required under the terms of the Contract, the Design-Builder shall carry insurance covering operations affecting the property of the railway company. The original railroad protective liability insurance policy and certificate of insurance showing insurance carried by the Design-Builder and any Subcontractors shall be submitted to the railway company for approval and retention.

Neither the Design-Builder nor any Subcontractor shall begin any work affecting the railway company until the railway company has received the insurance.

Notice of any material change in or cancellation of the required policies shall be furnished the Department and the railway company at least 30 days prior to the effective date of the change or cancellation. The insurance shall be of the following kinds and amounts:

1. **Design-Builder's public liability and property damage insurance:** The Design-Builder shall furnish evidence to the Department with respect to the operations to be performed that he carries regular contractor's public liability insurance. The insurance shall provide for a limit of at least the dollar value specified in the Contract for all damages arising out of bodily injuries to or the death of one person and subject to that limit for each person a total limit of at least the dollar value specified in the Contract for all damages arising out of bodily injuries to or death of two or more persons in any one occurrence, and regular design-builder's property damage insurance providing for a limit of at least the dollar value specified in the Contract for all damages arising out of bodily injury to or destruction of property in any one occurrence, and subject to that limit per occurrence, a total or aggregate limit of at least the dollar value specified in the Contract for all damages arising out of injury to or destruction of property during the policy period. The Design-Builder's public liability and property damage insurance shall include explosion, collapse, and underground damage coverage. If the Design-Builder subcontracts any portion of the Work, he shall secure insurance protection in his own behalf under the

Contract's public liability and property damage insurance policies to cover any liability imposed on him by law for damages because of bodily injury to, or death of persons and injury to, or destruction of property as a result of Work undertaken by the Subcontractors. In addition, the Design-Builder shall provide similar insurance protection for and on behalf of any Subcontractors to cover their operation by means of separate and individual design-builder's public liability and property damage policies. As an alternative, he shall require each Subcontractor to provide such insurance in his own behalf.

2. **Railroad protective insurance and public liability and property damage:** The policy furnished the railway company shall include coverage for contamination, pollution, explosion, collapse, and underground damage. The policy shall be of the type specified hereinafter and shall be expressed in standard language that may not be amended. No part shall be omitted except as indicated hereinafter or by an endorsement that states an amendment or exclusion of some provision of the form in accordance with the provisions of a manual rule. The form of the endorsement shall be approved as may be required by the supervising authority of the State in which the policy is issued. A facsimile of the Policy Declarations form as shown in the RFP Documents shall be made a part of the policy and shall be executed by an officer of the insurance company. The several parts of the requirements and stipulations specified or inferred herein may appear in the policy in such sequence as the company may elect.

   a. **For a policy issued by one company:**

      (NAME AND LOCATION OF INDEMNITY COMPANY), a _____ (Type of Company) Insurance Company, herein called the Company, agrees with the insured named in the Policy Declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the Policy Declarations made by the named insured and subject to all of the terms of his policy.

   For a policy issued by two companies:

      (NAME AND LOCATION OF INDEMNITY COMPANY) and (NAME AND LOCATION OF INDEMNITY COMPANY), each a _____ Insurance Company (Type of Company), herein called the Company, severally agree with the insured named in the Policy Declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the Policy Declaration made by the named insured and subject to all of the terms of this policy, provided the named Indemnity Company shall be the insured with respect to Coverage _____ and no other and the named Insurance Company shall be the insurer with respect to Coverage _____ and no other.

   b. **Insuring agreements:**

      (1) **Coverages: Coverage A—Bodily injury liability:** To pay on behalf of the insured all sums that the insured shall become legally obligated to pay as damages because of bodily injury, sickness, or disease including death at any time resulting therefrom (hereinafter called bodily injury) either (1) sustained by any person arising out of acts or omissions at the designated job site that are related to or are in connection with the Work described in Item 6 of the Policy Declarations; or (2) sustained at the designated job site by the Design-Builder, any Employee of the Design-Builder, any employee of the governmental authority specified in Item 5 of the Policy Declarations, or any designated employee of the insured, whether or not arising out of such acts or omissions.

      Coverage B—Property damage liability: To pay on behalf of the insured all sums the insured shall become legally obligated to pay as damages because of physical injury to or destruction of property, including loss of use of any property because of such injury or destruction (hereinafter called property damage) arising out of acts or omissions at the

designated job site that are related to or are in connection with the Work described in Item 6 of the Policy Declarations.

Coverage C—Physical damage to property: To pay for direct and accidental loss of or damage to rolling stock and other contents, mechanical construction Equipment, or motive power Equipment (hereinafter called loss) arising out of acts or omissions at the designated job site that are related to or are in connection with the work described in Item 6 of the Policy Declarations; provided such property is owned by the named insured or is leased or entrusted to the named insured under a lease or trust agreement.

(2) **Definitions:** *Insured* means and includes the named insured and any executive officer, director, or stockholder thereof while acting within the scope of his duties as such.

Design-Builder means the Design-Builder designated in Item 4 of the Policy Declarations and includes all Subcontractors of the Design-Builder but not the named insured.

Designated employee of the insured means (1) any supervisory employee of the insured at the job site; (2) any employee of the insured while operating, attached to, or engaged on work trains or other railroad Equipment at the job site that is assigned exclusively to the Design-Builder; or (3) any employee of the insured not within (1) or (2) who is specifically loaned or assigned to the work of the Design-Builder for prevention of accidents or protection of property, the cost of whose services is borne specifically by the Design-Builder or governmental authority.

Contract means any contract or agreement to carry a Person or property for a consideration or any lease, trust, or interchange contract or agreement respecting motive power, rolling stock, or mechanical construction Equipment.

(3) **Defense and settlement supplementary payments:** With respect to such insurance as is afforded by this policy under Coverages A and B, the Company shall defend any suit against the insured alleging such bodily injury or property damage and seeking damages that are payable under the terms of this policy, even if any of the allegations of the suit are groundless, false, or fraudulent. However, the Company may make such investigation and settlement of any claim or suit as it deems expedient.

In addition to the applicable limits of liability, the Company shall pay (1) all expenses incurred by the company, all costs taxed against the insured in any such suit, and all interest on the entire amount of any judgment therein that accrues after entry of the judgment and before the Company has paid or tendered or deposited in court that part of the judgment that does not exceed the limit of the Company's liability thereon; (2) premiums on appeal bonds required in any such suit and premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, but without obligation to apply for or furnish any such bonds; (3) expenses incurred by the insured for first aid to others that shall be imperative at the time of the occurrence; and (4) all reasonable expenses, other than loss of earnings, incurred by the insured at the Company's request.

(4) **Policy period and territory:** This policy applies only to occurrences and losses during the policy period and within the United States, its territories or possessions, or Canada.

c. **Exclusions:** This policy does not apply to the following:

(1) liability assumed by the insured under any contract or agreement except a contract as defined herein.

(2) bodily injury or property damage caused intentionally by or at the direction of the insured.

(3) bodily injury, property damage, or loss that occurs after notification to the named insured of the acceptance of the Work by the governmental authority, other than bodily injury, property damage, or loss resulting from the existence or removal of tools, uninstalled Equipment, and abandoned or unused Materials.

(4) under Coverage A(1), B, and C, to bodily injury, property damage, or loss, the sole proximate cause of which is an act or omission of any insured.

(5) under Coverage A, to any obligation for which the insured or any carrier as his insurer may be held liable under any workers' compensation, employment compensation, or disability benefits law or under any similar law; provided that the Federal Employer's Liability Act, *U.S. Code* (1946) Title 45, Sections 51-60, as amended, shall for the purpose of this insurance be deemed not to be any similar law.

(6) under Coverage B, to injury to or destruction of property owned by the named insured or leased or entrusted to the named insured under a lease or trust agreement.

(7) under any liability coverage, to injury, sickness, disease, death, or destruction (1) with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, or Nuclear Insurance Association of Canada or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or (2) resulting from the hazardous properties of nuclear material and with respect to which any Person is required to maintain financial protection pursuant to the Atomic Energy Act of 1954 or any law amendatory thereof or the insured is (or had this policy not been issued would be) entitled to indemnity from the United States or any agency thereof under any agreement entered into by the United States, or any agency thereof, with any Person.

(8) under any Medical Payments Coverage or any Supplementary Payments provision relating to immediate medical or surgical relief or to expenses incurred with respect to bodily injury, sickness, disease, or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any Person.

(9) under any liability coverage, to injury, sickness, disease, death, or destruction resulting from the hazardous properties of nuclear material if (1) the nuclear material is at any nuclear facility owned or operated by or on behalf of an insured or has been discharged or dispersed therefrom; (2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported, or disposed of by or on behalf of an insured; or (3) the injury, sickness, disease, death, or destruction arises out of the furnishing by an insured of services, Materials, or parts for Equipment in connection with the planning, construction, maintenance, operation, or use of any nuclear facility; if such facility is located in the United States, its territories or possessions, or Canada, this exclusion applies only to injury to or destruction of property at such nuclear facility.

(10) under Coverage C, to loss attributable to nuclear reaction, nuclear radiation, or radioactive contamination or to any act or condition incident to any of the foregoing.

(11) As used in exclusions (7), (8), and (9), the following definitions apply:

Disposable material means material containing by product material and resulting from the operation by any Person of any nuclear facility included in the definition of nuclear facility under (i) or (ii) below.

Hazardous properties include radioactive, toxic, or explosive properties.

Injury or destruction with respect to injury to or destruction of property, includes all forms of radioactive contamination of property.

Nuclear facility means:

a) any nuclear reactor.

b.) any equipment or device designed or used for separating the isotopes of uranium or plutonium; processing or utilizing spent fuel; or handling, processing, or packaging waste.

c) any equipment or device designed or used for the processing, fabricating, or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 (or any combination thereof) or more than 250 grams of uranium 235.

d) any structure, basin, Excavation, premises, or place prepared or used for the storage or disposal of waste (includes the site on which any of the foregoing is located, all operation conducted on such site, and all premises used for such operations).

Nuclear material means source material, special nuclear material, or byproduct material.

Nuclear reactor means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

Source material, special nuclear material, and byproduct material have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

Spent fuel means any fuel element or fuel component (solid or liquid) that has been used or exposed to radiation in a nuclear reaction.

d. **Conditions:** The following conditions, except conditions (3) through (12), apply to all coverages. Conditions (3) through (12) apply only to the coverage noted thereunder.

(1) **Premium:** The premium bases and rates for the hazards described in the Policy Declarations are stated therein. Premium bases and rates for hazards not so described are those applicable in accordance with the requirements of the manuals used by the company. The term "contract cost" means the total cost of all Work described in Item 6 of the Policy Declaration. The term "rental cost" means the total cost to the Design-Builder for rental or work trains or other railroad Equipment, including the remuneration of all employees of the insured while operating, attached to, or engaged thereon. The advance premium stated in the Policy Declarations is an estimated premium only. Upon termination of this policy, the earned premium shall be computed in accordance with the Company's rules, rates, rating plans, premiums, and minimum premiums applicable to this insurance. If the earned premium thus computed exceeds the estimated advance premium paid, the Company shall look to the Design-Builder specified in the Policy Declarations for any such excess. If the earned premium is less than the estimated advance premium paid, the Company shall return to the Design-Builder the unearned portion paid. In no event shall payment or premium be an obligation of the named insured.

(2) **Inspection:** The named insured shall make available to the Company records of information relating to the subject matter of this insurance. The Company shall be permitted to inspect all operations in connection with the Work described in Item 6 of the Policy Declarations.

(3) **Limits of liability, Coverage A:** The limit of bodily injury liability stated in the Policy Declarations as applicable to "each person" is the limit of the Company's liability for all damages (including damages for care and loss of services) arising out of bodily injury sustained by one Person as the result of any one occurrence. The limit of such liability stated in the Policy Declarations as applicable to "each occurrence" is (subject to the provision respecting each Person) the total limit of the Company's liability for all such damage arising out of bodily injury sustained by two or more Persons as the result of any one occurrence.

(4) **Limits of liability, Coverages B and C:** The limit of liability under Coverages B and C stated in the Policy Declarations as applicable to "each occurrence" is the total limit of the Company's liability for all damages and all loss under Coverages B and C combined arising out of physical injury to, destruction of, or loss of all property of one or more Persons or organizations, including the loss or use of any property attributable to such injury or destruction under Coverage B, as the result of any one occurrence. Subject to the provision respecting "each occurrence", the limit of liability under Coverages B and C stated in the Policy Declaration as "aggregate" is the total limit of the Company's liability for all damages and all loss under Coverages B and C combined arising out of physical injury to, destruction of, or loss of property, including the loss or use of any property attributable to such injury or destruction under Coverage B.

Under Coverage C, the limit of the Company's liability for loss shall not exceed the actual cash value of the property, or if the loss is a part thereof, the actual cash value of such part, at time of loss, nor what it would then cost to repair or replace the property of such part thereof with other of like kind and quality.

(5) **Severability of interests, Coverages A and B:** The term *the insured* is used severally and not collectively. However, inclusion herein of more than one insured shall not operate to increase the limits of the Company's liability.

(6) **Notice:** In the event of an occurrence or loss, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place, and circumstances thereof and the names and addresses of the injured and of able witnesses shall be given by or for the insured to the company or any of its authorized agents as soon as is practicable. If a claim is made or a suit is brought against the insured, he shall immediately forward to the Company every demand, notice, summons, or other process received by him or his representative.

(7) **Assistance and cooperation of the insured, Coverages A and B:** The insured shall cooperate with the Company and upon the Company's request attend hearings and trials and assist in making settlements, securing and giving evidence, obtaining the attendance of witnesses, and conducting suits. Except at its own cost, the insured shall not voluntarily make any payment, assume any obligations, or incur any expense other than for first aid to others that shall be imperative at the time of an accident.

(8) **Action against Company, Coverages A and B:** No action shall lie against the Company unless as a condition precedent thereto the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant, and the Company. Any Person who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No Person shall have any right under this policy to join the Company as a part to any action against the insured to determine the insured's liability. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the Company of any of its obligations hereunder.

(9) **Action against Company, Coverage C:** No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy nor until 30 days after proof of loss is filed and the amount of loss is determined as provided in this policy.

(10) **Insured's duties in event of loss, Coverage C:** In the event of loss, the insured shall protect the property, whether or not the loss is covered by this policy. Any further loss attributable to the insured's failure to protect shall not be recoverable under this policy. Reasonable expenses incurred in affording such protection shall be deemed incurred at the company's request.

The insured shall also file with the Company, as soon as practicable after loss, his sworn proof of loss in such form and including such information as the Company may reasonably require and shall, upon the Company's request, exhibit the damaged property.

(11) **Appraisal, Coverage C:** If the insured and the Company fail to agree as to the amount of loss, either may demand an appraisal of the loss within 60 days after the proof of loss is filed. In such event the insured and the Company shall each select a competent appraiser, and the appraisers shall select a competent and disinterested umpire. An award in writing or any two shall determine the amount of loss. The insured and the Company shall each pay his chosen appraiser and shall bear equally the other expenses of the appraisal and umpire. The Company shall not be held to have waived any of its rights by any act relating to appraisal.

(12) **Payment of loss, Coverage C:** The Company may pay for the loss in money, but there shall be no abandonment of the damaged property to the Company.

(13) **No benefit to bailee coverage:** The insurance afforded by this policy shall not inure directly or indirectly to the benefit of any carrier or bailee (other than the named insured) liable for loss to the property.

(14) **Subrogation:** In the event of any payment under this policy, the Company shall be subrogated to all of the insured's rights of recovery therefore against any Person. The insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

(15) **Application of insurance:** The insurance afforded by this policy is primary insurance. If the insured has other primary insurance against a loss covered by this policy, the Company shall not be liable under the policy for a greater proportion of such loss than the applicable limit of liability stated in the Contract bears to the total applicable limit of all valid and equitable insurance against such loss.

(16) **3-year policy:** A policy period of 3 years is comprised of three consecutive annual periods. Computation and adjustment of earned premium shall be made at the end of each annual period. Aggregate limits of liability as stated in this policy shall apply separately to each annual period.

(17) **Changes:** Notice to any agent of knowledge possessed by any agent or by any other Person shall not affect a waiver or a change in any part of this policy or stop the Company from asserting any right under the terms except by endorsement issued to form a part of this policy signed by *_____ provided, however, changes may be made in the written portion of the Policy Declaration by *_____ when initialed by such *_____ or by endorsement issued to form a part of this policy signed by such *_____. [*Insert titles of authorized company representatives.]

(18) **Assignment:** Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon.

(19) **Cancellation:** This policy may be cancelled by the named insured by mailing to the Company written notice stating when the cancellation shall become effective. This policy may be cancelled by the Company by mailing to the named insured, Design-Builder, and governmental authority at the respective addresses shown in this policy written notice stating when such cancellation shall be effective (not less than 30 days thereafter). The mailing of notice shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the named insured or the Company shall be equivalent to mailing. If the named insured cancels, the earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, the earned premium shall be computed pro rata. The premium may be adjusted either at the time cancellation is effected or as soon as practicable after the cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

(20) **Policy Declarations:** By acceptance of this policy, the named insured agrees that such statements in the Policy Declarations as are made by him are his agreements and representations, that his policy is issued in reliance on the truth of such representations, and that this policy embodies all agreements existing between himself and the Company or any of its agents relating to this insurance.

e. **For a policy issued by one company:**

In witness whereof, the _____ Indemnity Company has caused this policy to be signed by its president and a secretary at _____ and countersigned on the Policy Declarations page by a duly authorized agent of the Company.

(Facsimile of Signature)	*(Facsimile of Signature)*
Secretary	*President*

For a policy issued by two companies:

In witness whereof, the _____ Indemnity Company has caused this policy with respect to Coverages _____ and such other parts of the policy as are applicable thereto to be signed by its president and a secretary at _____ and countersigned on the Policy Declarations page by a duly authorized agent of the Company.

(Facsimile of Signature)	*(Facsimile of Signature)*
Secretary	*President*

(d) **Submitting Copies of Insurance Policies:** Prior to beginning construction operations on or over the railway Right of Way, the Design-Builder shall submit to the Department evidence of the railway company's approval and a copy of the required insurance policies. The State will not be responsible for any claims from the Design-Builder resulting from delay in the acceptance of any of these policies by the railway company other than consideration of an extension of time. If the delay is caused by the failure of the Design-Builder or his insurer to file the required insurance policies promptly, an extension of time will not be granted.

(e) **Beginning Construction:** Preliminary contingent work or other work by the railway company may delay the starting or continuous prosecution of the work by the Design-Builder. The Design-Builder shall be

satisfied as to the probable extent of such work and its effect on the operations prior to submitting a bid for the work. The State will not be responsible for any claims by the Design-Builder resulting from such delays except that an extension of time may be considered.

(f) **Arranging for Tests:**

1. **Railroad Specifications:** When ordering Materials that are to conform to railroad specifications, the Design-Builder shall notify the railway company, who will arrange for tests. The Design-Builder shall specify in each order that the Materials are to be tested in accordance with the requirements of the railroad specifications and not those of the Department.

2. **Highway Specifications:** When ordering Materials that are to conform to highway specifications, the Design-Builder shall specify in each order that the Materials are to be tested in accordance with the requirements of the Standard Specifications.

107.20—Construction Over or Adjacent to Navigable Waters

The Department will obtain a permit from the U.S. Coast Guard for the anticipated construction or demolition activities of structures on Department projects that cross a waterway(s) under the jurisdiction of the U.S. Coast Guard. As the permit holder, the Department must apply to the U.S. Coast Guard for approval of permit modifications that the Design-Builder requests to the original Department permit.

Prior to starting demolition or construction operations the Design-Builder shall meet with the Department and the U.S. Coast Guard (U.S. Coast Guard Coordination Meeting) to present its planned operations and the potential impacts those operations may pose to water traffic. As part of this meeting, the parties shall establish in writing the proper protocol for emergency closures and be governed accordingly.

(a) Activities subject to Coast Guard regulation under the Permit. Following the U.S. Coast Guard Coordination meeting, the Design-Builder shall submit its proposed schedule of operations in writing to the Department. The Department shall review and provide written comments, if applicable, to the Design-Builder within seven (7) days following receipt of the Design-Builder's schedule of operations. The Design-Builder shall incorporate the Department's comments and submit its notice of scheduled operations to the Department and to the U.S. Coast Guard at least thirty (30) days prior to commencement of any permitted construction or demolition operations. U.S. Coast Guard acceptance of the Design-Builder's written schedule of operations is a condition precedent to the Design-Builder's commencement of those operations.

(b) **Activities that require Channel closures or restrictions**. In addition to the submittal of its proposed schedule of operations as described in (a) above, Design-Builder shall submit Plans that comply with the Permit for Falsework, cofferdams, floating Equipment and other obstructions to the Channel or Channels to the Department. The Design-Builder's attention is directed to the possibility that advance notification for consideration of approval may vary depending on the type and duration of proposed closures, the time of year for requested closure(s), and location of existing Bridge(s) and waterway(s) involved, and the impact to entities served along or through the waterway(s). The Department shall review and provide written comments, if applicable, to the Design-Builder within thirty (30) days following receipt of the Design-Builder's Plans. The Design-Builder shall incorporate the Department's comments and submit its Plans to the Department and to the U.S. Coast Guard at least thirty (30) days prior to commencement of any permitted construction or demolition operations. The Design-Builder may not commence activities that require Channel closures or restrictions without the prior written approval of the Department and the U.S. Coast Guard. The Design-Builder shall be responsible for complying with all operational requirements that the U.S. Coast Guard may place on the Design-Builder as conditions of approval.

In addition, the Design-Builder shall request and obtain Department and U.S. Coast Guard approval in writing before commencing any operations that deviate from the Design-Builder's schedule of operations

when these operations interfere or have the potential to interfere with navigation of water traffic outside of timeframes previously approved by the Department and the U.S. Coast Guard.

Notices shall be sent to the U.S. Coast Guard, Fifth District Bridge Office (OBR), 431 Crawford Street, Portsmouth, VA 23704-5004. Payment of any penalty or fine that may be levied by the U.S. Coast Guard for Design-Builder violations of Bridge regulations found in 33 CFR Parts 114, 115, 116, 117 and 118 shall be the responsibility of the Design-Builder. Further, any delay to the Contract as a result of actions or inaction by the Design-Builder relative to the requirements herein that are determined by the Department to be the fault of the Design-Builder will be a non-compensable and non-excusable delay.

The cost to comply with the requirements of this provision and to provide and maintain temporary navigation lights, signals and other temporary work associated with the structure(s) under this Contract required by the U.S. Coast Guard for the protection of navigation during construction or demolition operations shall be included in the Price Proposal for other appropriate pay items.

107.21—Size and Weight Limitations

(a) **Hauling or Moving Material and Equipment on Public Roads Open to Traffic:** The Design-Builder shall comply with legal size and weight limitations in the hauling or moving of Material and Equipment on public Roads open to traffic unless the hauling or moving is covered by a hauling permit.

(b) **Hauling or Moving Material and Equipment on Public Roads Not Open to Traffic:** The Design-Builder shall comply with legal weight limitations in the hauling or moving of Material and Equipment on public Roads that are not open to traffic unless the hauling or moving is permitted elsewhere herein or is otherwise covered by a hauling permit. The Design-Builder shall be liable for damage that results from the hauling or moving of Material and Equipment. The hauling or moving of Material and Equipment on the Pavement Structure or across any structure during various stages of construction shall be subject to additional restrictions as specified or directed by the Department.

(c) **Furnishing Items in Component Parts of Sections:** If the size or weight of fabricated or manufactured items together with that of the hauling or moving vehicle exceeds the limitations covered by hauling permit policies and other means of transportation are not available, permission will be given to furnish the items in component parts of sections with adequately designed splices or connections at appropriate points. Permission for such adjustments shall be requested in writing, and approval in writing shall be secured from the Department prior to fabrication or manufacture of the items. The request shall state the reasons for adjustment and shall be accompanied by supporting data, including Working Drawings where necessary.

(d) **Construction Loading of Structures**: In the construction, reconstruction, widening, or repair of bridge, culvert, retaining wall and other similar type structures including approaches, the Design-Builder shall consider construction loads during the planning and prosecution of the work. If the loading capacity of these type structure(s) is not shown in the Contract, the Design-Builder is responsible for contacting the office of the appropriate district bridge engineer to obtain the loading capacity information. Construction loads include but are not limited to the weight of cranes, trucks, other heavy construction or material delivery equipment, as well as the delivery or storage of materials placed on or adjacent to the structure or parts thereof during the various stages (phases) of the work in accordance with the Design-Builder's proposed work plan. The Design-Builder shall consider the effect(s) of construction loads on the loading capacity of these type structure(s) in his sequencing of the work and operations, including phase construction. At the Department's request the Design-Builder shall be prepared to discuss or review his proposed operations with the Department with regard to construction loads to demonstrate he has taken such into consideration in the planning and execution of the work.

SECTION 108—PROSECUTION AND PROGRESS OF WORK

108.01—Prosecution of Work

The Design-Builder shall provide sufficient labor, Materials, Equipment, and tools and shall prosecute the Work with such means and methods and with such diligence as is required to attain and maintain a rate of progress necessary to ensure completion of the Project within the Contract Time(s) in accordance with the Contract Documents.

Once the Design-Builder has begun work, the Design-Builder shall prosecute the Work continuously and to the fullest extent possible except for suspensions authorized or ordered by the Department according to Section 108.05. If approval is given to suspend the Work temporarily, the Design-Builder shall notify the Department at least twenty four (24) hours in advance of resuming operations.

The Design-Builder shall notify the Department at least twenty four (24) hours in advance of any changes in the Design-Builder's planned operations or work requiring inspection.

108.02—Limitation of Operations

(a) General.

The Design-Builder shall conduct the Work in a manner and sequence that will ensure its expeditious completion with the least interference to traffic and shall have due regard for the location of detours and provisions for handling traffic. The Design-Builder shall not open any work to the prejudice or detriment of work already started. The Department may require the Design-Builder to finish a section of work before work is started on any other section.

(b) Holidays

Except as is necessary to maintain traffic, work shall not be performed on Sundays or the following holidays without the permission of the Department: January 1, Easter, Memorial Day, July 4, Labor Day, Thanksgiving Day, and Christmas Day.

If any of these holidays occurs on a Sunday, the following Monday shall be considered the holiday.

In addition to the Sunday or Holiday work limitations, mobile, short duration, short-term stationary, or intermediate-term stationary temporary traffic control zone (as defined in the VWAPM) lane closures on mainline lanes, shoulders, or ramps shall not be performed during the following Holiday time periods without the written permission of the Department. Additionally, a long-term stationary temporary traffic control zone (as defined in the VWAPM) shall not be initially put in place, adjusted, or removed during the following Holiday time periods without the written permission of the Department:

- **January 1**: From Noon on the preceding day until Noon on the following day, except as indicated below for Holidays occurring on a Friday/Saturday or Sunday/Monday.
- **Easter**: As indicated below for Holidays occurring on a Sunday.
- **Memorial Day**: As indicated below for Holidays occurring on a Monday.
- **July 4**: From Noon on the preceding day until Noon on the following day, except as indicated below for Holidays occurring on a Friday/Saturday or Sunday/Monday.
- **Labor Day**: As indicated below for Holidays occurring on a Monday.

- **Thanksgiving Day**: From Noon on the Wednesday preceding Thanksgiving Day until Noon on the Monday following Thanksgiving Day.

- **Christmas Day**: From Noon on the preceding day until Noon on the following day, except as indicated below for Holidays occurring on a Friday/Saturday or Sunday/Monday.

If the Holiday occurs on a Friday or Saturday: From Noon on the preceding Thursday to Noon on the following Monday.

If the Holiday occurs on a Sunday or Monday: From Noon on the preceding Friday to Noon on the following Tuesday.

108.03—Progress Schedule (Refer to Part 3 - Lump Sum Design-Build Agreement – Article 11 - Other Provisions)

The Design-Builder shall submit a Preliminary Schedule, Baseline Schedule and updates in accordance with the requirements of the General Conditions of Contract. Payment for Material stockpiled or stored in accordance with Section 109.08 will not be considered in determining the Design-Builder's rate of progress.

108.04—Determination and Extension of Completion Date (Refer to Part 4 - General Conditions – Article 8 Time, Article 9 Changes to the Contract Price and Time, and Article 10 Contract Adjustments and Disputes)

108.05—Suspension of Work Ordered by the Department (Refer to Part 4 - General Conditions – Article 11 Stop Work and Termination for Cause)

108.06—Failure to Complete on Time

For each day that any work remains incomplete after the Contract Times specified for the completion of the Work, the Department will assess liquidated damages against the Design-Builder in accordance with the Contract.

108.07—Default of Contract (Refer to Part 4 - General Conditions – Article 11 Stop Work and Termination for Cause)

108.08—Termination of Contract (Refer to Part 4 - General Conditions – Article 11 Stop Work and Termination for Cause)

108.09—Acceptance (Refer to Part 4 – General Conditions – Article 6 Payment)

108.10—Termination of Design-Builder's Responsibilities (Refer to Part 4 - General Conditions – Article 11 Stop Work and Termination for Cause)

SECTION 109—MEASUREMENT AND PAYMENT

109.01—Measurement of Quantities

(a) **General**: Unless otherwise specifically stated to the contrary in Article 6 of the Agreement, this Section 109.01 will only be applicable to Contract Price adjustments made under Article 9 of the General Conditions. The methods of measurement and computations to be used to determine quantities of Material furnished and work performed will be those generally recognized as conforming to good engineering practice.

Longitudinal measurements for surface area computations will be made along the surface and transverse measurements will be the surface measure shown in the Contract Documents or ordered in writing by the Department. Individual areas of obstructions with a surface area of nine (9) square feet or less will not be deducted from surface areas measured for payment.

Structures will be measured in accordance with the neat lines shown in the Contract Documents

Items that are measured by the linear foot will be measured parallel to the base or foundation upon which they are placed.

Allowance will not be made for surfaces placed over an area greater than that shown in the Contract Documents or for any Material moved from outside the area of the cross-section and lines shown in the Contract Documents.

When standard manufactured items are specified and are identified by weights or dimensions, such identification will be considered nominal. Unless more stringently controlled by tolerances in the Contract Documents, manufacturing tolerances established by the industries involved will be accepted.

(b) **Measurement by Weight**: Materials that are measured or proportioned by weight shall be weighted on accurate scales as specified in this Section. When material is paid for on a tonnage basis, personnel performing the weighing shall be certified by the Department and shall be bonded to the Commonwealth of Virginia in the amount of $10,000 for the faithful observance and performance of the duties of the weighperson required herein. The bond shall be executed on a form having the exact wording as the Weighpersons Surety Bond Form furnished by the Department and shall be submitted to the Department prior to the furnishing of the tonnage material.

The Design-Builder shall have the weighperson perform the following:

1. Furnish a signed weigh ticket for each load that shows the date, load number, plant name, size and type of material, project number, schedule or purchase order number, and the weights specified herein.

2. Maintain sufficient documentation so that the accumulative tonnage and distribution of each lot of material, by contract, can be readily identified.

3. Submit by the end of the next working day a summary of the number of loads and total weights for each type of material by contract.

Trucks used to haul Material being paid for by weight shall display the truck uniform identification number and legal gross and legal net weight limits. These markings shall be no less than two (2) inches high and permanently stenciled on each side of the truck with contrasting color and located as to be clearly visible when the vehicle is positioned on the scales and observed from normal position of the weigh Person at the scale house.

The truck to be used in the weighing operation shall be the weight of the empty truck determined with full tank(s) of fuel and the operator seated in the cab. The tare weight of trucks shall be recorded to the nearest twenty (20) pounds. At the option of the Design-Builder, a new tare may be determined for each load. When a new tare is obtained for each load, the requirement for full tank(s) of fuel will be waived.

Net rail shipment weights may be used for pay quantities when evidenced by railroad bills of lading. However, such weights will not be accepted for pay quantities of Materials that subsequently pass through a stationary mixing plant.

Scales shall conform to the requirements for accuracy and sensitivity as set forth in the *National Institute of Standards and Technology Handbook No. 44 for Specification Tolerances and Requirements for Commercial and Weighing Devices*. Scales used in the weighing of Materials paid for on a tonnage basis

shall be approved and sealed in accordance with the requirements of the policies of the Bureau of Weights and Measures of the Department of Agriculture and Consumer Services, or other approved agencies, at least once every six (6) months and upon being moved. Hopper and truck scales shall be serviced and tested by a scale service representative at least once every six (6) months. Hopper scales shall be checked with a minimum 500 pounds of test weights and truck scales shall be checked with a minimum 20,000 pounds of test weights.

Copies of scale test reports shall be maintained on file at the scale location for at least eighteen (18) months, and copies of all scale service representative test reports shall be forwarded to the Department.

The quantity of Materials paid for on a tonnage basis shall be determined on scales equipped with an automatic printer. Truck scale printers shall print the net weight and either the gross or tare weight of each load. Hopper scale printers shall print the net weight of each load. The weigh ticket shall also show the legal gross weight for Material weighed on truck scales and the legal net weight for Material weighed on hopper scales.

If the automatic printer becomes inoperative, the weighing operation may continue for forty eight (48) hours provided satisfactory visual verification of weights can be made. The written permission of the District Materials Engineer shall be required for the operation of scales after 48 hours.

If significant discrepancies are discovered in the printed weight, the ultimate weight for payment will be calculated on volume measurements of the Materials in place and unit weights determined by the Department or by other methods deemed appropriate to protect the interests of the Commonwealth.

(c) **Measurement by Cubic Yard**: Material that is measured by the cubic yard, loose measurement or vehicular measurement, shall be hauled in approved vehicles and measured therein at the point of delivery. Material measured in vehicles, except streambed gravel, silt cleanout, or other self-consolidating material will be allowed at the rate of 2/3 the volume of the vehicle. The full volume of the vehicle will be allowed for streambed gravel. Such vehicles may be of any size or type acceptable to the Department provided the body is of such shape that the actual contents can be readily and accurately determined. Unless all approved vehicles are of uniform capacity, each vehicle shall bear a plainly legible identification mark indicating the specific approved capacity. Each vehicle shall be loaded to at least its water level capacity.

When approved by the Department in writing, Material specified to be measured by the cubic yard may be weighed and such weights converted to cubic yards for payment purposes. Factors for conversion from weight to volume measurement will be determined by the Department and shall be agreed to by the Design-Builder before they are used.

(c) **Measurement by Lump Sum**: When used as an item of payment, the term *lump sum* will mean full payment for completion of work described in the Contract. When a complete structure or structural unit is specified as a Contract Item, the unit of measurement will be lump sum, and shall include all necessary fittings and accessories. The quantities may be shown in the Contract Documents for items for which lump sum is the method of measurement. If shown, the quantities are approximate and are shown for estimating purposes only and no measurement of quantities will be made for payment. Items that are to be measured as complete units will be counted by the Department in the presence of a representative of the Design-Builder.

(d) **Measurement for Specific Materials:**

1. **Concrete (Measured by Volume Measure):** Concrete will be measured and computed by dividing the work into simple geometrical figures and adding their volumes.

2. **Concrete (Measured by Square or Lineal Measure):** Concrete will be measured and computed by dividing the work into simple geometrical figures and adding their areas or measuring linearly along the item's surface.

3. **Excavation, Embankment, and Borrow**: In computing volumes of Excavation, Embankment, and Borrow, methods having general acceptance in the engineering profession will be used. When the measurement is based on the cross-sectional area, the average end area method will be used.

4. **Asphalt:** Asphalt will be measured by the gallon, volumetric measurement, based on a temperature of 60 degrees F using the following correction factors:

   a. 0.00035 per degree F for petroleum oils having a specific gravity 60/60 degrees F above 0.966

   b. 0.00040 per degree F for petroleum oils having a specific gravity 60/60 degrees F between 0.850 and 0.966

   c. 0.00025 per degree F for emulsified asphalt

   Unless volume correction tables are available, the following formula shall be used in computing the volume of asphalt at temperatures other than 60 degrees F:

   $$V^1 = V \times [1 - K(T - 60)]$$

   Where:
   V = volume of asphalt to be corrected;
   V^1 = volume of asphalt at 60 degrees F;
   K = correction factor (coefficient of expansion); and
   T = temperature in degrees F of asphalt to be corrected.

   When asphalt is delivered by weight, the volume at 60 degrees F will be determined by dividing the net weight by the weight per gallon at 60 degrees F.

   Asphalt will be measured by weight. Net certified scale weights, or weights based on certified volumes in the case of rail shipments, will be used as a basis of measurement, subject to correction when asphalt has been lost from the car or the distributor, disposed of, or otherwise not incorporated in the work.

   When asphalt is shipped by truck or transport, net certified weights or volumes subjected to correction for loss or foaming may be used to compute quantities.

   Only the quantity of asphalt actually placed in the work and accepted will be considered in determining the amount due the Design-Builder.

5. **Timber**: Timber will be measured in units of 1,000 foot-board-measure actually incorporated in the structure. Measurement will be based on nominal widths and thicknesses and the extreme length of each piece.

6. **Equipment rental**: Equipment rental will be measured by time in hours of actual working time and necessary traveling time of the Equipment within the limits of the Project or source of supply and the Project except when another method of measurement is specified.

109.02—Plan Quantities (Not Used)

109.03—Scope of Payment

Payments to the Design-Builder will be made for the Work in accordance with the Agreement.

The Design-Builder shall accept the compensation provided for in the Contract as full payment for the following:

(a) Furnishing all Materials, labor, tools, Equipment, and incidentals necessary to complete the work according to the Contract.

(b) Performing all Work contemplated in the Contract.

(c) All loss or damage arising from the nature of the Work or from action of the elements or any other unforeseen difficulties that may be encountered during prosecution of the Work and until its Final Acceptance.

(d) All risks of every description connected with the prosecution of the Work.

(e) All expenses incurred in consequence of the suspension of the Work as herein authorized.

(f) Any license, use, or infringement of patent, trademark, or copyright.

(g) The completion of the Work in accordance with the Contract requirements.

The payment of any partial estimate prior to Final Acceptance of the Project as provided for in Section 108.09 shall in no way affect the obligation of the Design-Builder to repair or replace any unacceptable, unauthorized or defective work or materials, or to be responsible for all damages attributable to such unacceptable, unauthorized or defective work or materials.

109.04—Compensation for Altered Quantities [Refer to Agreement (Article 6, Contract Price) and General Conditions (Article 9, Changes to Contract Price and Time)]

109.05—Contract Price Adjustments

Contract Price adjustments shall be made in conformance with the requirements of Article 9 of the General Conditions. In the event the Contract Price adjustment is to be made under Subparagraphs .3 or .4 of Section 9.4.1, or in the event of claims by Design-Builder under Article 10, then the rates for labor, Equipment, Materials and otherwise will be compensated in the following manner:

(a) **Labor:** Unless otherwise approved, the Design-Builder will receive the rate of wage or scale as set forth in his most recent payroll for each classification of laborers, forepersons, and superintendent(s) who are in direct charge of the specific operation. The time allowed for payment will be the number of hours such workers are actually engaged in the work. If overtime work is authorized, payment will be at the normal overtime rate set forth in the Design-Builder's most recent payroll. If workers performing the class of labor needed have not been employed on the Project, mutually agreed on rates will be established. However, the rates shall be not less than those predetermined for the Project, if applicable. An amount equal to forty five percent (45%) of the approved payroll will be included in the payment for labor to cover administrative costs, profit, and benefits or deductions normally paid by the Design-Builder.

(b) **Insurance and Tax:** The Design-Builder will receive an amount equal to twenty five percent (25%) of the approved payroll exclusive of additives of administrative cost as full compensation for property damage and liability, workers' compensation insurance premiums, unemployment insurance contributions, and social security taxes.

(c) **Materials:** The Design-Builder will receive the actual cost of Materials accepted by the Department that are delivered and used for the work including taxes, transportation, and handling charges paid by the Design-Builder, not including labor and Equipment rentals as herein set forth, to which fifteen percent (15%) of the cost will be added for administration and profit. The Design-Builder shall make every reasonable effort to take advantage of trade discounts offered by Material suppliers. Any discount received shall pass through to the Department. Salvageable temporary construction Materials will be retained by the Department, or their appropriate salvage value shall be credited to the Commonwealth, as agreed on by the Department.

(d) **Equipment:** The Design-Builder shall provide the Department a list of all Equipment to be used in the work. For each piece of Equipment, the list shall include the serial number; date of manufacture; location from which Equipment will be transported; and for rental Equipment, the rental rate and name of the company from which it is rented. The Design-Builder will be paid rental rates for pieces of machinery, Equipment, and attachments necessary for prosecution of the work that are approved for use by the Department. Equipment rental will be measured by time in hours of actual time engaged in the performance of the work and necessary traveling time of the Equipment within the limits of the Project or source of supply and the Project. Hourly rates will not exceed 1/176 of the monthly rates of the schedule shown in the *Rental Rate Blue Book* modified in accordance with the *Rental Rate Blue Book* rate adjustment tables that are current at the time the extra work is performed. Equipment rental rates not modified by the adjustment factors or rate modifications indicated in the *Rental Rate Blue Book* will not be considered. Hourly rates for Equipment on standby will be at fifty percent (50%) of the rate paid for Equipment performing work**.** Operating costs shall not be included in the standby rate. For the purposes herein "standby time" is defined as the period of time Equipment ordered to the jobsite by the Department is available on-site for the work but is idle for reasons not the fault of the Design-Builder or normally associated with the efficient and necessary use of that Equipment in the overall operation of the work at hand.

Payment will be made for the total hours the Equipment is performing work. When Equipment is performing work less than forty (40) hours for any given week and is on standby, payment for standby time will be allowed for up to forty (40) hours, minus hours performing work. Payment will not be made for the time that Equipment is on the Project in excess of twenty four (24) hours prior to its actual performance in the work. An amount equal to the *Rental Rate Blue Book* estimated operating cost per hour will be paid for all hours the Equipment is performing work. This operating cost shall be full compensation for fuel, lubricants, repairs, greasing, fueling, oiling, small tools, and other incidentals. No compensation will be paid for the use of machinery or equipment not authorized by the Department.

The Design-Builder will be paid freight cost covering the moving of Equipment to and from the specific work operation provided such cost is supported by an invoice showing the actual cost to the Design-Builder. However, such payment will be limited to transportation from the nearest source of available equipment. If Equipment is not returned to the nearest equipment storage lot but is moved to another location, the freight cost paid will not exceed the cost of return to the nearest storage lot.

The rates for Equipment not listed in the *Rental Rate Blue Book* schedule shall not exceed the hourly rate being paid for such Equipment by the Design-Builder at the time of the performance of the extra work. In the absence of such rates, prevailing rates being paid in the area where the authorized work is to be performed shall be used.

If the Design-Builder does not possess or have readily available Equipment necessary for performing the extra work and such Equipment is rented from a source other than a company that is an Affiliate, payment will be based on actual invoice rates, to which fifteen percent (15%) of the invoice cost will be added for administrative cost and profit. If the invoice rate does not include the furnishing of fuel, lubricants, repairs, and servicing, the invoice rate will be converted to an hourly rate, and an amount equal to the *Rental Rate Blue Book* estimated operating cost per hour will be added for each hour the Equipment is performing work.

(e) **Miscellaneous:** No additional allowance will be made for attachments that are common accessories for Equipment as defined in the *Rental Rate Blue Book,* general superintendents, timekeepers, secretaries, the use of small hand held tools or other costs for which no specific allowance is herein provided. The Design-Builder will receive compensation equal to the cost of the bond, special railroad insurance premiums, and other additional costs necessary for the specific work as determined by the Department. The Design-Builder shall supply documented evidence of such costs.

(f) **Compensation:** The compensation as set forth in this Section shall be accepted by the Design-Builder as payment in full for work performed on the basis described in this Section 109.05. At the end of each day, the Design-Builder's Representative and the Inspector shall compare and reconcile records of the hours of work and Equipment, labor, and Materials used in such work. Such accounting may not include actual costs or labor rates where these are not available but shall be used to verify quantities, types of Materials or labor, and number and types of Equipment.

If all or a portion of the work is performed by approved Design Consultants, Subcontractors, or Sub-Subcontractors, Design-Builder will be paid ten percent (10%) of the subcontract net costs to cover the Design-Builder's profit and administrative cost. The amount resulting will not be subject to any further additives. The itemized statements of costs as required below shall be submitted on a form that separates the subcontracted portions of the labor, Materials, and Equipment from the other costs.

(g) **Statements:** Payments will not be made for work performed on the basis described in this Section 109.05 until the Design-Builder has furnished the Department duplicate itemized statements of the cost of such work detailed as follows:

1. payroll indicating name, classification, date, daily hours, total hours, rate, and extension of each laborer, foreperson, and Superintendent.

2. designation, dates, daily hours, total hours, rental rate, and extension for each unit of Equipment.

3. quantities of Materials, prices, and extensions.

4. transportation of Materials.

Statements shall be accompanied and supported by invoices for all Materials used and transportation charges. However, if Materials used are not specifically purchased for such work but are taken from the Design-Builder's stock, then in lieu of the invoices, the Design-Builder shall furnish an affidavit certifying that such Materials were taken from his stock; that the quantity claimed was actually used; and that the price, transportation, and handling claimed represented his actual cost.

109.06—Common Carrier Rates (Not Used)

109.07—Eliminated Items

The Department shall have the right to delete any item of Work in the Contract. In such case, the Department shall notify Contractor of such deletion and the parties shall proceed in accordance with Article 9 of the General Conditions.

109.08—Partial Payments

(a) General

Payment will be made in accordance with the Agreement and the General Conditions of the Contract.

(b) Payment To Subcontractors (Not Used)

Payment to Subcontractors will be made in accordance with the Agreement and the General Conditions of the Contract.

(c) Retainage (Not Used)

Retainage will be in accordance with the Agreement and the General Conditions of the Contract.

109.09—Payment for Material on Hand

When requested in writing by the Design-Builder, payment allowances may be made for materials secured for use on the Project and required to complete the Project. Such material payments will be made for only those actual quantities of materials identified in the Contract, approved change orders, or otherwise **authorized and** documented **by the Department** based on delivery tickets, bills of lading, or paid invoices. All such payments shall be in accordance with the following terms and conditions:

(a) **Structural Steel or Reinforcing Steel:** An allowance of one hundred percent (100%) of the cost to the Design-Builder for structural steel **or reinforcing steel** materials secured for fabrication not to exceed sixty percent (60%) of the contract price may be made when such material is delivered to the fabricator and has been adequately identified for exclusive use on the Project. **The provisions of this section for steel reinforcement will only apply where the quantity of steel reinforcement is identified as a separate and distinct bid item for payment.** An allowance of one hundred percent (100%) of the cost to the Design-Builder for superstructure units and reinforcing steel, not to exceed ninety percent (90%) of the contract price, may be made when fabrication is complete. Prior to the granting of such allowances, the materials and fabricated units shall have been tested or certified and found acceptable to the Department and shall have been stored in accordance with the requirements specified herein. Allowances will be based on invoices, bills, or the estimated value as approved by the Department. **For the purposes of this section fabrication is defined as any manufacturing process such as bending, forming, welding, cutting or coating with paint or anti-corrosive materials which alters, converts, or changes raw material for its use in the permanent finished work.**

(b) **Other Materials**: For aggregate, pipe, guardrail, signs and sign assemblies, and other nonperishable material, an allowance of one hundred percent (100%) of the cost to the Design-Builder for materials, not to exceed ninety percent (90%) of the contract price, may be made when such material is delivered **to the Project** and stockpiled or stored in accordance with the requirements specified herein. Prior to the granting of such allowances, the material shall have been tested and found acceptable to the Department. Allowances will be based on invoices, bills, or the estimated value of the material as approved by the Department.

(c) **Excluded Items:** No allowance will be made for fuels, form lumber, falsework, temporary structures, or other work that will not become an integral part of the finished construction. **Additionally, no allowance will be made for perishable material such as cement, seed, plants, or fertilizer.**

(d) **Storage:** Material for which payment allowance is requested shall be stored in an approved manner in areas where damage is not likely to occur. If any of the stored materials are lost or become damaged, the Design-Builder shall repair or replace them **at no additional cost to the Department**. **Repair or replacement of such material will not be considered the basis for any extension of contract time.** If payment allowance has been made prior to such damage or loss, the amount so allowed or a proportionate part thereof will be deducted from the next progress estimate payment and withheld until satisfactory repairs or replacement has been made.

When it is determined to be impractical to store materials within the limits of the Project, the Department may approve storage on private property or, for structural units and reinforcing steel, on the manufacturer's or fabricator's yard. Requests for payment allowance for such **stored** material shall be accompanied by a release from the owner or tenant of such property or yard agreeing to permit the removal of the materials from the property without cost to the Commonwealth. The Department must be allowed access to the materials for inspection during normal business hours.

(e) **Materials Inventory:** If the Design-Builder requests a payment allowance for properly stored Material, he shall submit a certified and itemized inventory statement to the Department no earlier than five days and no later than two days prior to the progress estimate date. The statement shall be submitted on forms furnished by the Department and shall be accompanied by invoices or other documents that will verify the Material's cost. Following the initial submission, the Design-Builder shall submit to the Department a monthly-

certified update of the itemized inventory statement within the same time frame. The updated inventory statement shall show additional Materials received and stored with invoices or other documents and shall list Materials removed from storage since the last certified inventory statement, with appropriate cost data reflecting the change in the inventory. If the Design-Builder fails to submit the monthly-certified update within the specified time frame, the Department will deduct the full amount of the previous statement from the progress estimate.

At the conclusion of the Project, the cost of Material remaining in storage for which payment allowance has been made will be deducted from the progress estimate.

109.10—Final Payment

Payment will be made in accordance with the Agreement and the General Conditions of Contract.

109.11—Exhibits

The following exhibits, as well as any other exhibits specifically set forth in Exhibit 1 (Project Specific Terms), are made part of, and incorporated into these Division I Amendments to the Standard Specifications. (Exhibits to Part 5 are included in the RFP):

EXHIBIT 1 to PART 3 -- PROJECT SPECIFIC TERMS

EXHIBIT 102.05(g.1) -- SPECIAL PROVISION FOR USE OF DOMESTIC MATERIAL

EXHIBIT 102.05(g.2) -- FHWA–1273, REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

EXHIBIT 102.05(g.3) -- NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

EXHIBIT 107.13 -- PREDETERMINED MINIMUM WAGE RATES

EXHIBIT 107.15 -- SPECIAL PROVISION FOR SECTION 107.15

END OF PART 5
DIVISION I AMENDMENTS TO THE STANDARD SPECIFICATIONS