VDOT

Virginia Department of Transportation

REQUEST FOR PROPOSALS

A DESIGN-BUILD PROJECT

Multiple Culvert Rehabilitation Project 2

Region 3 – Salem, and Staunton Districts

UPC Nos.: 92700 and 92703

Contract ID Number: C000T7450DB30

April 7, 2009

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PART 1
REQUEST FOR PROPOSALS

INSTRUCTIONS FOR OFFERORS

1.0 INTRODUCTION

The Virginia Department of Transportation ("VDOT") submits this Request for Proposals ("RFP") to solicit design-build proposals ("Proposals") from those entities ("Offerors") interested in contracting to serve as the Design-Builder for multiple culvert replacements and repairs throughout Region 3 located in the following Districts: Salem and Staunton ("Project"). The purpose of this RFP is to establish the process for determining which Offeror (the "Successful Offeror") will be awarded the design-build contract ("Design-Build Contract") for the Project.

This is VDOT's priority for the Project:

- Cost - provide the best price for the scope of work identified in this RFP

Offerors Proposals must meet all requirements established by this RFP. Requirements of this RFP generally will use the words "shall", "will", or "must" (or equivalent terms) to identify a required item that must be submitted with an Offeror's Proposal. Failure to meet an RFP requirement will render an Offeror's Proposal non-responsive.

THE RESPONSIVE AND RESPONSIBLE OFFEROR SUBMITTING THE LOWEST PRICE PROPOSAL FOR THE PROJECT WILL BE RECOMMENDED FOR AWARDED.

The award of a contract to the Offeror who submitted the lowest bid, whose Proposal is responsive and whose Price Proposal is within VDOT's budget for design and construction services will be made in accordance with Part 1, Section 8 of this RFP.

2.0 BACKGROUND INFORMATION

2.1 Project Description

The Project consists of individual culvert replacements and rehabilitations at various crossings throughout the Commonwealth. The locations of the culverts to be rehabilitated or replaced are in multiple Districts and carrying multiple types and classifications of roadway.

The work for the Project shall generally consist of the following, including but not limited to: culvert rehabilitation, including invert repair or installing a pipe liner system; and culvert replacement, including replacing corrugated metal pipe, concrete box culvert; pavement reconstruction; installation of guardrail and terminals; and pavement markers. Specific descriptions for the scope of work at each culvert location are included in RFP Information Package – CD-ROM.

Plans for the anticipated construction at each culvert have NOT been developed. The RFP Information Package – CD-ROM contains any available existing plans or applicable standard drawings, available inspection reports, and a Culvert Specific Scope Sheet at each structure. The Offeror is expected to follow VDOT standard practices and details to accomplish the work in the Project. As described elsewhere in this document, all right of way requirements and any environmental impacts resulting from adjustments to the anticipated work at each structure are the responsibility of the Offeror. Offeror should note, however, that they are solely responsible for any schedule delays due to permit acquisition, modifications and NEPA document re-evaluations associated with Offeror's design and no time extensions will be granted.

2.2 Legislative Authority

2.2.1 §33.1-12(2)(b) of the *Code of Virginia* authorizes VDOT and the Commonwealth Transportation Board ("CTB") to develop and award contracts using the Design-Build contracting method. In accordance with the law, VDOT completed the Finding of Public Interest ("FOPI") dated March 16, 2009. The FOPI is available upon request.

2.3 Procurement Overview of the Project

2.3.1 VDOT will use a single-phase selection process for the selection of a Design-Builder on the Project. In accordance with the requirements of this RFP, interested Offerors will submit a Proposal consisting of a Letter of Submittal and Price Proposal. Upon completion of the evaluations of the Letters of Submittal and Price Proposals, it is anticipated that the Director of Innovative Project Delivery will recommend the Offeror who submitted the lowest bid, whose proposal is responsive and within VDOT's budget to the Chief Engineer for an award of a fixed price Design-Build Contract by the CTB.

2.4 Right-of-Way and Site Acquisition

2.4.1 The Offeror's proposed design shall not exceed current right of way limits. The Department will make information about the existing Right of Way limits for each location available on or before April 30, 2009.

If the Offeror's proposed design requires additional temporary construction easements beyond the current right of way limits it will be the responsibility of the Offeror to coordinate directly with the affected property owners to acquire such temporary construction easements in accordance with the requirements described in Part 2, Section 2.8.

2.5 Estimated Value of Construction Cost

2.5.1 VDOT's current estimated contract value for this solicitation is $1,200,000.00.

2.6 Project Milestone Schedule

2.6.1 VDOT plans to conduct the procurement of the Project in accordance with the following list of milestones leading to award of the Design-Build Contract. This schedule is subject to revision and VDOT reserves the right to modify this schedule as it finds necessary, in its sole discretion.

.1	Advertise RFP	04/07/09
.2	Pre-Proposal Meeting with Offerors	04/24/09(10:00AM prevailing local time)
.3	RFP Questions due to VDOT	05/04/09(4:00 PM prevailing local time)
.4	VDOT Responses to RFP Questions	05/25/09(4:00 PM prevailing local time)
.6	Letter of Submittal/Price Proposal/Escrow Document Due Date	07/06/09(4:00 PM prevailing local time)
.7	Open Price Proposals	07/09/09
.8	Notice of Intent to Award	07/16/09
.9	CTB Approval / Notice to Award	09/17/09
.10	Design-Build Contract Execution	10/01/09
.11	Notice to Proceed	10/15/09
.12	Substantial Completion	09/25/11
.13	Final Completion	09/25/11

2.6.2 VDOT has established final completion of the entire contract shall be no later than September 25, 2011.

2.7 VDOT's Point of Contact and Contract Reference

2.7.1 VDOT's sole Point of Contact (POC) for this Contract shall be the person designated below. VDOT's POC is the only individual authorized to discuss this RFP with any interested parties, including Offerors. All communications with VDOT's POC about the Project or this RFP shall be in writing, as required by applicable provisions of this RFP.

Name:	David A. Steele, P.E.
Address:	Innovative Project Delivery Division Virginia Department of Transportation 1401 East Broad Street Richmond, VA 23219
Phone:	(804) 371-6787
Fax :	(804) 786-7221
E-mail:	David.Steele@vdot.virginia.gov

2.7.2 VDOT disclaims the accuracy of information derived from any source other than VDOT's POC, and the use of any such information is at the sole risk of Offeror.

2.7.3 All written communications to VDOT from Offerors shall specifically reference the correspondence as being associated with UPC 92700 and 92703.

2.7.4 An RFP Information Package is available on CD-ROM for $50.00. Interested Offerors should complete the RFP Information Package Order Form included as Attachment 2.7.4. The instructions for submittal and payment are included on the form. The RFP Information Package will include the following components:

- Special Provisions
  - Special Provision for Density Control of Embankments and Backfill
  - Special Provision for Section 303 - Earthwork
  - Special Provision for Low Permeability Concretes
  - Special Provision for Design-Build Tracking (DBT) Numbers
  - Special Provision for Square Tube Steel Sign Post
  - Special Provision for Flowable Fill
  - Special Provision for Pipe Culvert Replacement of Rehabilitation
  - Special Provision for Lime Modification of Soils
  - Special Provision Copied Note for Steel Reinforcement
  - Special Provision for Epoxy Injection Pressure Crack Sealing
  - Special Provision for Load and Resistance Factor Design
  - Special Provision Copied Note for Hydraulic Cement Concrete
  - Special Provision Copied Note for ARRA Project Requirements
  - Special Provision for Load and Resistance Factor Design (LRFD)

- Other
  - Materials Division Memorandum Number MD-299-07 for Materials Acceptance – October 4, 2007
  - Culvert Scoping Packages to include Location Map, Culvert Specific Scope Sheet, Inspection Report, and Environmental Documents
  - VDOT Water Quality Permit Manual
  - VDOT, Wetland Compensation Manual

2.8 RFP Documents

2.8.1 The documents included in this RFP (collectively the "RFP Documents") consist of the following sections, as well as any attachments and exhibits contained or identified in such sections:

PART 1 – REQUEST FOR PROPOSALS, INSTRUCTIONS FOR OFFERORS
PART 2 – PROJECT TECHNICAL INFORMATION AND
REQUIREMENTS INCLUDING RFP INFORMATION PACKAGE (CD-ROM)
PART 3 – LUMP SUM DESIGN-BUILD AGREEMENT
PART 4 – GENERAL CONDITIONS

PART 5 – DIVISION I AMENDMENTS TO STANDARD SPECIFICATIONS (2002)

2.8.2 Each Offeror shall review the proposed RFP Documents and provide comments regarding any aspect of such documents to which it has any concern, including but not limited to terms that it considers to be ambiguous or to which it takes exception. Such comments will be submitted to VDOT's POC within the time specified in Section 2.6.1 of this RFP. VDOT will review all comments received and, if it deems appropriate, in its sole discretion, may modify such documents through an Addendum. Offerors shall base their Proposals on the RFP Documents included in the latest issued Addendum.

2.8.3 Addenda to the RFP Documents, if any, will be posted on the VDOT Project website. Hard copies of the Addenda on file will be available upon request. If there is any conflict between the electronic format and hard copy of any RFP Document or Addendum, the hard copy on file shall control.

2.9 Deviations from the RFP Documents

2.9.1 If awarded the Design-Build Contract, an Offeror will be obligated to meet all of the requirements of the RFP Documents. If VDOT is willing to modify a requirement, VDOT will issue an Addendum as appropriate, provided, however, that: (a) VDOT shall have the sole discretion as to the acceptability of any such modifications; and (b) no modifications from the requirements of the RFP Documents will be valid unless they are agreed to by VDOT and set forth in an Addendum.

3.0 GENERAL PROCEDURES AND REQUIREMENTS

This Section 3.0 provides general information, procedures and requirements related to the pre-submittal period to be followed by all Offerors.

3.1 Offeror's Pre-Submittal Responsibilities and Representations

3.1.1 Each Offeror shall be solely responsible for examining the RFP Documents, including any Addenda issued to such documents, and any and all conditions which may in any way affect its Proposal or the performance of the work on the Project, including but not limited to:

.1 Examining and carefully studying the RFP Documents, including any Addenda and other information or data identified in the RFP Documents;

.2 Visiting the Project site(s) and becoming familiar with and satisfying itself as to the general, local, and site conditions that may affect the cost, progress, or performance of its work on the Project;

.3 Becoming familiar with and satisfying itself as to all federal, state, and local laws and regulations that may affect the cost, progress, or performance of its work on the Project; and

.4 Determining that the RFP Documents are sufficient to indicate and convey understanding of all terms and conditions for the performance of Offeror's work on the Project.

3.1.2 Each Offeror is responsible for promptly giving VDOT written notice, in accordance with the processes set forth in Section 7.0 below, of: (a) all conflicts, errors, ambiguities, or discrepancies that Offeror discovers in the RFP Documents; and (b) aspects of the RFP Documents that Offeror does not understand. Any failure to do so shall be at Offeror's sole risk, and no relief for error or omission will be provided by VDOT.

3.2 Pre-Proposal Meeting and Site Visits

3.2.1 VDOT will hold a Pre-Proposal meeting of all Offerors on the date set forth in Section 2.6.1 above at VDOT's Central Office in Richmond, Virginia. No more than three (3) representatives from each Offeror (inclusive of any member of Offeror's team) will be allowed to participate in the Pre-Proposal Meeting.

3.3 Acknowledgment of Receipt of RFP, Revisions and Addenda

3.3.1 Offeror shall provide VDOT the Acknowledgement of RFP, Revisions, or Addenda Sheet (C-78), set forth as Attachment 3.3.1, with submission of the proposal, which will serve to acknowledge that Offeror has received this RFP and identify Offeror's representative, who shall be Offeror's single point of contact for the receipt of any documents, notices and addenda associated with this RFP.

4.0 CONTENTS OF PROPOSALS

This Section 4.0 describes the Letter of Submittal, and Price Proposal. The format for the presentation of such information is described in Section 6.0.

Offerors shall be aware that VDOT reserves the right to conduct an independent investigation of any information, including prior experience, identified in a Proposal by contacting project references, accessing public information, contacting independent parties, or any other means. VDOT also reserves the right to request additional information from an Offeror during the evaluation of its own Proposal.

Proposals shall specifically identify any elements that are deemed confidential or proprietary. Offerors shall be prepared upon request to provide justification of why such materials shall not be disclosed under the Virginia Freedom of Information Act in the Code of Virginia. The classification of the entire Proposal document, line item prices, and/or Price Proposals as proprietary or trade secrets is not acceptable.

4.1 Letter of Submittal

4.1.1 Provide a Letter of Submittal on the Offeror's letterhead confirming the official representative and point of contact for the Offeror relative to this RFP. The letter shall identify such individual's

name, title, address, phone and fax numbers, and e-mail addresses and shall be signed by an authorized representative of the Offeror's organization. If the Offeror is not yet a legal entity or is a joint venture, all major participants (including but not limited to the lead contractor and lead designer), or, if applicable, all joint venture partners/members shall sign the letter. All signatures shall be original and signed in ink.

4.1.2 Include evidence that the lead contractor is prequalified with VDOT or proof that the Letter Requesting Prequalification has been submitted to VDOT for consideration.

4.1.3 For team members providing professional services the Offeror should, provide evidence that:

.1 each business entity (other than a sole proprietorship) is registered with the Virginia State Corporation Commission (http://www.state.va.us/scc/division/clk/brg.htm).

.2 any Foreign Professional corporation or Foreign Professional Limited Liability Company possesses a Commonwealth of Virginia Certificate of Authority from the State Corporation Commission.

.3 any business entity (other than a professional corporation, professional limited liability company or sole proprietorship that does not employ other individuals for which licensing is required) is registered in the Commonwealth of Virginia with the Department of Professional & Occupational Regulation (http://www.state.va.us/dpor).

.4 any professional corporation and business entity that has branch offices located in Virginia and which offers or renders any professional services relating to the professions regulated by the Board For Architects, Professional Engineers, Land Surveyors, Certified Interior Designers And Landscape Architects (http://www.dpor.virginia.gov/dporweb/ape_main.cfm) is registered with the Board.

.5 any branch office which offers or renders any professional service has at least one full-time resident professional in responsible charge who is licensed in the profession offered or rendered at each branch.

4.1.4 Identify whether the Offeror will be structured as a corporation, limited liability company, general partnership, joint venture, limited partnership or other form of organization. Identify the team members who will undertake financial responsibility for the Project and describe any liability limitations. If the Offeror is a limited liability company, partnership or joint venture, describe the bonding approach that will be used and the members of such organizations who will have joint and several liability for the performance of the work required for the Project.

If the Offeror is a limited liability company, joint venture or any form of partnership, provide complete copies of the organizational documents that allow, or would allow by the time of contract award, the Offeror to do business in the Commonwealth of Virginia.

4.1.5 Include a letter from a surety or insurance company (with a Best's Rating of A minus and VIII or better by A.M. Best Co.) stating that the Offeror is capable of obtaining a performance and payment bond in the amount no less than the current estimated contract value referenced in Section 2.5.1, which bonds will cover the Project and any warranty periods. The letter from a surety shall include the language in a manner similar to the notation provided below.

"As surety for the above named Contractor, XYZ Company with an A.M. Best Rating of A+ XV will furnish a 100% Performance Bond and 100% Labor and Materials Payment Bond in the amount of the anticipated cost of construction, and said bonds will cover the Project and any warranty periods on behalf of the Contractor, in the event that such firm be the successful bidder and enter into a contract for this Project."

4.1.6 Pursuant to Section 8.2.1, declare that the offer represented by the Proposal will remain in full force and effect for one hundred twenty (120) days after the date the Technical Proposal is actually submitted to VDOT ("Letter of Submittal /Price Proposal/Escrow due date").

4.1.7 Please indicate, by executing and returning the attached Certification Regarding Debarment Forms, set forth as Attachments 4.1.7(a) and 4.1.7(b), if Offeror, or any subconsultant, subcontractor, or any other person or entity identified as a member of Offeror's organization associated therewith in the capacity of owner, partner, director, officer or any position involving the administration of Federal or State funds:

.1 Is currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any federal agency.

.2 Has been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past 3 years.

.3 Has a proposed debarment pending; or has been indicted, convicted, or had a civil judgment rendered against it or them by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

For any condition noted, indicate to whom it applies, initiating agency, and dates of action. Providing false information may result in federal criminal prosecution or administrative sanctions. For the avoidance of doubt, Attachments 4.1.7(a) and 4.1.7(b) shall be separately completed and executed by Offeror and all subconsultants and subcontractors.

4.1.8 Offeror should provide the identity of and information about the Key Personnel listed below. This information is to be provided on the Resume Form attached hereto as Attachment 4.1.8.

.1 **Design-Build Project Manager**– This individual shall be responsible for the overall Project design, construction quality management and contract administration for the Project.

.2 **Design Manager** – This individual shall be responsible for coordinating the individual design disciplines and ensuring the overall Project design is in conformance with the Contract Documents. The Design Manager shall be responsible for establishing and overseeing a QA/QC program for all pertinent disciplines involved in the design of the Project, including, but not limited to, review of design, working plans, specifications, and constructability for the Project.

Licensure/Certifications/Training Requirements: This individual shall be a registered, licensed, Professional Engineer in the Commonwealth of Virginia.

.3 **Construction Manager** – This individual, who will be required to be assigned to Project full time for the duration of construction operations, shall be responsible for managing the construction process to include all quality control (QC) activities to ensure the materials used and work performed meet contract requirements and the "approved for construction" plans and specifications.

Licensure/Certifications/Training Requirements: This individual shall hold a Virginia Department of Conservation and Recreation (DCR) Responsible Land Disturber (RLD) Certification and a VDOT Erosion and Sediment Control Contractor Certification (ESCCC) prior to the commencement of construction.

.4 **Quality Assurance Manager (QAM) –** This individual 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 Contractor's QC program. The QAM will ensure that all work and materials, testing, and sampling are performed in conformance with the contract requirements, and the "approved for construction" plans and specifications.

Licensure/Certifications/Training Requirements: This individual must be a registered, licensed, Professional Engineer in the Commonwealth of Virginia.

4.1.9 Project Controls.

Proposal Schedule, which should include: (i) a narrative description of the proposed Schedule; (ii) project activities with a maximum duration of one (1) month, (iii) logic relationships, durations, critical path based on the longest path, interim milestones, and (iv) permitting, and design review by VDOT. The Proposal Schedule to be included with the Proposal may be developed using Microsoft Office Project, Excel or an equivalent software package wherein the information is conveyed using logic relationships and a gantt chart. The Offeror shall provide the proposal schedule's source document in electronic format, e.g. .mpp, .xls, etc., on a CD-ROM.

4.2 Price Proposal

4.2.1 Offeror shall specify, on the Form set forth in Attachment 4.2.1 hereto, the Proposal Price, in both numbers and words. The price shall be broken out into the associated cost as for each project

activity set forth in the Proposal Schedule required by Section 4.1.9 above. Offerors are advised that the prices set forth above shall be considered full compensation to Offeror for all design services, labor, material, equipment, permits, taxes, overhead, profit and any other expenses of any kind applicable to the work to be undertaken by Offeror associated with such work, including but not limited to any escalation, extended site overhead, or acceleration.

4.2.2 The Price Proposal is to be based upon the Proposal Schedule submitted in Section 4.1.9.

4.2.3 Offeror shall provide a Schedule of Values for the Proposal Price. This schedule of values shall identify the quantities and costs of each project activity identified in the Proposal Schedule required by Section 4.1.9 above. The value associated with each activity shall be inclusive of all direct and indirect costs, overhead, profit and any other expenses of any kind. The values and quantities shall be clearly supported by the escrowed pricing documents.

4.2.4 Offeror shall submit, for the Proposal Price, a proposed monthly payment schedule showing the anticipated schedule on which funds will be required and the associated dollar value for the work. The value of the monthly payment schedule shall correlate with the Proposal Schedule.

4.2.5 Offeror shall provide the Proposal Guaranty (C-24) required by Section 102.07 of Part 5, Division I Amendments to Section 100 of the VDOT Road and Bridge Specifications. If the Price Proposal Guarantee is not submitted with the Price Proposal, than the Offeror shall be deemed non-responsive and will be disqualified from participating in the Design-Build procurement for this project.

4.2.6 Offeror shall provide the Sworn Statement Forms (C-104, C-105), as set forth in Attachments 4.2.6(a) and 4.2.6(b) respectively.

4.2.7 Offeror shall provide the required information set forth in Part 3, Section 6.3, Adjustments to Steel, Asphalt, and Fuel Prices.

5.0 PRICE PROPOSAL EVALUTION FACTORS

Price Proposals will be scored as follows:

VDOT will open and read the Price Proposals publicly. **THE RESPONSIVE AND RESPONSIBLE OFFEROR SUBMITTING THE LOWEST PRICE PROPOSAL FOR THE PROJECT WILL BE RECOMMENDED FOR AWARD.**

6.0 PROPOSAL SUBMITTAL REQUIREMENTS

This Section 6 describes the requirements that all Offerors must satisfy in submitting Proposals. Failure of any Offeror to submit its Proposal in accordance with this RFP will result in rejection of its Proposal.

6.1 Due Date, Time and Location

6.1.1 All Proposals must be received by the due date and time set forth in Section 2.6.1 ("Letter of Submittal/Price Proposal/Escrow Documents Due Date"). Submissions must be delivered to the following individual at the following address:

US Postal Service regular mail, send to:

Mr. W. W. Barker
Administrative Services Division
Virginia Department of Transportation
1401 E. Broad Street
Old Highway Building, 4th Floor
Richmond, VA 23219

Hand delivery, US Postal Service express mail, or private delivery service FEDEX, UPS, etc…), send to:

Mr. W. W. Barker
Administrative Services Division
Virginia Department of Transportation
1st Floor Reception Desk
1201 E. Broad Street
Richmond, VA 23219

Neither fax nor email submissions will be accepted. Offerors are responsible for effecting delivery by the deadline above, and late submissions will be rejected without opening, consideration, or evaluation, and will be returned unopened to the sender. VDOT accepts no responsibility for misdirected or lost proposals.

6.2 Format

If VDOT determines that a Letter of Submittal/Price Proposal does not comply with or satisfy requirements of this section VDOT may find such Proposal to be non-responsive.

6.2.1 A sealed parcel containing the Letter of Submittal, a sealed parcel containing the Price Proposal, and sealed parcel containing the Escrow Documents shall be submitted on the date designated in Section 2.6.1. If the sealed Letter of Submittal, Price Proposal, and Escrow Documents are not submitted on the above specified date, then the Offeror shall be deemed non-responsive and will be disqualified from participating in the design-build procurement for this Project. Parcels shall be clearly marked to identify the Project, the Offeror and identify the contents as Letter of Submittal, Price Proposal, and Escrow Documents.

6.2.2 Each Offeror shall deliver one (1) paper copy of the Letter of Submittal which must bear an original signature, and one CD-ROM containing the entire Letter of Submittal in a single cohesive Adobe PDF file.

The Letter of Submittal shall be bound and contained in a single volume if practical, with an identity on its front cover. If three ring binders are used to bind a proposal they should be a locking type three ring binder.

- The Letter of Submittal shall be:
  - Typed on one (1) side only.
  - Separated by numbered tabs with sections corresponding to the order set forth in Section 4.

- Except for charts, schedules, exhibits, and other illustrative and graphical information, all information shall be prepared on 8.5" x 11" white paper.

- Charts, schedules, exhibits and other illustrative and graphical information may be on 11" x 17" paper, but must be folded to 8.5" X 11".

- All printing, except for the front cover of the Letter of Submittal and any appendices, must be
  - Times New Roman, with a font of 12-point.
  - Times New Roman 10 point font may be used for filling out information on the Key Personnel Resume Form.
  - Include page number references in the lower right hand corner.

6.2.3 Price Proposals shall be presented in hard copy, with only one copy being submitted.

7.0 QUESTIONS AND CLARIFICATIONS

7.0.1 All questions and requests for clarification regarding this RFP shall be submitted in writing to VDOT's POC. No requests for additional information, clarification or any other communication should be directed to any other individual.

7.0.2 All questions or requests for clarification must be submitted by the due date set forth in Section 2.6.1 above. Questions or clarifications requested after such time will not be answered, unless VDOT elects, in its sole discretion, to do so.

7.0.3 VDOT's responses to questions or requests for clarification shall be in writing, and may be accomplished by an Addendum to this RFP. VDOT will not be bound by any oral communications, or written interpretations or clarifications that are not set forth in an Addendum.

7.0.4 VDOT, at its sole discretion, shall have the right to seek clarifications from any Offeror to fully understand information contained in the Proposal and to help evaluate and rank the Offerors.

8.0 NEGOTIATION AND AWARD OF CONTRACT

VDOT has determined that Award of Contract will be made in the following manner:

8.1 Negotiations and Award of Contract

8.1.1 VDOT will review the Proposal submitted by the Offeror with the lowest Price Proposal. If the Proposal is responsive and the price proposal is within VDOT's budget for design and construction services, then VDOT will issue a Notice of Intent to Award to the selected Design-Builder.

8.1.2 Pursuant to 23 CFR 636.513, VDOT may conduct limited negotiations with the selected Design-Builder to clarify any remaining issues regarding scope, schedule, financing or any other information provided by the Selected Design-Builder.

8.1.3 Pursuant to 23 CFR 636.404, if the Proposal Price submitted by the Offeror with the lowest Price Proposal is not within VDOT's budget for design and construction, VDOT may establish a competitive range among the Offerors who have submitted a responsive Proposal.

8.1.4 Pursuant to 23 CFR 636.402, 636.404, and 636.406, prior to VDOT establishing a competitive range, VDOT may hold communications with only those Offeror's whose exclusion from or inclusion in, the competitive range is uncertain. Communications will (a) enhance VDOT's understanding of Proposals; (b) allow reasonable interpretation of the Proposal; or (c) facilitate VDOT's evaluation process.

8.1.5 Pursuant to 23 CFR 636.404, after VDOT establishes the competitive range, VDOT will notify any Offeror whose Proposal is no longer considered to be included in the competitive range.

8.1.6 Pursuant to 23 CFR 636.506, 636.507, and 636.508, VDOT will hold discussions with all Offerors in the competitive range. Offerors are advised that VDOT may, in its reasonable discretion, determine that only one Offeror is in the competitive range.

8.1.7 Pursuant to 23 CFR 636.510, VDOT may determine to further narrow the competitive range once discussions have begun. At which point, VDOT will notify any Offeror whose Proposal is no longer considered in the competitive range.

8.1.8 Pursuant to 23 CFR 636.509, at the conclusion of discussions, VDOT, will request all Offeror(s) in the competitive range to submit a final proposal revision, also called Best and Final Offer (BAFO). Thus, regardless of the length or number of discussions, there will be only one request for a revised proposal (*i.e.*, only one BAFO).

8.1.9 Pursuant to 23 CFR 636.512, VDOT will review the final proposals in accordance with the review and selection criteria and complete a final ranking of the Offerors in the competitive range, then VDOT will issue a Notice of Intent to Award to the Selected Design-Builder.

8.1.10 Pursuant to 23 CFR 636.513, VDOT may conduct limited negotiations with the Selected Design-Builder to clarify any remaining issues regarding scope, schedule, financing or any other information provided by the Selected Design-Builder.

8.2 Proposal Validity

8.2.1 The offer represented by each Proposal will remain in full force and effect for one hundred twenty (120) days after the Proposal Due Date defined in Section 2.6.1. If Award of Contract has not been made by the Commonwealth Transportation Board within one hundred twenty (120) days after the Proposal Due Date, each Offeror that has not previously agreed to an extension of such deadline shall have the right to withdraw its Proposal.

8.3 Contract Execution and Notice to Proceed

8.3.1 Within 15 days of Notice of Intent to Award, Successful Offeror shall deliver to VDOT all pertinent documents in accordance with Section 103 of the Division I Amendments to the Standard Specifications. Upon Award of Contract, VDOT will deliver an executed copy of the Design-Build Contract to the Successful Offeror, who shall execute and deliver such copy to VDOT within seven (7) days of receipt.

8.3.2 VDOT reserves the right to issue Notice to Proceed within fifteen (15) days after execution of the Design-Build Contract.

9.0 RIGHTS AND OBLIGATIONS OF VDOT

9.1 Reservation of Rights

In connection with this procurement, VDOT reserves to itself all rights (which rights shall be exercisable by VDOT in its sole discretion) available to it under applicable law, including without limitation, the following, with or without cause and with or without notice:

9.1.1 The right to cancel, withdraw, postpone or extend this RFP in whole or in part at any time prior to the execution by VDOT of the Design-Build Contract, without incurring any obligations or liabilities.

9.1.2 The right to issue a new RFP.

9.1.3 The right to reject any and all submittals, responses and proposals received at any time.

9.1.4 The right to modify all dates set or projected in this RFP.

9.1.5 The right to terminate evaluations of responses received at any time.

9.1.6 The right to suspend and terminate the procurement process for the Project, at any time.

9.1.7 The right to revise and modify, at any time prior to the Proposal Submittal Date, factors it will consider in evaluating responses to this RFP and to otherwise revise its evaluation methodology.

9.1.8 The right to waive or permit corrections to data submitted with any response to this RFP until such time as VDOT declares in writing that a particular stage or phase of its review of the responses to this RFP has been completed and closed.

9.1.9 The right to issue addenda, supplements, and modifications to this RFP, including but not limited to modifications of evaluation criteria or methodology and weighting of evaluation criteria.

9.1.10 The right to permit submittal of addenda and supplements to data previously provided with any response to this RFP until such time as VDOT declares in writing that a particular stage or phase of its review of the responses to this RFP has been completed and closed.

9.1.11 The right to hold meetings and conduct discussions and correspondence with one or more of the Offerors responding to this RFP to seek an improved understanding and evaluation of the responses to this RFP.

9.1.12 The right to seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to the RFP, including the right to seek clarifications from Offerors.

9.1.13 The right to permit Offerors to add or delete firms and/or Key Personnel until such time as VDOT declares in writing that a particular stage or phase of its review has been completed and closed.

9.1.14 The right to add or delete Offeror responsibilities from the information contained in this RFP.

9.1.15 The right to appoint and change appointees of the Evaluation Team as applicable.

9.1.16 The right to use assistance of outside technical and legal experts and consultants in the evaluation process.

9.1.17 The right to waive deficiencies, informalities and irregularities in a Proposal, accept and review a non-conforming Proposal or seek clarifications or supplements to a Proposal.

9.1.18 The right to disqualify any Offeror that changes its submittal without VDOT approval.

9.1.19 The right to change the method of award or the evaluation criteria and scoring at any time prior to submission of the Proposals.

9.1.20 The right to respond to all, some, or none of the inquiries, questions and/or request for clarifications received relative to the RFP.

9.1.21 The right to disqualify and/or cease negotiations with an Offeror if VDOT, in its sole discretion, determines that the Offeror's Price Proposal contains unbalanced pricing among the specific portions of work identified therein.

9.1.22 The right to delete one or more of the structures identified in the scopes of work attached in the RFP Information Package CD-ROM.

9.2 No Assumption of Liability

9.2.1 VDOT assumes no obligations, responsibilities, and liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFP. All such costs shall be borne solely by each Offeror and its team members.

9.2.2 In no event shall VDOT be bound by, or liable for, any obligations with respect to the Project until such time (if at all) a contract, in form and substance satisfactory to VDOT, has been executed and authorized by VDOT and, then, only to the extent set forth therein.

10.0 PROTESTS

This Section simply summarizes protest remedies available with respect to the provisions of the Code of Virginia that are relevant to protests of awards or decisions to award Design-Build Contracts by VDOT. This section does not purport to be a complete statement of those provisions and is qualified in its entirety by reference to the actual provisions themselves.

In accordance with §2.2-4360, of the *Code of Virginia*, if an unsuccessful Offeror wishes to protest the award or decision to award a contract, such Offeror must submit a protest in writing to VDOT's POC no later than ten (10) calendar days after the award or the announcement posting the decision to award, whichever occurs first. The written protest shall include the basis for the protest and the relief sought. No protest shall lie for a claim that the selected Offeror is not a responsible bidder.

The protesting Offeror shall concurrently file a copy of its notice of protest with all other Offerors.

Public notice of the award or the announcement of the decision to award shall be given by the public body in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. However, if the protest of any Offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 2.2-4342, of the *Code of Virginia*, then the time within which the protest must be submitted

shall expire ten (10) calendar days after those records are available for inspection by such Offeror under § 2.2-4342, of the *Code of Virginia*.

VDOT shall issue a decision in writing within ten (10) calendar days of the receipt of any protest stating the reasons for the action taken. This decision shall be final unless the Offeror appeals within ten (10) calendar days of receipt of the written decision, by instituting legal action in accordance with § 2.2-4364, of the *Code of Virginia.*

Pursuant to § 2.2-4362, of the *Code of Virginia*, an award need not be delayed for the period allowed a bidder or Offeror to protest, but in the event of a timely protest, no further action to award the Contract will be taken unless there is a written determination by the Commissioner, or his designee, that proceeding without delay is necessary to protect the public interest or unless the Design-Build Proposal would expire. Further, pursuant to §2,2-4361, of the *Code of Virginia*, pending a final determination of a protest or appeal, the validity of the contract awarded and accepted in good faith shall not be affected by the fact that a protest or appeal has been filed.

11.0 MISCELLANEOUS

11.1 Virginia Freedom of Information Act

11.1.1 All proposals submitted to VDOT become the property of VDOT and are subject to the disclosure requirements of Section 2.2-4342 of the Virginia Public Procurement Act and the Virginia Freedom of Information Act (FOIA) (Section 2.2-3700 et seq.). Offerors are advised to familiarize themselves with the provisions of each Act referenced herein to ensure that documents identified as confidential will not be subject to disclosure under FOIA. In no event shall the Commonwealth, the Commonwealth Transportation Commissioner, or VDOT be liable to an Offeror for the disclosure of all or a portion of a proposal submitted pursuant to this request.

11.1.2 If a responding Offeror has special concerns about information which it desires to make available to VDOT but which it believes constitutes a trade secret, proprietary information, or other confidential information exempted from disclosure, such responding Offeror should specifically and conspicuously designate that information as such in its Proposal and state in writing why protection of that information is needed. The Offeror should make a written request to the Director of the Innovative Project Delivery Division. The written request shall:

.1 Invoke such exemption upon the submission of the materials for which protection is sought.

.2 Identify the specific data or other materials for which the protection is sought.

.3 State the reasons why the protection is necessary.

.4 Indicate that a similar process with the appropriate officials of the affected local jurisdictions is or will be conducted. Failure to take such precautions prior to submission of a proposal may subject confidential information to disclosure under the Virginia FOIA.

11.1.3 Blanket designations that do not identify the specific information shall not be acceptable and may be cause for VDOT to treat the entire Proposal as public information. Nothing contained in this provision shall modify or amend requirements and obligations imposed on VDOT by applicable law, and the applicable law(s) shall control in the event of a conflict between the procedures described above and any applicable law(s).

11.1.4 In the event VDOT receives a request for public disclosure of all or any portion of a proposal identified as confidential, VDOT will attempt to notify the Offeror of the request, providing an opportunity for such Offeror to assert, in writing, claimed exemptions under the FOIA or other Commonwealth law. VDOT will come to its own determination whether or not the requested materials are exempt from disclosure. In the event VDOT elects to disclose the requested materials, it will provide the Offeror advance notice of its intent to disclose.

11.1.5 Because of the confidential nature of the evaluation and negotiation process associated with this Project, and to preserve the propriety of each Offeror's Proposal, it is VDOT's intention, subject to applicable law, not to consider a request for disclosure until after VDOT's issuance of a Notice of Intent to Award. Offerors are on notice that once a Design-Build Contract is executed, some or all of the information submitted in the Proposal may lose its protection under the applicable laws of the Commonwealth.

11.2 Conflict of Interest

11.2.1 Offerors shall require its proposed team members to identify potential conflicts of interest (real or perceived) relative to this procurement. Offerors are notified that prior or existing contractual obligations between a company and VDOT relative to this Project or VDOT's design-build program may present a conflict of interest. If a potential conflict of interest is identified, the Offeror shall present the pertinent information to VDOT's POC.

VDOT, in its sole discretion, will make a determination relative to potential organizational conflicts of interest or a real or perceived competitive advantage, and its ability to mitigate such a conflict. An organization determined to have a conflict of interest or competitive advantage relative to this procurement that cannot be mitigated, shall not be allowed to participate as a design-build team member for the Project. Failure to abide by VDOT's determination in this matter may result in a proposal being declared non-responsive.

11.2.2 Conflicts of interest are described in state and federal law, and may include the following situations:

1. An organization or individual hired by VDOT to provide assistance in development of instructions to Offerors or evaluation criteria for the Project.

2. An organization or individual hired by VDOT to provide assistance in development of instructions to Offerors or evaluation criteria as part of the programmatic guidance or procurement documents for VDOT's design-build program, and as a result has a unique competitive advantage relative to the Project.

3. An organization or individual with a present or former contract with VDOT to prepare planning, environmental, engineering, or technical work product for the Project, and has a potential competitive advantage because such work product is not available to all potential Offerors in a timely manner prior to the procurement process.

11.2.3 VDOT reserves the right, in its sole discretion, to make determinations relative to potential conflicts of interest on a Project specific basis.

11.2.4 VDOT may, in its sole discretion, determine that a conflict of interest or a real or perceived competitive advantage may be mitigated by disclosing all or a portion of the work product produced by the organization or individual subject to review under this section. If documents have been designated as proprietary by Virginia law, the Offeror will be given the opportunity to waive this protection from disclosure. If Offeror elects not to disclose, Offeror may be declared non-responsive.

11.3 Ethics in Public Contracting Act

VDOT may, in its sole discretion, disqualify the Offeror from further consideration for the award of the Design-Build Contract if it is found after due notice and examination by VDOT that there is a violation of the Ethics in Public Contracting Act, Section 2.2-4367 of the Virginia Code, or any similar statute involving the Offeror in the procurement of the contract.

11.4 Requirement to Keep Team Intact

11.4.1 The team proposed by Offeror, including but not limited to Key Personnel, and other organizations and individuals identified pursuant to Sections 4.1.9 above, shall remain on Offeror's team for the duration of the procurement process and, if the Offeror is awarded the Design-Build Contract, the duration of the Design-Build Contract. If extraordinary circumstances require a proposed change, it must be submitted in writing to VDOT's POC, who, at his sole discretion, will determine whether to authorize a change. Unauthorized changes to the Offeror's team at any time during the procurement process may result in the elimination of the Offeror from further consideration.

11.5 Disadvantaged Business Enterprises

11.5.1 It is the policy of VDOT that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, shall have every opportunity to participate in the performance of construction/consultant contracts. **The DBE contract goal for this procurement is zero percent (0%).** Offerors are encouraged to take all necessary and reasonable steps to ensure that DBEs have

every opportunity to compete for and perform services on contracts, including participation in any subsequent supplemental contracts. If a portion of the work on the Project is to be subcontracted out, Offerors must seek out and consider DBEs as potential subcontractors. DBEs must be contacted to solicit their interest, capability and qualifications. Any agreement between an Offeror and a DBE whereby the DBE promises not to provide services to any other Offeror or other contractors/consultants is prohibited.

11.5.2 If a DBE is not certified, the DBE must become certified with the Virginia Department of Minority Business Enterprises (VDMBE) prior to the Proposal Due Date. If the DBE is a prime, the firm will receive full credit for the planned involvement of their own workforce, as well as the work they commit to be performed by DBE subcontractors. DBE primes are encouraged to make the same outreach. DBE credit will be awarded only for work actually performed by DBEs themselves. When a DBE prime or subcontractor subcontracts work to another firm, the work counts toward DBE goals only if the other firm itself is a DBE. A DBE must perform or exercise responsibility for at least 30% of the total cost of its contract with its own workforce.

11.5.3 DBE certification entitles a firm to participate in VDOT's DBE Program. However, it does not guarantee that the firm will obtain VDOT work nor does it attest to the firm's abilities to perform any particular type of work.

11.5.4 When preparing bids for projects with DBE goals, VDOT encourages prospective bidders to seek the assistance of the following offices;

Virginia Department of Minority Business Enterprises
111 East Main Street, Suite 300
Richmond, VA 23219
Phone: (804) 786-2260
Toll Free (VA Only) 1-800-223-0671
www.dmbe.virginia.gov

Metropolitan Washington Airports Authority
Equal Opportunity Programs Department
1 Aviation Circle
Washington, DC 20001
Phone: (703) 417-8625
www.metwashairports.com

Contractors are also encouraged to seek help from the VDOT Districts Equal Employment Opportunity ("EEO") Offices, Central Office Civil Rights Office and the VDOT Business Opportunity and Workforce Development ("BOWD") Center as listed below:

VDOT Central Office
1221 East Broad Street
Richmond, VA 23219

Lynchburg District
4219 Campbell Avenue
Lynchburg, VA 24506

(804) 786-2085

Bristol District
870 Bonham Drive
Bristol, VA 24203
(276) 669-9907

Culpeper District
1601 Orange Road
Culpeper, VA 22701
(540) 829-7523

Fredericksburg District
87 Deacon Road
Fredericksburg, VA 22405
(540) 899-4562

Hampton Roads District
1700 N. Main Street
Suffolk, VA 23434
(757) 925-2519

BOWD
1602 Rolling Hills Drive
Suite 110
Richmond, VA 23229
Phone: (804) 662-9555

(434) 856-8168

Northern Virginia District
14685 Avion Parkway
Chantilly, VA 20151
(703) 383-2341

Richmond District
2430 Pineforest Drive
Colonial Heights, VA 23834
(804) 524-6091

Salem District
731 Harrison Avenue
Salem, VA 24153
(540) 387-5453

Staunton District
811 Commerce Road
Staunton, VA 24401
(540) 332-7888

The following informational websites may also be of assistance:

www.virginiadot.org/business/bu_bizDev.asp

www.virginiadot.org/business/bu-civil-rights-home.asp

11.5.5 UPC 92700 and 92703 has federal funding. In accordance with the Governor's Executive Order No. 33, VDOT requires utilization of Small, Women and Minority ("SWaM") Businesses to participate in the performance of state funded projects. VDOT also encourages the utilization of SWaM Firms to participate in the performance of federally funded Projects. A list of the DMBE certified SWaM firms is maintained on the DMBE web site (http://www.dmbe.state.va.us/) under the SWaM Vendor Directory link. Offerors are encouraged to take all necessary and reasonable steps to ensure that SWaM firms have the maximum opportunity to compete for and perform services in the design-build contract. If the Offeror intends to subcontract a portion of the services on the Project, the Offeror is encouraged to seek out and consider SWaM firms as potential subconsultants. The Offeror is encouraged to contact SWaM firms to solicit their interest, capability and qualifications. Any

agreement between an Offeror and a SWaM firm whereby the SWaM firm promises not to provide services to other Offerors is prohibited.

11.6 Trainee and Apprenticeship Participation

11.6.1 VDOT will not require trainee and apprenticeship participation for this Project. Thus, the on-the-job trainee goal for this Project is zero (0) individuals.

11.7 Escrowed Proposal Documents

11.7.1 Scope

Pursuant to Section 11.7.5.1 below, each Offeror shall submit to the individual set forth in Section 6.1.1 above, on the Price Proposal Submission Date, one copy of all documentary information generated in preparation of its Proposal. This material is hereinafter referred to as Escrow Proposal Documents ("EPDs"). The EPDs will be held in a secure location at the VDOT Central Office until the Successful Offeror is determined. The EPDs of the Successful Offeror will be transferred to and then held in escrow at the banking institution specified in this Section 11.7.6. EPDs of all other Offerors will be returned to the Offerors following the execution of the Design-Build Contract.

11.7.2 Ownership

.1 The EPDs are, and shall always remain, the property of the Offeror, subject to joint review by VDOT and the Offeror, as provided herein.

.2 VDOT stipulates and expressly acknowledges that the EPDs constitute trade secrets. This acknowledgement is based on VDOT's express understanding that the information contained in the EPDs is not known outside Offeror's business, is known only to a limited extent and only by a limited number of employees of the Offeror, is safeguarded while in Offeror's possession, is extremely valuable to Offeror and could be extremely valuable to Offeror's competitors by virtue of its reflecting Offeror's contemplated techniques of design and construction. VDOT further acknowledges that Offeror expended substantial sums of money in developing the information included in the EPDs and further acknowledges that it would be difficult for a competitor to replicate the information contained therein. VDOT further acknowledges that the EPDs and the information contained therein are made available to VDOT only because such action is an express prerequisite to Award of Contract. VDOT further acknowledges that the EPDs include a compilation of the information used in Offeror's business, intended to give Offeror an opportunity to obtain an advantage over competitors who do not know of or use the contents of the documentation.

11.7.3 Purpose

EPDs may be used to assist in the negotiation of price adjustments and change orders and in the settlement of disputes and claims. They will not be used for pre-award evaluation of the Offeror's

anticipated methods of construction or to assess the Offeror's qualifications for performing the Work or the prices submitted.

11.7.4 Format and Contents

.1 Offerors may submit EPDs in their usual cost estimating format provided that all information is clearly presented and ascertainable. It is not the intention of this Section 11.7 to cause the Offeror extra work during the preparation of the Proposal, but to ensure that the EPDs will be adequate to enable complete understanding and proper interpretation for their intended use. The EPDs shall be submitted in the language of the Specifications (i.e., English).

.2 It is required that the EPDs clearly itemize the estimated costs of performing the work of each item contained in Offeror’s schedule of values. Cost items shall be separated into sub-items as required to present a detailed cost estimate and allow a detailed cost review. The EPDs shall include: estimates for costs of the design professionals and consultants itemized by discipline both for development of the design, all quantity take-offs, crew size and shifts, equipment, calculations of rates of production and progress, copies of quotes from subcontractors and suppliers, and memoranda, narratives, drawings and sketches showing site or work area layouts and equipment, add/deduct sheets, geotechnical reviews and consultant reports, and all other information used by the Offeror to arrive at the prices contained in the Proposal. Estimated costs shall be broken down into estimate categories for each bid items such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials and subcontract costs as appropriate. Plant and equipment, indirect costs, bond rates and calculations, insurance costs and financing should be detailed. The Offeror's allocation of indirect costs, contingencies, and mark-up shall be identified.

.3 All costs shall be identified. For bid items amounting to less than $10,000, estimated unit costs are acceptable without a detailed cost estimate, provided that labor, equipment, materials and subcontracts, as applicable, are included, and provided that indirect costs, contingencies, and mark-up, as applicable, are allocated.

.4 RFP Documents provided by VDOT should not be included in the EPDs unless needed to comply with these requirements.

11.7.5 Submittal

.1 The EPDs shall be submitted in a sealed container to the individual set forth in Section 6.1.1 above, which container shall be clearly marked on the outside with the Offeror's name, date of submittal, Project name, and the words "Escrow Proposal Documents."

.2 Prior to Award of Contract, EPDs of the Successful Offeror will be transferred to the banking institution referenced in Section 11.7.6 and will be examined, organized, and inventoried by representatives of VDOT, together with members of the Offeror's staff who are knowledgeable in how the Proposal was prepared. This examination is to ensure that the EPDs are legible and complete. It will not include review of, and will not constitute approval of proposed construction

methods, estimating assumptions, or interpretations of any RFP Documents or the Design-Build Contract. Examination will not alter any condition or term of the Design-Build Contract.

.3 If all the documents required by this Section 11.7 have not been included in the original submittal, additional documentation may be submitted, at VDOT's discretion, prior to Award of Contract.

.4 If the Design-Build Contract is not awarded to the Successful Offeror, the EPDs of the next Offeror to be considered for award shall be processed as described above.

.5 Timely submission of complete EPDs is an essential element of the Offeror's responsibility and a prerequisite to Award of Contract.

.6 If any Offeror's proposal is based upon subcontracting any part of the work, each subcontractor whose total subcontract price exceeds ten percent (10%) of the Total Proposal Price proposed by the Offeror, shall provide separate Escrow Documents to be included with those of the Offeror. Such documents shall be opened and examined in the same manner and at the same time as the examination described above for the highest-scored Offeror.

.7 If the Offeror wishes to subcontract any portion of the work after Award of Contract, VDOT retains the right to require the Offeror to submit Escrow Documents from the subcontractor before the subcontract is approved.

11.7.6 Storage

The Successful Offeror's EPDs shall be stored at SunTrust Bank at the following address:

SunTrust Bank
ATTN: Emily J. Hare
919 East Main Street
7th Floor
Richmond, Virginia 23219
(804) 782-5400

The cost for storing the EPDs will be paid by the Successful Offeror.

11.7.7 Examination

.1 The EPDs shall be examined by VDOT and the Offeror, at any time deemed necessary by VDOT.

.2 VDOT may delegate review of EPDs to members of VDOT's staff or consultants. The foregoing notwithstanding, the EPDs and information contained therein may be used in the

resolution of any claim or dispute before any entity selected to resolve disputes and in any litigation or arbitration commenced hereunder. No other person shall have access to the EPDs.

.3 Access to the documents will take place in the presence of duly designated representatives of both VDOT and the Offeror, except that, if the Offeror refuses to be present or to cooperate in any other way in the review of the documents, VDOT may upon notice to the Offeror, review such documents without the Offeror being present.

11.7.8 Final Disposition and Return of EPDs

.1 The EPDs of the unsuccessful Offerors will be returned after the Design-Build Contract has been executed and delivered, after VDOT rejects all of the Proposals or after VDOT terminates its procurement.

.2 The EPDs of the Successful Offeror will be returned to the Offeror at such time as the Design-Build Contract has been completed, final payment has been made, and all claims or disputes arising under or related to the Design-Build Contract have been fully and finally resolved and/or adjudicated.

11.7.9 Execution of Escrow Agreement

The Successful Offeror, as a condition of Award of Contract, agrees to execute the Escrow Agreement in the form set forth in Attachment 11.7.9.

11.8 Administrative Requirements

In addition to the specific submittal requirements set forth in Sections 3.0 and 4.0 above, all Offerors shall comply with the following:

11.8.1 All business entities, except for sole proprietorships, are required to be registered with the Virginia State Corporation Commission (a Business Registration Guide is available on the Internet at http://www.state.va.us/scc/division/clk/brg.htm). Foreign Professional Corporations and Foreign Professional Limited Liability Companies must possess a Commonwealth of Virginia Certificate of Authority from the State Corporation Commission to render professional services. Any business entity other than a professional corporation, professional limited liability company or sole proprietorship must be registered in the Commonwealth of Virginia with the Department of Professional & Occupational Regulation, Virginia Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects (http://www.state.va.us/dpor/ape_regs.htm). Board regulations require that all professional corporations and business entities that have branch offices located in Virginia which offer or render any professional services relating to the professions regulated by the Board be registered with the Board. Registration involves completing the required application and submitting the required registration fee for each and every branch office location in the Commonwealth. All branch offices that offer or render any professional service must have at least one full-time resident professional in responsible charge who is licensed in the profession offered or

rendered at each branch. All firms involved that are to provide professional services must meet this criteria prior to at the time of submission of the Proposal.

11.8.2 In accordance with VA Code § 2.2-4311.1, the successful Offeror will be required to certify that it does not, and to agree that it shall not, during the performance of the Design-Build Contract, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986. In addition, the Offeror's subcontractors (at all tiers) will be required to provide the same certification and agreement in their subcontract agreements.

11.8.3 All Offerors must have internal control systems in place that meet federal requirements for accounting. These systems must comply with requirements of 48 CFR 31, "Federal Acquisition Regulations, Contract Cost Principles and Procedures," and 23 CFR 172, "Administration of Negotiated Contracts."

11.8.4 VDOT assures compliance with Title VI of the Civil Rights Act of 1964, as amended. The consultant and all subconsultants selected for this Project will be required to submit a Title VI Evaluation Report (EEO-D2) when requested by the Department to respond to the RFP. This requirement applies to all consulting firms with fifteen (15) or more employees.

11.8.5 VDOT does not discriminate against an offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment. This requirement includes all applicable VDOT Road and Bridge Specifications.

11.8.6 Give names and detailed addresses of all affiliated and/or subsidiary companies. Indicate which companies are subsidiaries. If a situation arises in responding to this questionnaire where you are unsure whether another firm is or is not an affiliate, doubt should be resolved in favor of affiliation and the firm should be listed accordingly. An affiliate shall be considered as any business entity which is closely associated to another business entity so that one entity controls or has power to control the other entity either directly or indirectly; or, when a third party has the power to control or controls both; or where one business entity has been so closely allied with another business entity through an established course of dealings, including but not limited to the lending of financial wherewithal, engaging in joint ventures, etc. as to cause a public perception that the two firms are one entity. Firms which are owned by a holding company or a third party, but otherwise meet the above conditions and do not have interlocking directorships or joint officers serving, are not considered to be affiliates**.**

11.8.7 Offerors shall note and comply with the requirements relative to the eVA Business-to-Government Vendor system. The eVA Internet electronic procurement solution, web site portal (http://www.eva.state.va.us), streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution through either eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. For more detail information regarding eVA,

registrations, fee schedule, and transaction fee, use the website link: http://www.eva.state.va.us. All Offerors must register in eVA; failure to register will result in a proposal being rejected.

11.8.8 The required services may involve the handling of Critical Infrastructure Information/Sensitive Security Information (CII/SSI) material. Firm(s) handling CII/SSI material will be required to sign non-disclosure agreements. Individuals with the firm(s) that handle CII/SSI material will be required to sign non-disclosure agreements. Once negotiations have been completed and prior to executing a contract, personnel handling CII/SSI material, visiting Critical Infrastructure (CI) facilities or performing bridge/tunnel inspections may be required to pass a fingerprint-based Criminal History Background Check (CHBC). An individual employee's failure to successfully pass the fingerprint-based CHBC will not negate the selection and Offerors will be allowed to replace those individuals. However, if key personnel fail the fingerprint-based CHBC, the selection may be cancelled and negotiations begun with the next ranked Offeror. VDOT reserves the right to conduct fingerprint-based CHBC on all employees of the prime consultant, on any employees of subconsultants or on any proposed replacements during the term of the contract who will be involved in this project. All costs associated with the fingerprint-based CHBC are the responsibility of the Design-Builder. A VDOT issued photo-identification badge is required for each employee of the Design-Builder's team who will need access to VDOT CI facilities or who will be performing bridge/tunnel inspections. Based upon the results of the fingerprint-based CHBC, VDOT reserves the right to deny issuance of a VDOT security clearance or a VDOT issued photo-identification badge. A CII/SSI Non-Disclosure Agreement must be signed and submitted with the RFP Information Package Order Form in order to purchase the Information Package. The CII/SSI Non-Disclosure Agreement is attached to this document as Attachment 11.8.8.

11.9 Attachments

The following attachments are specifically made a part of, and incorporated by reference into, these Instructions for Offerors:

ATTACHMENT 2.7.4	--	RFP INFORMATION PACKAGE ORDER FORM
ATTACHMENT 3.3.1	--	FORM C-78 (ACKNOWLEDGEMENT OF REVISIONS)
ATTACHMENT 4.1.7(a)	--	CERTIFICATION REGARDING DEBARMENT (PRIMARY)
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ATTACHMENT 4.2.6(a)	--	FORM C-104 (BIDDER'S STATEMENT)
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END OF PART 1
INSTRUCTIONS FOR OFFERORS

ATTACHMENT 2.7.4

DESIGN–BUILD

ORDER FORM

MULTIPLE BRIDGE REHABILITATION PROJECT – REGIONS 1-4 & MULTIPLE CULVERT REHABILITATION PROJECT 2 – REGIONS 1-3 REQUEST FOR PROPOSALS (RFP) INFORMATION PACKAGE PROPOSALS TO BE SUBMITTED MONDAY, JULY 6, 2009 BY 4:00 PM (prevailing local time)

FIRM NAME _____

COMPLETE MAILING
ADDRESS_____

_____
(PLEASE GIVE BOTH STREET ADDRESS AND POSTAL DELIVERY ADDRESS)

FIRM TELEPHONE NUMBER_____ FIRM FAX NUMBER_____

E-MAIL ADDRESS _____

SIGNED:_____

FOR QUESTIONS REGARDING THE RFP INFORMATION PACKAGE CONTACT:

DAVID A. STEELE, P.E.
VIRGINIA DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, VIRGINIA 23219
(804) 371-6787

TO ORDER THE RFP INFORMATION PACKAGE BY TELEPHONE/MAIL/FAX CONTACT:

THE SCHEDULING AND CONTRACT DIVISON PLAN ROOM
VIRGINIA DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, VIRGINIA 23219
(804) 786-1898,786-5161 OR 371-9868
FAX TELEPHONE NO. (804) 786-2788 (Ordering by fax using a Master or Visa credit card is the preferred method)

MASTERCHARGE/VISA NO._____

EXPIRATION DATE:_____

THE RFP INFORMATION PACKAGE WILL NOT BE ISSUED PRIOR TO RECEIPT OF PAYMENT

Dear Sir/Madam:

Please send the RFP Information Package designated below. Enclosed is check No._____in the amount of $_____ made payable to the Treasurer of Virginia.

TO VIEW THE RFP GO TO THE WEBSITE ADDRESS LISTED BELOW
http://www.virginiadot.org/business/request-for-proposals.asp

CONTRACT ID NO.	UPC #S	PACKAGES REQUESTED	TOTAL **($50.00 per package, price includes 5%Virginia Sales Tax)**
		#	$
C000T7435DB24	92753		
C000T7440DB25	92756 and 92699		
C000T7441DB26	92755, 92704, and 92702		
C000T7442DB27	92764 and 92701		
C000T7443DB28	92765		
C000T7447DB29	92766		
C000T7450DB30	92700 and 92703		

FOR DEPARTMENTAL USE ONLY

RFP PACKAGE MAILED_____ MAILED BY_____

TO BE MAILED_____ CHECKED BY_____

ATTACHMENT 3.3.1
FORM C-78
(Revised 01/19/09)

Form C-78
Rev.7-13-05

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION

ORDER NO. N/A

UPC NO. 92700 and 92703

ACKNOWLEDGEMENT OF RFP, REVISIONS AND/OR ADDENDA

Acknowledgement shall be made of receipt of any and all revisions and/or addenda pertaining to the above designated project which are issued by the Virginia Department of Transportation prior to the opening date of Price Proposals as shown in the RFP herein. Failure to include this acknowledgement in the Proposals may result in the rejection of your Proposal.

By signing this form, the Offeror acknowledges receipt of the RFP, revisions and/or addenda to the RFP and/or plans for the above designated project which were issued under cover letter(s) of the date(s) shown hereon:

1. Cover letter of _____
(Date)

2. Cover letter of _____
(Date)

3. Cover letter of _____
(Date)

4. Cover letter of _____
(Date)

5. Cover letter of _____
(Date)

6. Cover letter of _____
(Date)

_____ _____
SIGNATURE DATE

ATTACHMENT 4.1.7(a)
CERTIFICATION REGARDING DEBARMENT
PRIMARY COVERED TRANSACTIONS

UPC No.: 92700 and 92703

1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; and have not been convicted of any violations of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1) b) of this certification; and

d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The undersigned makes the foregoing statements to be filed with the proposal submitted on behalf of the Offeror for contracts to be let by the Commonwealth Transportation Board.

_____ _____

Signature Date Title

_____

Name of Firm

ATTACHMENT 4.1.7(b)
CERTIFICATION REGARDING DEBARMENT
LOWER TIER COVERED TRANSACTIONS

UPC No.: 92700 and 92703

1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The undersigned makes the foregoing statements to be filed with the proposal submitted on behalf of the Offeror for contracts to be let by the Commonwealth Transportation Board.

_____ _____

Signature Date Title

_____

Name of Firm

ATTACHMENT 4.1.8

KEY PERSONNEL RESUME FORM

Brief Resume of Key Personnel anticipated for the Project.
a. Name & Title:
b. Project Assignment:
c. Name of Firm with which you are now associated:
d. Years experience: With this Firm ____Years With Other Firms ____Years Please list chronologically your employment history, position and general experience or fields of practice for the last fifteen(15) years:
e. Education: Degree(s)/Year/Specialization:
f. Active Registration: Year First Registered/ Discipline/VA Registration #:
g. Document the extent and depth of experience and qualifications relevant to the Project. 1. *Note your specific responsibilities and authorities for each assignment, not those of the firm.* 2. *Note whether experience is with current firm or with other firm.* 3. *Provide beginning and end dates for each assignment.* **(List at least three (3), but no more than five (5) relevant projects for which you have performed a similar function.)**

ATTACHMENT 4.2.1
PRICE PROPOSAL FORM

4.2.1 Offeror shall specify, the following pricing information, in both numbers and words:

.1 County # 9 Virginia Structure # 6153;
Lump Sum _____
_____($_____)
.2 County # 11 Virginia Structure # 6315;
Lump Sum _____
_____($_____)
.3 County # 11 Virginia Structure # 6483;
Lump Sum _____
_____($_____)
.4 County # 8 Virginia Structure # 6161;
Lump Sum_____
_____($_____)
.5 County # 85 Virginia Structure # 6151;
Lump Sum _____
_____($_____)
.6 County # 85 Virginia Structure # 6199;
Lump Sum _____
_____($_____)

Proposal Price;
Total Lump Sum
_____
_____($_____)

Date: _____

Signature: _____

Design-Builder: _____

Vendor No.: _____

Attachment 4.2.6(a)
Form C-104 (BIDDER'S STATEMENT)

ORDER NO.: N/A
CONTRACT ID. NO.: C000T7450DB30

Form C-104
Rev. 12-9-99

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION

UPC: 92700 and 92703

FHWA: ARRA-FS09(021), and ARRA-FS09(022)

This form must be completed, signed and returned with bid; and failure to do so may result in the rejection of your bid. **THE CONTRACTOR SHALL AFFIRM THE FOLLOWING STATEMENT EITHER BY SIGNING THE AFFIDAVIT AND HAVING IT NOTARIZED OR BY SIGNING THE UNSWORN DECLARATION UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES.** A SEPARATE FORM MUST BE SUBMITTED BY EACH PRINCIPAL OF A JOINT VENTURE BID.

STATEMENT, In preparation and submission of this bid, I, the firm, corporation or officers, agents or employees thereof did not, either directly or indirectly, enter into any combination or arrangement with any persons, firm or corporation or enter into any agreement, participate in any collusion, or otherwise take any action in the restraint of free, competitive bidding in violation of the Sherman Act (15 U.S.C. Section 1) or Article 1.1 or Chapter 12 of Title 18.2 (Virginia Governmental Frauds Act), Sections 59.1-9.1 through 59.1-9.17 or Sections 59.1-68.6 through 59.1-68.8 of the Code of Virginia.

AFFIDAVIT

The undersigned is duly authorized by the bidder to make the foregoing statement to be filed with bids submitted on behalf of the bidder for contracts to be let by the Commonwealth Transportation Board.

Signed at _____ , this ____ day of _____ , 20 ____
County (City), STATE

_____ By: _____ _____
(Name of Firm) (Signature) Title (print)

STATE of _____ COUNTY (CITY) of _____
To-wit:

I _____ , a Notary Public in and for the State and County(City) aforesaid, hereby certify that this day _____ personally appeared before me and made oath that he is duly authorized to make the above statements and that such statements are true and correct.

Subscribed and sworn to before me this _____ day of _____ , 20 _____

_____ My Commission expires _____
Notary Public

OR
UNSWORN DECLARATION

The undersigned is duly authorized by the bidder to make the foregoing statement to be filed with bids submitted on behalf of the bidder for contracts to be let by the Commonwealth Transportation Board.

Signed at _____ , this ____ day of _____ , 20 ____
County (City), STATE

_____ By: _____ _____
(Name of Firm) (Signature) Title (print)

Attachment 4.2.6(b)
FORM C-105 (BIDDER'S CERTIFICATION)

UPC NO.: 92700 and 92703
CONTRACT ID. NO.: C0007450DB30

Form C-105
Rev. 12-9-99

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
AFFIDAVIT

UPC: 92700 and 92703

FHWA: ARRA-FS09(021), and ARRA-FS09(022)

This form must be completed, signed, notarized and returned with bid; and failure to do so, may result in the rejection of your bid. A separate form must be submitted by each principal of a joint venture bid.

1. I, the firm, corporation or officers, agents or employees thereof have neither directly nor indirectly entered into any combination or arrangement with any person, firm or corporation or entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such contract, the effect of which is to prevent competition or increase the cost of construction or maintenance of roads or bridges.

   During the preceding twelve months, I (we) have been a member of the following Highway Contractor's Associations, as defined in Section 33.1-336 of the Code of Virginia (1970). (If none, so state).

NAME	Location of Principal Office
_____	_____
_____	_____
_____	_____

2. I (we) have _____, have not _____, participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that I/We have _____, have not _____, filed with the joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

   Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor [41 CFR 60-1.7(b)(1)], and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contract or subcontracts of $10,000 or under are exempt.)

   Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b) (1) prevents the award of contract and subcontract unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

(Continued)

Attachment 4.2.6(b)
FORM C-105 (BIDDER'S CERTIFICATION)

UPC NO.: 92700 and 92703
CONTRACT ID. NO.: C0007450DB30

3. The bidder certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated above; and

(d) Where the bidders is unable to certify to any of the statements in this certification, the bidder shall show an explanation below.

Explanations will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any explanation noted, indicate below to whom it applies, initiating agency, and dates of action. Providing false information may result in federal criminal prosecution or administration sanctions. The bidder shall provide immediate written notice to the Department if at any time the bidder learns that its certification was erroneous when submitted or has become erroneous by reason of change circumstances.

The undersigned is duly authorized by the bidder to make the foregoing statements to be filed with bids submitted on behalf of the bidder for contracts to be let by the Commonwealth Transportation Board.

Signed at _____ , this ____ day of _____ , 20 ____
County (City), STATE

_____ By: _____ _____
(Name of Firm) (Signature) Title (print)

STATE of _____ COUNTY (CITY) of _____
To-wit:

I _____ , a Notary Public in and for the State and County(City) aforesaid, hereby certify that this day _____ personally appeared before me and made oath that he is duly authorized to make the above statements and that such statements are true and correct.

Subscribed and sworn to before me this _____ day of _____ , 20 _____

_____ My Commission expires _____
Notary Public

ATTACHMENT 11.7.9
ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Agreement") is made and entered into as of _____, 2009, by and among the Virginia Department of Transportation ("Department"), _____ ("Offeror") and _____ ("Escrow Agent") with reference to the following facts:

WHEREAS, Department has issued a Request for Proposals dated April 7, 2009 ("RFP") for the completion of the Multiple Culvert Rehabilitation Project 2 in the Salem and Staunton Districts ("Project); and

WHEREAS, Offeror has submitted to Department a proposal ("Proposal") in response to the RFP; and

WHEREAS, as part of the Proposal, Offeror is submitting one copy of all information regarding the assumptions made in developing the Proposal, as required under Section 11.7 of the RFP, in _____ separately sealed and labeled boxes ("EPDs"); and

WHEREAS, Department and Offeror wish to employ the services of Escrow Agent to act as the escrow holder with regard to the EPDs for the limited purposes set forth below, and Escrow Agent has agreed to serve as such escrow holder under the terms and conditions provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Deposit. Offeror hereby deposits with Escrow Agent the EPDs. Escrow Agent hereby acknowledges receipt of such EPDs, and such EPDs shall be held in escrow under the terms and conditions of this Agreement.

2. Holding of EPDs. Escrow Agent shall hold the EPDs in escrow in a designated are on the premises of Escrow Agent located at _____on a confidential basis. The EPDs shall be stored in an area which is locked at all times. No third party, including the employees of Escrow Agent, shall be allowed access to any of the EPDs except as provided in Section 3 hereof, although this shall not preclude employees of Escrow Agent from having access to the locked area for other purposes.

3. Review of EPDs. Escrow Agent shall provide facilities for joint review of the EPDs by representatives of Department and Offeror in accordance with the terms of the RFP, upon at least one business days' advance notice.

4. **Release of EPDs**. Escrow Agent shall release the EPDs as follows:

(a) Escrow Agent shall release the EPDs to Offeror, and Offeror shall pick up the EPDs at Offeror's expense, upon deliver by Department of a certificate certifying the Department has entered into a Design-Build Contract with another Offeror (the "Contractor") and that all EPDs of other Offerors are to be released.

(b) Escrow Agent shall release the EPDs to the Design-Builder and Department for delivery and retention to the Department as set forth in the Design-Build Contract at such time as it is notified by Department and the Design-Builder.

5. **Representation and Warranty**. Offeror represents and warrants to Department that, prior to delivery of the EPDs to Escrow Agent, the EPDs were personally examined by an authorized representative of Offeror and that they constitute all the documentation and information used in the preparation of the Proposal.

6. **Rights of Escrow Agent**. If conflicting demands are made or notices served upon Escrow Agent with respect to this escrow, the parties hereto expressly agree that Escrow Agent shall have the absolute right at its election to do any of the following:

(a) withhold and stop all further proceedings in, and performance of, this escrow;

(b) file a suit in interpleader and obtain an order from the court requiring the parties to interplead and litigate in such court their several claims and rights amongst themselves, or

(c) deliver all EPDs with seals intact to another location to be selected by Department within thirty (30) days after Escrow Agent delivers notice thereof to Department.

7. **Fees**. Offeror shall be responsible for any escrow fees. If Offeror fails to pick up the EPDs under Section 4(a), Offeror shall pay any fees accruing thereafter.

8. **Notices**. All notices which may be or are required to be given or made by either party hereto to the other shall be in writing. Such notices shall be either personally delivered or sent by registered mail, postage prepaid, to:

If to the Offeror:

_____
_____
_____
Attention: _____

If to Department:

_____
_____
_____
Attention: _____

If to Escrow Agent:

_____
_____
_____
Attention: _____

or to such other addressees and such other places as any party hereto may from time to time designate by written notice to the others.

9. **Counterparts**. This Agreement may be executed in one or more counterparts, all of which together shall be deemed an original.

10. **Headings**. The title headings of the respective paragraphs of this Agreement are inserted for convenience only, and shall not be deemed to be part of this Agreement or considered in construing this Agreement.

11. **Governing Law**. The laws of the Commonwealth of Virginia, excluding its conflict of laws, shall govern this Agreement.

12. **Attorneys' Fees**. If either Department or Offeror commences or engages in any action by or against the other party directly or indirectly arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and other costs incurred in the action and in preparation for said action and any subsequent appeal. All parties agree to indemnify and hold Escrow Agent harmless from and against all costs, expenses, and reasonable attorneys' fees in connection with any such action.

IN WITNESS WHEREOF, the parties hereto, each intending to be legally bound by this writing, have caused this Agreement to be executed the date first above written.

VIRGINIA DEPARTMENT OF TRANSPORTION

By: _____
Name:_____
Title:_____

OFFEROR

By: _____
Name: _____
Title: _____

The escrow provided for this Agreement is hereby accepted by Escrow Agent.

_____:

By: _____
Name: _____
Title: _____

Critical Infrastructure Information/Sensitive Security Information (CII/SSI) Multi-Purpose Non-Disclosure Agreement

Retain a copy of both the front and back sides of this form for future reference

VDOT requires CII/SSI be protected and not disclosed to unauthorized persons.

PART A: To Be Completed By Individual VDOT or Company Employee

I agree with the following as a condition of being granted access to CII/SSI:

CII/SSI, which is valuable and sensitive, is protected by law and by strict VDOT policies. The intent of these laws and policies is to assure that CII/SSI will remain confidential - that is, it will be used only as necessary to accomplish VDOT's mission. Disclosure of CII/SSI in any manner that permits interception by unauthorized persons could compromise safety and security and is prohibited. CII/SSI may be released only to persons with a need-to-know.

I might have access to this information in various formats including but not limited to documents and drawings, physical structures, and computer based systems. I have no right or ownership interest in any VDOT CII/SSI. VDOT may at any time revoke my authorization allowing access to CII/SSI.

Willful violation of this agreement may subject me to discipline which might include, but is not limited to, removal from current VDOT projects; exclusion from further VDOT related work; and legal liability. My obligations with respect to the confidentiality and security of all CII/SSI disclosed to me shall survive the termination of any agreement or relationship with VDOT. My execution of this agreement shall not nullify or affect in any manner any other agreement, non-disclosure or otherwise, which I have executed or may execute with VDOT or the Commonwealth of Virginia.

I am obligated to protect this information from unauthorized disclosure in accordance with the terms of this agreement. I will only use CII/SSI that I obtain to perform my legitimate VDOT related duties. I will conduct myself in a strict conformance to applicable laws and VDOT policies governing CII/SSI. I will safeguard the confidentiality of all CII/SSI at all times. I will be responsible for my misuse or my wrongful disclosure of CII/SSI.

Each provision of this agreement is severable. If any administrative or judicial tribunal should find any provision of this agreement to be unenforceable, all other provisions shall remain in full force and effect.

I make this agreement in good faith, without mental reservation or purpose of evasion.

Printed Name	Date
VDOT District/Division OR Company Name	Phone Number
Company Address	
Signature	Signature of Authorized Agent (Not required for VDOT employees)

PART B: To Be Completed By Company Agent Only:

In addition to the provisions above, I certify:

All employees of this company involved with this VDOT project, regardless of location, who will have access to CII/SSI, myself included, will complete Part A of the Critical Infrastructure Information/Sensitive Security Information Multi-Purpose Non-Disclosure Agreement. The Agreement will be signed by me and accepted by VDOT prior to being granted access to CII/SSI. We will only access CII/SSI for which we have a need-to-know.

We will safeguard the confidentiality of all CII/SSI at all times. We will conduct ourselves in strict conformance to applicable laws and VDOT policies governing CII/SSI. Obligations with respect to the confidentiality and security of all CII/SSI disclosed to us shall survive the termination of any agreement or relationship with VDOT.

Authorized Company Agent:

Signature of Authorized Agent	Date
Printed Name	Title
Company Name	Phone Number
Company Address	
VDOT Contract Name and Number	

This form is valid for the identified project for a period of two years, while employed by the same company.

Critical Infrastructure Information/Sensitive Security Information (CII/SSI)
Multi-Purpose Non-Disclosure Agreement
Back Page

Retain a copy of both the front and back sides of this form for future reference.

Handling CII/SSI

You are responsible for safeguarding Critical Infrastructure Information/Sensitive Security Information (CII/SSI) in your custody or under your control.

The extent of protection afforded CII/SSI shall be sufficient to reasonably foreclose the possibility of its loss or compromise.

The terms of this clause (*Handling CII/SSI*), including this paragraph, must be included in any dissemination of any document, in whole or in part, that contains CII/SSI.

Protection - CII/SSI shall be protected at all times, either by appropriate storage or having it under the personal observation and control of a person authorized to receive it. Each person who works with protected CII/SSI is personally responsible for taking proper precautions to ensure that unauthorized persons do not gain access to it.

Use and Storage - During working hours, reasonable steps shall be taken to minimize the risks of access to CII/SSI by unauthorized personnel. After working hours, CII/SSI shall be secured in a secure container, such as a locked desk, file cabinet or facility where contract security is provided.

Reproduction - Documents or material containing CII/SSI may be reproduced to the minimum extent necessary consistent with the need to carry out official duties provided that the reproduced material is marked and protected in the same manner as the original material.

Disposal - Material containing CII/SSI shall be disposed of by any method that prevents unauthorized retrieval (e.g. shredding, burning, returning to original source, etc.).

Transmission - CII/SSI shall be transmitted only by VDOT courier, US first class, express, certified or registered mail, or through secure electronic means.

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PART 2
REQUEST FOR PROPOSALS

TECHNICAL INFORMATION & REQUIREMENTS

1.0 DESIGN-BUILDER'S SCOPE OF WORK

1.1 Project Description

The Project consists of culvert replacements and rehabilitation at various locations throughout the Commonwealth. The locations of the culverts to be rehabilitated or replaced are in multiple Districts and carry multiple types and classifications of roadway.

The work for the Project shall consist of the following, including but not limited to: culvert rehabilitation, including invert repair or installing a pipe liner system; and replacement of corregated metal pipe and concrete box culverts; pavement reconstruction; installation of guardrail and terminals; and pavement markers. Specific descriptions for the scope of work at each culvert location are included in RFP Information Package – CD-ROM.

Plans for the anticipated construction at each culvert have NOT been developed. The RFP Information Package – CD-ROM contains any available existing plans, or applicable standard drawings, available inspection reports, and a Culvert Specific Scope Sheet at each structure. The Offeror shall follow VDOT standard practices and details to accomplish the work in the Project. As described elsewhere in this document, all right of way requirements and any environmental impacts resulting from adjustments to the anticipated work at each structure are the responsibility of the Offeror. Offeror should note, however, that they are solely responsible for any schedule delays due to temporary construction easement acquisition, modifications and NEPA document re-evaluations associated with Offeror's design and no time extensions will be granted.

1.2 Anticipated Scope of Work

The anticipated scope of work for this Project to be undertaken by the successful Offeror under the Design-Build Contract is anticipated to include, among other things: (a) design; (b) construction; (c) quality assurance/quality control (QA/QC) for design and construction; (d) overall project management and (e) public relations. Culvert Specific Scope Sheets for each structure are included in the RFP Information Package CD-ROM and shall take precedence over Inspection Reports. Offerors should note that all work performed on this Project shall be completed using English (Imperial) Units.

1.3 Anticipated Design Services

Design services are anticipated to include, but are not limited to, surveying, roadways, culvert structures and repairs, retaining walls, traffic control devices, guardrails, signs, pavement markings and marker plans, drainage design, geotechnical investigation, materials analysis, foundation design, hydraulic and hydrologic analysis, pavement design, utility relocation design, and transportation management plan. VDOT has NOT performed any topographic surveys or preliminary geotechnical subsurface investigation for this Project at any culvert location in the Project. Offeror's will provide quality assurance and quality control for design in accordance with VDOT Minimum Quality Control and Quality Assurance Requirements for Design Build (August 2008).

1.4 Anticipated Right of Way and Utilities

Right of way acquisition are not a part of the scope of work for this project. However, temporary construction easements may be required at various locations. Refer to Section 2.9 for further details. Utility relocations, adjustments, and coordination shall include all work necessary to perform the relocations, adjustments, and coordination of utilities as required by the Project. All costs for utility relocations shall be included in the Offeror's Lump Sum Bid.

1.5 Anticipated Construction Services

Construction services are anticipated to include, but are not limited to, earthwork, roadway, structures (including all necessary foundation work, subgrade preparation, headwalls and wingwalls, culverts/pipes and excavation), retaining walls, traffic control devices, the demolition and removal of portions of the existing roadways, demolition of existing structures, drainage, utility relocations/adjustments and coordination (including continuity of service if necessary), transportation management plan, and erosion and sediment control. Offerors will also provide construction engineering inspection and management, quality assurance and quality control, including plant quality assurance inspection and testing, but excluding items listed under Section 2.11.2 below.

1.6 Anticipated Environmental Services

Environmental services shall include all work necessary to support acquisition of necessary water quality permits, and compliance with any and all environmental commitments, conditions, or restrictions prior to or during construction. VDOT will obtain necessary water quality permits for the Design-Builder's proposed work. Design-Builder shall provide all work necessary to support VDOT's acquisition of permits as further described in Section 2.4.2.

2.0 PROJECT TECHNICAL INFORMATION & REQUIREMENTS

2.1 Standards and Reference Documents

The design and construction work for the Project shall be performed in accordance with the applicable Federal, State and Local laws and VDOT Standards, Specifications and Reference

Documents to include, but not limited to the documents listed herein. The Offeror shall verify and use the latest version of the documents listed herein. The Successful Offeror shall meet or exceed the minimum roadway design standards and criteria.

If during the course of the design, the Successful Offeror determines specific Standard, Specification, or Reference Documents required are not listed herein, it is the responsibility of the Offeror to identify the pertinent Standard, Specification or Reference Document and submit to VDOT for review and approval prior to inclusion in the Contract Documents.

- VDOT's Minimum Quality Control and Quality Assurance Requirements for Design-Build and Public-Private Transportation Act Projects (August 2008)
- VDOT 2002 Drainage Manual (including current Errata Sheet)
- VDOT Hydraulic Design Advisories (all current)
- VDOT CADD Manual (Version 2004)
- VDOT Construction Manual (2005)
- VDOT Post Construction Manual (1997 Edition)
- VDOT Construction Inspection Manual (December 2001)
- VDOT Traffic Engineering Design Manual
- VDOT 2003 Minimum Standards of Entrances to State Highways
- VDOT Right-of-way and Utilities Division Manuals, Vol. I (July 1999) and II (November 2003)
- VDOT Current Land Use Permit Manual
- VDOT Policy Manual for Public Participation in Transportation Projects (updated September 2004)
- VDOT Instructional & Information Memorandums ("I&IM"), All Divisions
- VDOT Policy for Integrating Bicycle and Pedestrian Accommodations
- VDOT Road and Bridge Standards, Vol. 1 and Vol. 2 (2001)
- VDOT Road and Bridge Specifications (2002) , including all revisions
- VDOT Guardrail Installation Training Manual ("GRIT") February 2006
- VDOT Road Design Manual, Vol. I
- VDOT Guidelines for 1993 AASHTO Pavement Design, Revised – May 2003
- VDOT Survey Manual (2002 Edition)
- VDOT Manual of Instruction for Material Division
- VDOT Materials Division Memorandum Number MD299-07 for Materials Acceptance – October 4, 2007 (Included in the RFP Information Package)
- VDOT Manual of Structure and Bridge Division, Vol. III,V and VII
- VDOT 2005 Virginia Work Area Protection Manual
- VDOT Mobility Management Division Memoranda
- VDOT Water Quality Permit Manual, Revised - March 28, 2006 (Included in the RFP Information Package – CD-ROM)
- VDOT, Wetland Compensation Manual (1999) (Included in the RFP Information Package – CD-ROM)

- AASHTO LRFD Bridge Design Specifications, 4th Edition, 2008 Interim Specifications and VDOT Modifications
- AASHTO A Policy on Geometric Design of Highways and Streets (2004)
- AASHTO Guide Specifications for Horizontally Curved Highway Bridges (Current Edition)
- AASHTO Fracture Critical Non-Redundant Steel Bridge Members Current Spec. with all Interim Specifications
- AASHTO Standard Specifications for Structural Supports for Highway Signs, Luminaries, and Traffic Signals, 1994 Edition
- AASHTO Standard Specifications for Structural Supports for Highway Signs, Luminaries, and Traffic Signals, 4th (2001) Edition (to be used for the design of dynamic message sign supports only).
- AASHTO Guide Design Specifications for Bridge Temporary Works, 1995
- AASHTO Construction Handbook for Bridge Temporary Works, 1995
- AASHTO Guide for the Development of Bicycle Facilities (1999)
- AASHTO Guide for the Planning, Design, and Operation of Pedestrian Facilities (2004)
- AASHTO Guide for Design of Pavement Structures (Rigid Pavement and Flexible Pavement) (1993 Edition)
- AASHTO Guide for Protective Screening of Overpass Structures (1990)
- AASHTO Guide for Roadway Lighting Design (2005)
- USDOT FHWA Standard Highway Signs
- National Electric Code ("NEC")
- Manual of Uniform Traffic Control Devices ("MUTCD") (2003 Edition)
- Virginia Supplement to MUTCD
- Traffic Engineering Division Memorandums (TDM)
- DCR Virginia Stormwater Management Handbook (First Edition – 1999)
- DCR Virginia Erosion and Sediment Control Handbook (Third Edition – 1992)
- American Water Works Associations Standards
- Americans with Disabilities Act Accessibility Guidelines for State and Local Government Facilities
- Transportation Research Board Highway Capacity Manual, Third Edition (1994)
- Duncan, J.M. (April 2000) Factor of Safety And Reliability In Geotechnical Engineering, Journal of Geotechnical and Geoenvironmental Engineering, ASCE, Discussions and Closure August 2001
- Special Provision for Density Control of Embankments and Backfill (Included in the RFP Information Package – CD-ROM), Revised – November 26, 2006
- Special Provision for Section 303 - Earthwork (Included in RFP Information Package – CD-ROM), dated September 19, 2008
- Special Provision for Low Permeability Concretes (Included in the RFP Information Package – CD-ROM), dated March 9, 2009
- Special Provision for Lime Modification of Soils (included in the RFP Information Package – CD-ROM), dated May 31, 2000

- Special Provision for Design-Build Tracking (DBT) Numbers (included in the RFP Information Package – CD-ROM), dated February 8, 2008
- Special Provision for Square Tube Steel Sign Post (Included in the RFP Information Package – CD-ROM), dated July 7, 2005
- Special Provision for Flowable Fill (Included in the RFP Information Package – CD-ROM), dated July 9, 2002
- Special Provision Copied Note for Steel Reinforcement (Included in the RFP Information Package – CD-ROM), dated December 4, 2007
- Special Provision for Pipe Culvert Replacement of Rehabilitation (included in the RFP Information Package – CD-ROM)
- Special Provision for Epoxy Injection Pressure Crack Sealing (Included in RFP Information Package – CD-ROM), dated March 22, 2005
- Special Provision for Load and Resistance Factor Design (LRFD) (Included in RFP Information Package – CD-ROM), dated December 29, 2008
- Special Provision Copied Note for Hydraulic Cement Concrete (Included in RFP Information Package – CD-ROM), dated August 17, 2004
- Special Provision Copied Note for ARRA Project Requirements (Included in RFP Information Package – CD-ROM), dated March 26, 2009

In the event of a discrepancy between VDOT and other non-VDOT Standards and References listed herein, the VDOT specifications, design standards or manuals shall take precedence. Special Provisions included in this Contract Document or other Special Provisions selected for use in design and construction of this Project that has been approved by VDOT will govern over the VDOT specifications, design standards and manuals. Special Provision Copy Notes approved by VDOT and requirements specified within the text of this RFP will govern over both the Special Provisions and VDOT specifications, design standards and manuals.

The Offeror shall be responsible for preparing any design waiver(s) and/ or design exception(s) documentation to be submitted to the VDOT Project Manager for approval. Design Waivers will be required for any element that does meet AASHTO minimum design criteria, but not VDOT minimum standards. Design Exceptions will be required for any design element that does not meet AASHTO minimum design criteria. See IIM-LD-227.3, S&B 70.1 for more information regarding Design Exceptions and Design Waivers.

2.2 Structures

The culverts for this Project shall be designed for AASHTO HL-93 Loading. The culverts shall be designed using the Load and Resistance Factor Design Method.

When a culvert replacement is specified for a particular structure, the culvert shall be replaced in accordance with the Culvert Specific Scope Sheet for the culvert in question (see the RFP Information Package – CD-ROM). For all culvert replacements, the roadway geometry over the culvert shall remain the same unless otherwise specified in the Culvert Specific Scope Sheets included in the RFP Information Package CD-ROM. Any proposed corrugated metal pipe by the

Offeror must be coated. A bare metal culvert pipe is not acceptable. In addition, no asphalt coating is allowed.

The exposed concrete elements of proposed structures shall utilize low permeability concrete in accordance with current VDOT Specifications.

All headwall/wingwall rehabilitation, including but not limited to delamination and spall repair and crack repair and/or injection shall be performed in accordance with VDOT standard specifications, details and standard practice. Non-standard repairs that may be required shall be included in the design and submitted to VDOT for review during plan preparation.

Unless a specific railing/parapet is required in the Culvert Specific Scope Sheet in the RFP Information Package – CD-ROM, the railing/parapet shall be selected from the approved list of FHWA crash-tested railing/parapets and/or as required in VDOT Manual of Structure and Bridge Division, Vol. V Part 2.

2.2.1 Shop Drawings

The Offeror shall review and approve working/shop drawings and submit four approved sets to VDOT for each structure. Reference should be made to Section 105.02 of VDOT Road & Bridge Specifications 2002. The working/shop drawings shall be approved by a registered, licensed, Professional Engineer.

2.2.2 FHWA Culvert Construction Unit Cost Report

For each culvert, the Successful Offeror shall submit Estimated Quantities along with the associated unit costs for all standard and non-standard items in the final plan submittal. The culvert unit cost data is required to complete VDOT's annual Bridge Construction Unit Cost Report which is provided to FHWA.

A Bridge Design Criteria Special Provision for each culvert is included as part of each specific scope of work identified as part of the RFP Information Package – CD-ROM.

2.2.3 The American Recovery and Reinvestment Act of 2009 (ARRA)

This project is funded by the ARRA. Projects funded by the ARRA require an additional level of data reporting therefore reporting on this project will meet the requirements of the ARRA. The Design Builder shall be responsible for meeting all of the reporting requirements under the ARRA.

2.3 Approach Roadways

For open-cut culvert replacement projects, the roadway within the limits of excavation as well as 50' beyond the limits of excavation in each direction along the centerline of the roadway shall be

removed and replaced in kind. Any proposed changes to the existing pavement section by the Offeror must be approved by VDOT. For the purpose of bidding only, the Offeror shall use the pavement section provided in the Culvert Specific Scope Sheet (included in the RFP Information Package – CD ROM).

2.4 Environmental

2.4.1 Environmental Documentation

VDOT has completed Programmatic Categorical Exclusions (PCE's) for all culverts included in this RFP in accordance with the requirements of the National Environmental Policy Act ("NEPA"). Preliminary Plans, Specifications and Estimates (PS&E) re-evaluations, and Environmental Certification forms have also been completed (included in the RFP Information Package – CD ROM).

The Offeror shall carry out environmental commitments, conditions, or restrictions during design and construction phases as appropriate, and as identified on the Environmental Certification, and PS&E Re-evaluation forms. The Offeror shall note that some commitments have been identified (i.e. Time of Year Restrictions (TOYR) on in-stream work); the Offeror shall organize and plan construction activities accordingly. For specific detailed information regarding commitments (e.g. TOYR), the Offeror is referred to the RFP Information Package. All environmental commitment compliance shall be supported by appropriate documentation and shall be provided by the Offeror to the VDOT Project Manager**.** VDOT shall complete the final update of the PS&E re-evaluation and Environmental Certification forms prior to the VDOT Project Manager releasing the project for construction.

Any changes proposed by the Offeror in either the footprint and/or scope of the Project as expressed in the PCE must be coordinated by the Offeror with VDOT and approved prior to implementation by the Offeror. Changes in the footprint or scope may necessitate additional environmental studies and coordination by VDOT with the FHWA. The Offeror shall carry out any additional environmental commitments that result from recoordination at its sole expense and no additional cost to the Project; additionally the Offeror will be responsible for any schedule delays and associated costs.

2.4.2 Water Quality Permits

VDOT shall be responsible for the tasks involved with determining the need for water quality permits and performing the associated tasks to secure water quality permits, permit modifications and/or permit extensions. This will be done in accordance with the VDOT's Water Quality Permit Manual.

The Offeror shall provide sufficient design details and/or construction sketches/plans, and quantities information to VDOT to determine the applicability of water quality permits for the project.

If VDOT determines the water quality permits are not required based on the information the Offeror provided to VDOT, the Offeror shall be notified in writing by the VDOT Project Manager that the work is released for execution. Any deviations that the Offeror makes to the project footprint and/or scope may render VDOT's permit determination invalid and will require additional coordination with VDOT.

If water quality permits are required, the Offeror shall support VDOT's permit acquisition efforts by providing (but not limited to) design details, project descriptions, permit sketches and quantities information which shall include information such as limits of jurisdiction, square feet of impact below OHW (or MLW) both permanent and temporary, cubic yards of impact below OHW (or MLW) both permanent and temporary and broken out by excavation, permanent fill and temporary fill quantity calculations, plan views, section views, construction notes, construction phasing details, temporary construction measures, erosion and sediment controls, hydraulic commentary, and access requirements.

In addition the Offeror shall support/attend VDOT's presentation at the Interagency Coordination Meetings (IACM), address agency comments/concerns, evaluate and/or incorporate design changes for avoidance and minimization, attend regulatory agency field reviews, etc. VDOT shall provide the delineations of jurisdictional limits to the Offeror for inclusion in the Offeror's permit sketches. The Offerors bids shall not include costs for VDOT's tasks associated with water quality permit acquisition. However, all costs associated with the Offeror's support of VDOT's permit determination and/or permit acquisition shall be included in the Offeror's bid.

If VDOT determines that wetlands and/or stream mitigation is required to secure the permit authorization, the Offeror shall be provided an opportunity by the VDOT Project Manager to provide VDOT a mitigation cost proposal prior to submission of the permit application. If VDOT accepts the Offeror proposal, the Offeror shall provide documentation of the compensatory mitigation to VDOT for inclusion in the permit application. The Offeror will be reimbursed for the cost of the mitigation proposal by VDOT after the regulatory agencies accept the mitigation proposal and issue the water quality permits. However, if the Offeror does not provide a mitigation proposal prior to submission of the permit application and/or VDOT or the regulatory agencies do not accept the Offeror's proposal for compensatory mitigation, VDOT will provide the required compensatory mitigation with no cost reimbursement to the Offeror.

The Offeror shall note that avoidance, minimization, and mitigation measures associated with permit acquisition will require close coordination between the Offeror and VDOT. However, if permit issuance is delayed or permits are denied, the Offeror will be responsible for any schedule delays and/or associated costs.

The Offeror shall be responsible for coordination with VDOT to ensure that project schedules accommodate any Special Provisions, Time of Year Restrictions (TOYR), and the duration of permit acquisition from the regulatory agencies. The Offeror shall be responsible for adhering to permit conditions and Special Provisions, as identified in the permit authorizations including but not limited

to TOYR, avoidance and minimization recommendations, restoration of temporary impact areas, and countersinking culverts.

The Offeror shall not proceed with work covered by the water quality permits until the VDOT Project Manager releases the work in writing. The VDOT Project Manager may release a portion or all of such work not in jurisdictional areas, but may order a suspension of the same work after its release. The Offeror shall not be allowed to begin work that pre-determines the work required in the jurisdictional areas until the permits are secured.

After receiving the VDOT Project Manger release of the work, the Offeror shall notify in writing the VDOT Project Manager 14 days prior to beginning work in the jurisdictional areas covered by the water quality permits so the required agency notifications can be made by VDOT.

The Offeror shall allow environmental compliance inspections by VDOT, and/or regulatory agencies as required by permits and/or to facilitate any interim compliance reviews/assessments.

At the conclusion of the project, the Offeror shall notify in writing the VDOT Project Manager of the completion of the work in the jurisdictional areas covered by the water quality permits so the required agency notifications can be made by VDOT.

Any changes proposed by the Offeror in either the footprint and/or scope of the Project as provided in design details and/or construction sketches/plans and quantities information provided by the Offeror and used by VDOT to determine the applicability of water quality permits and/or information provided to VDOT to secure the necessary water quality permits will require additional coordination with VDOT and may necessitate the acquisition of additional or modified water quality permits to meet the change in footprint and/or scope. The Offeror shall carry out any additional environmental commitments that result from change in footprint and/or scope at its sole expense and no additional cost to the Project; additionally the Offeror will be responsible for any schedule delays and associated costs.

2.4.3 Environmental Monitoring

VDOT will monitor the Project during construction to ensure compliance with all applicable environmental laws, regulations, Executive Orders, commitments, etc. If at any time, the Offeror is not in compliance with all applicable environmental laws, regulations, Executive Orders, commitments, etc., the VDOT Project Manager has the authority to suspend work until such time as the deficiencies have been corrected to meet the minimum standards. The Offeror shall not be granted any cost or time compensation for any work suspensions associated with non-compliance. Any monetary fines associated with violations shall be the responsibility of the Offeror.

2.4.4 Hazardous Materials

All solid waste, hazardous waste, and hazardous materials shall be managed in accordance with all applicable federal, state, and local environmental regulations. The Offeror shall notify the

VDOT Project Manager immediately of all instances involving the spill, discharge, dumping or any other releases of hazardous materials into the environment and shall provide all required notifications and response actions.

The Offeror shall be responsible for the development of a Spill Prevention, Control, and Countermeasure Plan as required by regulation and for submission of any required plan to the VDOT Project Manager prior to start of construction. The Offeror is to conduct a review(s) of all the staging areas for the presence of hazardous materials prior to use, and shall document the findings, and submit to the VDOT Project Manager.

2.5 Survey

VDOT has NOT completed any field survey for the Project. The Offeror shall be responsible for obtaining all surveys needed for the Project in accordance with VDOT Survey Manual, conforming to VDOT Standards, including, but not limited to the following:

- Horizontal Control
- Vertical Control
- Notification of property owners*
- Post photography control
- Additional aerial photography, if necessary, negatives become property of VDOT
- Photogrammetry
- Field data
- Topography
- Property data, including additional easements and/or property acquisitions
- Utilities
- Levels
- Digital Terrain Model

*Offerors should be aware that Virginia Code 33.1-94 now requires that notice "be sent to the owner by certified mail, at the address recorded in the tax records, return receipt requested, or delivered by guaranteed overnight courier or otherwise delivered to the owner in person with proof of delivery not less than 15 days prior to the first date of the proposed entry. Notice of intent to enter shall be deemed made on the earlier of the date of mailing, if mailed, or on the date delivered."

2.6 Geotechnical Work

In the case of added pipe and/or culvert beyond the existing culvert location, additional geotechnical investigation shall be performed to satisfy VDOT standards and specifications. Offerors shall comply with Virginia Code 33.1-94 as noted above.

2.6.1 Geotechnical Requirements

The Offeror shall analyze methods to minimize settlement of the pavement and utility backfill within the limits of construction of the culverts. All geotechnical work shall be completed to satisfy baseline and post-construction contract performance requirements.

Note that the lesser amount of total or differential settlement satisfying this section shall have precedence.

Design and construct pavements, subgrades, earthwork and utility backfill to meet the following post-construction settlement tolerances:

- Total vertical settlement shall be less than one inch over the initial 20-years.
- Settlement that does not result in damage to adjacent or underlying structures, including utilities.
- For pavement sections of tie-ins to the Project, grade tolerances shall be measured with a 10-foot straightedge. The variation of the surface from the testing edge of the straightedge between any two contacts with the surface shall not be more +/- ¼-inch at project tie-ins.
- The embankment in the area of the proposed culvert replacement shall be designed with a factor of safety of 1.5 against stability failure.

Humps and depressions exceeding the specified tolerance will be subject to correction by the Offeror. Offeror shall notify the Quality Assurance Manager ("QAM") and VDOT for any non-conformance items.

2.6.2 Foundation

The Design-Builder's qualified geotechnical engineer shall perform an inspection of all subgrades prior to placement of the bedding materials to confirm the type and condition of the foundation materials are suitable for support of the proposed drainage structures. An inspection report of the findings of the exploration and approval of foundation materials for support of the drainage structures shall be provided to the Design-Builder's quality assurance manager (QAM) prior to placement of the pipes or culverts.

Where unsuitable foundation materials are encountered at the established grade, such material shall be removed and replaced to provide adequate support of the proposed pipes or culverts as direct by the design-builder's geotechnical engineer. The cost to remove and replace this unsuitable material with bedding as described below shall be the responsibility of the Design-Builder and included in the Design-Builder's Lump Sum Price Proposal. Backfill for areas where unsuitable material has been removed shall be placed and compacted in accordance with the requirements of Section 303.04(g).

2.6.3 Bedding

Bedding must be removed new bedding must be installed at each replacement location. Bedding material for culvert foundations, including foundations in soft yielding or otherwise unsuitable material, shall be aggregate No. 25 or 26 conforming to the requirements of Section 205 except where standing or running water is present in the pipe foundation excavation, then pipe bedding material shall be aggregate No. 57 for the depth specified on the plans or as directed by the Design-Builder's geotechnical engineer, capped with 4 inches of aggregate No. 25 or 26.

Pipe bedding shall be lightly and uniformly compacted and shall be carefully shaped so that the lower section of the pipe exterior is in contact with the bedding material for at least ten percent of the overall height of the pipe. Bedding material shall be shaped to accommodate the bell when bell and spigot pipe is used. The depth of bedding material shall be at least 4 inches.

2.7 Hydraulics

2.7.1 General

In-stream construction and/or diversions will be required to repair or replace culverts. Any necessary hydraulic work required under this Contract shall be performed in accordance with the criteria contained in the referenced documents, which are incorporated by reference to this Project scope.

2.7.2 Hydrologic and Hydraulic (H&H) Analysis

The Design-Builder will be required to perform a limited hydraulic analysis to prove that their proposed culvert rehabilitation/replacement will maintain the hydraulic capacity as of the existing culvert. The result of this analysis will be provided to VDOT for review and approval prior to the commencement of construction The limited hydraulic analysis will follow the guidelines of the VDOT Drainage Manual's chapter's 6, 8, and 12 with the following exceptions: (1) this project is not intended to increase the hydraulic capacity of any of the culverts, (2) the designed rehabilitation/replacements will not be required to meet current flood frequency or allowable headwater requirements, however the 100 year flood will be used in design calculations. The approval of the Design-Builders analysis represents a hold point in the Design-Builder's CPM Schedule.

If the Design-Builder alters the alignment of the culverts natural stream design, bank hardening, and revetments may be necessary as part of the hydraulic design of the various stream crossings in the Project to minimize downstream impacts in accordance with State and Federal requirements applicable to this project. Natural stream design, bank hardening and revetments shall be designed in accordance with acceptable FHWA Publications. Acceptable FHWA publications include, but are not limited to HDS-6, HEC-11, HEC-14, HEC-15, and HEC-20.

2.7.3 Countersinking

When replacing an existing culvert crossing, it will necessary countersink at least one culvert below the stream bed to comply with the environmental permit requirements. When a pipe is countersunk, the area below the stream bed should not be considered available for flow. For consideration of hydraulic equivalency, when the same material is used, the proposed countersunk culvert should be increased one standard size from the existing culvert being replaced.

2.7.4 Outfall Protection

Outlet protection is required at all culverts and shall comply with HDA 06-03.01 and any other applicable standards.

2.7.5 Drainage

The drainage design work may include the design of culverts, open channels, storm sewers, bridge drainage assemblies and structures, adequate outfall analysis (in accordance with DCR Minimum Standard 19), stormwater management facilities, and erosion and sediment control in compliance with the standards and reference documents listed previously in Section 2.1 and the VDOT Erosion and Sediment Control & Stormwater Management Program.

2.7.6 Stormwater Management Plan and Erosion and Sediment Control

Prepare and implement an Erosion and Sediment Control ("ESC") Plan and a Stormwater Management Plan in compliance with the Virginia Erosion and Sediment Control Law, the Virginia Erosion and Sediment Control Regulations, the Virginia Stormwater Management Program, the Virginia Stormwater Management Regulations. The Offeror must certify that the Erosion and Sediment Control (ESC) and Stormwater Management Plans have been designed and reviewed in accordance with Virginia Department of Conservation and Recreation ("DCR") regulations and VDOT policies and procedures, including applicable I&IM. A qualified person, other than the designer, who is a certified DCR Plan Reviewer, must independently review and certify the ESC Plans. The Offeror shall complete and submit the ESC and SWM Plan Certification form (LD-445C) to the VDOT Project Manager certifying the ESC and SWM plan for the Project is in accordance with VDOT's Approved ESC and SWM Standards and Specifications. The Offeror will be responsible for compliance with construction-related permit conditions and shall assume all obligations and cost incurred by complying with the terms and conditions of the permit. Any fines associated with permit or regulatory violations shall be the responsibility of the Offeror.

If the land-disturbing activity at any single structure location is 1 acre or greater (2500 square feet or greater in a Chesapeake Bay Preservation Area), a Virginia Stormwater Management Program (VSMP) Construction Permit is required. The Offeror, as necessary, shall make determination of need, coordinate, and submit required information to the VDOT Project Manager. VDOT will review the submitted information and the VDOT Project Manager will obtain permit registration coverage as required. The Offeror shall not proceed with work covered by the permit until the VDOT Project

Manager releases the work in writing. The Offeror shall be responsible for compliance with pre-construction and construction related permit conditions. The Offeror shall be responsible for compliance with construction-related permit conditions and shall assume all obligations and cost incurred by complying with the terms and conditions of the permit. Any fines associated with permit or regulatory violations shall be the responsibility of the Offeror. The Offeror shall also have on-site during land disturbing operations an individual or individuals holding a DCR Inspector Certification, a DCR Responsible Land Disturber (RLD) Certification and a VDOT Erosion and Sediment Control Contractor Certification (ESCCC) to ensure compliance with all requirements.

2.8 Traffic Control Devices

The Project shall include all signs necessary for the Project. All existing traffic control devices within the Project limits shall be modified or replaced to meet current VDOT standards.

2.8.1 Signs

The Project shall include all required modifications to existing signs and all required new signs. Any signs on adjacent roadways that require relocation/replacement due to construction activities shall be the responsibility of the Offeror. An existing sign inventory shall be completed prior to site demolition in accordance with the VDOT Traffic Engineering Design Manual. This existing information shall be submitted at the same time as the first plan submittal for proposed signing.

2.8.2 Guardrail

The Offeror shall make reasonable effort to ensure that the clear zone within the project limit is free from hazards and fixed objects. In the event that removal or relocation of hazard and fixed objects from the clear zone is not feasible, the Offeror shall design and install appropriate barrier system for protect in accordance with NCHRP 350. The same requirement applies to existing conditions affected by this project where guardrail upgrade will be required.

For culvert replacement projects, existing substandard guardrail must be upgraded and/or replaced to meet current standards in accordance with IIM-LD-220.2. Information for guardrail to be upgraded and/or replaced is included in each Culvert Specific Scope Sheet included in the RFP Information Package CD-ROM. This information includes the type, and quantity of guardrail and the type, and quantity of end treatments. The quantities provided are based on the type of culvert replacement identified in the RFP Information Package. Any deviation from this scope of any Culvert Specific Scope Sheet, will be subject to VDOT's approval and any additional costs or time related to guardrail from this change in scope shall be the responsibility of the Design-Builder.

2.9 Right of Way

The Offeror's proposed design shall not exceed current right of way limits. The Department will make information about the existing Right of Way limits for each location available on or before April 30, 2009.

If the Offeror's proposed design requires additional temporary construction easements beyond the current right of way limits it will be the responsibility of the Offeror to coordinate directly with the affected property owners to acquire such temporary construction easements in accordance with the requirements noted below. Offeror shall be solely responsible for assuming all cost and risks associated with exceeding such right of way limits, including any public hearings that may be required, and no modifications to the Contract Price or Contract Time(s) will be granted or considered.

The Offeror, shall act on behalf of the Commonwealth of Virginia ("Commonwealth"), and provide all ROW acquisition services for the Project. Right of Way acquisition services shall include appraisal, appraisal review, negotiation, title examinations, and closings.

All appraisers and acquisition firms shall be selected from VDOT's pre-approved list. VDOT must issue a Notice to Commence Right of Way acquisition to the Offeror prior to any offers being made to acquire the property. VDOT must also issue a Notice to Commence Construction to the Offeror once the property has been acquired prior to commencing construction on the property. There will be NO additional fee right of way acquisition as part of the project. The Offeror will be responsible for the actual costs of acquiring any Temporary Construction Easements associated with the project. These easements will be acquired in the name of the Commonwealth of Virginia. VDOT reserves the right to determine the necessity and size of any Temporary Construction Easements that may require eminent domain.

The Offeror shall carry out the responsibilities related to acquisition of Temporary Construction Easements as follows:

- Acquire property in accordance with all applicable Federal and State laws and regulations, including but not limited to the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended (the "Uniform Act") and Titles 25.1 and 33.1 of the 1950 Code of Virginia, as amended. The acquisition of property shall follow the guidelines as established by VDOT and other State and Federal guidelines that are required and the VDOT Right of Way and Utilities Division Manuals, Vol. I and II.

- Submit procedures for handling right of way acquisitions to VDOT for approval prior to commencing right of way activities. These procedures are to show the Offeror's methods, including the appropriate steps and workflow required for title examinations, appraisals, and review of appraisals, and negotiations.

- Offeror shall obtain access to and use VDOT's Right of Way and Utilities Management System ("RUMS") to manage and track the acquisition process. RUMS will be used for project status reporting; therefore, entries in RUMS shall be made in a timely manner to accurately reflect current project status. Offeror shall use the VDOT standard forms and documents, as found in RUMS. Any changes to the forms and documents must be approved by VDOT. Training in the use of RUMS and technical assistance will be provided by VDOT.

- Provide a current title examination (no older than sixty days) for each parcel at the time of initial offer to landowner. Each title examination report shall be prepared by a VDOT-approved title company in accordance with VDOT's Right of Way Manual and shall include Title Insurance is required at closing for fee or permanent easement acquisitions. Should the Offeror select a law firm to certify title examinations, the certifying attorney shall show evidence of Professional Liability Insurance. VDOT reserves the right to determine if the Professional Liability Insurance coverage is sufficient. If any title examination report has an effective date that is older than sixty days, an update is required prior to making an initial offer to the landowner.

- Prepare appraisals in accordance with VDOT's Appraisal Guidelines. The type of appraisal required for each property shall be submitted to VDOT for approval prior to the commencement of the appraisal process.

- Provide appraisal reviews complying with technical review guidelines of VDOT's Appraisal Guidelines and make a recommendation of just compensation. The reviewer shall be approved by VDOT and shall be on VDOT's approved fee appraiser list. VDOT shall have final approval of all appraisals. VDOT must approve any settlements above the most recent approved appraisal.

- Make direct payments of benefits to property owners for negotiated settlements, and payments to be deposited with the court. Payment documentation is to be prepared and submitted with the Acquisition Report (RW-24).
- Prepare, obtain execution of, and record documents conveying title to such properties to the Commonwealth and deliver all executed easement agreements to VDOT. For all property purchased in conjunction with the Project, title shall be conveyed to "Commonwealth of Virginia, Grantee" by a VDOT-approved easement agreement.

- Because these acquisitions are being made as an agent on behalf of the Commonwealth, VDOT shall make the ultimate determination in each case as to whether settlement is appropriate or whether the filing of a condemnation action is necessary, taking into consideration the recommendations of the Offeror. The Offeror shall not request the filing of a certificate until the landowner has been given a minimum of 30 days to consider the offer or the landowner terminates negotiations. When VDOT authorizes the filing of a certificate, the Offeror shall prepare a Notice of Filing of Certificate. All required documents necessary to file a certificate shall be forwarded to the VDOT Project Manager who will forward the package to the District Right of Way and Utilities Manager for review and approval. Upon approval, the District Right of Way and Utilities Manager will return the package to the VDOT Project Manager who will then forward to the Offeror. The Offeror shall be responsible for filing the certificate.

- The following will be paid, if and when necessary, under a Work Order in accordance with Article 9 of the General Conditions of Contract: The Offeror shall provide the necessary staff and resources to work with VDOT throughout the entire condemnation process until the property is acquired by entry of a final non-appealable order, or by an Agreement After Certificate executed and approved by VDOT and the appropriate court. The Offeror shall provide updated appraisals (*i.e.*,

appraisal reports effective as of the date of taking) and expert testimony supporting condemnation proceedings upon request by VDOT.

- The Offeror shall be responsible for all contacts with landowners for rights of way or construction items.

- The Offeror shall use reasonable care in determining whether there is reason to believe that property to be acquired for rights of way may contain concealed or hidden wastes or other materials or hazards requiring remedial action or treatment. When there is reason to believe that such materials may be present, the Offeror shall take steps consistent with customary VDOT practices to investigate. VDOT shall be notified of the presence of such materials before an offer is made to acquire the property.

During the acquisition process and for a period of three years after final payment is made to the Offeror for any phase of the work, or until the Commonwealth has indefeasible title to the property, all Project documents and records not previously delivered to VDOT, including but not limited to design and engineering costs, construction costs, costs of acquisition of rights of way, and all documents and records necessary to determine compliance with the laws relating to the acquisition of rights of way and the costs of relocation of utilities, shall be maintained and made available to VDOT for inspection or audit. Throughout the design, acquisition and construction phases of the Project, copies of all documents/correspondence shall be submitted to the Project Manager, Central Office and respective District Offices.

2.10 Utilities

The Offeror shall be responsible for coordination of the Project construction with all utilities that may be affected. The Offeror shall be responsible for coordinating the work of the Offeror, its subcontractors and the various utilities. The resolution of any conflicts between utilities and the construction of the Project shall be the responsibility of the Offeror. No additional compensation or time will be granted for any delays, inconveniences, or damage sustained by the Offeror or its subcontractors due to interference from utilities or the operation of relocating utilities.

The Offeror shall be responsible for utility designations, utility locates (test holes), conflict evaluations, cost responsibility determinations, utility relocation designs, utility relocations and adjustments, utility reimbursement, replacement land rights acquisition and utility coordination required for the Project. Offeror is responsible for all necessary utility relocations and adjustments to occur in accordance with the accepted Baseline Schedule. All efforts and cost necessary for utility designations, utility locates (test holes), conflict evaluations, cost responsibility determination, utility relocation designs, utility relocations and adjustments, utility reimbursements, replacement land rights acquisition and utility coordination shall be included in the Offeror's Price Proposal; provided, however, that the compensation paid to landowners for replacement land rights will be paid by VDOT and shall **NOT** be included in the Offeror's Price Proposal.

The Offeror shall make all reasonable efforts to design the Project to avoid conflicts with

utilities, and minimize impacts where conflicts cannot be avoided.

The Offeror shall initiate early coordination with all utilities located within the Project limits. The Offeror shall identify and acquire any replacement utility easements or required right of way needs of all utilities necessary for relocation due to conflicts with the Project.

The Offeror shall provide all utilities with roadway design plans as soon as the plans have reached a level of completeness adequate to allow them to fully understand the Project impacts. The utility will use the Offerors design plan for preparing relocation plans and estimates. If a party other than the utility prepares relocation plans, there shall be a concurrence box on the plans where the utility signs and accepts the relocation plans as shown.

The Offeror shall coordinate and conduct a preliminary review meeting with all affected utilities to assess and explain the impact of the Project. The VDOT Project Manager and District Utilities Engineer (or designee) shall be included in this meeting.

The Offeror shall verify the prior rights of each utility's facilities if claimed by a Utility owner. If there is a dispute over prior rights with a utility, the Offeror shall be responsible for resolving the dispute. The Offeror should prepare and submit to VDOT a Preliminary Utility Status Report within 60 days of the Date of Commencement that includes a listing of all utilities located within the Project limits and a conflict evaluation and cost responsibility determination for each Utility. This report shall include copies of easements, plans, or other supporting documentation that substantiates any compensable rights of the utilities. The Offeror should obtain the following from each utility that is located within the Project limits: relocation plans including letter of "no cost" where the utility does not have a compensable right; utility agreements including cost estimate and relocation plans where the utility has a compensable right; utility easement forms to be executed by the landowner, if necessary; letters of "no conflict" where the utility's facilities will not be impacted by the Project.

The Offeror shall review all relocation plans to ensure that relocations comply with VDOT Right of way and Utilities Division Manual, Volumes II, Utility Relocation Policies and Procedures and VDOT’s Land Use Permit Manual. The Offeror shall also ensure that there are no conflicts with the proposed roadway improvements, and ensure that there are no conflicts between each of the utility's relocation plans. The Offeror shall prepare and submit to VDOT all relocation plans. The Offeror is expected to assemble the information included in the relocation plans in a final and complete form and in such a manner that VDOT may approve the submittals with minimal review. The Offeror is expected to meet with VDOT’s District Utilities Office within 45 days of the Date of Commencement to gain a full understanding of what is required with each submittal. The Offeror shall receive written approvals from VDOT prior to authorizing utilities to commence relocation construction. The utilities shall not begin their relocation work until authorized by the Offeror. Each relocation plan submitted must be accompanied by a certification from the Offeror stating that the proposed relocation will not conflict with the proposed roadway improvement and will not conflict with another utility's relocation plan.

At the time that the Offeror notifies VDOT that the Offeror deems the Project to have reached Final Completion, the Offeror shall certify to VDOT that all utilities have been identified and conflicts have been resolved and that those utilities with compensable rights or other claims related to relocation or coordination with the Project have been relocated and their claims and compensable rights satisfied or will be satisfied by the Offeror.

The Offeror shall accurately show the final location of all utilities on the As-Built Plans for the Project. Known utility owners and their respective contact numbers are included in the Culvert Specific Scope Sheets attached in the RFP Information Package – CD-ROM.

2.11 Quality Assurance / Quality Control (QA/QC)

Design-Builder shall submit its QA/QC Plan for both design and construction to VDOT for review and approval at the meeting held after the Date of Commencement as set forth in Part 4 General Conditions under Section 2.1.2.

2.11.1 Design Quality Management Plan

The Offeror shall be responsible for design quality. The Design Manager, assigned by the Offeror, shall be responsible for overall management of the QA/QC program for design. This individual shall report directly to the Offeror's Project Manager and shall be responsible for all design QA/QC activities. The Design Manager shall maintain close communication with Offeror's Project Manager and shall ensure the Project is completed in accordance with the requirements of the Contract Documents. He/she shall perform all design oversight reviews. VDOT will participate in these reviews. Under this procedure, the Design Manager shall provide VDOT with draft design plans for review and approval to confirm that the design work complies with the requirements of the Contract Documents, especially Section 2.4 of the General Conditions and the Standard and Reference Documents listed in Section 2.1 herein prior to initiation of construction activities on the Project.

Plan submissions shall be transmitted to VDOT's Project Manager who will distribute plans to appropriate VDOT and FHWA staff for review and approval. VDOT and FHWA shall have the right to review and comment on all draft plans and Specifications for compliance with the requirements of the Contract Documents and Standard and Reference Documents. The Offeror shall be responsible to satisfy all such requirements and hereby acknowledges that VDOT and FHWA will have the right to disapprove any design that it is not in compliance with the requirements of the Contract Documents and Standard and Reference Documents [unless design was previously approved in writing by VDOT and FHWA].

The written approval of the modifications should be attached with the draft plans submitted for review. The Offeror shall revise and modify all draft plans so as to fully reflect all comments and shall deliver to VDOT's Project Manager the revised submittal. The VDOT Project Manager will distribute plans to appropriate VDOT and FHWA staff for review and comments**.**

Final plans shall be submitted to VDOT and FHWA for review and approval by the Chief Engineer prior to the construction of that element or Work Package. The time frame for plan review and approval shall be in accordance with the requirements outlined in the Contract Documents. The Offeror shall be responsible for the design details and ensuring that the design and construction work are properly coordinated. VDOT's formal acceptance of the design will occur at the time of Final Acceptance as provided in the Contract Documents.

2.11.2 Construction Management Plan

The plan requires that the Offeror shall have the overall responsibility for both the Quality Control ("QC") and Quality Assurance ("QA") activities. The Offeror shall be responsible for 100% QA work and QA sampling and testing for all materials used and work performed on the Project. These QA functions shall be performed by an independent firm that has no involvement in the construction QC program/activities. The Offeror will also be responsible for providing quality assurance and quality control testing for all materials manufactured off-site, excluding the items listed below:

- Prestressed Concrete Structural Elements (beams, girders (AASHTO and bulb-T), and piles).
- Structural Steel Elements (beams and girders).
- Pipe (concrete, steel, aluminum and high density polyethylene) for culverts, storm drains and underdrains.
- Precast Concrete Structures.
- Asphalt Concrete Mixtures.
- Aggregate (dense and open graded mixes).
- Metal Traffic Signal and Light Poles and Arms

VDOT will provide plant quality assurance and plant testing of these items. In the event that the Department determines that materials fail to meet the tolerances in the Road and Bridge specifications, a Non-Compliance Report ("NCR") will be issued by the VDOT Project Manager and addressed to the Offeror's QAM for resolution. The Offeror is responsible to submit a Source of Materials, Form C-25, for all materials the Department retains responsibility for testing. The C-25 is for informational purposes only for the Department for the purpose of performing QA inspections. The C-25 will not be approved or rejected by the Department since it is the Offeror's responsibility to obtain materials that meet the contractual requirements. The Offeror will be responsible for providing quality assurance and quality control testing of all off-site materials that are not identified above, to include materials obtained from off-site soil borrow pits.

The Offeror's QAM shall report directly to the Offeror's Project Manager and be independent of the Offeror's roadway, bridge and otherwise physical construction operations. The QAM shall establish quantities prior to commencing construction, and provide VDOT a total number of QC, QA, Independent Assurance (IA) and Independent Verification (IV) tests required as a result of the quantities and the sampling and testing requirements as set forth in Sections 105.4 and 105.5 (August 2008 QA/QC Guide). VDOT will provide all IA and IV tests and therefore final determination of the

actual number of IA and IV tests to be performed will be made by the Department based on these quantities.

The QAM will be responsible for the QA inspection and testing of all materials used and work performed on the Project to include monitoring of the Contractor's QC activities, maintaining the Materials Notebook, documentation of all materials, sources of materials and method of verification used to demonstrate compliance with the Department Standards. This includes all materials where QA testing is to be performed by the Department. The QAM shall be vested with the authority and responsibility to stop any work not being performed according to the Contract requirements. The construction QA and QC inspection personnel shall perform all of the construction inspection and sampling and testing work that is normally performed by VDOT, as prescribed in the Construction Manual, Inspection Manual, Materials Manual of Instructions and all other applicable Reference Documents. This includes the documentation of construction activities and acceptance of manufactured materials.

VDOT's role during construction operations will be limited to verification sampling and testing, independent assurance, review and processing progress payments, and oversight of the Offeror's construction management scheduling, document control and other Project control and Project management/administration efforts necessary to properly administer and manage the Project. All construction QA and QC personnel shall hold current VDOT materials certifications when testing hydraulic cement concrete, asphalt concrete, soils and aggregate, pavement markings and for the safety and use of nuclear testing equipment, as required by the Road and Bridge Specifications. The QA programs must be performed under the direction of the QAM. The QC programs should be performed under the direction of the Construction Manager. Substitution of Construction Manager and the QAM shall require VDOT approval. In addition, VDOT shall have the right to order the removal of any construction QA and QC personnel to include the QAM and the Construction Manager for poor performance at the sole discretion of the VDOT Project Manager. The QA/QC plan shall include rapid reporting of non-compliance to the VDOT Project Manager, and the remedial actions to be taken as discussed in Section 105.12 of the Division 1 Amendments to the Standard Specifications (Part 5).

The Offeror shall provide, prior to Final Application for Payment, a complete set of Project records that included, but are not limited to the following:

- Project correspondence.
- Project diaries.
- Test reports.
- Invoices.
- Materials books.
- Certified survey records.
- DBE/EEO records.
- Warranties.
- Maintenance Manual.

- Special Tools, etc.

2.12 Traffic Management Plan

The Offeror shall prepare a Transportation Management Plan (TMP) in accordance with IIM 241.3 and TED-351.1 for all proposed work associated with the Project for approval by the VDOT Project Manager. The specific TMP project level requirements for this contract are for Type A projects. This plan shall be prepared and implemented to promote safe and efficient operation of adjacent public transportation facilities and State Highways. This plan shall reflect the work in the Culvert Specific Scope Sheets and all applicable VDOT Standards and Specifications and local ordinances regarding time of work. This plan shall, unless otherwise directed by VDOT, also incorporate a regular weekly update to the appropriate municipality regarding any scheduled lane closures and identification of work areas for the next two weeks following the update.

2.12.1 Holiday Restrictions

Unless otherwise approved by VDOT as part of the Transportation Management Plan, no temporary lane restrictions shall take place between 12:00 noon on the Friday preceding and 12:00 noon Tuesday following Memorial Day and Labor Day; or any State or Federal holiday if these holidays occur on Saturday, Sunday or Monday. If any State or Federal holiday falls on a week day other than Monday, there shall be no temporary lane restrictions between 12:00 noon the day before and 12:00 noon the day after each of these holidays. No lane restriction shall take place between 12:00 noon Wednesday preceding and 12:00 noon the Monday following Thanksgiving Day.

2.12.2 Weekend Restrictions

Unless otherwise approved by VDOT as part of the Transportation Management Plan, no weekend lane closures are allowed.

2.13 Plan Preparation

2.13.1 Geopak and MicroStation

When the Offeror is given the Date of Commencement, they will be furnished the following software and files which run in WindowsNT, Windows2000, or Windows XP Professional only: Geopak (current version used by VDOT), MicroStation (current version used by VDOT) and VDOT Standard Resources Files.

2.13.2 Software License Requirements

VDOT shall furnish license(s) for drafting software products only to the Offeror. The License(s) will be supplied upon request by the Offeror, based on the data provided on a completed Software License Form, LD-893, and subsequently reviewed and approved by the VDOT Project Manager.

All License(s) are provided for use on the Project as detailed on the request only for the duration specified for this Project. Any adjustment made to the Project schedule will be taken into consideration in adjusting the time the license(s) are available. Justification for the number of license(s) requested **MUST** include the estimated number of total computer hours for the task of design, detailing, relating Project management and other computer based engineering functions requiring the software requested.

The appropriate use of all license(s) provided to the Offeror will become the responsibility of the Offeror regardless of who on the team uses the license(s). The Offeror will be responsible for keeping track of the license(s) provided to them or a team member and the prompt return of the license(s) and removal of the software from any system used solely for the Project for which it was obtained.

2.13.3 Drafting Standards

All plans shall be prepared in accordance with the most recent version of the VDOT's Road Design Manual, Vol. I, VDOT's CADD Manual and VDOT's Instructional & Informational Memoranda (I&IM) and VDOT's Manual of the Structure and Bridge Division, Vol. V – Part 2 – Design Aids and Typical Details.

The approved plans shall be furnished by the Offeror with appropriate signature blocks and Professional Engineer seal on the title sheets indicating approval for construction.

2.13.4 Electronic Files

All plans shall also be submitted in electronic format using the provided versions of Microstation CADD software. Files shall be submitted in both DGN and TIFF formats. VDOT will furnish electronic files of all applicable standard detail sheets upon request by Offeror. An electronic copy of the Cover Sheet with signature block is included in the RFP Information Package - CD ROM. The files will use standard VDOT cell libraries, level structures, line types, text fonts, and naming conventions as described in the most recent version of the VDOT CADD Manual and VDOT's Manual of the Structure and Bridge Division, Vol. V – Part 2 – Design Aids and Typical Details. Files furnished to Offeror in electronic format shall be returned to VDOT and removed from Offeror and its designer's computer equipment upon completion of this Project.

2.13.5 Structure Plans

Each sheet of the contract plans shall be completely dimensioned, and all elevations necessary for construction purposes shall be shown. An Estimated Quantities table shall be included on the final structure plans for each structure. The Offeror shall provide complete details for steel and concrete structures or components, including, but not limited to, all sizes and overall dimensions of members, number and arrangement of all fasteners at joints, type and size of welds, size and placement of prestressing strands, and location of concrete inserts and embedments.

2.13.6 Construction Plans

Construction Plans are those that are issued for construction and approval by VDOT's Chief Engineer. This plan milestone includes plans that may be submitted as soon as sufficient information is available to develop Construction Plans for certain portions or elements of the Project. The Offeror shall meet commitments for review and approval by other entities/agencies as specified in other portions of the RFP and its attachments. These plans will be issued for construction following approval by VDOT's Chief Engineer. The roadway or structure plans may be submitted for approval in logical subsections (such as from bridge to bridge) and consisting of work packages such as: 1) clearing and grubbing along with erosion and siltation control, grading and drainage, 2) paving, and 3) traffic control. Individual bridge plans may be submitted in logical components such as: 1) foundation, 2) remaining substructure, and 3) superstructure. A submittal schedule and planned breakdown of work packages shall be submitted to VDOT for approval as part of their planned Project schedule.

In addition, the construction plans shall include the following: 1) for all proposed and relocated waterline and sanitary sewer lines provide plan and profiles prepared at 1 inch = 5 feet vertical and 1 inch = 25 feet horizontal and all calculation charts and models, 2) for all proposed and existing storm systems utilized for adequate outfall, provide plan and profiles prepared at 1 inch = 5 feet vertical and 1 inch = 25 feet horizontal and all associated calculation charts (capacity, inlet sizing, and HGL), and 3) provide adequate outfall cross sections and calculations.

The roadway or bridge plans described above shall be submitted to VDOT Project Manager. VDOT shall receive ten (10) full size sets and two (2) half size sets of each submission. The plan submissions shall be delivered, in accordance with Section 2.13.8.

2.13.7 Record (As-Built) Plans

The final plan milestone is Record (As-Built) Plans. As-Built Plans shall be prepared, certified and submitted to the Department with the final application for payment. These plans will show all adjustments and revisions to the Construction Plans made during construction and serve as a permanent record of the actual location of all constructed elements. The Offeror shall submit the Record (As-Built) Plans in both hard copy and electronic (DGN & TIFF) formats.

2.13.8 Plan Deliverables

Hard Copy paper plans and Electronic plans (DGN & TIFF) formats on CD or other approved media

- Approved for Construction Plans.
- Record Plans (As-Built).
- Working Drawings.
- Shop Drawings.
- Design Calculations.

2.14 Public Involvement / Relations

The Offeror will handle the fulfillment of all public involvement responsibilities. During the design and construction phases, the Offeror shall:

- hold informal meetings with affected local citizen groups and businesses as necessary and as directed by VDOT. Any meetings held will be in accordance with the VDOT Policy Manual for Public Participation in Transportation Projects, updated September 2004.

- provide to VDOT's Central Office Public Affairs written information about the Project suitable for posting by VDOT on its web site. Such information will include a Project overview, plan of work for the coming month, overall Project schedule and contact information as well as updated Project photos. Web content should be updated at least twice a month throughout the duration of the Project.

- during the construction phase, the Offeror shall provide to the Central Office Public Affairs at least weekly written information about the Project's effects on traffic (traffic updates) that may be used by VDOT for issuing news releases to the public.

2.15 Monthly Progress Meetings

Design-Builder shall participate in monthly progress meetings as described in Part 4 (General Conditions of Contract), Section 2.1.8.

2.16 Virginia Occupational Safety and Health Standards

The Project shall comply with Virginia Occupational Safety and Health Standards in accordance with Section 110.05 of the Division I Amendments to the Standard Specifications.

At a minimum, all Contractor personnel shall comply with the following, unless otherwise determined unsafe or inappropriate in accordance with OSHA regulations:

2. 16.1 Hard hats shall be worn while participating in or observing all types of field work when outside of a building or outside of the cab of a vehicle, and exposed to, participating in or supervising construction.

2. 16.2 Respiratory protective equipment shall be worn whenever an individual is exposed to any item listed in the OSHA Standards as needing such protection unless it is shown the employee is protected by engineering controls.

2.16.3 Adequate eye protection shall be worn in the proximity of grinding, breaking of rock and/or concrete, while using brush chippers, striking metal against metal or when working in situations where the eyesight may be in jeopardy.

2.16.4 Approved high visibility Safety apparel shall be worn by all exposed to vehicular traffic and construction equipment.

2.16.5 Standards and guidelines of the current Virginia Work Area Protection Manual shall be used when setting, reviewing, maintaining, and removing traffic controls.

2.16.6 Flaggers shall be certified in accordance with the Virginia Flagger Certification Program.

2.16.7 No person shall be permitted to position themselves under any raised load or between hinge points of equipment without first taking steps to support the load by the placing of a safety bar or blocking.

2.16.8 Explosives shall be purchased, transported, stored, used and disposed of by a Virginia State Certified Blaster in possession of a current criminal history record check and a commercial driver's license with hazardous materials endorsement and a valid medical examiner's certificate. All Federal, State and local regulations pertaining to explosives shall be strictly followed.

2.16.9 All electrical tools shall be adequately grounded or double insulated. Ground Fault Circuit Interrupter ("GFCI") protection must be installed in accordance with the National Electrical Code ("NEC") and current Virginia Occupational Safety and Health agency ("VOSH"). If extension cords are used, they shall be free of defects and designed for their environment and intended use.

2.16.10 No person shall enter a confined space without training, permits and authorization.

2.16.11 fall protection is required whenever an employee is exposed to a fall six feet or greater.

3.0 ATTACHMENTS

The following attachments are specifically made a part of, and incorporated by reference into, these Technical Information and Requirements:

All additional information is included in the RFP Information Package – CD-ROM referred to in Part 1, Section 2.7.4 of this RFP.

PART 3

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

This **AGREEMENT** is made as of the ___ day of _____ in the year of___, by and between the following parties, for services in connection with the Project identified below.

VIRGINIA DEPARTMENT OF TRANSPORTATION ("Department"),
An agency of the Commonwealth of Virginia:

Virginia Department of Transportation
Attention: Chief Engineer
1401 East Broad Street
Richmond, VA 23219

DESIGN-BUILDER:

PROJECT: Multiple Culvert Rehabilitation Project 2
Region 3 Salem and Staunton Districts

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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 *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 Division I Amendments (Part 5) to Standard Specifications, dated _____ ("Division I Amendments");

2.1.5 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract;

2.1.6 ~~Design Builder's Deviation List;~~ (NOT USED)

2.1.7 Department's Request for Proposals dated April 7, 2009 ("RFP"), including all Addenda [*List Addenda by number and date*];

.1 Part 1 – Instructions for Offerors

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

2.1.8 Design-Builder's Proposal submitted in response to RFP, including all final modifications [*List Modifications by number and date*].

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 hereof, provided, however, that Parts 3, 4 and 5 of the RFP shall be deemed superseded by the documents set forth in Sections 2.1.2 through 2.1.4 hereof.

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 The betterments and higher and/or more stringent standards or specifications and design and construction criteria, concepts, and drawings set forth in the Proposals, whether or not listed in the Deviation List, shall supersede the minimum requirements of the RFP Documents and apply to the performance of the Work.

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 the 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**. The 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. The Department waives any rights to seek recovery from Design-Builder for any claims, damages, liabilities, losses and expenses arising out of or resulting from the Department's use of the Work Product on another project.

Article 5

Contract Time

5.1 **Date of Commencement.** The Work shall commence upon Design-Builder's receipt of Department's Notice to Proceed or the date set forth in the Notice to Proceed ("**Date of Commencement**"), unless the parties mutually agree otherwise in writing. The 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** **[*To be inserted as the Agreement is finalized*]**

5.2.1 **Substantial Completion Dates**. The Design-Builder shall substantially complete the Work and it shall be open for traffic on _____ (shall be the date set forth in Section_____ of Part 1 of this RFP) (the "**Substantial Completion Date**").

~~**5.2.2** **Interim Milestone Dates**. Interim Milestones and/or Substantial Completion of identified portions of the Work shall be achieved as follows by the dates specified below ("**Interim Milestone Dates**"): *[Insert any interim milestones for portions of the Work with different scheduled dates for Substantial Completion]*~~ (NOT USED)

5.3 **Final Completion**. Final Completion of the Work, and any part thereof, shall be achieved as expeditiously as reasonably practicable, but in no event later than ~~[*sixty (60)*] days after Substantial Completion of the Work or designated part of the Work (the last day of such [*sixty]* day period being referred to as~~ _____, the "**Final Completion Date**"~~).~~

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

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

5.6. **Liquidated Damages**. Design-Builder understands that if the Contract Times 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:

~~**5.6.1** If Substantial Completion of the Work is not attained by the Substantial Completion Date, Designer-Builder shall pay Department _____ Dollars ($_____) as liquidated damages for each day that actual Substantial Completion of the Work extends beyond the Substantial Completion Date.~~ (NOT USED)

~~**5.6.2** If Interim Milestone(s) are not attained by the Interim Milestone Date(s), Designer-Builder shall pay Department _____ Dollars ($_____) as liquidated damages for each day that each Interim Milestone(s) extends beyond the Interim Milestone Date.~~ (NOT USED)

5.6.3 If Final Completion is not attained by the Final Completion Date, Designer-Builder shall pay Department **One Thousand Three Hundred Fifty and 00/100 Dollars ($1,350.00)** as liquidated damages for each day that Final Completion extends beyond the Final Completion Date.

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

5.7.1 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);

5.7.2 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

5.7.3 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.

~~**5.8 Early Completion Bonus**. If Substantial Completion of the entire Work is attained on or before the Substantial Completion Date (such earlier date being referred to as the "**Bonus Date**"), the Department shall pay the Design-Builder at the time of Final Payment under Section 7.3 hereof an early completion bonus of _____ Dollars ($_____) (the "**Early Completion Bonus**") for each day that Substantial Completion is attained earlier than the Bonus Date, except that the Early Completion Bonus shall not exceed _____ Dollars ($_____). Further, the parties acknowledge, recognize, and agree, that in order to qualify for the Early Completion Bonus, the Design-Builder must notify the Department by _____ and provide a general release executed by the Design-Builder waiving 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.~~ (NOT USED)

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 _____Million _____Thousand and 00/100 Dollars ($_____) ("**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 Specifications.

6.3 Adjustments to Asphalt, Fuel and Steel. Department and Design-Builder agree to adjust prices for asphalt, fuel and steel, in accordance with the Department's pertinent special provisions, attached hereto as Exhibits 6.3(a), 6.3(b), ~~6.3(c),~~ 6.3(d), and 6.3(e) 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 asphalt, fuel and steel will be based on the quantities identified in the work packages 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 the Date of Commencement, 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 the 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 the Department attributable to the work performed by the Subcontractor; or (b) notify the 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 the 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 shall not be construed to be an obligation of the 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 Pursuant to VA. CODE §2.2-4354, Design-Builder agrees to provide the 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 6.7 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 6.7.2 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 three (3) 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 three (3) 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 the Department's best interests. The 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~~, other than the payment described in Section 8.3.3 of Part 1 of the RFP~~ (NOT USED). Design-Builder specifically waives any and all rights to claim from the 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:

8.2.1 Stop Work as specified in the notice;

8.2.2 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;

8.2.3 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;

8.2.4 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;

8.2.5 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;

8.2.6 Transfer and deliver to Department or its designee, as directed by Department: (a) possession and control of the Project; and (b) 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 Construction Documents 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, the Design-Builder shall not be liable for any warranties for Work which has not achieved Substantial Completion, nor shall the Design-Builder have any liability with respect to any design materials produced with respect to the Project;

8.2.7 Complete performance in accordance with the Contract Documents of all Work not terminated;

8.2.8 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

8.2.9 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; provided, however, that Design-Builder: (a) shall not take any such action with respect to any items for which title has previously transferred to Department; (b) is not required to extend credit to any purchaser; and (c) 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 Code of Virginia §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 Substantial Completion 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.

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 the Department and to be retained by Design-Builder or sold by the Design-Builder (with the proceeds being retained by the 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 Substantial Completion 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. The Design-Builder makes no warranties with respect to Work which has not achieved Substantial Completion 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 Article 8 shall be a dispute to be resolved in accordance with the requirements of the General Conditions, Article 10.

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:

[*Insert Department's Representative*]

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:

[*Insert Department's Representative*]

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:

[*Insert Design-Builder's Representative*]

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:

[*Insert Design-Builder's Representative*]

9.3 The 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 principles of the Department Construction Directive Memorandum *Communication on Construction Projects, Process for Field Decision Making*, CD-2004-1, noting however that many of the responsibilities and duties traditionally completed by the Department are allocated to Design-Builder within these Contract Documents.

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 Proposal Schedule. This 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.

11.1.2 Baseline Schedule. Within ninety (90) days of the Date of Commencement, Design-Builder shall submit to Department, for its review and approval, a CPM schedule that includes, among other things: (a) the order in which Design-Builder proposes to carry out the Work (including each stage of design, right-of-way acquisition, Governmental Approvals (including but not limited to permit acquisition), procurement, manufacture, delivery to Site, construction, inspection and testing); and (b) the times when submissions and approvals or consents by Department are required (provided, however, that such times shall be no less than the Department's minimum review duration identified in Section 3.1 of the General Conditions of Contract). This schedule shall be resource-loaded, broken down into work packages that are consistent with the Work Breakdown Structure submitted in Design-Builder's Proposal, and in deliverables generally completed within thirty (30) days, with the dollar value (price) of each deliverable being identified. If Department does not approve such submission, Design-Builder shall resubmit a revised schedule to Department within seven (7) days of its receipt of Department's comments on such schedule. This process shall continue until such time as a schedule is so approved by Department ("**Baseline Schedule**"), and the payment schedule is so approved by Department ("**Earned Value Schedule**") as referenced in Section 6.1 of General Conditions of Contract (Part 4). 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. As part of, and in conjunction with, the monthly reports required by Section 11.1.8, Design-Builder shall provide Department with any proposed update of the Baseline Schedule for Department's review and approval and a progress narrative that describes, at a minimum, the overall progress for the preceding month, a critical path analysis, a discussion of problems encountered and proposed solutions thereof, work calendars, constraints, delays experienced and any pending Time Impact Analysis ("**TIA**"), float consumption as a result of either Department and/or Design-Builder delays, documentation of any logic changes, duration changes, resource changes or other relevant changes. The monthly progress narrative shall also include the following:

.1 Comparisons of actual and planned progress, including: (i) illustrating schedule variance graphically by plotting the Budgeted Cost of Work Performed ("**BCWP**") and the Budgeted Cost of Work Scheduled ("**BCWS**"); and (ii) reporting the Schedule Performance Index ("**SPI**"), defined as the ratio of BCWP divided by BCWS; and

.2 Statement by the Design-Builder that this is the only schedule being executed to perform the Work; and

.3 Details of any aspects of the Work which may jeopardize the completion in accordance with the Contract Documents; and

.4 Measures being (or to be) adopted to overcome such aspects and a list of approvals needed to adopt such measures.

If Department believes that the Baseline Schedule needs a specific revision, either in logic, activity duration, manpower or cost, it will be requested from Design-Builder in writing. Design-Builder shall respond in writing within seven (7) days, either agreeing with Department's proposed revision, and henceforth including it in the next Baseline Schedule update, or providing justification why it should not be accomplished. If revisions cannot be agreed upon either through written correspondence or subsequent meetings, Department and Design-Builder shall agree to attempt to resolve the issues through a TIA submission as described in Section 8.3 of the General Conditions of Contract or the dispute resolution process of Article 10 in the General Conditions of Contract. If the Department and the Design-Builder cannot agree on the TIA, the Design-Builder shall proceed under the previously approved Baseline Schedule. At no time shall Design-Builder continue to reflect items of non-concurrence from Department in Baseline Schedule updates.

11.1.4 <u>Schedule Format</u>. Design-Builder shall submit two (2) copies in electronic format of the Baseline Schedule, including updates and narratives. A CD-ROM containing the latest Baseline Schedule update in electronic format shall be submitted for each schedule iteration along with two (2) color coded plots of the current Time Scaled Logic Diagram, which shall be neatly organized and plotted time scaled from left to right on 24"x36" sheets with suitable notation relating the interface points among sheets. Time Scaled Logic Diagrams shall clearly depict the critical path, as well as activity identifications, activity descriptions, original durations, early start, early finish, late start, late finish, and actual dates as applicable. This process shall continue until Final Completion. The first day of the month ("data date") of each Baseline Schedule update shall coincide with Design-Builder's Application for Payment. Design-Builder shall use Microsoft Office Project, Excel, or and equivalent software package ~~Primavera Engineering and Construction software~~ as the format for the Baseline Schedule and all updates. ~~The scheduling software that will be utilized by VDOT on this project is the latest Portfolio Management software by Primavera Systems, Inc. (currently "P6"). Notwithstanding any other provision in the contract, the Design-Builder shall develop a CPM Baseline Schedule and all required schedule updates using Primavera Systems, Inc. software with the capability to import and export electronic schedule data in Primavera's Proprietary Exchange Format (XER) and that is wholly and entirely compatible with the VDOT's current software version. Submission of data from another software system where data conversion techniques or software is~~

~~used to import into Primavera's scheduling software is not acceptable and will be cause for rejection of the submitted schedule~~

11.1.5 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.

11.1.6 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.

11.1.7 Department's Review and Approval of Baseline Schedule. Department's review and approval of the Baseline Schedule or subsequent updates 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).

11.1.8 Monthly Reports. Monthly reports shall be prepared by Design-Builder and submitted to Department in six (6) copies. The first report shall cover the 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 Completion. 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 personnel and Design-Builder's 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 the narrative as set forth in Section 11.1.3 above;

.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, asphalt and steel, on Department-provided forms referenced in Section 11.3.1 herein.

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.

11.1.9 <u>Project Records</u>. 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 11.1.9. 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 the 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 are specifically made part of, and incorporated by reference into, this Agreement:

EXHIBIT 6.3(a)	--	ADJUSTMENT FOR ASPHALT
EXHIBIT 6.3(b)	--	FORM C-16a (PRICE ADJUSTMENT FOR ASPHALT)
EXHIBIT 6.3(d)	--	ADJUSTMENT FOR FUEL
EXHIBIT 6.3(e)	--	ADJUSTMENT FOR STEEL
EXHIBIT 11.1.1	--	PROPOSAL SCHEDULE *[To be inserted as the Agreement is finalized.]*
EXHIBIT 11.1.9	--	EXAMPLE CORRESPONDENCE TRACKING LOG

Original with signatures on file in the Innovative Project Delivery Division.

DEPARTMENT:	**DESIGN-BUILDER:**
Virginia Department of Transportation *(Name of Department)*	_____ *(Name of Design-Builder)*
_____ *(Signature)*	_____ *(Signature)*
_____ *(Printed Name)*	_____ *(Printed Name)*
Chief Engineer *(Title)*	_____ *(Title)*
Date: _____	Date: _____

END OF PART 3
LUMP SUM DESIGN-BUILD AGREEMENT

EXHIBIT (Exhibit # 6.3(a))
ADJUSTMENT FOR ASPHALT
SPECIAL PROVISION FOR
ASPHALT MATERIAL PRICE ADJUSTMENT
DESIGN-BUILD PROJECTS

July 30, 2008

In the event the Design-Builder elects to seek adjustment for asphalt items designated in the Price Proposal\Contract as Price Adjustment Items such items will be subject to price adjustment as set forth herein. Other items will not be adjusted, except as otherwise specified in the contract. If new pay items which contain asphalt material are established by Work Order, they will not be subject to Price Adjustment unless specifically designated in the Work Order to be subject to Price Adjustment.

Each month, the Department will publish an average state-wide PG 64-22 f.o.b. price per ton (metric ton) developed from the average terminal prices provided to the Department from suppliers of asphalt cement to contractors doing work in Virginia. The Department will collect terminal prices from approximately 12 terminals each month. These prices will be received once each month from suppliers on or about the last weekday of the month. The high and low prices will be eliminated and the remaining values averaged to establish the average statewide price for the following month. That monthly state-wide average price will be posted on the Scheduling and Contract Division website on or about the first weekday of the following month.

This monthly statewide average price will be the Base Index for all contracts on which bids are received during the calendar month of its posting and will be the Current Index for all asphalt placed during the calendar month of its posting. In the event an index changes radically from the apparent trend, as determined by the Engineer, the Department may establish an index which it determines to best reflect the trend.

The amount of adjustment applied will be based on the difference between the contract Base Index and the Current Index for the applicable calendar month during which the work is performed. Adjustment of any asphalt material item designated as a price adjustment item which does not contain PG 64-22, except PG 76-22, will be based on the indexes for PG 64-22. The quantity of asphalt cement for asphalt concrete pavement to which adjustment will be applied will be the quantity based on the percent of asphalt cement shown on the appropriate approved job mix formula.

The quantity of asphalt emulsion for surface treatments to which adjustment will be applied will be the quantity based on 65 percent residual asphalt.

Price adjustment will be shown as a separate entry on the monthly progress estimate; however, such adjustment will not be included in the total cost of the work for progress determination or for extension of contract time.

Any apparent attempt to unbalance bids in favor of items subject to price adjustment or failure to submit required cost and price data as noted hereinbefore may result in rejection of items for asphalt adjustment.

___I elect to use this provision
___I elect not to use this provision

Date: _____

Signature: _____

Design-Builder: _____

Vendor No.: _____

EXHIBIT (Exhibit # 6.3(a))
ADJUSTMENT FOR ASPHALT

Form C-16a
7-13-05

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
PRICE ADJUSTMENT

INSTRUCTIONS - This form is to be completed and returned ONLY when asphalt concrete items are designated for price adjustment on the bid price sheets.

PROJECT NUMBER:

DISTRICT:

Bid Prices in this contract for items containing PG 64-22 asphalt cement were developed using an f.o.b. price of $ _____ per **IMPERIAL** ton for **PG 64-22**. This quote will be averaged into the monthly price index.

Bid Prices in this contract for items containing PG 76-22 asphalt cement were developed using an f.o.b. price of $ _____ per **IMPERIAL** ton for **PG 76-22**. This quote is project specific.
(When required by provisions)

Price quotes signed by each supplier from which the Design-Builder proposes to obtain PG 64-22 or PG 76-22 shall be maintained by the successful bidder. These quotes shall be retained on site during the life of the Contract for review by the Engineer upon request.

DATE:_____

SIGNATURE:_____

_____
(Firm or Corporation)

_____
(Vendor No.)

EXHIBIT (Exhibit # 6.3 (d))
ADJUSTMENT FOR FUEL
VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
OPTIONAL ADJUSTMENT FOR FUEL
DESIGN-BUILD PROJECTS

May 14, 2006

The Department will adjust monthly progress payments up or down as appropriate for cost changes in fuel used on specific items of work identified in this provision.

The amount of adjustment will be computed from the change in the indexes and the on-site fuel use as shown in the Fuel Use Table below.

In order to be eligible for fuel adjustment under this provision, the Design-Builder shall clearly identify in its Price Proposal those pay items and the associated quantities it chooses to have fuel adjustment applied to in its work packages. Items the successful Design-Builder chooses for fuel adjustment must be specifically designated in writing in the Design-Builder's Price Proposal to be considered complete for fuel adjustment. Items not properly designated or left out of the Design-Builder's Price Proposal will automatically not be considered for adjustment.

The monthly index price to be used in the administration of this provision will be calculated by the Department from the Diesel fuel prices published by the U. S. Department of Energy, Energy Information Administration on highway diesel prices, for the Lower Atlantic region. The monthly index price will be the price for diesel fuel calculated by averaging each of the weekly posted prices for that particular month.

For the purposes of this provision, the base index price will be calculated using the data from the month preceding the receipt of bids. The base index price will be posted by the Department at the beginning of the month for all bids received during that month.

The current index price will be posted by the Department and will be calculated using the data from the month preceding the particular estimate being vouchered for payment.

The current monthly quantity for eligible items of work selected by the Design-Builder for fuel adjustment in its work packages will be multiplied by the appropriate fuel factor to determine the gallons of fuel to be cost adjusted. The amount of adjustment per gallon will be the net difference between the current index price and the base index price. Computation for adjustment will be made as follows:

EXHIBIT (Exhibit # 6.3 (d))
ADJUSTMENT FOR FUEL

S = (E - B) QF

Where; S = Monetary amount of the adjustment (plus or minus)
B = Base index price
E = Current index price
Q = Quantity of individual units of work
F = Appropriate fuel factor

Adjustments will not be made for work performed beyond the original contract time limit unless the original time limit has been changed by an executed Work Order.

If new pay items are added to this contract by Work Order and they are listed in the Department's general categories of eligible items in the Fuel Table below, the Work Order must indicate which of these individual items will be fuel adjusted; otherwise, those items will not be fuel adjusted. If applicable, designating which new pay items will be added for fuel adjustment must be determined during development of the Work Order and clearly shown on the Work Order form. The Base Index price on any new eligible pay items added by Work Order will be the Base Index price posted for the month in which bids were received for that particular project. The Current Index price for any new eligible pay items added by Work Order will be the Index price posted for the month preceding the estimate on which the Work Order is paid.

When quantities differ between the last monthly application of payment prepared upon final acceptance and the final application of payment, adjustment will be made using the appropriate current index for the period in which that specific item of work was last performed.

In the event any of the base fuel prices in this contract increase more than 100 percent (i.e. fuel prices double), the Engineer will review each affected item of work and give the Design-Builder written notice if work is to stop on any affected item of work. The Department reserves the right to reduce, eliminate or renegotiate the unit price for remaining portions of affected items of work.

Any amounts resulting from fuel adjustment will not be included in the total cost of work for determination of progress or for extension of contract time.

FUEL USE TABLE (Rate per Unit)

Item	Onsite Gallons/Units
Excavation Regular, borrow, embankment, undercut, structure	0.29 gal/c.y.
Aggregate Base, subbase, select material	0.26 gal/ton
Asphalt All mixes	3.50 gal/ton
Concrete	
Bridges and structure, retaining wall	2.00 gal/c.y.
Sidewalk, all pavement	0.95 gal/s.y.

EXHIBIT (Exhibit # 6.3 (d))
ADJUSTMENT FOR FUEL

___I elect to use this provision
___I elect not to use this provision

Date: _____

Signature: _____

Design-Builder: _____

Vendor No.: _____

EXHIBIT (Exhibit # 6.3 (e))
ADJUSTMENT FOR STEEL

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
PRICE ADJUSTMENT FOR STEEL
DESIGN-BUILD PROJECTS

April 12, 2005

In the event Design-Builder submits a design that incorporates steel items, the Department will adjust monthly progress payments associated with eligible work packages up or down as appropriate for cost changes in steel used on specific items of work identified in the Price Proposal/contract in accordance with this provision. The following steel items will be eligible for consideration under this provision: structural steel (rolled beams, plate girders, diaphragms, plate bearings, etc.), reinforcing steel (plain & epoxy coated), overhead sign structures, guardrail, posts, standard sign or lighting supports, railing, encasement pipe, H-piles (end bearing or friction), steel strand (used for pre-tensioned or post-tensioned finished elements) and sheet piles. Inventoried materials from the listing of eligible items are specifically excluded for consideration. In addition, concrete items where reinforcing steel is normally included in the unit bid price for the item such as (but not limited to) drop inlets, median barriers, sound barrier walls, bridge railing and parapets, are not eligible for consideration under this provision

The requirements of this provision shall apply only to material cost changes that occur between the date of the opening of the Price Proposal and the date the material is shipped to the fabricator. To be eligible for this price adjustment, Design-Builder is required to fill out the accompanying Form for Price Adjustment for Eligible Steel Items on Design-Build Projects and submit the same with its Price Proposal for the Project. By signing the Form and submitting it with its Price Proposal Design-Builder declares its intention to participate in the price adjustment in its contract with the Department. For the purposes of this provision, the prices listed on the Form for Price Adjustment for Eligible Steel Items on Design-Build projects are fixed for cost and adjustment calculations regardless of quantities incorporated into final design. Further, in order for steel items to be eligible for adjustment, once shipped to the fabricator, the items shall be specifically stored, labeled, or tagged, recognizable by color marking, and identifiable by project for inspection and audit verification.

This provision allows for price adjustment only for embedded steel used for pre-tensioned or post-tensioned precast components where furnishing steel is included on the list of eligible steel items on the Form for Price Adjustment for Eligible Steel Items on Design-Build Projects. Steel used for post-tensioned or pre-tensioned elements shall be evaluated for price adjustment in the same manner as other steel material eligible under the requirements of this provision except that adjustment shall only apply to the tonnage or poundage of steel strand used in the pre-tensioned or post-tensioned element. This provision shall only apply to material cost changes of steel strand that occur between the date of opening of the Price Proposal and the date the strand material is shipped to Design-Builder, or any Subcontractor or supplier/fabricator who is placing the steel into the finished component.

Design-Builder shall upon request furnish documentation supporting the price per pound for eligible steel items as shown on the Form for Price Adjustment for Eligible Steel Items on Design-Build Projects furnished with its Price Proposal. Design-Builder must use the format as shown with this Form; no other format for presenting this information will be permitted. Design-Builder shall certify that all items of documentation are original and were used in the computation of the price per pound amount for the represented eligible pay items for the month the Price Proposal was opened. This documentation shall support the base line material price ("Base Price") of the steel item only. Base price per pound shall not include the following cost components: fabrication, shipping, storage, handling, and erection.

Failure to submit all documentation required or requested supporting the per pound prices on eligible steel items will result in Design-Builder being ineligible for a price adjustment of any or all steel items.

EXHIBIT (Exhibit # 6.3 (e))
ADJUSTMENT FOR STEEL

Price adjustment of each qualifying item under consideration will be subject to the following condition:

There is an increase or decrease in the cost of eligible steel materials in excess of 10 percent up to a maximum of 60 percent from the Base Price when compared with the latest published price index ("Price Index") in effect at the time material is shipped to the fabricator.

The Price Index the Department is using is based on The U.S. Department of Labor, Bureau of Labor Statistics, Producers Price Index (PPI) which measures the average price change over time of the specific steel eligible item from the perspective of the seller of goods. The specific Producers Price Index (PPI) to be used to adjust the price for the eligible VDOT steel items is shown in the table below. **Please note**: The Producers Price Index (PPI) is subject to revision 4 months after original publication, therefore, price adjustments and payments will not be made until the index numbers are finalized.

The following table indicates the Producers Price Index (PPI) steel category index items and the corresponding I.D. numbers to which VDOT items will be compared:

VDOT Pay Item	Bureau of Labor Statistics PPI Series I. D. Number WPU#
Reinforcing steel (plain & epoxy coated) Steel Strand (Pre-tensioning & Post-tensioning)	101704
Plate girders & rolled beams (St'd. & High strength, diaphragms, plate bearings, etc.) Steel piling (H-pile & sheet)	Average of 1017 & 101
Steel encasement pipe Overhead sign structures, posts, poles, guardrail, sign or lighting supports, & railing	101706
Guardrail	Average of 1017 & 101707

The price adjustment will be determined by computing the percentage of change in index value beyond 10 percent above or below the index on the date of opening of Design-Builder's Price Proposal to the index value on the date the steel material is shipped to the fabricator (Please see included sample examples). Weights and date of shipment must be documented by a bill of lading provided to the Department. The final price adjustment dollar value will be determined by multiplying this percent increase or decrease in the index (after 10%) by the represented quantity of steel shipped, by the Base Price per pound subject to the limitations herein.

Price increase/decrease will be computed as follows:

$A = B \times P \times Q$

Where;
- A = Steel price adjustment in lump sum dollars
- B = Average weighted price of steel submitted in Design-Builder's Price Proposal for project in price per pound as listed on the Form for Price Adjustment for Eligible Steel Items on Design-Build Project
- P = Adjusted percentage change in PPI average from shipping date to

EXHIBIT (Exhibit # 6.3 (e))
ADJUSTMENT FOR STEEL

date of opening of Price Proposal minus 10% (0.10) threshold

Q = Total quantity of steel in pounds shipped to fabricator for specific project

Delays to the work caused by steel shortages may be justification for a contract time extension but will not constitute grounds for claims for standby equipment, extended office overhead, or other costs associated with such delays.

The need for application of the adjustments herein to extra works will be determined by the Engineer on an individual basis and, if appropriate, will be specified on the Work Order.

This price adjustment is capped at 60 percent. This means the maximum “P” value for increase or decrease that can be used in the above equation is 50% (60%-10% threshold).

Calculations for price adjustment shall be shown separate from the monthly progress payment for work packages and will not be included in the total cost of work for determination of progress or for extension of contract time.

Upon Department review and due process consideration for redress by Design-Builder any apparent evidence to unbalance the price supplied by Design-Builder in favor of items subject to price adjustment will result in ineligibility for Department participation under this provision.

EXHIBIT (Exhibit # 6.3 (e))
ADJUSTMENT FOR STEEL

FORM FOR PRICE ADJUSTMENT FOR ELIGIBLE STEEL ITEMS ON DESIGN-BUILD PROJECTS
Must be supplied with Price Proposal for Department Participation

(All prices to be supported by project-specific quotes)

DATE FOR RECEIPT OF PRICE PROPOSAL _____

Note: All prices (costs) are to include any surcharges on materials quoted. Vendors must include this surcharge with their cost. All prices (costs) are F.O.B. from the originating mill.

	Cost per pound
Reinforcing Bar (plain & epoxy coated)	_____
Plate girders & rolled beams	_____
H- piles	_____
Guardrail	_____
Posts	_____
Pipe Encasements	_____
Steel Strand	
Overhead sign structures, posts, poles Sign or lighting supports & railings	_____

We/I, the undersigned, understand that by supplying prices for the steel items listed above and signing this form we are declaring our desire to apply the Special Provision For Steel Adjustment for Design-Build Projects to this Price Proposal and contract. The terms and conditions for participation are as stated in the Special Provision For Steel Adjustment for Design-Build Projects.

_____ _____

EXHIBIT (Exhibit # 6.3 (e))
ADJUSTMENT FOR STEEL

Design-Builder

Date

EXHIBIT (Exhibit # 6.3 (e))
ADJUSTMENT FOR STEEL

11-Apr-05

Sample Calculation of a Price Adjustment (increase)

Price Proposal submitted on April 28, 2005.

Project as designed has 450,000 lb. of structural steel.

Design-Builder's *f.o.b. supplier price for the structural steel supplied with Price Proposal is $0.2816 per pound. *free on board

Adjusted** BLS Producers Price Index (PPI) most recently published average at time of opening of Price Proposal is 139.6.

** final change
after 4 months

Eligible steel shipped to fabricator in same month, October 2007.

Adjusted BLS Producers Price Index (PPI) most recently published average for month of October is 161.1

Adjustment formula is as follows:

A = B X P X Q

Where;
- A = Steel price adjustment in lump sum dollars
- B = Average weighted price of steel submitted with Price Proposal for D-B project in $ per pound
- P = Adjusted percentage change in PPI average from shipping date to date of submitted Price Proposal minus 10% (0.10) threshold
- Q = Total quantity of steel shipped to fabricator in October 2004 for this project in pounds

B = $0.2816

P = (161.1- 139.6)/139.6 – 0.10 = 0.054

Q = 450,000 lb.

A = 0.2816 x 0.054 x 450,000

A = $6,842.88 pay adjustment to Design-Builder

EXHIBIT (Exhibit # 6.3 (e))
ADJUSTMENT FOR STEEL

11-Apr-05

Sample Calculation of a Price Adjustment (decrease)

Price Proposal submitted on April 28, 2005.

Project as designed has 450,000 lb. of eligible steel.

Design-Builder's *f.o.b. supplier price for the eligible steel supplied with Price Proposal is $0.2816 per pound. *free on board

Adjusted BLS Producers Price Index (PPI) most recently published average at time of opening of Price Proposal is 156.6.

Eligible steel shipped to fabricator in same month, October 2004.

Adjusted BLS Producers Price Index (PPI) most recently published average for month of October is 136.3

Adjustment formula is as follows:

A = B X P X Q

Where;
- A = Steel price adjustment in lump sum dollars
- B = Average weighted price of steel submitted with Price Proposal for D-B project in $ per pound
- P = Adjusted percentage change in PPI average from shipping date to date of submitted Price Proposal minus 10% (0.10) threshold
- Q = Total quantity of steel shipped to fabricator in October 2004 for this project in pounds

B = $0.2816

P = (156.6 – 136.3)/136.3 – 0.10 = 0.049

Q = 450,000 lb.

A = 0.2816 x 0.049 x 450,000

A = $6,209.28 credit to Department

EXHIBIT (Exhibit # 6.3 (e))
ADJUSTMENT FOR STEEL

20-Jan-05

Sample Form to be turned in for Steel Price Adjustment Provision
(All prices to be supported by project-specific quotes)

BID DATE 28-Apr-04

Bid Item 61720 High Strength Structural Steel

Supplier	Description of material	Unit price f.o.b supplier $/lbs	Quantity In lbs.	Price Extension	Date of Quote
XYZ mill	Structural beams Various sizes (see quote)	$0.28	1,200,000	$336,000.00	21-Apr-04
ABC distributing	Various channel & angle shapes (see quote)	$0.32	35,000	$11,200.00	20-Apr-04
		Total	1,235,000	$347,200.00	
		Average weighted price =		$0.2816	

Note: All prices are to include any surcharges on materials quoted as if they are shipped in the month the bid is submitted. Vendors must include this surcharge along with their base price on their quotes.

Reinforcing Bar (plain)

Reinforcing Bar (epoxy coated)

H- piles

Guardrail

Posts

Pipe Encasements

EXHIBIT (Exhibit # 6.3 (e))
ADJUSTMENT FOR STEEL

20-Jan-05

Sample Calculation of a Price Adjustment (increase)

Project bid on April 28, 2004.

Project has 450,000 lb. of structural steel.

Orders placed in timely manner and according to contract.

Contractor's *f.o.b. supplier price for the structural steel in bid is $0.2816 per pound. *free on board

Adjusted** BLS Producers Price Index (PPI) most recently published average at time of bid is 139.6.
** final change
after 4 months
All steel shipped to fabricator in same month, October 2004.

Adjusted BLS Producers Price Index (PPI) most recently published average for month of October is 161.1

Adjustment formula is as follows:

A = B X P X Q

Where;
- A = Steel price adjustment in lump sum dollars
- B = Average weighted price of steel submitted with bid on project in $ per pound
- P = Adjusted percentage change in PPI average from shipping date to bid date minus 10% (0.10) threshold
- Q = Total quantity of steel shipped to fabricator in October 2004 for this project in pounds

B = $0.2816

P = (161.1- 139.6)/139.6 – 0.10 = 0.054

Q = 450,000 lb.

A = 0.2816 x 0.054 x 450,000

A = $6,842.88 pay adjustment to Contractor

EXHIBIT (Exhibit # 6.3 (e))
ADJUSTMENT FOR STEEL

20-Jan-05

Sample Calculation of a Price Adjustment (decrease)

Project bid on April 28, 2004.

Project has 450,000 lb. of structural steel.

Orders placed in timely manner and according to contract.

Contractor's *f.o.b. supplier price for structural steel in bid is $0.2816 per pound. *free on board

Adjusted BLS Producers Price Index (PPI) most recently published average at time of bid is 156.6.

All steel shipped to fabricator in same month, October 2004.

Adjusted BLS Producers Price Index (PPI) most recently published average for month of October is 136.3

Adjustment formula is as follows:

A = B X P X Q

Where;
- A = Steel price adjustment in lump sum dollars
- B = Average weighted price of steel submitted with bid on project in $ per pound
- P = Adjusted percentage change in PPI average from shipping date to bid date minus 10% (0.10) threshold
- Q = Total quantity of steel shipped to fabricator in October 2004 for this project in pounds

B = $0.2816

P = (156.6 – 136.3)/136.3 – 0.10 = 0.049

Q = 450,000 lb.

A = 0.2816 x 0.049 x 450,000

A = $6,209.28 credit to Department

___I elect to use this provision
___I elect not to use this provision

Date: _____

Signature: _____

EXHIBIT (Exhibit # 6.3 (e))
ADJUSTMENT FOR STEEL

Design-Builder: _____

Vendor No.: _____

PART 4

General Conditions of Contract Between Department and Design-Builder

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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.

.1 *Agreement* refers to the executed Lump Sum Design-Build Agreement Between Department and Design-Builder.

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

.3 *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.

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

.5 *Contractor* shall mean Design-Builder.

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

.7 *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.

.8 *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.

.9 *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.

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

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

.12 *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 the Department.

.13 *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.

.14 *Interim Milestone* is completion and delivery dates for parts of the work specified by the Contract Documents.

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

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

.17 *QA Manager (QAM)* is the Design-Builder's designee responsible for providing Quality Assurance and Quality Control of the Work, and ensuring conformance with the Contract Documents.

.18 *QA/QC Plan* is a plan that details how the Design-Builder will provide quality control (QC) and quality assurance (QA) 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 requirements.

.19 *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.

.20 *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.

.21 *RFP Documents* refer to those documents identified in Part 1, Instructions for Offerors, Section 2.8.1 of the RFP.

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

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

.24 *Standard Drawings* are the applicable drawings in the Virginia Department of Transportation *Road and Bridge Standards*, current as of the date of the Agreement.

.25 *Standard Specifications* are the Virginia Department of Transportation *Road and Bridge Specifications,* 2002.

.26 *State* means the Commonwealth of Virginia.

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

.28 *State Indemnitee* means and includes the 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.

.29 *Subcontract* means any and all agreements between Design-Builder and its Subcontractors and other agreements between Subcontractors and 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.

.30 *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.

.31 *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.

.32 *Substantial Completion* is the date on which the Work, or an agreed upon portion of the Work, is complete in accordance with the Contract Documents so that Department can occupy and use the Project (or a portion thereof, if the Contract Documents provide for acceptance of portions of the Project upon Substantial Completion of such portions) for its intended purposes. It is intended that, as of Substantial Completion, the Department and the public (traveling and general) will have full and unrestricted use and benefit of the Work (or, if applicable, an agreed upon portion of the Work), from both an operational and safety standpoint, with only minor incidental Work remaining to be performed, corrected or repaired.

.33 *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.

.34 *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).

.35 *Work Package* is a deliverable at the lowest level of the WBS. 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. Design-Builder's Representative may be replaced only by the mutual agreement of Department and Design-Builder.

2.1.2 The parties will meet within seven (7) days after the Agreement Date, and also will meet within seven (7) days after Date of Commencement, 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.

2.1.3 Design-Builder shall provide Department with the Baseline Schedule, updates and monthly reports set forth in Section 11.1 of the Agreement.

2.1.4 Design-Builder shall be responsible for securing, executing and paying all costs associated with the procurement of all agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work, and shall provide all right-of-way acquisition services associated with this 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 Design-Build Project Manager, Design Manager, Construction Manager, and Quality Assurance Manager (collectively, "**Key Personnel**"). 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. 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 approved Project right-of-way plans for property, 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 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 meeting held after the Date of Commencement as set forth in Section 2.1.2. Along with the QA/QC Plan submittal, the QA Manger shall provide a presentation of the QA/QC Plan utilizing project related scenarios.

2.1.8 Design-Builder shall participate in monthly progress meetings. During such meetings, progress during the prior month shall be reviewed The Design-Builder shall collect information from any key subcontractors/sub-consultant responsible for work completed during the specified duration and work scheduled during the upcoming reporting duration. These meetings shall be attended by the design-build project manager, construction manager, quality assurance manager and design manager, as well as other key personnel from the design and construction firms defined within the Offeror's proposal and Department representative's designated by the VDOT

Project Manager. Meetings will occur monthly beginning the month after the issuance of the 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 the Department within two calendar days of the monthly progress meeting.

2.2 Scope Validation and Identification of Scope Issues

2.2.1 Scope Validation Period. Except as modified in Section 2.2.2 below, the term "**Scope Validation Period**" shall refer to the ninety (90) day period following the Date of Commencement. 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 errors, omissions, inconsistencies, constructability problems, Site conditions or any other defects or concerns of any kind (collectively referred to as "**Scope Issues**") that may affect Design-Builder's ability to complete its proposed design concept within the Contract Price and Contract Time(s). If Design-Builder finds any Scope Issues, it shall notify Department in writing of such findings within the Scope Validation Period. Upon such notice, the Parties shall promptly meet and confer to discuss the resolution of such issues. If a Scope Issue could not have reasonably been identified by Design-Builder prior to the Agreement Date, and if resolution of the issue materially impacts Design-Builder's price or time to perform the Work, Design-Builder shall be entitled to submit a request for Work Order, and Department shall have the right to act upon such request, in accordance with Article 9 hereof. 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.

2.2.2 Scope Validation Period for Non-Accessible Areas of the Site *[if applicable]*. The Parties recognize that the Department will not have acquired and have complete right of entry to all areas of the Project as of the Date of Commencement, and that, as a result, Design-Builder will not have access to such areas to conduct any additional geotechnical evaluations as contemplated by Section 4.3.2 below. The Parties further recognize that there is a possibility that Design-Builder may be restricted, as of the Date of Commencement, from having full access to other areas of the Site for purposes of conducting geotechnical evaluations. 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 ninety (90) days from the date that Department notifies Design-Builder that it has acquired and obtained compete right of entry to such areas.

2.2.3 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. Following completion of the Scope Validation Period, with the sole exception of those Scope Issues identified during the Scope Validation Period and subject to valid requests for Work Orders in accordance with Section 2.2.1 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.

2.3 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.

2.3.2 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. Notwithstanding the preceding sentence, if the Contract Documents establish a specific performance standard for any aspect of the Work, the design professional services shall be performed to achieve such standards.

2.3.3 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.

2.3.4 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, consistent with any applicable provision of the Contract Documents, provide Department with ten (10) sets of the following interim design submissions, which submissions generally correspond to the 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).

2.4.2 Design-Builder shall submit to Department Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work, in full compliance with all Legal Requirements and Governmental Approvals. The Construction Documents 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 Construction Documents in accordance with the procedures set forth Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit ten (10) sets of approved Construction Documents to Department prior to commencement of construction.

2.4.3 Department's review, comment and/or approval of interim design submissions and the Construction Documents 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 Construction Documents) shall not be deemed to transfer any liability from Design-Builder to Department.

2.4.4 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 Construction Documents for a portion of the Work to permit procurement and construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.5 Legal Requirements

2.5.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the 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 Construction Documents 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 the Department's Governmental Approvals List attached as 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).

2.6.4 This Section 2.6 has precedence over Section 107.02 of the Standard Specifications (Permits, Certificates and Licenses).

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 the 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 Substantial Completion 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 Substantial Completion 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 the Date of Commencement, 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. Department shall have the right to suspend any or all Work if Design-Builder fails to comply with its obligations hereunder.

2.8.4 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 Substantial Completion.

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 Substantial Completion 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.

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 Construction Documents 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.

3.1.3 Department Project Manager shall be responsible for coordinating and participating in a monthly progress meeting day for the duration of the Project. Meetings will occur monthly beginning the month after the issuance of the Notice to Proceed.

3.2 Furnishing of Services and Information

3.2.1 Department has provided RFP Information Documents in Part 2 of the RFP Documents 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 the Department's Governmental Approval List attached as Exhibit 3.5.1.

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 is responsible for all work performed on the Project or at the Site by Separate Contractors under Department's control. Department shall contractually require its Separate Contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

Article 4
Hazardous Materials and Differing Site Conditions

4.1 Hazardous Materials

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Materials encountered at the Site. Upon encountering any Hazardous Materials, Design-Builder will stop Work immediately in the affected area and duly notify Department and, if required by Legal Requirements, all Governmental Units with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Materials, Department shall take the necessary measures required to ensure that the Hazardous Materials are remediated or rendered harmless. Such necessary measures shall include Department retaining qualified independent experts to: (i) ascertain whether Hazardous Materials have actually been encountered; and, if they have been encountered, (ii) prescribe the remedial measures that Department must take either to remove the Hazardous Materials or render the Hazardous Materials harmless.

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Department's expert provides it with written certification that: (i) the Hazardous Materials have been removed or rendered harmless; and (ii) all necessary Governmental Approvals have been obtained.

4.1.4 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 Hazardous Materials at the Site.

4.1.5 Notwithstanding the preceding provisions of this Section 4.1, Department is not responsible for Hazardous Materials introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.1.6 Design-Builder shall indemnify, defend and hold harmless each State Indemnitee from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from:

.1 those Hazardous Materials introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable;

.2 the spreading, migration, release, remediation, storing, transportation or disposal by Design-Builder, Subcontractors or anyone for whose acts they may be liable, of pre-existing Hazardous Materials not discovered during the Scope Validation Period or thereafter; and

.3 exacerbation, due to negligence, recklessness or willful misconduct of Design-Builder, Subcontractors, or anyone for whose acts they may be liable of the release, spreading, migration or toxicity of Hazardous Materials at the Site which are known by Design-Builder to exist.

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 the Date of Commencement, 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 2.2.3 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.

Article 5
Insurance and Bonds

5.1 Design-Builder's Insurance Requirements

5.1.1 Design-Builder is responsible for procuring and maintaining from insurance companies authorized to do business in the Commonwealth of Virginia the insurance required by the Division I Amendments.

5.1.2 Design-Builder's liability insurance required by Section 5.1.1 above shall be written for the coverage amounts set forth in the Division I Amendments and shall include completed operations insurance for the period of time set forth in such amendments.

5.1.3 Design-Builder's liability insurance set forth in Section 5.1.1 above shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

5.1.4 Prior to the Date of Commencement, Design-Builder shall provide Department with certificates evidencing that: (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents; and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Department.

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.

Article 6
Payment

6.1 Schedule of Payments

6.1.1 Within ninety (90) days of the Date of Commencement, Design-Builder shall submit to Department, for its review and approval, and as part of its submission of the Baseline Schedule under Section 11.1.2 of the Agreement, pricing for the value of each work package, consistent with the Work Breakdown Structure submitted in Design-Builder's Proposal ("**Earned Value Schedule**").
The approved Earned Value Schedule will: (i) include values for all items comprising the Work; and (ii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

6.1.2 The parties agree that progress payments for Work performed prior to Department's approval of the Earned Value Schedule shall be based on the schedule of values provided in the Proposal.

6.1.3 Neither the Earned Value 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.

6.2 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 work package, and the value in dollars of such work package, 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 a work package upon initiation of the respective work package.

.2 Design-Builder shall earn eighty percent (80%) of the value of a work package upon completion of the respective work package.

.2 QA/QC shall be an integral part of each work package. As part of each Application for Payment that includes completed work packages, Design-Builder's designated quality assurance manager shall certify that each work package 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 the respective work package have been resolved.

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 Substantial Completion

6.6.1 Design-Builder shall notify Department when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete. Within seven (7) days of Department's receipt of Design-Builder's notice, Department and Design-Builder will jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents. If such Work is substantially complete, Department shall prepare and issue a Certificate of Substantial Completion that will set forth: (i) the date of Substantial Completion of the Work or portion thereof; (ii) the remaining items of Work that have to be completed before final payment; (iii) provisions (to the extent not already provided in the Contract Documents) establishing Department's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment; and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

6.6.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Department shall pay to Design-Builder all amounts properly due, as applicable, to the entire Work or completed portion of the Work, less an amount equal to two hundred percent (200%) of Department's determination of the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

6.6.3 Department, at its option, may use a portion of the Work which has been determined to be substantially complete, provided, however, that: (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above; and (ii) Design-Builder and Department have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate Governmental Units having jurisdiction over the Project.

6.7 Final Acceptance and Final Payment

6.7.1 Design-Builder shall notify Department when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is finally complete. Within seven (7) days of Department's receipt of Design-Builder's notice, Department and Design-Builder will jointly inspect such Work to verify that it is complete in accordance with the requirements of the Contract Documents. The Department will make the Final Acceptance of the Work in accordance with Section 105.15 of the Division I Amendments, whereupon Design-Builder will provide Department with a Final Application for Payment. Department shall make final payment by the time required in the Agreement, provided that Design-Builder has completed all of the Work in conformance with the Contract Documents.

6.7.2 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 correspondence files 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.

6.7.3 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 Acceptance; 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, or those for whose acts it is responsible, 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 filed, Design-Builder shall commence to take the steps necessary to 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 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 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.

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: (i) the defense of such claim is being tendered to Design-Builder; or (ii) 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: (i) a conflict exists between it and the Design-Builder which prevents or potentially prevents Design-Builder from presenting a full and effective defense; or (ii) 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 therefor.

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 the 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 the Design-Builder's indemnity. Notwithstanding the foregoing, if the Department elects to conduct its own defense and it is later determined that no indemnification obligation existed as to the particular claim, the Department shall pay its own costs and expenses relating thereto. In addition, if the Department elects to conduct its own defense because it perceives a conflict of interest, the 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.

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, 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 Time 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 Time Impact Analysis ("**TIA**") establishing the influence of the event on the latest approved Baseline Schedule update. Each TIA shall include a Fragmentary Network, and for events that have yet to occur (such as proposed change orders), the Fragmentary Network shall demonstrate how Design-Builder proposes to incorporate such event into the Baseline Schedule. The TIA shall demonstrate: (i) the time impact based on the date the event occurred, or, in the instance of proposed change orders, the date such change order was given to Design-Builder; (ii) the status of the Work at such point in time; and (iii) the time computation of all affected activities. Upon approval by Department, the event shall be included in the next Baseline Schedule update.

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 Time Impact Analysis ("**TIA**") establishing the influence of the event on the Baseline Schedule. Each TIA shall include a Fragmentary Network, and for events that have yet to occur (such as proposed change orders), the Fragmentary Network shall demonstrate how Design-Builder proposes to incorporate such event into the Baseline Schedule. The TIA shall demonstrate: (i) the time impact based on the date the event occurred, or, in the instance of proposed change orders, the date such change order was given to Design-Builder; (ii) the status of the Work at such point in time; and (iii) the time computation of all affected activities. 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 TIA 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 TIA 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 TIA by Department shall be made within ten (10) days after receipt of each TIA, unless subsequent meetings and negotiations are necessary. Upon approval, a copy of the TIA signed by Department shall be returned to Design-Builder, and incorporated into the next Baseline Schedule update.

8.3.7 The TIA 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 The Department may issue a CCD by unilateral Work Order using VDOT Form C-10, subject further to the terms of Section 9.4.3.

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:

.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.

9.4.3 If Department and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Department, or if there are any other disagreements over the scope

of Work or proposed changes to the Work, Department and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Department with a good faith estimate of the costs to perform the disputed services in accordance with Department's interpretations. If the parties are unable to agree and Department expects Design-Builder to perform the services in accordance with Department's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Department issuing a written order to Design-Builder: (i) directing Design-Builder to proceed; and (ii) specifying Department's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable direct costs incurred to perform the services, and Department agrees to pay such amounts, with the express understanding that: (i) such payment by Department does not prejudice Department's right to argue that it has no responsibility to pay for such services; and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Department's order is deemed to be a change to the Work.

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 event arising out of or related to the Work or Project, including the acts or omissions of Department, it shall provide written notice to Department of the basis for such Contract Price or Contract Time adjustment or relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice of Design-Builder’s intention to seek a Contract Price or Contract Time adjustment or relief shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the request for Contract Price or Contract Time adjustment or relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request for Contract Price or Contract Time adjustment or relief, whichever is later. Such notice shall include sufficient information to advise Department of the 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 of such request.

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 such dispute or disagreement shall be submitted administratively as set forth in Sections 10.2.3 and 10.2.4 below.

10.2.3 If the process established in Section 10.2.2 above does not result in the resolution of a dispute or disagreement, Design-Builder shall submit to Department a written claim which shall set forth the facts upon which the claim is based. Design-Builder shall include all pertinent data and correspondence that may substantiate the claim. Within ninety (90) days from the receipt of such claim, Department shall make an investigation and notify Design-Builder in writing by registered mail of its decision. Design-Builder and Department may, however, mutually extend such ninety-day period for another thirty (30) days. If dissatisfied with the decision, Design-Builder shall, within thirty (30) days from receipt of such decision, notify the Commissioner, in writing, that Design-Builder desires to appear before him, either in person or through counsel, and present any additional facts and arguments in support of its claim as previously filed.

10.2.4 The Commissioner or his designee will schedule and meet Design-Builder within thirty (30) days of receiving the Design-Builder's written request. Design-Builder and Commissioner may, however, mutually agree to schedule such appearance to be held after thirty (30) days but before sixty (60) days from the receipt of such written request. Within forty-five (45) days from the date of the appearance before him, the Commissioner shall make an investigation of the claim and notify Design-Builder in writing of his decision. Design-Builder and the Commissioner may, however, mutually agree to extend such forty-five day period for another thirty (30) days. If the Commissioner deems that all or any portion of a claim is valid, he shall have the authority to

negotiate a settlement with Design-Builder, but any such settlement shall be subject to the provisions of VA. CODE §2.2-514.

10.2.5 Failure of Department or the Commissioner to render a decision within the time period specified in Section 10.2.4 above, or within such other period as has been mutually agreed upon, shall be deemed a denial of the claim. Any mutual agreements for time extension permitted herein shall in no way extend the limitations set out in §33.1-192.1. If the Commissioner determines that a claim has been denied as the result of an administrative oversight, then the Department reserves the right to reconsider the claim.

10.2.6 As to such portion of the claim as is denied by the Commissioner, Design-Builder may institute a civil action for such sum as it claims to be entitled to under the Agreement for itself, and for anyone claiming by or through Design-Builder, by the filing of a petition in the Circuit Court of the City of Richmond, which shall be the exclusive jurisdiction for any civil actions brought by Design-Builder against Department. Any civil action brought by Design-Builder on behalf of a Subcontractor or Design Consultant shall only be brought for costs and expenses caused by the acts or omissions of Department and shall not be brought for costs and expenses caused by Design-Builder. Trial shall be by the court without a jury. The submission of the claim to the Department of Transportation within the times and as set out in Sections 10.2.3 through 10.2.5 above shall be a condition precedent to bringing a civil action. Department shall be allowed to assert any and all defenses in a case brought by Design-Builder on behalf of a Subcontractor or Design Consultant which are available to Design-Builder.

10.2.7 No civil action shall be brought against Department by Design-Builder (on behalf of itself or anyone claiming by or through Design-Builder) arising out of or related to this Agreement unless: (i) Design-Builder shall have exhausted the processes set forth in Sections 10.2.1 through 10.2.5 above; and (ii) such suit or action is initiated within twelve (12) months from Design-Builder's receipt of the decision of the Commissioner. The parties agree that the above-referenced conditions are conditions precedent to the initiation of a civil action, and that failure of Design-Builder to meet such conditions will be grounds for the civil action being dismissed.

10.2.8 Any moneys that become payable as the result of a settlement after Final Payment will not be subject to payment of interest unless such payment is specified as a condition of the settlement.

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.

11.2 Department's Right to Perform and Terminate for Cause

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

.1 begin the Work on the Date of Commencement;

.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;

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 the Work shall be finally completed in accordance with the Contract Documents. 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 Headings

12.6.1 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.

12.7 Notice

12.7.1 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.

12.8 Amendments

12.8.1 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.

12.9 Exhibits

12.9.1 The following exhibits are specifically made part of, and incorporated by reference into, this Agreement:

EXHIBIT 3.5.1 -- GOVERNMENTAL APPROVALS LIST

END OF PART 4
GENERAL CONDITIONS OF CONTRACT

Exhibit 3.5.1

Governmental Approvals List

The following will be the responsibility of the Department to obtain:

1. National Environmental Policy Act approval, Environmental Assessment has been completed by VDOT.

2. Environmental Certification (EQ-103) – Has been completed by VDOT.

3. Water Quality Permits - Refer to Part 2 Section 2.4.2

PART 5

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

These Division I Amendments supersede Division I of the 2002 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 Specifications and in 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-

Advertisement, Notice of. A public announcement, as required by law, inviting, in a one 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 Request for Qualifications 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 Statement of Qualifications.

Agreement. The Lump Sum Design-Build Agreement between Department and Design-Builder.

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 Request for Proposals. The award is subject to the execution and approval of a satisfactory Agreement therefor, and such conditions as may be specified or required by law.

Award date. The date on which the decision is made by the Board to award to 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 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 Proposals.

Bidder (also referred to as Offeror). Any individual, partnership, corporation, or joint venture that formally submits a Statement of Qualifications or Proposal for the work contemplated thereunder.

Bids, Invitation for. See definition for the term "Advertisement, Notice of."

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 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.

-C-

Calendar day. Any day shown on the calendar.

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.

Channel. A water course or drainage way.

Commissioner. Commonwealth Transportation Commissioner.

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

Construction area. The area where authorized construction occurs.

Construction limits. The intersection of side slopes, including slope rounding, with the original ground, plus slopes for drainage ditches or incidental construction.

Contract (also referred to as Contract Documents). The Contract Documents defined in Article 2 of the Agreement. Oral representations or promises shall not be considered a part of the Contract.

Contract Engineer. The Engineer's authorized representative for administering the advertisement, receiving Proposals, and awarding contracts for the Department.

Contract item. A specifically described unit of work for which a price is provided in the Contract.

Contract time limit. The number of calendar days or calendar date that specifies the time allowed for completion of the work described in the Contract, including authorized extensions.

Contractor (also referred to as Design-Builder). Any individual, partnership, corporation, or joint venture that contracts with the Department to perform the Contract.

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. The portion of a roadway formed by excavating below the surface of the earth.

-D-

Day. Unless otherwise stated, a calendar day.

Deflection. The vertical movement occurring between the supports of a bridge superstructure or its components (beams, girders, and slabs) 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. Refer to the definition for the term "Contractor."

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

Disincentive. A monetary deterrent used to discourage the Design-Builder from exceeding the contract time limit.

Disposable material. Material generally found to be unsuitable for roadway construction or material that is surplus.

Disposal areas. Areas generally located off the project right of way where unsuitable or surplus material is deposited.

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

-E-

Earthwork. The work consisting of grubbing, drainage, roadway excavation, embankment excavation, borrowing, grading, placing rock, and preparing subgrades.

Easement (Right of way). A grant of the right to use property for a specific use.

Embankment. A structure of soil, soil aggregate, or broken rock between the existing ground and subgrade.

Employee. Any person working on the Project specified in the Contract who is under the direction or control of or receives compensation from Design-Builder or any Subcontractor.

Engineer. The 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.

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

Extra work. An item of work that is not provided for in the Contract as awarded but that is found to be essential to the satisfactory fulfillment of the Contract within its intended scope.

-F-

Falsework. A framework of wood or steel used to support forms for the construction of concrete slab spans or t-beams, or provide temporary support for structural units during the construction or reconstruction of permanent supports.

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.

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

Force account work. Prescribed work of a contractual status performed by the Design-Builder and compensated for as specified in Section 109.05.

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 stream.

-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 105.09.

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. A monetary amount used to encourage the Design-Builder to complete work prior to the time limit specified in the Contract.

Inspector. The Engineer's authorized representative who is assigned to make detailed inspections of the quality and quantity of the work and its conformance to the 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 or more individuals, partnerships, corporations, or combinations thereof that join together for the purpose of bidding on and performing a contract.

-L-

Laboratory. The testing laboratory of the Department or any other testing laboratory that may be designated by the Engineer.

Liquidated damages. Damages as set forth in the Contract, paid by the Design-Builder to the Department when the Design-Builder fails to complete the project within the time frame specified in the Contract. These damages include, but are not limited to, additional costs associated with administration, engineering, supervision and inspection of the project.

-M-

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-

Notice to Proceed. A written notice to the Design-Builder that advises it of the date on which prosecution of the work shall begin.

-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 25 percent of the time during any 12 month period.

Overtopping flood. The magnitude of flood that just overflows the traveled way at a given structure and/or on the approach traveled way of such structure.

-P-Q-

Pavement structure. The combination of subbase, base, and surface courses that is placed on a subgrade to support the traffic load and distribute it to the roadbed.

Pay item. A specifically described unit of work for which a price is provided in the Contract.

Phase inspection. The inspection of work at predetermined stages in lieu of continuous inspection.

Plans. The approved plans and standard drawings, profiles, typical cross sections, computer output listings, supplemental drawings or exact reproductions thereof, and all subsequent approved revisions thereto that show the location, character, dimensions, and details of the work specified in the Contract.

Prequalification. The procedure used to assure the Department of the Design-Builder's ability to perform the work, experience in similar work, and sufficiency of equipment to accomplish the work and that the Design-Builder's financial resources will permit financing the work.

Profile grade. The line of a vertical plane intersecting the top surface of the proposed wearing surface, usually along the longitudinal center line of the roadbed.

Project. The work specified to be performed in the Contract.

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. See definition for the term "Bid".

-R-

Ramp. A connecting roadway between two highways or traveled ways or between two intersecting highways at a grade separation.

Request for Proposals (RFP). All documents, whether attached or incorporated by reference, utilized for soliciting proposals. The RFP is the only solicitation in a single-phase procurement process. The RFP is the second phase of a two-phase selection process in which VDOT issues a written request to those Offerors which have been pre-qualified to submit both technical and price proposals.

RFP Documents. The term used in an RFP to identify all sections, attachments and exhibits to the RFP, including but not limited to Instructions to Proposers and Project technical information and requirements.

Request for Qualifications (RFQ). 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 qualified firms to apply for prequalification.

Right of way. A general term denoting land, property, or interest therein, usually in a strip, that is acquired for or devoted to transportation facilities but is not meant to denote the legal nature of 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.

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 which 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 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 that are necessary for the correct drainage thereof.

-S-

Sea water. 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.

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 center line of the roadway with a line parallel to the face of the abutments or, in the case of culverts, with the center line of the culverts.

Special provision. A document that sets forth specifications or requirements for a particular project.

Specifications. A general term that includes all directions, provisions, and requirements contained herein and those that may be added or adopted as supplemental specifications, special provisions, or special provision copied notes. All are necessary for the proper fulfillment of the Contract.

Standard drawings. Unless otherwise specified, applicable drawings in the Department's *Road and Bridge Standards* and such other standard drawings as are referred to on the plans.

Standard Specifications. The Department's *Road and Bridge Specifications*, 2002.

State. Commonwealth of Virginia.

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

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

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.

Subcontractor. Any person or entity retained by Design-Builder as an independent Design-Builder to perform a portion of the Work and shall include materialmen and suppliers.

Subgrade. The top surface of a roadbed shaped to conform to the typical section on which the pavement structure and shoulders are constructed.

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.

Superintendent. The executive representative of the Design-Builder, who is authorized to receive and fulfill instructions from the Department and who supervises and directs the construction.

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

Surety. A corporate entity 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 corporate body 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. One or more layers of a pavement structure designed to accommodate the traffic load, the top layer of which resists skidding, traffic abrasion, and disintegrating effects of weather. The top layer is sometimes called the wearing course.

Surplus material. Material that is present on a project as a result of unbalanced earthwork quantities, excessive swell, slides, undercutting, or other conditions beyond the control of the Design-Builder

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

-T-U-

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.

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

Top of earthwork. The uppermost surface of the embankment excavation, exclusive of select material, that is shaped to conform with the typical section.

Traveled way. The portion of the roadway for the movement of vehicles, exclusive of shoulders.

-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.

Work. 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.

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 ~~for review~~. (NOT USED)

Work order. A written order issued by the Department to the Design-Builder that specifies changes in the plans or quantities or both within the scope of the Contract and that establishes the basis of payment and time adjustments for the work affected by the changes.

SECTION 102—BIDDING REQUIREMENTS AND CONDITIONS

102.01—Prequalification of Offerors

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

The names of persons authorized to sign Proposals shall be on file with the Department. A name will be considered to be on file if it appears as that of an officer, a partner, or an owner on the current Design-Builder's Financial Statement. Requests by the Offeror to revise the list of persons authorized to sign Proposals shall be submitted in writing and approved prior to the date Proposals are opened. A Proposal signed by someone whose name is not on file may be rejected.

The Offeror shall certify on the Offeror Certification of Prequalification Classification and Work Capacity Form provided in the RFQ and/or RFP that the necessary classification, type, and current maximum capacity rating are sufficient to cover the amount of the Proposal and any uncompleted work under contract. Allowance will be made for subcontract work only on contracts with the Department, and then only if the work is listed on the Design-Builder's Proposal to Subcontract Form provided in the RFQ/RFP.

Unless otherwise designated by the Offerors, the Proposal amount of a joint venture will be divided equally to determine if the maximum capacity rating for each Offeror is within each Offeror's range.

When an individual is prequalified to Proposal jointly only with a specific company, the joint venture will be considered a unified entity for qualification purposes.

An Offeror who makes a false certification on the Offeror Certification of Prequalification Classification and Work Capacity Form will be subject to forfeiture of the Proposal bond or disqualification from bidding on future work for a 90-day period, or both.

Offerors intending to submit Proposals consistently shall prequalify at least once a year. However, the maximum capacity rating or classification, or both, may be changed during that period if additional favorable reports are submitted or upon unsatisfactory performance. The Department may require a Design-Builder to furnish a current financial and experience statement at any time.

The Design-Builder may be temporarily disqualified from bidding on contracts with the Department when the Budgeted Cost of Work Performed ("BCWP") is more than 10 percent less than the Budgeted Cost of Work Scheduled ("BCWS") on the basis of the Design-Builder's latest approved progress schedule. Progress will be determined at the time of the monthly progress estimate. If the Design-Builder is delinquent by more than 10 percent, he may be notified that if the next monthly progress estimate shows a delinquency of more than 10 percent, his name may be removed from the list of prequalified Offerors unless he can establish that the delinquency was attributable to conditions beyond his control. If his name is removed, the Design-Builder will not be reinstated as a prequalified Offeror until the Department deems that his progress has improved to the extent that the work can be completed within the contract time limit or until final acceptance.

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.

102.02—Contents of RFQ and RFP

Upon request, the Department will furnish an RFQ (for two-phase procurements) or RFP (for one-phase procurements) to any interested party. Those parties who are ultimately selected on the shortlist under a two-phase procurement will receive an RFP.

The RFQ and/or RFP will specify the location and description of the contemplated construction, as well as other technical information that the Department believes may be appropriate. The RFQ and RFP will specify the time in which the work shall be completed and the date and time by which the responses from interested parties must be filed.

Papers bound with or attached to RFQs and RFPs will be considered a part of the SOQ and Proposal respectively. Unless otherwise permitted, such papers shall not be detached or altered when the SOQ or Proposal is submitted.

Design-Builder shall include the latest dated Acknowledgment of Revision Sheet (C-78) as part of the submission of its SOQ or Proposal when revisions are made to the RFQ or RFP prior to receipt of the SOQ or Proposal. Failure to submit such revision sheets in accordance with the terms of the SOQ or Proposal will render the SOQ or Proposal non-responsive and will be rejected.

102.03—Interpretation of Quantities in RFP (Not Used)

102.04—Examination of Site of Work and Contract Documents

Subsurface data may be available for review by the Offeror in the office of the District or State Materials Division Administrator. Such data are accurate with regard to test holes and are made available to the Offeror in good faith in order to apprise him of information in possession of the Department. Any conclusions drawn by the Department concerning subsurface conditions are based solely on the data and are merely indications of what appear to be existing subsurface conditions. The Department does not warrant these conclusions to be correct, either expressly or by implication. Nor does the Department warrant the condition, amount, or nature of the material that may be encountered or the sufficiency of the data, either expressly or by implication. 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. Unless specifically stated otherwise in the Contract Documents, the submission of a Proposal will be considered conclusive evidence that the Offeror is satisfied with regard to the subsurface conditions to be encountered in the work.

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 time periods specified in the RFQ or RFP, and 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.

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 Contract Engineer.

102.05—Preparation of Proposal

The Offeror shall prepare and submit his Proposal in accordance with the instructions in the RFP, and award of the Contract will be made on the basis of the RFP. Except as otherwise specified in the RFP, when regular and alternate designs are shown in the RFP, the Offeror shall submit a Proposal price for at least one design. The Department may award the Contract to the Offeror who submitted the best Proposal for the regular design or the best Proposal for the alternate design, whichever is deemed to be in the best interest of the State. Offeror shall also comply with the requirements as set forth in Exhibits 102.05(a) (*Use of Domestic Material*), 102.05(b) (*FHWA Required Contract Provisions Federal-Aid Construction Contracts*) and 102.05(c) (*Executive Order 11246*), attached herewith.

The Proposal shall be signed in ink by the individual, one or more members of a partnership, or one or more of the officers of a corporation, whichever is applicable. For a joint venture, the Proposal shall be signed in ink by each individual involved, each partnership through one or more of its members, or each corporation through one or more officers of the corporation, whichever is applicable.

If the Proposal is made by an individual, the name and address of the individual shall be shown; if by a partnership, its name and address and the name and title of the partner signing the Proposal shall be shown; if by a corporation, the name of the corporation, its address, and the name and title of the officer signing the Proposal shall be shown; if by a joint venture, the aforementioned information shall be shown for each party.

A sworn statement shall be executed by the Offeror or his agent on behalf of each person, firm, association, or corporation submitting a Proposal. The statement shall certify that the person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action to restrain free competitive bidding in connection with the RFP. The sworn statement shall be in the form of an affidavit furnished by the Department and shall be sworn to before a person who is authorized by the laws of the State to administer oaths. The original of the sworn statement shall be filed with the Department when the Proposal is submitted.

102.06—Irregular Proposals

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

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

(b) if the Proposal is not written in ink or typed

(c) if 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 Contract Documents

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

(e) if the Proposal is not properly signed

(f) if erasures or alterations in the Offeror's entries are not initialed by the Offeror

(g) if there are unauthorized additions, conditional or alternate Proposals, or irregularities of any kind that may make the Proposal incomplete, indefinite, or ambiguous

(h) if the unit prices in the Proposal are obviously unbalanced, either in excess or below the cost analysis values as determined by the Department

(i) if any papers included in the Proposal are detached or altered when the Proposal is submitted except as otherwise provided for herein

(j) if Proposals are submitted in envelopes showing a designation for a project other than the project for which the Proposal is made

(k) if the Offeror fails to submit a statement concerning collusion

(l) if the Proposal contains any other deviation from the RFP

102.07—Proposal Guaranty

A Proposal in excess of $250,000.00 will not be accepted or considered unless accompanied by a guaranty in the form of a Proposal bond made payable to the Treasurer of Virginia. A Proposal bond will be accepted only if executed on a form which contains the exact wording as the form furnished by the Department. Any Proposal accompanied by a bond having wording that differs in any respect from that furnished by the Department may be rejected. The amount of the proposal guaranty shall be 5 percent of the total 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

Any of the following causes may be considered sufficient for the disqualification of an Offeror and rejection of his Proposal:

(a) more than one Proposal for the same work from 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 here is defined as: Any business entity which is closely associated to another business entity so that one has the power to control the other either directly or indirectly; or, when a third party has the power to control both; or, where one business entity has been so closely allied with another through an established course of dealings, including but not limited to the lending of financial wherewithal or engaging in joint ventures, so as to cause a public perception that the two firms are one entity.

(b) evidence of collusion among Offerors; participants in such collusion will not be considered for future Proposals until requalified by the Board

(c) incompetency or inadequate machinery, plants, or other equipment as revealed by the Offeror's financial and experience statements required by these specifications

(d) unsatisfactory workmanship or progress as demonstrated by performance records of current or past work for the Department, other agencies or departments of the State, or agencies or departments of other states in the United States or federal government

(e) uncompleted work with the Department that in the judgment of the Department might hinder or prevent prompt completion of additional work if awarded

(f) failure to pay or settle satisfactorily all 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

(g) failure to comply with any prequalification regulation of the Department

(h) failure to cooperate properly with representatives of the State supervising construction or disorderly conduct toward any such representative

(i) default under a previous contract

102.09—Delivery of Proposal

Proposals shall be delivered in accordance with the instruction in the RFP. Unless clearly stated otherwise, Proposals shall be submitted in two 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 contact point 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.

102.10—Withdrawal of Proposal

An Offeror may withdraw a Proposal in accordance with the following.

(a) **Standard Withdrawal:** A Offeror may withdraw a Proposal provided the request for the withdrawal is written and signed by a person(s) who qualifies to execute the Proposal in accordance with the requirements of Section 102.05. The request must be received by the Contract Engineer at least 1 hour prior to the time specified for receiving Proposals.

(b) Conditional Withdrawal: (Not Used)

102.11—Combination or Conditional Proposals

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.

102.12—Public Opening of Proposals

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

102.13—Material Guaranty

Before a contract is awarded, and if specified in the RFP, an Offeror may be required to furnish a complete statement concerning the origin, composition, and manufacture of the materials to be used in the work, together with samples. The Department may review and approve the origin, composition, and manufacture of the materials to be used in the work.

102.14—Use of Debarred Suppliers

In accordance with the requirements of Section 200.02, 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. Listings will be posted in the Contract Engineer's office, VDOT, 1401 E. Broad Street, Richmond, Virginia, and in each district office. The Design-Builder shall ensure compliance with this Section 102.14.

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 Design-Builder.

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 compared in accordance with the RFP for the design-build contract.

The Department may correct arithmetical errors in the Proposal prior to such comparison. The results of the comparisons will be available to the public after the determination has been made by the Board to award the Contract.

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

103.02—Award of Contract

If the Contract is awarded, the award will be made in accordance with the RFP to the highest ranked responsive and responsible Offeror without discrimination on the grounds of race, color, sex, or national origin. In the event of tie Proposals, (1) in the case of federal-aid highway projects, preference shall be given to the responsive and responsible Offeror with the lowest price Proposal; and (2) in all other cases, preference shall be given in accordance with VA Code Section 2.2-4324.The award date will not be later than midnight on the 90th day after the opening of sealed Price Proposals. If the Board has not awarded the Contract within this period, the Offeror may withdraw his Proposal without penalty or prejudice unless the time limit is extended by mutual consent. Notice to Proceed is expected to be issued in accordance with the RFP.

103.03—Cancellation of Award

The Board 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 highest ranked Offerors, will be returned immediately after the examination of Proposals. The Proposal guaranties of the two highest ranked Offerors will be returned within 5 days after a satisfactory bond has been furnished and the Contract has been duly executed. The Department will retain Proposal guaranties in the form of Proposal bonds if the Offeror does not request their return. When the Design-Builder withdraws his Proposal prior to award, after being the highest ranked Offeror, the Proposal bond will be forfeited in accordance with the requirements of Section 2.2-4336 of the *Code of Virginia*.

103.05—Requirements of Contract Bond

Within 15 calendar days after notification, the successful Offeror shall furnish the following 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 Contract in strict conformity with the Contract Documents, and

(b) a payment bond in the sum 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 for the Contract.

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

The bonds shall be made on official forms furnished by the Department and shall be executed by the Design-Builder 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. In order to be considered properly executed, the bonds shall include authorized signatures and titles.
In lieu of payment or performance bonds, the Design-Builder 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 Design-Builder, 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 35 percent of the total contract price of the planting items.

103.06—Contract Documents

The portion of the executed Contract submitted by the Design-Builder shall include the following documents unless the filing of any of them at a later date is specifically permitted by other sections of these Specifications or by special provisions:
(a) **Contract:** Refer to Article 2 of the Agreement.

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

(c) **Affidavits and Documents:** Affidavits and documents shall include those required to be made a part of the Contract by any federal or state law in effect on the date of the Notice of Advertisement.

(d) **Workers' Compensation Insurance Certificate:** The certificate shall be filed on forms furnished by the Department within 15 calendar days after notification of award of the Contract. The certificate shall be executed by an approved and authorized insurance company as required by state law and shall cover the Contract it accompanies.

The Design-Builder shall file notice with the Department at least 30 days prior to the cancellation of any required workers' compensation coverage. If any of his insurance of this class is cancelled, the Design-Builder shall cease operations on the date of the cancellation and shall not resume operations until new insurance is certified as being in force.

(e) **Baseline Schedule:** Refer to Article 2, Section 2.1.3 of the General Conditions.

At least once a week, the Design-Builder shall advise the Department of the approximate timing for anticipated critical stages for the subsequent week. The Department shall be advised at least 24 hours in advance of any changes in planned operations or critical staging mentioned herein and in Section 105.12.

Delays in work resulting from the Design-Builder's failure to provide the Baseline Schedule or updates will not be considered just cause for extension of the contract time limit or for additional compensation.

(f) **Design-Builder's Bodily Injury and Property Damage Liability Insurance:** The Design-Builder shall procure and maintain at his own expense, until final acceptance of the work covered by the Contract, insurance of the kinds and in the amounts specified herein. The minimum limits of liability for this insurance shall be as follows:

A Combined Single Limit for Bodily Injury Liability and Property Damage Liability	
$1,000,000	Each Occurrence
$2,000,000	Aggregate

Evidence of insurance in compliance with the above shall be filed on forms approved by the Department within 15 days after notification of award of the contract. The evidence shall be executed by an approved and authorized insurance company authorized to do business in Virginia and with a minimum *"Best Rating"* of *"B"*, and shall cover the Contract it accompanies.

The Design-Builder shall file notice with the Department at least 30 days prior to the cancellation or reduction of the required insurance, and shall cease operations on the date of the cancellation or reduction until new insurance is in force and the same evidence of insurance is provided to the Department.

The Design-Builder's Bodily Injury and Property Damage Liability Insurance shall cover liability of the Design-Builder for damage because of bodily injury to, or death of persons and damage to, or destruction of property, which may be suffered by persons other than the Design-Builder's own employees as a result of the negligence of the Design-Builder in performing the work covered by the Contract.

Insurance provided in compliance with this section shall include liability of the Design-Builder for damage to or destruction of property, which may be suffered by persons other than the Design-Builder's own employees as a result of blasting operations of the Design-Builder in performing the work covered by the Contract.
If any part of the work is sublet, insurance meeting the same requirements shall be provided by or in behalf of the Subcontractors and evidence of such insurance shall be submitted with the sublet request.

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Design-Builder or Subcontractor(s) for liability in excess of such coverage, nor shall it preclude the Commonwealth from taking such actions as is available to it under any other provision of this Contract or otherwise in law.

103.07—Execution and Approval of Contract

The Proposal as submitted by the Design-Builder, including the documents specified in Section 103.06(a), shall constitute the Contract upon submittal of the bonds required by the Contract Documents and workers' compensation insurance certificate and the final execution by the Department. If the Contract is not awarded within the time limit specified in Section 103.02, the Offeror may withdraw his Proposal without penalty or prejudice. No contract shall be considered effective until it has been fully executed by all parties.

103.08—Failure To Furnish Bonds or Certificate of Insurance

Failure by the successful Offeror to furnish the Department acceptable bonds, workers' compensation insurance or the Design-Builder's Bodily Injury and Property Damage Liability Insurance policy within 15 calendar days after being notified of the 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 State, not as a penalty but in liquidation of damages sustained. The Contract may then be awarded to the next highest ranked responsible Offeror, or the work may be readvertised or constructed otherwise, as determined by the Board.

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 the Contract.

In the event the successful Offeror on a non-guaranteed contract is unwilling or unable to fulfill the contract and fails to notify the Department prior to execution of the contract by the Department the Offeror will be declared in default in accordance with the requirements of Section 108.13. In the event the Offeror notifies the Department prior to execution of the contract by the Department of such unwillingness or inability to fulfill the contract, the Offeror will be enjoined from bidding on contracts without furnishing guarantee for a period of no less than 90 days from the date of notice by the Department. An Offeror who has never been enjoined or defaulted on a non-guaranteed contract and who notifies the Department prior to contract execution of an unwillingness or inability to fulfill the contract will not be enjoined for the first occurrence; however, such Offeror will not be permitted to rebid or perform work on this Contract.

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.

104.02—Alteration of Quantities or Character of Work

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 satisfactorily complete the Project. Such changes in quantities and alterations shall not invalidate the Contract nor release the surety, and the Design-Builder agrees to perform the Work as altered.

If the alterations or changes in quantities significantly change the character of the work under the Contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding anticipated profits, will be made to the Contract. The basis for the adjustment shall be agreed upon prior to the performance of the Work. If a

basis cannot be agreed upon, then an adjustment will be made either for or against the Design-Builder in such amount as the Department may determine to be fair and equitable.

At the option of the Department, the Design-Builder may be directed to accomplish the work on a force account basis in accordance with the requirements of Section 109.05.

If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the Contract.

The term "significant change" shall be construed to apply only:

when the character of the work as altered differs materially in kind or nature from that involved or included in the RFP Documents.

Value Engineering Proposals (VEP): VEP applies to changes in scope proposed by the Design-Builder. The Design-Builder may submit to the Department written VEPs for modifying the plans, specifications, or other requirements of the RFP Documents for the purpose of reducing the total cost of construction without reducing the design capacity or quality of the finished product. If the VEP is accepted by the Department, the net savings will be equally divided by the Department and Design-Builder.

Each VEP shall result in a net reduction of the Contract Price 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 VEP:

statement that the proposal is submitted as a VEP

statement concerning the basis for the VEP and benefits to the Department and an itemization of the items and requirements in the RFP Documents affected by the VEP

detailed estimate of the cost under the existing Contract and under the VEP

proposed specifications and recommendations as to the manner in which the VEP changes are to be accomplished

statement as to the time by which a contract work order adopting the VEP must be issued so as to obtain the maximum cost-effectiveness

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

The work order effecting the necessary modification of the Contract will establish the net savings agreed on, provide for adjustment of the contract prices, and indicate the net savings. The Design-Builder shall absorb all costs incurred in preparing a VEP. Reasonably incurred costs for reviewing and administering a VEP 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 VEP. The Design-Builder's 50 percent share of the net savings shall constitute full compensation to him for effecting all changes pursuant to the agreement.

Unless specifically provided for in the work order authorizing the VEP, acceptance of the VEP and performance of the work thereunder will not change the contract time limit.

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

Proposed changes in the basic design of a bridge or pavement type or that require different right-of-way limits will not normally be considered an acceptable VEP. If a VEP is based on or is similar to a change in the plans, specifications, or special provisions adopted by the Department prior to submission of the VEP, the Department will not accept the VEP.

The Department will be the sole judge of the acceptability of a VEP. The requirements herein apply to each VEP 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 consider or approve a VEP.

Subject to the provisions contained herein, the Department or any other public agency shall have the right to use all or part of an accepted VEP 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)

104.04—Maintenance During Construction

The Design-Builder shall maintain the work from the beginning of construction operations until final acceptance. Maintenance shall constitute continuous and effective work prosecuted day by day with adequate equipment and forces to such end that the roadway and structures, including barricades and warning signs as provided for in accordance with the requirements of Section 107.10, are maintained in a satisfactory condition at all times.

When a Contract specifies placing a course on another course or subgrade previously constructed, the Design-Builder shall maintain the previous course or subgrade during all construction operations.

The road shall be kept open to all traffic while undergoing improvements. The Design-Builder shall keep the portion of the project being used by public, pedestrian, and vehicular traffic in such condition that traffic will be 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 bear all costs of performing maintenance work before final acceptance and of constructing and maintaining necessary approaches, crossings, intersections, drainage, both existing and proposed, and that required during the construction operation and other features without direct compensation except as provided for herein. However, when the Design-Builder confines his operation to the surface of the roadway and reasonable width of the shoulder and the surface is not disturbed or damaged by his operations or equipment, he shall not be responsible for the maintenance of the surface that remains undisturbed or undamaged.

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. Design-Builder shall allay dust whenever required, or when directed by the Department, and the cost shall be included in the Contract Price. Holes in hard surface pavements shall be filled with approved asphalt patching material.

(a) **Detours:** Detours may be indicated on the plans or in the special provisions or may be used with the approval of the Engineer. Unless otherwise designated in the contract, the Design-Builder will furnish and erect all directional markings for through traffic on off-project detours authorized or requested by the Engineer. Detours over existing state roads will be designated, marked, and maintained by the Design-Builder. If any project is located wholly or in part within the corporate limits of a municipality and through traffic is to be detoured at the request of the municipality, the municipality will provide and maintain the detours within the corporate limits and will furnish and erect 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 requirements of these Specifications affecting the rights of the public within his contract limits, including those concerning lights and barricades. Maintenance of all other detours shall be the responsibility of the Design-Builder.

Right of way for temporary highways, diversion channels, sediment and erosion control features or bridges required by these provisions will be furnished by the Design-Builder.

(b) **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 on by the Design-Builder and Department.

(c) **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 requirements of *MUTCD*. Flaggers shall use sign paddles to regulate traffic in accordance with the requirements of *MUTCD*.

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 in possession of their certification card shall be removed from the flagging site and operations requiring flagging shall be suspended by the Design-Builder. Further, flaggers performing duties improperly will have their certifications revoked.

(d) **Delays:** Unless otherwise approved, two-way traffic shall be maintained at all times. The Design-Builder shall not stop traffic without permission of the Department.

If one-way traffic is approved, the Design-Builder shall provide flaggers to direct the traffic. Design-Builder shall provide flaggers and pilot vehicles in accordance with the requirements of Section 512, and the cost shall be included in the Contract Price. Upon request from the Design-Builder 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, removal when no longer needed, electrical service, maintenance or repair work, and a predetermined rental charge per day for the signals.

(e) **Connections and Entrances:** Connections with other roads and public and private entrances shall be kept in a reasonably smooth condition at all times. Connections or entrances shall not be disturbed by the Design-Builder until necessary. Once connections or entrances have been disturbed, they shall be maintained and completed as follows:

1. **Connections:** Connections that had an original paved surface shall be brought to final grade through the intersection. At least 2 lanes shall be paved as soon as possible after connections are disturbed. Other connections

shall be brought to final grade through the intersection, and the required material or a temporary aggregate stabilization course shall be placed as soon as possible 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.

2. **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 salvaged material until the entrance can be completed and the required base and surface or stabilization course can be placed.

The Design-Builder shall apply stabilization or surfacing material to connections and entrances whenever necessary, or when directed by the Department. The cost shall be included in the Contract Price.

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.

(f) **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 3 feet from the edge of the paved surface.

(g) **Hydraulic Embankment:** Design-Builder shall bridge suction or discharge pipes across the surface of an existing traveled highway, as may be directed by the Department. Traffic shall be protected by the display of warning signals both day and night. If dredging operations damage an existing traveled highway, the Design-Builder shall cease operations and repair damages to the highway.

(h) **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 2 miles. Patching shall be coordinated with excavating so that an area of not more than 1/2 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.

(i) **Temporary Structures:** The Design-Builder shall construct, maintain, and remove temporary structures and approaches necessary for use by traffic. Unless otherwise specified in the Contract, the cost of these operations shall be included in the Contract Price. 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 the requirements of Section 105.02.

(j) **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 25 percent for supervisory and administrative personnel, will be deducted from monies due the Design-Builder for the project.

(k) **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 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 who otherwise use a portion of the haul route for ingress or egress to their residential 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.

104.05—Removing and Disposing of Structures and Obstructions

The Design-Builder shall remove and dispose of or store fences, buildings, structures, or encumbrances within the construction limits unless separate pay items for this work are included in the Contract. Payment for these operations shall be included in the Contract Price. Materials so removed, including existing drains or pipe culverts, shall become the property of the Design-Builder.

(a) **Signs:** The Design-Builder shall relocate street name signs, no parking signs, and other traffic 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. The Design-Builder will remove such signs from the storage area and deliver to the nearest Area Headquarters. 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 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 as good 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 boxes shall be included in the Contract Price.

104.06—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 Design-Builder shall maintain a neat and orderly work site 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. All parts of the work shall be left in a neat and orderly condition.

Within 30 days after final acceptance, the Design-Builder shall remove his equipment from the right of way and property adjacent to the project that he does not own or control.

SECTION 105—CONTROL OF WORK

105.01—Authority of Department

The Department has the authority to suspend the work wholly or in part if the Design-Builder fails to correct conditions that are unsafe for workers or the general public or carry out the provisions of the Contract. The Department may also suspend work for such periods as he may deem necessary because of unsuitable weather in accordance with the requirements of Section 108.10, conditions considered unsuitable for prosecution of the work, or any other condition or reason deemed to be in the public interest.

The Design-Builder shall confirm conformance with the Contract Documents and shall note any deviations from the Contract Documents, and shall provide their professional recommendations as to the resolution of questions or issues of quantity, quality, acceptance, interpretation, or disputes that may be presented to the Department.

105.02—Plans and Working Drawings

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

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.

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. 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 Professional Engineer, holding a valid license to practice engineering in the Commonwealth of Virginia, shall certify working drawings for falsework supporting a bridge superstructure.

The Design-Builder shall provide four sets of any submittal. ~~The Department will return reviewed working drawings to the Design-Builder within 15 days from the date of receipt~~. (NOT USED) If a railroad, municipality, or other entity as specified in the Contract or on the plans is required to review the working drawings, the reviewed working drawings will be returned within 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.

Prior to fabrication or construction, the Design-Builder shall submit ~~for review by~~ (NOT USED) the Department of each working drawing and design calculation and a Professional Engineer's certification of such design 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 Professional Engineer's stamp or seal. Certification for foundations will be required only when the designs are furnished by the Design-Builder.

The design shall be in accordance with *AASHTO'S Standard Specifications for Structural Supports for Highway Signs, Luminaries, and Traffic Signals*. The certification shall be made by a Professional Engineer holding a valid license to practice engineering in Virginia.

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 which shall be made for the Design-Builder by a Professional Engineer holding a valid license in the Commonwealth of Virginia. Such certification shall cover all design data, supporting calculations and materials. Pipe designs previously certified or approved by the Department will not require recertification.

~~The Department's review of the Design-Builder's working drawings will relate to conformance to the requirements of the Contract. The review shall not be considered as authorization for any deviation from the requirements of the Contract unless the deviation, including explicit supporting justification, is specifically described. The review will not relieve the Design-Builder from responsibility for errors in the working drawings. If working drawings detailing a change(s) initiated by the Design-Builder require more than two resubmissions or revisions, the cost of additional reviews by the Department or its designated representative(s) will be assessed to the Design-Builder.~~ (NOT USED)

The cost of working drawings furnished by the Design-Builder shall be included in the Contract Price.

105.03—Conformity with Plans and Specifications

Values for materials to be used in the work shall be in close conformity with the specified 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 by the Department.

Permissible tolerances for the elevation of earthwork and thickness of the several courses of select material, subbases, and bases are specified in the Standard Specifications. If permissive tolerances are exceeded or if consistent deviations from the plans 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 plans require the finished surface to tie into any structural item whose elevation is fixed, the elevation of the finished surface shall coincide with the elevation of the structural item.

105.04—Furnishing and Erecting Precast Structures

The Department will allow precast units for the construction of standard drainage units and minor structures. The use of precast box culverts, precast arch, and special design precast structures may only be used in accordance with the plans.

The Design-Builder shall ensure that the precast unit, as installed at each specific location, will possess the specified structural, functional, aesthetic, and serviceability characteristics of the cast-in-place design. If field conditions make the precast unit unsuitable, the Design-Builder may modify the unit in a manner that will not be detrimental to the structural design, as approved by the Department, or shall replace the unit with the originally designed cast-in-place unit at his own expense.

Submittal of designs for precast items included in the standard drawings will not be required provided fabrication is in accordance with the standard details. Submittal of designs for precast box culverts on the Department's approval list will not be required provided the Design-Builder submits a certification that it will be fabricated in accordance with the preapproved design drawings.

Requests for approval of a precast design shall include detailed plans and supporting computations that have been reviewed and approved by a registered Professional Engineer having at least 5 years experience in structural design of the type of precast structures or components proposed. Concrete shall have a design strength at 28 days of at least 4,000 pounds per square inch and an air content of 6±2 percent. The design of the concrete mixture and the method of casting, curing, handling, and erecting shall be subject to review by the pertinent Design Consultant. Precast units may be shipped after reaching 85 percent of the design compressive strength as determined by control cylinders tested in accordance with the requirements of Section 404. Units shall retain their structural integrity during shipment and shall be subject to inspection at the job site. Approval to use precast units shall not be construed as waiving the size and weight hauling limitations of Section 105.14.

105.05—Coordination of Plans, Standard Drawings, Specifications, Supplemental Specifications, Special Provisions, and Special Provision Copied Notes

The Design-Builder shall be responsible for coordination of the Contract Documents, including but not limited to the RFP Documents, including Plans, Standard Drawings, Specifications, and these Specifications. The plans, standard drawings, these Specifications, and the Standard Specifications, and supplementary documents are parts of the Contract Documents. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work. In case of a discrepancy, the order of precedence is stated in the Agreement.

The Design-Builder shall not take advantage of any apparent error or omission in the Contract Documents. If the Design-Builder discovers an error or omission, he shall immediately notify the Design Consultant and inform the Department of the corrections. The Design-Builder will then make such corrections as necessary for fulfilling the intent of the Contract, as may be required by the Design Consultant.

105.06—Cooperation of Design-Builder

The Design-Builder will be supplied with at least two sets of the Contract Documents. Two copies of the Department's *Road and Bridge Specifications* and two copies of Department's *Road and Bridge Standards* will be furnished on request without charge.

The Design-Builder shall submit to the Department four sets of each plan revision issued while the project is under construction. Design-Builder shall keep one complete set of plans, standard drawings, contract assemblies, and Specifications available on the project at all times except for maintenance projects, certain sign projects, and other projects having no field office or on which the Design-Builder has no office.

The Design-Builder shall give the work the constant attention necessary to facilitate progress and shall cooperate with the Engineer, Inspector, and other contractors in every way possible. If any portion of a 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 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 a competent superintendent capable of reading and understanding the Contract Documents and experienced in the type of work being performed who shall receive instructions from the Department. The superintendent 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.

105.07—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 facility in any manner.

The Design-Builder shall coordinate project construction with utility adjustments and take all necessary precautions to prevent disturbance of the utility facilities.

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

Existing, adjusted, or new utility facilities that are to remain within the right of way shall be properly protected by the Design-Builder to prevent disturbance or damage resulting from construction operations. If 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 facility and shall take appropriate actions to adjust the utility.

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 appropriate price for other items in the Contract.

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 of Contract, 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.

105.08—Cooperation among Design-Builders

Section 3.6 of the General Conditions of Contract has precedence.

105.09—Holidays (Check with the pertinent district on holiday, weekend, and weekday restrictions for lane closures, maintenance, and construction work.)

~~Except as is necessary to maintain traffic, construction work shall not be performed on Sundays or the following holidays without the permission of the Department: January 1, 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.~~ (NOT USED)

Section 2.12.1 of Part 2, Technical Information and Requirements, has precedence.

105.10—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 shall be 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 Commonwealth of Virginia.

105.11—Authority and Duties of Inspector

Inspectors employed by the Department are authorized to conduct independent inspection and oversight of 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 Inspector is not authorized to alter or waive the provisions of the Contract Documents.

The Inspector is not authorized to accept any Work, make final acceptance of the project, approve any operation or item, or act as foreman for the Design-Builder. Inspection by the Department shall not relieve the Design-Builder of any obligation to furnish acceptable materials or provide completed construction that is in accordance with the Contract Documents.

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

105.12—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 independent inspection by the Department. The Department shall be allowed access to all parts of the work and shall be furnished such information and assistance by the Design-Builder as are required to make a complete and detailed inspection. The Department shall have ready access to machines and plant equipment used in processing or placing materials.

The Design-Builder shall keep the Department informed of planned operations in accordance with the requirements of Section 103.06(e).

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. If necessary, the Design-Builder shall restore such portions of the work to comply with the Specifications. 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 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 the 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 Design-Builder's own expense.

If an inspection reveals that work has not been properly performed, the Design-Builder will be so advised and shall immediately inform the Department, in writing, of his schedule for correcting such work and the time at which a reinspection can be made.

105.13—Removal of Unacceptable and Unauthorized Work

Work that does not conform to the requirements of the Contract will be considered unacceptable work.

Unacceptable work shall be remedied or removed immediately and replaced in an acceptable manner at the Design-Builder's expense.

No work shall be done until the Design-Builder establishes the lines and grades. Work that is done beyond the lines shown on the plans will be considered unauthorized and will not be paid for. Such work may be ordered removed or replaced at the Design-Builder's expense.

If the Design-Builder fails to comply immediately with any order of the Department or the Quality Assurance Manager made under the provisions of this section, the Department or the Quality Assurance Manager will have the authority to cause unacceptable work to be removed and replaced and unauthorized work to be removed.

105.14—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 pertinent Design Consultant 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.

105.15—Acceptance

Partial Acceptance: (Not Used)

Final Acceptance: Upon receipt of a written notice from the Design-Builder of presumptive completion of the entire project, the Department will make an inspection. If all work specified in the Contract has been completed, the inspection will constitute the final inspection and the Department will make the final acceptance. The Design-Builder will be notified of final acceptance in writing within 5 days.

If the inspection discloses that any work, in whole or in part, is incomplete or unacceptable, the Design-Builder shall immediately correct the deficiency. Upon completion or correction of the work, another inspection will be made that will constitute the final inspection. In such event, the Department will make the final acceptance and the Design-Builder will be notified of final acceptance in writing within 5 days. In any event, the Design-Builder shall maintain the project until final acceptance except under conditions that may be specifically exempted.

105.16—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 shall be new.

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 requirements of the Contract, do not furnish the valid test data required to document the quality of the material or equipment, or do not furnish valid 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 herein before, at least 60 days prior to their use on the project, but not less than two weeks prior to delivery.

Materials shall not be furnished from a source that has been identified by the Office of Federal Activities as being on the EPA's list of violating facilities.

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 the Department authorizes a change in writing. However, when the Design-Builder has an option as to the type of pipe that may be used, he may use any one 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 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 State in writing.

106.02—Material Delivery

The Design-Builder shall advise the Quality Assurance Manager and the Department at least 2 weeks prior to the delivery of any material from the following list that is from a commercial source:
Prestressed Concrete Structural Elements (beams, girders (AASHTO and bulb-T), and piles)
Structural Steel Elements (beams and girders)
Pipe (concrete, steel, aluminum and high density polyethylene) for culverts, storm drains and underdrains
Precast Concrete Structures
Metal Traffic Signal and Light Poles and Arms
Asphalt Concrete Mixtures
Aggregate (dense and open graded mixes)

106.03—Local Material Sources (Pits and Quarries)

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. 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.

The Design-Builder shall obtain 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 obtain a release signed by the property owner indicating that the property has been satisfactorily restored. This requirement does not apply to commercial sources or sources owned by the Design-Builder.

Local material pits and quarries shall not be opened or reopened without authorization by the Department. The Design-Builder shall obtain the approval of a site plan from the Department, including (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; (8) constructed or natural waterways used for discharge; and (9) a sequence and schedule to achieve the approved plan. The site plan shall also include sediment basins if required. Sediment basins are required if the runoff from a watershed area of 3 acres or more flows across a disturbed area of 10,000 square feet or greater. The Design-Builder shall design, construct, and maintain the basin to accommodate the anticipated sediment loading from the land disturbing activity. The Design-Builder shall certify to Department that the sediment basin design is in compliance with the Virginia Erosion and Sediment Control Regulations.

The Design-Builder's design and restoration shall be in accordance with the Contract and in accordance with the requirements of the federal, state, and local laws and regulations.

If the approved plan provides for the continued use or other use of the pit or quarry beyond the date of Final Completion, the Design-Builder shall furnish the Department a bond made payable to the Commonwealth of Virginia in an amount equal to the Department'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 8 months after Final Completion, 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.

Topsoil on borrow sites shall be stripped and stockpiled for use as needed within the construction limits of the project or in the reclamation of borrow and disposal areas.

If the Design-Builder fails to provide necessary controls to prevent erosion and siltation, such efforts are not made in accordance with the approved sequence, or the efforts are found to be inadequate, he shall take immediate action to abate erosion and siltation. The Department may cause the Design-Builder to cease all contributing operations and direct efforts toward corrective action or may perform the work with state forces or other means determined by the Department. If the Design-Builder does not perform the work, the cost of performing the work, plus 25 percent for supervisory and administrative personnel, will be deducted from moneys due the Design-Builder.

Costs for applying seed, fertilizer, lime, and mulch; 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 items.

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 moneys due the Design-Builder.

The Design-Builder will be held liable for penalties, fines, or damages incurred by the Department as a result of his failure to prevent erosion or siltation.

After removing the material, 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.

If payment is to be made for material measured in its original position, material shall not be removed until cross sections have been taken. The material shall be reserved exclusively for use on the project until completion of the project or until final cross-sections have been taken.

106.04—Disposal Areas

Unsuitable or surplus material whose presence is shown on the plans shall be deposited on approved areas located off the right of way. The Design-Builder shall obtain the necessary rights to such property provided at least one property owner having a suitable location is willing to enter a reasonable agreement.

The Design-Builder shall obtain 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 a disposal area, the Design-Builder shall obtain a release signed by the property owner indicating that the property has been satisfactorily restored. This requirement will be waived for property that is owned by the Design-Builder or the Department or for which rights have been procured by the Department.

Prior to opening a disposal area, the Design-Builder shall obtain the approval of a site plan from the Department. The plan shall show (1) the location and approximate boundaries of the disposal area; (2) all procedures to minimize erosion and siltation; (3) haul roads; (4) provision for environmentally compatible screening; (5) restoration of and cover vegetation for the area following the deposit of material; (6) the drainage pattern on and away from the area affected, including constructed or natural waterways used for drainage; (7) the streams or tributaries receiving the discharge; and (8) a sequence and schedule to complete the work, and (9) total drainage area for temporary sediment traps. The site plan shall also include sediment basins if required. Sediment basins are required if the runoff from a watershed area of 3 acres or more flows across a disturbed area of 10,000 square feet or greater. The Design-Builder shall design, construct, and maintain the basin to accommodate the anticipated sediment loading from the land disturbing activity. 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 107.14.

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.

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 the necessary controls to prevent erosion and siltation, such efforts are not made in accordance with the approved sequence, or the efforts are found to be inadequate, he shall take immediate action to abate erosion and siltation. The Department shall have the right to direct the Design-Builder to cease all contributing operations and direct efforts toward corrective action. If the Design-Builder does not perform the work, the Department may, acting in accordance with the provisions of the Contract Documents, perform the work and in such event the Design-Builder shall reimburse the Department for the entire cost of performing the work, plus 25 percent for supervisory and administrative personnel.

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.

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 approval of the Department, the Design-Builder may use in the project any materials found in the excavation that comply with the Specifications. 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.

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 these specifications 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.

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 theDesign-Builder. Inspection of these items shall be performed in accordance with the requirements of the appropriate VTM by the Department or a commercial laboratory approved by the Department. Additional cleaning or repair necessary because of environmental conditions in transit shall be at the Design-Builders 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 shall furnish equipment and maintain a plant laboratory at locations approved for plant processing of materials. The Design-Builder 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 have a telephone, intercom, or other electronic communication system connecting the laboratory and scale house if the facilities are not in close proximity. The laboratory shall be constructed in accordance with the requirements of local building codes.

The Design-Builder shall furnish, install, maintain, and replace, as conditions necessitate, testing equipment specified by the appropriate AASHTO method or VTM being used and provide necessary office equipment and supplies to facilitate keeping records and generating test reports. The Design-Builder's technician shall maintain current copies of the appropriate test procedures. The Design-Builder 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.

(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 its 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.

Additional required storage space shall be provided by the Design-Builder at his expense. Private property shall not be used for storage purposes without the written permission of the owner or lessee. Copies of the written permission shall be furnished to the Department. Upon completion of the use of the property, the Design-Builder shall furnish to the Department a release signed by the property owner indicating that the property has been satisfactorily restored.

106.09—Handling Materials

Materials shall be handled in a manner that will preserve their quality and fitness for the work. Aggregates shall be transported from storage to the work in vehicles constructed to prevent loss or segregation of materials.

106.10—Unacceptable Materials

Materials that do not conform to the Specifications shall be considered unacceptable. Such materials, whether in place or not, will be rejected and shall be removed from the site of the work. If it is not practical for the Design-Builder to remove rejected material immediately, the Design-Builder will mark the material for identification. Rejected material whose defects have been corrected shall not be used until approval has been given by the Department. 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 Documents. The cost of handling and placing materials after delivery to the Design-Builder shall be included in the Contract Price.

The Design-Builder shall be responsible for material delivered to him, including shortages, deficiencies, and damages that occur after delivery, and any demurrage charges.

SECTION 107—LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

107.01—Laws To Be Observed

Design-Builder shall execute and file the documents, statements, and affidavits required under any applicable federal or state law or regulation affecting his Proposal or Contract or prosecution of the work thereunder. The Design-Builder shall permit examination of any records made subject to such examination by any federal or state law or by regulations promulgated thereunder by any state or federal agency charged with enforcement of such law.

In accordance with Title 2.2, Chapter 43, Article 4 of the *Code of Virginia* (Virginia Public Procurement Act), the Design-Builder shall make payment to all Subcontractors, as defined in the Code, within 7 days after receipt of payment from the Department; or, shall notify the Department and Subcontractor in writing of the intention to withhold all or a part of the amount due along with the reason for nonpayment.

In the event payment is not made as noted, the Design-Builder shall pay interest at the rate of 1 percent per month, unless otherwise provided in the Contract, to the Subcontractor on all amounts that remain unpaid after 7 days except for the amounts withheld as provided hereinbefore.

These same requirements shall be included in each subcontract and shall be applicable to each lower-tier Subcontractor.

107.02—Permits, Certificates, and Licenses (Refer to Part 4 -General Conditions – Section 2.6 Governmental Approvals & Section 3.5 Governmental Approvals)

107.03—Patented Devices, Materials, and Processes (Refer to Part 4 -General Conditions – Article 7 Indeminfication)

107.04—Restoration of Work Performed by Others

The Department may construct or reconstruct any utility service in the highway or street 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.

When authorized by the Department, the Design-Builder shall allow any person, firm, or corporation 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 necessary work will be paid for as extra work in accordance with the requirements of the Standard Specifications and shall be subject to the same conditions as the original work performed.

107.05—Federal-Aid Provisions

When the U.S. government pays all or any portion of the cost of a project, the Design-Builder shall observe the federal laws and rules and regulations made pursuant to such laws. 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.

107.06—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.

107.07—Public Convenience and Safety

The Design-Builder shall conduct his work so as to ensure the least possible obstruction to traffic. The Design-Builder shall provide for the safety and convenience of the general public and residents along the highway and the protection of persons and property as specified in Section 104.04.

107.08—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 or the use of any existing crossing. 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 own 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 interfere unnecessarily 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 railway company that are made a part of the Contract.

(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 will be borne by the Design-Builder.

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.

(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 provide the Department a copy of railway company's 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 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

Any review of or comment on the plan of operations by the Department 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 Subcontractor 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 Design-Builder'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 Subcontractor. 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 may 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 Declarations form as shown in the RFP 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 _____ Insurance Company, herein called the
(Type of Company)
Company, agrees with the insured named in the Declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the 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, herein called
(Type of Company)

the Company, severally agree with the insured named in the Declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the 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 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 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 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 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* 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 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 or organization 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 or organization

(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 or organization

(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

As used in exclusions (7), (8), and (9), the following definitions apply: *Hazardous properties* include radioactive, toxic, or explosive properties. *Nuclear material* means source material, special nuclear material, or byproduct 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. *Disposable material* means material containing byproduct material and resulting from the operation by any person or organization of any nuclear facility included in the definition of nuclear facility under 1 or 2 below. *Nuclear facility* means

(1) any nuclear reactor

(2) 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

(3) 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

(4) 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 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. With respect to injury to or destruction of property, *injury* or *destruction* includes all forms of radioactive contamination of property.

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 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 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 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 Declarations for any such excess. If less, 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 Declarations.

(3) **Limits of liability, Coverage A:** The limit of bodily injury liability stated in the 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 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 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 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 his 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 or organization or the legal representative thereof 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 or organization 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 enure 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 therefor against any person or organization. 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 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) **Declarations:** By acceptance of this policy, the named insured agrees that such statements in the 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 Declarations page by a duly authorized agent of the Company.

(Facsimile of Signature) Secretary	(Facsimile of Signature) 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 Declarations page by a duly authorized agent of the Company.

(Facsimile of Signature) Secretary	(Facsimile of Signature) 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 Proposal. 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 Standard Specifications, the Design-Builder shall specify in each order that the materials are to be tested in accordance with the Standard Specifications.

107.09—Construction Over or Adjacent to Navigable Waters

The Design-Builder shall conduct the work on navigable waters so as to ensure the least possible obstruction to navigation and that the existing navigable depths will not be impaired except as may be allowed by a permit issued by the U.S. Coast Guard. The Design-Builder shall also provide and maintain temporary navigation lights and signals required by U.S. Coast Guard regulations for the protection of navigation. When the Design-Builder determines that the work has reached a point where such action may be taken, the Design-Builder shall promptly clear the channel(s) through the structure of falsework, piling, or other obstructions placed therein or caused by the construction of the structure to the satisfaction of the Coast Guard.

107.10—Barricades and Warning Signs

The Design-Builder shall take all necessary precautions for the protection of the work and the safety of the public as described herein and in Sections 104.04, 107.07, and 512.

Highways closed to traffic shall be protected by barricades and other warning devices as required by the Department. Barricades and warning devices shall be illuminated where required during 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. Barricades, warning signs, lights, temporary signals, and other protective devices shall conform to the requirements of Section 512.

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 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. Notice shall not relieve the Design-Builder of responsibility for damage resulting from his blasting operations.

107.12—Protecting and Restoring Property and Landscape

The Design-Builder shall preserve property and improvements along the lines of and adjacent to the work unless their removal or destruction is called for by the plans. 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, 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 the Department.

The Design-Builder shall be responsible for damage or injury to property during the prosecution of the work resulting from any act, omission, neglect, or misconduct in the method of executing the work or attributable to defective work or materials. This responsibility shall not be released until final acceptance of the project.

When direct or indirect damage is done to property by or on account of any act, omission, neglect, or misconduct in the method of executing the work or in consequence of the nonexecution 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 making settlement with the

property owner. The Design-Builder shall secure from the owner a release from any claim against the Department without additional compensation therefor. A copy of this release shall be furnished the Department.

107.13—Responsibility for Damage Claims

The Design-Builder shall indemnify and save harmless the State, the Board, and its officers, agents, and employees, as well as the city, town, county, or other municipality in which the work is performed and their officers, agents, and employees, from suits, actions, or claims brought for or on account of any injuries or damages received or sustained by any person, persons, or property resulting from or arising out of the work performed by the Design-Builder, or by or in consequence of any neglect in safeguarding the work, through the use of unacceptable materials in the construction or the improvement, or resulting from any act or omission, neglect, or misconduct of the Design-Builder; or by or on account of any claims or amounts recovered by infringement of any patent, trademark, or copyright. The Commissioner may retain as much of the monies due the Design-Builder under and by virtue of his Contract as the State considers necessary to ensure that a fund will be available to pay a settlement or judgment of such suits, actions, or claims. If no monies are due, the Design-Builder's surety will be held until all such claims and actions have been settled and suitable evidence to that effect has been furnished the Board. Any extension of time granted the Design-Builder in which to complete the Contract shall not relieve him or his surety of this responsibility.

It is not intended by any of the provisions of any part of the Contract to create the public or any member thereof as a third party beneficiary hereunder or to authorize anyone not a party to the Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.

When any act, omission, or other action of the Design-Builder occurs that affects the health, safety, or welfare of the public, the Department will direct the Design-Builder to take prompt action to repair, replace, or restore the damage or injury within a time frame established by the Department. If the Design-Builder fails to make such repair, replacement, or restoration within the established time frame, the Department will have the damage or injury repaired, replaced, or restored and will deduct the cost of such repair, replacement, or restoration from monies due the Design-Builder.

107.14—Environmental Stipulations

The Design-Builder hereby represents (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 Design-Builder 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.

(a) **Erosion and Siltation:** The Design-Builder shall exercise every reasonable precaution, including temporary and permanent measures, throughout the duration of the project to control erosion and prevent or minimize siltation of rivers, streams, lakes, and impoundments. Siltation control measures shall be applied to erodible material exposed by any activity associated with construction, including local material sources, stockpiles, disposal areas, and haul roads.

Temporary measures shall be coordinated with Contract work to the extent practicable to ensure economical, effective, and continuous erosion and siltation control. Permanent erosion control measures and drainage facilities shall be installed as the work progresses.

The Design-Builder shall have, within the limits of the project, an employee certified by the Department of Conservation and Recreation in Erosion and Sediment Control who shall inspect erosion and siltation control devices and measures for proper installation and deficiencies immediately after each rainfall, at least daily during prolonged rainfall, and weekly when no rainfall event occurs. Deficiencies shall be corrected immediately. Failure on the part of the Design-Builder to maintain appropriate erosion and siltation control devices in a functioning condition may result in the Department notifying the Design-Builder in writing of specific deficiencies. If the Design-Builder fails to correct or take appropriate actions to correct the specified deficiencies within 24-hours 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 toward correcting the specified deficiencies, hold progress payments, or proceed to correct the specified deficiencies and deduct the entire cost of such work from monies due the Design-Builder. Failure of the Design-Builder to maintain a certified Erosion and Sediment Control employee within the limits of the project will result in the Department suspending work related to any land disturbing activity until such time as a certified Erosion and Sediment Control employee is present on the project.

(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 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.

Construction discharge water shall be filtered to remove deleterious materials prior to discharge into state waters. 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 nonerodible 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 state and federal agencies in accordance with the requirements of the Contract and shall take immediate actions to contain, remove, and properly dispose of the oil or chemical.

Excavation material shall be disposed of in approved areas above the mean high water mark shown on the plans 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 channel changes are shown 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.

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 appropriate items of the Contract.

Temporary bridges or other structures shall be used wherever an appreciable number of stream crossings will be made.

Conduct all operations near rivers, streams, or impoundments in accordance with applicable water quality permits. Do not conduct clearing or grubbing within 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.

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.

3. **Noise:** The Design-Builder's operations shall be performed so that exterior noise levels measured during a noise-sensitive activity shall be not more than 80 decibels. *Noise-sensitive activity* is any activity for which lowered noise levels are essential if the activity is to serve its intended purpose. Such activities include those associated with residences, hospitals, nursing homes, churches, schools, libraries, parks, and recreational areas.

Design-Builder shall monitor construction-related noise if requested by local agencies, the Department or neighboring property owners. If construction noise levels exceed 80 decibels, 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.

Design-Builder shall determine whether certain portions of the project that produce objectionable noise should be restricted or prohibited between 10 P.M. and 6 A.M. 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 are not 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) **Forests:** 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 the state and federal governments 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 proper state authority charged with the responsibility of investigating and evaluating such finds. The Design-Builder shall cooperate and, assist in protecting, mapping, and removing the findings. The Design-Builder’s costs for such work shall be included in the Contract Price, provided, however, that Design-Builder shall have the ability to seek relief under the Differing Site Conditions clause of the General Conditions of Contract. Findings shall become the property of the State unless they are located on federal lands, in which event they shall become the property of the U.S. government.

107.15—Opening Sections Of Projects To Traffic

When specified in the Contract or when directed by the Department, certain sections of the work may be opened to traffic. 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 and the Design-Builder has not been dilatory in prosecuting the work, the Design-Builder will not be required to assume any expense entailed in maintaining the road for traffic. Such expense will be borne by the Department or will be compensated for in accordance with the requirements of the Contract. Repair of damage attributable to traffic will be compensated for in accordance with the requirements of the Contract. The cost of all other repairs shall be borne by the Design-Builder.

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 for the completion of other items of work that are occasioned because of the changed working conditions will be compensated in accordance with the requirements of the Contract.

If the Design-Builder is dilatory in completing the work, he shall not be relieved of the responsibility for maintenance during the period the section is opened to traffic prior to final acceptance. Any expense resulting from the opening of such portions under these circumstances, except slides, shall be borne by the Design-Builder. The Design-Builder shall conduct the remainder of the construction operations so as to cause the least obstruction to traffic.

107.16—Design-Builder's Responsibility For Work

Until final acceptance of the work by the Department in accordance with the requirements of the Section 105.15, the 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. The Design-Builder shall rebuild, repair, restore, and make good damage to any portion of the work occasioned by any of the foregoing causes before final acceptance and shall bear the expense thereof.

In case of suspension of work, as defined elsewhere in the Contract, the Design-Builder shall be responsible for the project and shall take such precautions as may be necessary to prevent damage to the work, provide for erosion control and drainage, and erect any necessary temporary structures, signs, or other facilities at his own expense. During the suspension of work, the Design-Builder shall properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seedings, and soddings furnished under the Contract and shall take adequate precautions to protect new tree growth and other important vegetation against damage.

107.17—Design-Builder's Responsibility For Utility Property And Services

At points where the Design-Builder's operations are adjacent to the properties of any utility, including railroads, and damage to which might result in considerable 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 utility lines so that removal and adjustment operations may progress in a 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 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 the local fire authority has approved provisions for continued service. 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 24 hours prior to disconnection. In addition, the Design-Builder shall notify the locality's fire department or communications center no later than 24 hours after reconnection of such hydrants. The Design-Builder shall be responsible for any damage to utilities that is attributable to his neglect or methods of performing the work.

Nothing in this section shall be construed to be in conflict with Section 107.12.

The Design-Builder shall comply with all requirements of the *Virginia Underground Utility Damage Prevention Act* § 56-265.14 (the Miss Utility law). The Design-Builder shall wait a minimum of 48 hours after notifying the Miss Utility notification center before commencing excavation work. The Design-Builder may commence excavation work after 48 hours only if confirmed through the Ticket Information Exchange (TIE) System that all applicable utilities have either marked their underground line locations or reported that no lines are present in the work vicinity.

The Design-Builder shall wait an additional 24 hours before commencing excavation operations if any utility operators have failed to respond to the Ticket Information Exchange within the first 48 hours.

107.18—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.

107.19—Personal Liability of Public Officials

In carrying out any of the provisions of these Specifications 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, Engineer, or their authorized representatives, either personally or as officials of the State. In all such matters, they act solely as agents and representatives of the State.

107.20—No Waiver of Legal Rights

The State shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after final acceptance of the work and payment therefor 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, or certificate is untrue or incorrectly made, or (3) that the work or materials do not conform with the provisions of the Contract. The State shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate, and payment in accordance therewith, from recovering from the Design-Builder or his surety, or both, such damage as it may sustain by reason of his failure to comply with the terms of the Contract. Neither the acceptance by the Department or any representative of the Department nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the Department shall operate as a waiver of any portion of the Contract or of any power herein reserved or of any right to damages. A waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

SECTION 108—PROSECUTION AND PROGRESS OF WORK

108.01—Subcontracting

The Design-Builder shall perform with his own organization work amounting to not less than 30 percent of the original Contract Price, unless otherwise stated in the RFP.

The use of Subcontractors or other disposition of any portion of the Contract work shall not relieve the Design-Builder of any responsibility for the fulfillment of the entire Contract.

108.02—Notice to Proceed

The Department will issue a Notice to Proceed in accordance with the RFP. The Contract time will start at the commencement of work or on the date specified in the Notice to Proceed, whichever is earlier. In no case shall work begin before the Contract is executed by the Department. The Design-Builder shall notify the Department at least 3 days prior to the date on which work will begin.

108.03—Prosecution of Work

The Design-Builder shall begin work within 10 days of the date specified in the Notice to Proceed. Work shall be conducted in such a manner and with sufficient materials, equipment, tools, and labor as are necessary to ensure its completion in accordance with the Contract Documents within the Contract Time(s). Once the Design-Builder has begun work, it shall be prosecuted continuously and to the fullest extent possible except for interruptions caused by weather or delays authorized or ordered by the Department. If approval is given to discontinue the work temporarily, the Design-Builder shall notify the Department at least 24 hours in advance of resuming operations.

108.04—Critical Materials

When the supply of critical materials becomes scarce because of the needs of national defense or industrial conditions beyond the control of the Department or Design-Builder, the provisions of this Section will become applicable to the Contract.

When all items of work involving noncritical materials have been completed by the Design-Builder or have progressed to a point where no further work is practicable prior to receipt of critical materials, a complete suspension of work will be granted by the Department. Requests for partial suspension orders because of delays attributable to nonreceipt of critical materials will be considered on the basis of merit in each case.

108.05—Limitation of Operations

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.

108.06—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 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 of the Department.

If the Department determines that the Design-Builder or the Design-Builder's employees, representatives, or agents of any person acting in his behalf have violated this provision, the Design-Builder may, at the discretion of the Department, be disqualified from bidding on future contracts with the Department. Any implicated employees, agents, or representatives of the Design-Builder may be prohibited from working on any contract awarded by the Department. The decision of the Department shall be binding on all parties. A Design-Builder so disqualified may be reinstated only by petition to and approval by the Board.

108.07—Character of Workers, Work Methods, and Equipment

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.

Any person employed by the Design-Builder or any Subcontractor who, in the opinion of the Department, does not perform his work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the

Department, be removed forthwith by the Design-Builder or Subcontractor employing the person and shall not be employed again on any portion of the work without the approval of the Department. If the Design-Builder fails to remove the person or furnish suitable and sufficient personnel for proper 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 request or order.

Equipment shall be of sufficient size and in such mechanical condition as to meet the requirements of the work and produce a satisfactory quality of work. Equipment shall be such that no damage to the roadway, adjacent property, or other highways will result from its use. Design-Builder shall order the removal and require replacement of unsatisfactory equipment.

When methods and equipment to be used by the Design-Builder are not prescribed in the Contract, the Design-Builder is free to use methods or equipment that will accomplish the Contract work in conformity with the requirements of the Contract.

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 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 requirements of the Contract, 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 Time limit as the result of authorizing a change in methods or equipment under these provisions.

108.08—Baseline Schedule

The Design-Builder shall submit a Baseline Schedule and updates in accordance with the requirements of the General Conditions of Contract. Payment for material stockpiled or stored in accordance with the requirements of Section 109.08 will not be considered in determining the Design-Builder's rate of progress.

108.09—Determination and Extension of Contract Time Limit (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)

108.10—Suspension of Work Ordered by the Engineer (Refer to Part 4 -General Conditions – Article 11 Stop Work and Termination for Cause)

108.11—Failure To Complete on Time

For each calendar day that any work remains incomplete after the Contract Time limit specified for the completion of the work, the Department will assess liquidated damages against the Design-Builder in accordance with the Contract.

108.13—Default of Contract (Refer to Part 4 -General Conditions – Article 11 Stop Work and Termination for Cause)

108.14—Termination of Contract (Refer to Part 4 -General Conditions – Article 11 Stop Work and Termination for Cause)

108.15—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

This Section 109.01 will be applicable to adjustments in the Contract Price, and is not intended to supercede the work breakdown measurement process applicable to progress payments.

Work specified in the Contract will be measured by the Design-Builder according to U.S. Standard Measure. 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 computations will be made horizontally, and transverse measurements will be the surface measure shown on the plans or ordered in writing by the Department. Individual fixture areas of 9 square feet or less will not be deducted from surface areas measured for payment.

Structures will be measured according to neat lines shown on the plans.

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 a greater area than shown on the plans or for any material moved from outside the area of the cross section and lines shown on the plans.

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 cited specifications, manufacturing tolerances established by the industries involved will be accepted.

(a) **Measurement by Weight**: Materials that are measured or proportioned by weight shall be weighed on accurate scales. 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. No payment will be made for materials delivered in excess of the legal load limits established for each truck.

The Design-Builder shall have the weighperson perform the following:

1. Post and furnish a weekly tare weight of each truck used and keep a record of them for 12 months.

2. Furnish a signed weigh ticket for each load that shows the date, truck number, load number, plant name, size and type of material, project, schedule or purchase order number, and the weights specified herein.

3. Maintain sufficient documentation so that the accumulative tonnage and distribution of each lot of material, by contract, can be readily identified.

4. 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 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 weighperson at the scale house.

Trucks used to haul material shall be equipped with a cover suitable to protect the material and to protect the traveling public.

The truck tare 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 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 by 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 months and upon being moved. Hopper and truck scales shall be serviced and tested by a scale service representative at least once every six 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 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 conform to the requirements of Section 211.11 and 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 48 hours provided satisfactory visual verification of weights can be made. The written permission of the Department will 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 State.

(b) **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, 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 (in effect, lump sum work) is specified as the unit of measurement, the unit will be construed to include necessary fittings and accessories. The quantities may be shown on the plans for items for which lump sum is the method of measurement. If shown, the quantities are approximate and are shown for estimating purposes only. Items that are to be measured as complete units will be counted by the Inspector in the presence of a representative of the Design-Builder.

(d) Specific Items:

1. **Concrete:** Concrete will be measured and computed by dividing the work into simple geometrical figures and adding their volumes.

2. **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.

3. **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:

$V^1 = V/K(T - 60) + 1$

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.

When specified in the Contract, 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.

4. **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.

5. **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 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

(b) performing all work contemplated under 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 infringement of patent, trademark, or copyright

(g) the completion of the work in accordance with the requirements of the Contract

The payment of any partial estimate or any retained percentage prior to final acceptance of the project as provided for in Section 105.15 shall in no way affect the obligation of the Design-Builder to repair or renew any defective parts of the construction or to be responsible for all damages attributable to such defects.

109.04—Compensation for Altered Quantities (Refer to Part 3 – Lump Sum Agreement – Article 6 Contract Price and Part 4 – General Conditions – Article 9 Changes to Contract Price and Time)

109.05—Extra and Force Account Work

Extra work performed in accordance with the requirements of Section 9.4.1 of the General Conditions will be paid for at the unit prices or lump sum specified in the work order. In lieu of such agreement, the Department may require the Design-Builder to do such work on a force account basis to 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, foremen, 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 45 percent of the approved force account payroll will be included in the payment for labor to cover administrative costs, profit, and benefits and/or deductions normally paid by the Design-Builder.

(b) **Insurance and Tax:** The Design-Builder will receive an amount equal to 25 percent of the approved force account 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 of force account work.

(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, exclusive of labor and equipment rentals as herein set forth, to which 15 percent 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 accrue to the Department. Salvageable temporary construction materials will be retained by the Department, or their appropriate salvage value shall be credited to the State, 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 hourly rental rates for pieces of machinery, equipment, and attachments necessary for prosecution of the work that are approved for use by the Department. Hourly rental 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 *Blue Book* rate adjustment tables that are current at the time the force account is authorized. Adjustment factors or rate modifications indicated on area maps in the *Blue Book* will not be considered when acceptable rates are determined. Hourly rental rates for equipment held in ready will be at 50 percent of the rate paid for equipment in use.

Payment will be made for the total hours the equipment is in use. When equipment is in use less than 40 hours for any given week and is held in ready, payment for held-in-ready time will be allowed for up to 40 hours, minus hours in use. Payment will not be made for the time that equipment is on the project in excess of 24 hours prior to its actual use in the force account work. An amount equal to the *Blue Book* estimated operating cost per hour will be paid for all hours the equipment is in use. 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 force account 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 storage lot.

The rates for equipment not listed in the *Blue Book* schedule shall not exceed the hourly rate being paid for such equipment by the Design-Builder at the time of the force account authorization. In the absence of such rates, prevailing rates being paid in the area where the work is contemplated shall be used.

If the Design-Builder does not possess or have readily available equipment necessary for performing the force account work and such equipment is rented from a source other than a company that is an affiliate of the Design-Builder, payment will be based on actual invoice rates, to which 15 percent 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, it will be converted to an hourly rate, and an amount equal to the *Blue Book* estimated operating cost per hour will be added for each hour the equipment is in use.

(e) **Miscellaneous:** No additional allowance will be made for attachments that are common accessories for equipment as defined in the *Blue Book*, general superintendents, timekeepers, secretaries, the use of small 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 force account 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 a force account basis. At the end of each day, the Design-Builder's representative and the Inspector shall compare and reconcile records of the cost of work done as ordered on a force account basis.

If all or a portion of the force account work is performed by an approved Subcontractor, the Design-Builder will be paid 10 percent of the subcontract net force account costs before additives are applied to cover his profit and administrative cost. The amount resulting will not be subject to any further additives. The itemized statements of costs as required by (g) herein shall be submitted on a form that separates the subcontracted portions of the force account labor, materials, and equipment from the other force account costs.

(g) **Statements:** Payments will not be made for work performed on a force account basis 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, foreman, 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 on the force account work 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—Eliminated Items

If any item in the Contract is determined to be unnecessary for the proper completion of the work contracted, the Department may, upon written notice to the Design-Builder, eliminate such item from the Contract. Payment will not be made for such item except that the Design-Builder will be compensated for the actual cost of any work performed for the installation of such item and the net cost of materials purchased, including freight and tax costs, as evidenced by invoice. No additional compensation will be made for overhead or anticipated profit.

109.07—Partial Payments

Payment will be made in accordance with the Agreement and the General Conditions of Contract

109.08—Payment for Material on Hand

When requested in writing by the Design-Builder, payment allowances may be made for material secured for use on the project. Such material payments will be for only those actual quantities identified in the contract, approved work orders, or otherwise documented as required to complete the project and shall be in accordance with the following terms and conditions:

(a) **Structural Units:** An allowance of 100 percent of the cost to the Design-Builder for structural steel materials for fabrication not to exceed 60 percent 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. An allowance of 100 percent of the cost to the Design-Builder for superstructure units, not to exceed 90 percent of the contract price, may be made when they have been fabricated. Prior to the granting of such allowances, the structural steel 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.

(b) **Other Materials:** For reinforcing steel, aggregate, pipe, guardrail, signs and sign assemblies, and other nonperishable material, an allowance of 100 percent of the cost to the Design-Builder for materials, not to exceed 90 percent of the contract price, may be made when such material is delivered and stockpiled or stored in accordance with the requirements specified herein. However, no allowance will be made for cement, seed, plants, fertilizer, and other perishable material. 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. No allowance will be made for electrical or computer equipment until it is completely installed, operational, and accepted in conformance with the contract requirements.

(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. 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, on the manufacturer's or fabricator's yard. Requests for payment allowance for such 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 State.

(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 5 days and no later than 2 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.

109.09—Final Payment

Payment will be made in accordance with the Agreement and the General Conditions of Contract.

109.10—Payment

Upon Department payment of the Subcontractor's portion of the work as shown on the monthly progress estimate and the receipt of payment by the Design-Builder for such work, the Design-Builder shall make compensation in full to the Subcontractor. For the purposes of this provision, payment of the Subcontractor's portion of the work shall mean that payment has been issued for that portion of the work that was identified on the monthly progress estimate for which the Subcontractor has performed service.

The Design-Builder shall make payment in full for the portion of the work identified on the monthly progress estimate to the Subcontractor within 7 days of the receipt of payment from the Department in accordance with the requirements of Section 109.07. If the Design-Builder withholds any funds as part of his contract with the Subcontractor to ensure satisfactory compliance and completion and the Subcontractor achieves specified work as verified by payment from the Department to the Design-Builder, the Design-Builder shall make full payment to the Subcontractor within 7 days.

If the Design-Builder fails to make payment to the Subcontractor within the time frame specified herein, the Subcontractor shall contact the Department and the Design-Builder's bonding company in writing. The Bonding Company and the Department will insure payment in accordance with the requirements of Sections 107.01 and Section 109.

SECTION 110—MISCELLANEOUS PROVISIONS

110.01—Common Carrier Rates (Not Used)

110.02—Labor and Wages

The Design-Builder shall comply with the provisions and requirements of the State's workers' compensation law and public statutes that regulate hours of employment on public work. Job orders placed with a State Employment Service shall indicate that employment preference will be given to veterans referred for employment. Advertisements in newspapers or other publications for project employees shall include the notation "Employment Preference to Veterans."

(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 classifications. For additional details of predetermined minimum wage rates, see Exhibit 110.02 attached herewith.

(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 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.

110.03—Equal Employment Opportunity

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.

The Design-Builder shall maintain the following records and reports as required by the contract EEO provisions:

- record of all applicants for employment
- new hires by race, work classification, hourly rate, and date employed
- minority and nonminority employees employed in each work classification
- changes in work classifications
- employees enrolled in approved training programs and the status of each
- minority Subcontractors with meaningful minority group representation
- copies of Form C-57 submitted by Subcontractors

If the Contract has a pay item 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.

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.

(a) **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.

(b) **EEO Officer:** The Design-Builder shall designate and make known to the Department an EEO Officer who can effectively administer and promote an active Design-Builder EEO program and who shall be assigned adequate authority and responsibility to do so.

(c) 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 cognizant 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 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 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 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.

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.

(d) 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.

(e) **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 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 persons.

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 persons. Upon completion of each investigation, the Design-Builder shall inform every complainant of all avenues of appeal.

(f) 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, 25 percent 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 price Proposal for other items in the Contract.

6. If the Contract provides a pay item for trainees, training shall be in accordance with the requirements of Section 518.

(g) **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 will 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 persons and women. If union referral practice prevents the Design-Builder from meeting the EEO requirements, the Design-Builder shall immediately notify the Department.

(h) **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 MBE, DBE, and WBE construction firms from the Department. If MBE, DBE, or WBE goals are established in the RFP, the Design-Builder shall comply with the requirements of Section 110.04.

The Design-Builder shall use best efforts to ensure Subcontractor compliance with his EEO obligations.

(i) **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 nonminority group members and women 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 women 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 3 years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the Department.

Each month for the first 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, nonminority, and female employees currently engaged in each work classification shown on the form. The completed Form C-57 shall be submitted within 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.

110.04—Use of Minority Business Enterprises (MBEs)

Design-Builder shall comply with all of the requirements of Exhibit 110.04, attached herewith. This Exhibit is a November 4, 2004 Special Provision from the Department, and when the term "Contractor" is used, it is intended to refer to "Design-Builder."

110.05—Construction Safety and Health Standards

It is a condition of the Contract, and shall be made a condition of each subcontract entered into pursuant to the Contract, that the Design-Builder and any Subcontractor shall not require any worker employed in performance of the Contract to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to their health or safety, as determined under construction safety and health standards promulgated by the U.S. Secretary of Labor in accordance with the requirements of Section 107 of the Contract Work Hours and Safety Standards Act.

The Design-Builder shall comply with the Virginia Occupational Safety and Health Standards adopted under Section 40.1-22 of the *Code of Virginia* and the duties imposed under Section 40.1-51.1 of the Code. Any violation of the requirements or duties that is brought to the attention of the Design-Builder by the Department or any other person shall be immediately abated.

110.06—Bulletin Boards and Posting Official Notices

Except for maintenance contracts, the Design-Builder shall furnish, erect, and maintain at least two bulletin boards having dimensions of at least 48 inches in width and 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 contract 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. The costs for such work shall be included in the Contract Price.

110.07—Certification of Nonsegregated Facilities

The Certification of Nonsegregated Facilities, as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities for highway construction contracts exceeding $10,000 that are not exempt from the provisions of the equal opportunity clause, requires that Offerors neither maintain nor provide facilities for employment that are segregated on a basis of race, creed, color, or national origin,

whether such facilities are segregated by directive or on a de facto basis. If the Contract exceeds $10,000 and is not exempt from the provisions of the equal opportunity clause, the Offeror by signing the Proposal will be deemed to have signed and agreed to the provisions of the certification. If the Contract exceeds $10,000 and is not exempt from the provisions of the equal opportunity clause, the Design-Builder shall forward the following notice to prospective Subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed $10,000 and are not exempt from the provisions of the equal opportunity clause:

NOTICE TO PROSPECTIVE SUBCONTRACTORS AND MATERIAL SUPPLIERS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES

(a) Subcontractors and material suppliers are cautioned as follows: By signing the subcontract or entering into a material supply agreement, the Subcontractor or material supplier will be deemed to have signed and agreed to the provisions of the Certification of Nonsegregated Facilities, as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, prior to the award of the subcontract or consummation of a material supply agreement if such subcontract or agreement exceeds $10,000 and is not exempt from the provisions of the equal opportunity clause. This certification provides that the Subcontractor or material supplier does not maintain, or provide for his employees, facilities that are segregated on the basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the Subcontractor or material supplier will not maintain such segregated facilities.

(b) Subcontractors or material suppliers receiving subcontract awards or material supply agreements exceeding $10,000, which are not exempt from the provisions of the equal opportunity clause, will be required to provide for the forwarding of this notice to prospective Subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed $10,000 and are not exempt from the provisions of the equal opportunity clause.

110.08 Exhibits

The following exhibits are specifically made a part of, and incorporated by reference into, these Division I Amendments to the Standard Specifications:

EXHIBIT 102.05(a) -- SPECIAL PROVISION FOR USE OF DOMESTIC MATERIAL

EXHIBIT 102.05(b) -- FHWA –1273, REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

EXHIBIT 102.05(c) -- NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

EXHIBIT 110.02 -- PREDETERMINED MINIMUM WAGE RATES

EXHIBIT 110.04 -- SPECIAL PROVISION FOR SECTION 110.04

END OF PART 5
DIVISION I AMENDMENTS TO THE STANDARD SPECIFICATIONS

Exhibit 102.05(a)

S102C0B-0702

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
USE OF DOMESTIC MATERIAL

May 3, 1995c
Reissued July 9, 2002

SECTION 102.05 PREPARATION OF BID of the Specifications is amended to include the following:

Except as otherwise specified, all iron and steel products (including miscellaneous steel items such as fasteners, nuts, bolts and washers) incorporated for use on this project shall be produced in the United States of America; unless the use of any such items will increase the cost of the overall project by more than 25 percent. "Produced in the United States of America" means all manufacturing processes whereby a raw material or a reduced iron ore material is changed, altered or transformed into an item or product which, because of the process, is different from the original material, must occur in one of the 50 States, the District of Columbia, Puerto Rico or in the territories and possessions of the United States. Raw materials such as iron ore, pig iron, processed, pelletized and reduced iron ore and other raw materials used in steel products may, however, be imported. All iron and steel items will be classified hereinafter as "domestic" or "foreign", identified by and subject to the provisions herein. In the event use of the aforementioned "domestic" iron and steel will increase the cost of the overall project by more than 25 percent, the Contractor may furnish either "domestic" or "foreign" items.

In the event the Contractor proposes to furnish "foreign" iron and steel and can verify a savings in excess of 25 percent of the overall project cost, the bid proposal (Form C-7 and Supportive Data supplement) shall be completed using the best price offer for each bid item.

Award of the contract will be made to the bidder who submits the lowest total bid based on furnishing "domestic" iron and steel items, unless such total bid exceeds the lowest total bid based on furnishing "foreign" iron and steel items by more than 25 percent.

The information listed on the Supportive Data sheet will be used to provide the basis for verification of the required cost savings. In the event comparison of the prices given, or corrected as provided in Section 103.01 of the Specifications, shows that use of "foreign" iron and steel does not represent a cost savings exceeding the aforementioned 25 percent, "domestic" iron and steel and prices given therefor shall be used and the "100 percent Domestic Items Total" shall be the Contractor's bid.

In the event the total cost of all "foreign" iron and steel does not exceed one-tenth of one percent of the total contract cost or $2,500, whichever is greater, the use of such material will not be restricted by the requirements herein. However, by signing the bid, the Bidder certifies that such cost does not exceed the limits established herein.

Prior to final payment the Contractor shall obtain from the supplier and furnish to the Department a certificate of compliance with the domestic requirements herein. The Contractor may personally certify that miscellaneous iron and steel and hardware conforms to the domestic requirements herein.

Exhibit 102.05(b)

SF010AF-0702

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REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

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ATTACHMENTS

A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendent and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

Section I, paragraph 2;
Section IV, paragraphs 1, 2, 3, 4, and 7;
Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. **Selection of Labor:** During the performance of this contract, the contractor shall not:

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his 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, national origin, age or disability. 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, preapprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

6. **Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor 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, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

8. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

9. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of $10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. **General:**

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate

wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. **Classification:**

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. **Payment of Fringe Benefits:**

a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. **Apprentices and Trainees (Programs of U.S. DOL) and Helpers:**

a. Apprentices:

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determiation for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division

determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under a approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. **Apprentices and Trainees (Programs of the U.S. DOT):**

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

6. **Withholding:**

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contractsubject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. **Overtime Requirements:**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. **Violation:**

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. **Withholding for Unpaid Wages and Liquidated Damages:**

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. **Compliance with Copeland Regulations (29 CFR 3):**

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. **Payrolls and Payroll Records:**

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less that the applicable wage rate and fringe benefits or cash equivalent for the classification of worked performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than $1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who

performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer 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 covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined 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. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that 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 the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project: **NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS**

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more that $10,000 or imprisoned not more than 5 years or both."

X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. **Instructions for Certification - Primary Covered Transactions:**

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared

ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless itknows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

2. **Instructions for Certification - Lower Tier Covered Transactions:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions of $25,000 or more - 49 CFR 29)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters intoa lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

Exhibit 102.05(c)

SF030AF-0702 Reissued July 9, 2002

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals for female and minority participation, expressed in percentage terms of the Contractor's aggregate work force in each trade on all construction works in the covered area, are as follows:

   Females- 6.9%
   Minorities - See Attachment "A"

   The goals are applicable to all the Contractor's construction work performed in the covered area, whether or not it is Federal or federally assisted. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

   The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications, set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established herein. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executives Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs <u>within 10 workings days</u> the award of any construction subcontract in excess of $10,000 at any tier for construction works under this contract. The notification shall list the name, address and telephone number of the subcontractor, employer identification number, estimated dollar amount of the subcontract, estimated starting and completion dates of the subcontract. and the geographical area in which the contract is to be performed.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

1. As, used in this provision:

   a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

   b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

   c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941;

   d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors and Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth m the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the coverer area. Covered construction Contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

   a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. <u>The Contractor, where possible, shall assign two or more women to each construction project.</u> The Contractor shall specifically ensure that all foreman, superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off the street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or women sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources complied under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper or annual report; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents and General Foremen prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including in any news media advertisement that the Contractor is "An Equal Opportunity Employer" for minority and female, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Directs its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures and tests to be used m the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of Contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for such opportunities through appropriate training or other means.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated, except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. Goals for women have been established. However, the Contractor IS required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner, that is even thought the Contractor has achieved its goals for women, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or nation origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246. as amended.

13. The Contractor, in fulfilling its obligations under these specifications shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from ItS efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director will proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate and make known to the Department a responsible official as the EEO Officer to monitor all employment related activity, to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors will not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

ATTACHMENT A

Economic Area	Goal (Percent)
Virginia:	
021 Roanoke-Lynchburg, VA	
SMSA Counties:	
4640 Lynchburg, VA	19.3
VA Amherst; VA Appomattox; VA Campbell; VA Lynchburg.	
6800 Roanoke, VA	10.2
VA Botetourt; VA Craig; VA Roanoke; VA Roanoke City; VA Salem	
Non-SMSA Counties.	12.0
VA Alleghany; VA Augusta; VA Bath; VA Bedford; VA Bland; VA Carroll; VA Floyd; VA Franklin; VA Giles; VA Grayson; VA Henry; VA Highland; VA Montgomery;VA Nelson; VA Patrick; VA Pittsylvania; VA Pulaski; VA Rockbridge; VA Rockingham; VA Wythe; VA Bedford City; VA Buena Vista: VA Clifton Forge; VA Covington; VA Danville; VA Galax; VA Harrisonburg; VA Lexington; VA Martinsville; VA Radford; VA Staunton; VA Waynesboro; WV Pendleton.	
022 Richmond, VA:	
SMSA Counties:	
6140 Petersburg - Colonial Heights - Hopewell, VA	30.6
VA Dinwiddie; VA Prince George; VA Colonial Heights; VA Hopewell; VA Petersburg.	
6760 Richmond, VA	24.9
VA Charles City; VA Chesterfield; VA Goochland, VA Hanover; VA Henrico; VA New Kent; VA Powhatan; VA Richmond.	
Non-SMSA Counties	27.9
VA Albermarle; VA Amelia; VA Brunswick; VA Buckingham, VA Caroline; VA Charlotte; VA Cumberland; VA Essex; VA Fluvanna; VA Greene; VA Greensville; VA Halifax; VA King and Queen; VA King William; VA Lancaster; VA Louisa; VA Lunenburg; VA Madison; VA .Mecklenburg; VA Northumberland; VA Nottoway; VA Orange; VA Prince Edward; VA Richmond VA Sussex; VA Charlottesville; VA Emporia; VA South Boston	
023 Norfolk - Virginia Beach - Newport News VA:	
SMSA Counties:	
5680 Newport News- Hampton, VA	27.1
VA Gloucester; VA James City; VA York; VA Hampton; VA Newport News; VA Williamsburg.	
5720 Norfolk - Virginia Beach - Portsmouth, VA - NC	26.6
NC Currituck; VA Chesapeake; VA Norfolk; VA Portsmouth; VA Suffolk; VA Virginia Beach.	
Non-SMSA Counties	29.7
NC Bertie; NC Camden; NC Chowan; ,NC Gates; NC Hertford; NC Pasquotank; NC Perquimans; VA lsle of Wight; VA Matthews; VA Middlesex; VA Southampton;VA Surry; VA Franklin.	
Washington, DC:	
020 Washington, DC.	
SMSA Counties:	
8840 Washington, DC - MD - VA	28.0
DC District of Columbia; MD Charles; MD Montgomery MD Prince	

Georges; VA Arlington; VA Fairfax; VA Loudoun; VA Prince William
VA Alexandria; VA Fairfax City; VA Falls Church.

Non- SMSA Counties 25.2

MD Calvert; MD Frederlck; MD St. Marys: MD Washington; VA Clarke;
VA Culpeper; VA Fauquier; VA Frederick; VA King George; VA Page; VA
Rappahannock; VA Shennandoah; VA Spottsylvania; VA Stafford; VA
Warren: VA Westmoreland; VA Fredericksburg; VA Winchester WV Berkeley;
WV Grant; WV Hampshire; WV Hardy; WV Jefferson; WV Morgan.

Tennessee:

052 Johnson City - Kingsport - Brlstol, TN - VA

SMSA Counties:

3630 Johnson City - Kingsport -Bristol, TN-VA..... 2.6

TN Carter; TN HawkIns; TN Sulivan; TN Washingtion; VA Scott: VA
Washington;VA Bristol.

Non-SMSA Counties 3.2

TN Greene; TN Johnson; VA Buchanan;VA Dickenson; Va Lee;
VA Russell; VA Smyth; VA Tazewell; VA Wise; VA Norton; WV McDowell;
WV Mercer.

Maryland

019 Baltimore MD:

Non-SMSA Counties 23.6

MD Caroline; MD Dorchester; MD Kent; MD Queen Annes; MD Somerset;
MD Talbot; MD Wicomico; MD Worchester; VA Accomack; VA Northampton.

GENERAL DECISION: VA20080013 07/25/2008 VA13

Date: July 25, 2008
General Decision Number: VA20080013 07/25/2008

Superseded General Decision Number: VA20070013

State: Virginia

Construction Type: Highway

Counties: Alleghany, Appomattox, Augusta, Bath, Bland, Buchanan, Buckingham, Buena Vista*, Carroll, Charlotte, Clifton Forge*, Covington*, Craig, Cumberland, Dickenson, Floyd, Franklin, Frederick, Galax*, Giles, Grayson, Halifax, Harrisonburg*, Henry, Highland, Lee, Lexington*, Martinsville*, Montgomery, Nelson, Norton*, Page, Patrick, Prince Edward, Pulaski, Radford*, Rockbridge, Rockingham, Russell, Shenandoah, Smyth, South Boston*, Staunton*, Tazewell, Waynesboro*, Winchester*, Wise and Wythe Counties in Virginia.

*INDEPENDENT CITIES

HIGHWAY CONSTRUCTION PROJECTS (Excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction and other major bridges)

Modification Number	Publication Date
0	02/08/2008
1	07/25/2008

* SUVA1999-016 02/11/1999

	Rates	Fringes
Asbestos Worker/Heat and Frost Insulator	$ 10.95	
BLASTER	$ 11.33	
Carpenters:		
Structure	$ 9.99	
Concrete Finisher	$ 10.13	
Deckhand	$ 13.49	
Electricians	$ 14.00	
FENCE ERECTOR	$ 8.50	
Flagger	$ 6.75	
Form Setter	$ 12.39	

Guardrail erector.....$ 9.73

Laborers:
Asphalt Rakers.....$ 8.63
Construction Workers I
(Skilled Laborers).....$ 8.12
Construction Workers II
(Laborers).....$ 7.21
Landscape Workers.....$ 7.25
Pipelayers.....$ 8.95
Power Tool Operators.....$ 7.94

MASON
Structure.....$ 9.00

Painter, Bridge.....$ 9.00

PAINTER.....$ 10.81

Plumbers.....$ 14.31

Power equipment operators:
Air Compressor Operators....$ 11.00
Asphalt Distributor
Operators.....$ 8.93
Asphalt Paver Operators.....$ 9.68
Backhoe Operators.....$ 10.14
Bulldozer Operators,
Utility.....$ 8.70
Bulldozer Operators.....$ 10.02
Concrete Finish Machine
Operators, Utility.....$ 10.88
Concrete Finish
Machine/Screed Operators
(Bridge).....$ 10.50
Concrete Paving Machine
Operators.....$ 10.75
Concrete Pump Operators.....$ 8.33
Concrete Saw Operators.....$ 8.25
Crane, Derrick, Dragline
Operators.....$ 11.52
Crusher Tender Operators....$ 10.35
Drill Operators.....$ 10.54
Excavator Operators.....$ 12.00
Front-End Loader Operators
2 yds. & Under.....$ 9.56
Over 2 yds.....$ 10.13
Fuel and Lubricant Service
Truck Drivers.....$ 7.50
Gradall Operators.....$ 14.00
Grade Checker.....$ 6.55
Hydro-Seeder Operators.....$ 7.49
Log Skidder Operators.....$ 9.00
Mechanics.....$ 11.34
Mobile Mixer Operators.....$ 10.30
Motor Grader Operators

Fine Grade.....$ 11.59
Rough Grade.....$ 11.58
Oiler Greaser.....$ 8.00
Pavement Marker Operators...$ 8.88
Pavement Marking Truck
Operators.....$ 13.50
Pavement Planing
Groundmen.....$ 8.00
Operators.....$ 8.13
Pile Driver
Leadsman.....$ 9.00
Operators.....$ 9.88
Pipe Boring/Jacking
Machine Operators.....$ 8.50
Plant Operators.....$ 8.00
Roller Operators
Finish.....$ 8.60
Rough.....$ 8.31
Scraper Pan Operators.....$ 9.45
Shot Blast Machine
Operators.....$ 8.00
Shovel Operators
2 yds. and Under.....$ 8.04
Over 2 yds.....$ 10.00
Slip-Form Paver Operators...$ 7.14
Slurry Seal Paver
Machine Operators.....$ 8.25
Truck Drivers.....$ 10.33
Stabilizer Operators.....$ 10.00
Stone Spreader Operators....$ 9.67
Subgrade Machine Operators..$ 8.50
Tractor Operators
Crawlers.....$ 9.42
Utility.....$ 7.47
Transit Mix Truck Drivers...$ 9.75
Trenching Machine Operators.$ 8.73
Vacuum Machine Operators....$ 9.75

Reinforcing metal workers.....$ 9.73

Sheet Metal Worker.....$ 8.90

SIGN ERECTOR.....$ 8.50

Structural workers.....$ 13.25

TRAFFIC SIGNALIZATION:
Traffic Signal Installation
Maintainers.....$ 13.51

Truck drivers:
Heavy Duty.....$ 8.93
Multi-Rear Axle.....$ 8.65
Single Rear Axle.....$ 8.40
Tandem Rear Axle.....$ 8.60

WATERPROOFER.....$ 7.28

Welder.....$ 11.65

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

END OF GENERAL DECISION.

Exhibit 110.04

S110A1F-0205

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
SECTION 110.04

November 4, 2004

Section 110.04 of the Specifications is replaced by the following:

Section 110.04 Use of Disadvantaged Business Enterprises (DBEs)

Disadvantaged Business Enterprise (DBE) Program Requirements.

Any Contractor, subcontractor, supplier, DBE firm, and contract surety involved in the performance of work on a federal-aid contract shall comply with the terms and conditions of the USDOT DBE Program as the terms appear in Part 26 of the Code of Federal Regulations (49 CFR as amended), the USDOT DBE Program regulations; and VDOT's Road and Bridge Specifications and DBE Program rules and regulations.

All time frames referenced in this provision are expressed in workdays unless otherwise indicated. Should the expiration of any deadline fall on a weekend or holiday, such deadline will automatically be extended to the next normal workday.

All administrative remedies noted in this provision are automatic unless the Contractor exercises the right of appeal within the required timeframe(s) specified herein. Appeal requirements, processes, and procedures shall be in accordance with guidelines stated herein and current at the time of the proceedings. Where applicable, the Department will notify the Contractor of any changes to the appeal requirements, processes, and procedures after receiving notification of the Contractor's desire to appeal.

Miscellaneous DBE Program Requirements.

In accordance with 49 CFR Part 26 and VDOT's DBE Program requirements, the Contractor, for itself and for its subcontractors and suppliers, whether certified DBE firms or not, shall commit to complying fully with the auditing, record keeping, confidentiality, cooperation, and anti-intimidation or retaliation provisions contained in those federal and state DBE Program regulations. By bidding on this contract, and by accepting and executing this contract, the Contractor agrees to assume these contractual obligations and to bind the Contractor's subcontractors contractually to the same at the Contractor's expense.

Required Contract Provisions.

For the purposes of this provision, Contractor is defined as the Prime Contractor of the contract; and sub-contractor is defined as any DBE supplier, manufacturer, or subcontractor performing work or furnishing material, supplies or services to the contract. The Contractor shall physically include this same contract provision in every supply or work/service subcontract that it makes or executes with a subcontractor having work for which it intends to claim credit.

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award, administration, and performance of this contract. Failure by the Contractor to carry out these

requirements is a material breach of this contract, which will result in the termination of this contract or other such remedy, as VDOT deems appropriate

Bank Services.

The Contractor and each subcontractor are encouraged to use the services of banks owned and controlled by socially and economically disadvantaged individuals. Such banking services and the fees charged for services typically will not be eligible for DBE Program contract goal credit. Such information is available from the VDOT's Internet Civil Rights Division website: www.Virginiadot.org/business/bu-civil-rights-support-specs.

DBE Certification.

The only DBE firms eligible to perform work on a federal-aid contract for DBE contract goal credit are firms certified as Disadvantaged Business Enterprises by the Department of Minority Business Enterprises or VDOT in accordance with federal and VDOT guidelines. A directory listing of certified DBE firms can be obtained from Department of Minority Business Enterprises Internet website: www.dmbe.state.va.us

DBE Program-related Certifications Made by Bidders\Contractors.

Bids will be considered non-responsive and will be rejected for failure to comply with the requirements of this Special Provision and the contract specifications. By submitting a bid and by entering into any contract on the basis of that bid, the bidder/Contractor certifies to each of the following DBE Program-related conditions and assurances:

(1) That the management and bidding officers of its firm agree to comply with the bidding and project construction and administration obligations of the USDOT DBE Program requirements and regulations of 49 CFR Part 26 as amended, and VDOT's Road and Bridge Specifications and DBE Program requirements and regulations.

(2) Under penalty of perjury and other applicable penal law that it has complied with the DBE Program requirements in submitting the bid, and shall comply fully with these requirements in the bidding, award, and execution of the contract.

(3) To ensure that certified DBE firms have been given full and fair opportunity to participate in the performance of the contract. The bidder certifies that all reasonable steps were, and will be, taken to ensure that DBE firms had and will have an opportunity to compete for and perform work on the contract. The bidder further certifies that the bidder shall not discriminate on the basis of race, color, age, national origin, or sex in the performance of the contract or in the award of any subcontract.

    Any agreement between a bidder and a DBE whereby the DBE promises not to provide quotations for performance of work to other bidders is prohibited.

(4) As a bidder good faith efforts were made to obtain certified DBE participation in the proposed contract at or above the goal for certified DBE participation established by VDOT. It has submitted as a part of its bid a true, accurate, complete, and detailed written explanation of the good faith efforts it performed to meet the contract goal for certified DBE participation.

(5) Once awarded the contract, the Contractor shall make good faith efforts to utilize certified DBE firms to perform work designated to be performed by certified DBEs at or above the amount or percentage of the dollar value specified in the bidding documents. Further, the Contractor understands it shall not unilaterally terminate, substitute for, or replace any DBE firm that was designated in the executed contract in whole or in part with another DBE, any non-DBE firm, or

with the Contractor's own forces or those of an affiliate of the Contractor without the prior written consent of VDOT as set out within the requirements of this provision.

Once a contract is awarded, the Contractor shall designate and make known to the Department a liaison officer who is assigned the responsibility of administering and promoting an active and inclusive DBE program as required by 49 CFR Part 26 for certified DBEs. The designation and identity of this officer need be submitted only once by the Contractor during any twelve (12) month period at the preconstruction conference for the first contract the Contractor has been awarded during that reporting period. The Department will post such information for informational and administrative purposes at VDOT's Internet Civil Rights Division website.

(6) Once awarded the contract, the Contractor shall comply fully with all regulatory and contractual requirements of the USDOT DBE Program, and that each DBE firm participating in the contract shall fully perform the designated work items with the DBE's own forces and equipment under the DBE's direct supervision, control, and management. If it is awarded the contract and if VDOT determines that as the Contractor, a DBE or any other firm retained by the Contractor has failed to comply with federal or VDOT DBE Program regulations and/or their requirements on that contract, VDOT has the authority and discretion to determine the extent to which the DBE contract goals have not been met, and will assess against the Contractor any remedies available at law or provided in the contract in the event of such a contract breach.

(7) In the event a bond surety takes over the completion of work after VDOT has terminated the prime Contractor, the surety shall be obligated to meet the same DBE contract goals as were required of the original prime Contractor in accordance with the requirements of this specification.

Designation of DBE Firms to Perform on Contract.

The bidder, by signing and submitting its bid, certifies the DBE participation information submitted within the stated time thereafter is true, correct, and complete, and that the information provided includes the names of all certified DBE firms that will participate in the contract, the specific line item(s) that each listed certified DBE firm will perform, and the creditable dollar amounts of the participation of each listed certified DBE. The specific line item must reference the VDOT line number and item number contained in the proposal. The bidder further certifies, by signing its bid, it has committed to use each certified DBE firm listed for the specific work item shown to meet the contract goal for certified DBE participation. Award of the contract will be conditioned upon meeting these and other listed requirements of 49 CFR Part 26.53 and the contract documents.

By signing the bid, the bidder certifies on work it proposes to sublet, it has made good faith efforts to seek out and consider certified DBEs as potential subcontractors. The bidder shall contact DBEs to solicit their interest, capability, and prices in sufficient time to allow them to respond effectively, and shall retain on file proper documentation to substantiate its good faith efforts.

When a DBE firm has been removed from eligibility as a certified DBE firm, the following actions will be taken:

(1) When a Contractor has made a commitment to use a DBE firm that is not currently certified, thereby making the Contractor ineligible to receive DBE participation credit for work performed, and a subcontract has not been executed, the ineligible DBE firm does not count toward either the contract goal or overall goal. The Contractor shall meet the contract goal with a DBE firm that is eligible to receive DBE credit for work performed, or must demonstrate to the Engineer that it has made good faith efforts to do so.

When a Contractor has executed a subcontract with a certified DBE firm prior to official notification of the DBE firm's loss of eligibility, the Contractor may continue to use the firm on the contract and shall continue to receive DBE credit toward its DBE goal for the subcontractor's work.

When VDOT has executed a prime contract with a DBE firm that is certified at the time of contract execution but that is later ruled ineligible, the portion of the ineligible firm's performance on the contract before VDOT has issued the notice of its ineligibility shall count toward the contract goal.

(2) If a certified DBE subcontractor is terminated, or fails, refuses, or is unable to complete the work on the contract for any reason, the Contractor must promptly request approval to substitute or replace that firm in accordance with this section of this Special Provision. The Contractor, as aforementioned in (1) above, shall notify VDOT in writing before terminating and/or replacing the certified DBE that was committed as a condition of contract award or that is otherwise being used or represented to fulfill certified DBE contract obligations during the contract performance period. Written consent from the Department for terminating the performance of any DBE shall be granted only when the Contractor can demonstrate that the DBE is unable, unwilling, or ineligible to perform its obligations for which the Contractor sought credit toward the contract DBE goal. Such written consent by the Department to terminate any DBE shall concurrently constitute written consent to substitute or replace the terminated DBE with another DBE. Consent to terminate a certified DBE shall not be based on the Contractor's ability to negotiate a more advantageous contract with another subcontractor whether that subcontractor is, or is not, a certified DBE

(a) Contractor's Written Request to Terminate DBE

All Contractor requests to terminate, substitute, or replace a certified DBE shall be in writing, and shall include the following information:

(i) The date the Contractor determined the certified DBE to be unwilling, unable, or ineligible to perform;

(ii) The projected date that the Contractor shall require a substitution or replacement DBE to commence work if consent is granted to the request;

(iii) A brief statement of facts describing and citing specific actions or inaction by the certified DBE giving rise to the Contractor's assertion that the certified DBE is unwilling, unable, or ineligible to perform;

(iv) A brief statement of the affected certified DBE's capacity and ability to perform the work as determined by the Contractor;

(v) A brief statement of facts regarding actions taken by the Contractor which are believed to constitute good faith efforts toward enabling the certified DBE to perform;

(vi) The current percentage of work completed on each bid item by the certified DBE;
(vii) The total dollar amount currently paid per bid item for work performed by the DBE;

(viii) The total dollar amount per bid item remaining to be paid to the certified DBE for work completed, but for which the certified DBE has not received payment, and with which the Contractor has no dispute;

(ix) The total dollar amount per bid item remaining to be paid to the certified DBE for work completed, but for which the certified DBE has not received payment, and over which the Contractor and/or the certified DBE have a dispute.

(b) Contractor's Written Notice to DBE of Pending Request to Terminate and Substitute With Another DBE

The Contractor shall send a copy of the "request to terminate and substitute" letter to the affected committed DBE firm, in conjunction with submitting the request to the Engineer. The affected DBE firm may submit a response letter to the Department within two (2) working days of receiving the notice to terminate from the Contractor. The affected DBE firm shall explain its position concerning performance on the committed work. The Department will consider both the Contractor's request and the DBE's response and explanation before approving the Contractor's termination and substitution request, or determining if any action should be taken against the Contractor.

If, after making its best efforts to deliver a copy of the "request to terminate and substitute" letter, the Contractor is unsuccessful in notifying the affected DBE firm, the Department will verify the affected, committed DBE firm is unable or unwilling to continue the contract, and the Department will immediately approve the Contractor's request for a substitution.

(c) Proposed Substitution of Another Certified DBE

Upon termination of a certified DBE, the Contractor shall use reasonable good faith efforts to replace the terminated DBE. The termination of such certified DBE shall not relieve the Contractor of its obligations pursuant to this section, and the unpaid portion of the terminated certified DBE's contract would not be counted toward the contract goal.

When a DBE substitution is necessary the Contractor shall submit in writing the name of another certified DBE firm, the proposed work to be performed by that firm, and the dollar amount of the work to replace the unfulfilled portion of the work of the originally committed DBE firm. The Contractor shall furnish all pertinent information including contract I.D. number, project number, bid item, item description, bid unit and bid quantity, unit price, and total price. In addition, the Contractor shall submit documentation for the requested substitute DBE as described in this section of this Special provision.

Should the Contractor be unable to commit the remaining required dollar value to the substitute DBE, the Contractor shall provide written evidence of good faith efforts made to obtain the substitute value requirement. The Department will review the quality, thoroughness, and intensity of those efforts. Efforts that are merely superficial or pro-forma will not be considered good faith efforts to meet the contract goal for certified DBE participation. The Contractor must document the steps taken that demonstrate good faith efforts to obtain participation as set forth in the **Good Faith Efforts Described** section of this Special Provision.

Bidding Procedures.

The following bidding procedures shall apply to the contract for DBE Program compliance purposes:

Contract Goal, Good Faith Efforts Specified.

All bidders evidencing the attainment of DBE goal commitment equal to or greater than the required DBE goal established for the project must submit completed Form C-111 as a part of the bid documents. Form C-111 may be submitted electronically or may be faxed to the Department, but in no case shall the bidder's Form C-111 be received later than 2 hours after the time stated in the bid proposal for the receipt of bids.

If, at the time of submitting its bid the bidder knowingly cannot meet or exceed the required DBE contract goal, it shall submit Form C-111 exhibiting the DBE participation it attained as a part of its bid documents. The bidder shall then submit its good faith efforts within two (2) working days after the bid opening.

The lowest responsive and responsible bidder must submit its properly executed Form C-112 within two (2) working days after the bids have been opened and the determination of apparent lowest bidder. If, after review of the apparent lowest bid, VDOT determines the DBE requirements have not been met, the apparent lowest successful bidder must submit good faith documentation, which must be received by the Contract Engineer within two (2) working days after official notification of such failure to meet the aforementioned DBE requirements.

Good Faith Efforts Described.

Good faith efforts may be determined through use of the following list of the types of actions the bidder may make to obtain DBE participation. This is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts of similar intent may be relevant in appropriate cases:

(1) Soliciting through reasonable and available means, such as but not limited to, attendance at pre-bid meetings, advertising, and written notices to certified DBEs who have the capability to perform the work of the contract. Examples include: advertising in at least one daily newspaper of general circulation; phone contact with a completely documented telephone log, including the date and time called, contact person, or voice mail status; and internet contacts with supporting documentation, including dates advertised. The bidder shall solicit this interest no less than five (5) business days before the bids are due so that the solicited DBEs have enough time to reasonably respond to the solicitation. The bidder shall determine with certainty if the DBEs are interested by taking reasonable steps to follow up initial solicitations as evidenced by documenting such efforts on Department standard good faith documentation forms;

(2) Selecting portions of the work to be performed by certified DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Contractor might otherwise prefer to perform these work items completely or with its own forces;

(3) Providing interested certified DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner, which will assist the DBEs in responding to a solicitation;

(4) Negotiating for participation in good faith with interested DBEs;

(a) Evidence of such negotiation shall include the names, addresses, and telephone numbers of DBEs that were considered; dates DBEs were contacted, a description of the information provided regarding the plans, specifications, and requirements of the contract for the work selected for subcontracting; and, if insufficient DBE participation seems likely, evidence as to why additional agreements could not be reached for DBEs to perform the work;

(b) A bidder using good business judgment should consider a number of factors in negotiating subcontractors, including certified DBE subcontractors, and should take a firm's price, qualifications, and capabilities, as well as contract goals, into consideration. However, the fact that there may be some additional costs involved in finding and using certified DBEs is not sufficient reason for a bidder's failure to meet the contract goal for certified DBE participation, as long as such costs are reasonable and comparable to costs customarily appropriate to the type of work under consideration. Also, the ability or desire of a bidder to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make diligent good faith efforts. Bidders are not, however, required to accept higher quotes from DBEs if the price difference can be shown by the bidder to be excessive, unreasonable; or greater than would normally be expected by industry standards;

(5) A bidder cannot reject a certified DBE as being unqualified without sound reasons based on a thorough investigation of the DBE's capabilities. The certified DBE's standing within its industry, membership in specific groups, organizations, associations and political or social affiliations, and union vs. non-union employee status are not legitimate causes for the rejection or non-solicitation of bids in the bidder's efforts to meet the project goal for certified DBE participation;

(6) Making efforts to assist interested certified DBEs in obtaining bonding, lines of credit, or insurance as required by VDOT or by the bidder/Contractor;

(7) Making efforts to assist interested certified DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services subject to the restrictions contained in these provisions;

(8) Effectively using the services of appropriate personnel from VDOT and from the Virginia Department of Minority Business Enterprises, (VDMBE); available minority/women community or minority organizations; contractors' groups; local, state, and Federal minority/ women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and utilization of qualified DBEs.

Bid Rejection.

The failure of a bidder to submit the required documentation within the timeframes specified in the **Contract Goal, Good Faith Efforts Specified** section of this Special Provision may be cause for rejection of that bidder's bid.

In order to award a contract to a bidder that has failed to meet DBE contract goal requirements, VDOT will determine if the bidder's efforts were adequate good faith efforts, and if given all relevant circumstances, those efforts were to the extent a bidder actively and aggressively seeking to meet the requirements would make. Efforts to obtain DBE participation are not good faith efforts if they could not reasonably be expected to produce a level of DBE participation sufficient to meet the DBE Program and contract goal requirements.

If the lowest bidder is rejected for failure to submit required documentation, the Department may either award the work to the next lowest bidder, or re-advertise and construct the work under contract or otherwise as determined by the Commonwealth Transportation Board (CTB).

Documentation, and Administrative Reconsideration of Good Faith Efforts.

During Bidding

As described in the **Contract Goal, Good Faith Efforts Specified** section of this Special Provision, the bidder must provide certified written documentation of its good faith efforts made to meet the DBE contract goal as proposed by VDOT within the timeframe specified in this section of the provision. No extension of time for submittal of good faith effort documentation will be allowed. The means of transmittal and the risk for timely receipt of this information shall be the responsibility of the bidder. The bidder shall attach additional pages to the certification, if necessary, in order to fully detail specific good faith efforts made to obtain certified DBE firm participation in the proposed contract work.

However, regardless of the DBE contract goal participation level proposed by the bidder or the extent of good faith efforts shown, all bidders shall timely and separately file their completed and executed Forms C-111 and C-112 and good faith efforts as aforementioned, or face potential bid rejection. If a bidder does not submit its completed and executed C-111 or C-112 when required by this Special Provision the bidder's bid will be considered non-responsive and will be rejected.

Where the Department upon initial review of the bid results determines the apparent low bidder has failed or appears to have failed to meet the requirements of the **Contract Goal, Good Faith Efforts Specified** section of this Special Provision and has failed to adequately document that it made a good faith effort to achieve sufficient DBE participation as specified in the bid proposal, that firm upon notification of the Department's initial determination will be offered the opportunity for administrative reconsideration before VDOT rejects that bid as non-responsive. The bidder shall address such request for reconsideration in writing to the Contract Engineer within five (5) days of receipt of notification by the Department and shall be given the opportunity to discuss the issue and present its evidence in person to the Administrative Reconsideration Panel. The Administrative Reconsideration Panel will be made up of VDOT Division Administrators for the Civil Rights, Scheduling and Contract and Procurement divisions, none of who took part in the initial determination that the bidder failed to make the goal or make adequate good faith efforts to do so. After reconsideration, VDOT shall notify the bidder in writing of its decision and explain the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

If, after reconsideration, the Department determines the bidder has failed to meet the requirements of the contract goal and has failed to make adequate good faith efforts to achieve the level of DBE participation as specified in the bid proposal, the bidder's bid will be rejected.

If sufficient documented evidence is presented to demonstrate that the apparent low bidder made reasonable good faith efforts, the Department will award the contract and reduce the DBE requirement to the actual commitment identified by the lowest successful bidder at the time of its bid.

However, such action will not relieve the Contractor of its responsibility for complying with the reduced DBE requirement during the life of the contract or any administrative sanctions as may be appropriate.

During the Contract

If the Contractor fails upon completion of the project to meet the required participation, the Contractor and any prime contractual affiliates, as in the case of a joint venture, may be enjoined from bidding as a prime Contractor, or participating as a subcontractor on VDOT projects for a period of 90 days.

Prior to enjoinment from bidding or denial to participate as a subcontractor for failure to comply with participation requirements, as provided hereinbefore, the Contractor may submit documentation to the Engineer to substantiate that failure was due solely to quantitative underrun(s) or elimination of items subcontracted to DBEs, and that all feasible means have been used to obtain the required participation. The Engineer upon verification of such documentation shall make a determination whether or not the Contractor has met the requirements of the contract.

If it is determined that the aforementioned documentation is insufficient or the failure to meet required participation is due to other reasons, the Contractor may request an appearance before the Administrative Reconsideration Panel to establish that all feasible means were used to meet such participation requirements. The decision of the Administrative Reconsideration Panel shall be administratively final. The enjoinment period will begin upon the Contractor's failure to request a hearing within the designated time frame or upon the Administrative Reconsideration Panel's decision to enjoin, as applicable.

DBE Participation for Contract Goal Credit

DBE participation on the contract will count toward meeting the DBE contract goal in accordance with the following criteria:

(1) Cost-plus subcontracts will not be considered to be in accordance with normal industry practice and will not normally be allowed for credit.

(2) The applicable percentage of the total dollar value of the contract or subcontract awarded to the DBE will be counted toward meeting the contract goal for certified DBE participation in accordance with the **Designation of DBE Firms to Perform on Contract** section of this Special Provision for the value of the work, goods, or services that are actually performed or provided by the certified DBE firm itself or subcontracted by the certified DBE to other certified DBE firms.

(3) When a certified DBE performs work as a participant in a joint venture, the Contractor may count toward the DBE goal only that portion of the total dollar value of the contract equal to the distinctly defined portion of the contract work that the DBE has performed with the DBE's own forces or in accordance with the provisions of this Section. The Department shall be contacted in advance regarding any joint venture involving both a certified DBE firm and a non-DBE firm to coordinate Department review and approval of the joint venture's organizational structure and proposed operation where the Contractor seeks to claim the certified DBE's credit toward the DBE contract goal.

When a DBE subcontracts part of the work of the contract to another firm, the value of that subcontracted work may be counted toward the DBE contract goal only if the DBE's subcontractor at a lower tier is a VDOT certified DBE. Work that a certified DBE subcontracts to either a non-DBE firm or to a non-certified DBE firm will not count toward the DBE contract goal. The cost of supplies and equipment a DBE subcontractor purchases or leases from the prime Contractor or the prime's affiliated firms will not count toward the contract goal for certified participation.

(4) The Contractor may count expenditures to a certified DBE subcontractor toward the DBE contract goal only if the certified DBE performs a Commercially Useful Function (CUF) on that contract.

(5) A Contractor may not count the participation of a certified DBE subcontractor toward the Contractor's final compliance with the DBE contract goal obligations until the amount being counted has actually been paid to the certified DBE. A Contractor may count sixty (60) percent of its expenditures actually paid for materials and supplies obtained from a DBE certified by VDOT

as a regular dealer, and one hundred (100) percent of such expenditures actually paid for materials and supplies obtained from a VDOT certified DBE manufacturer.

(a) For the purposes of this Special Provision, a regular dealer is defined as a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the material, supplies, articles, or equipment required and used under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the certified DBE firm shall be an established business that regularly engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions will not be considered regular dealers.

(b) A certified DBE firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business where it keeps such items in stock if the certified DBE both owns and operates distribution equipment for the products it sells and provides for the contract work. Any supplementation of a regular dealer's own distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or contract-by-contract basis to be eligible for credit to meet the DBE contract goal.

(c) If a certified DBE regular dealer is used for DBE contract goal credit, no additional credit will be given for hauling or delivery to the project site goods or materials sold by that certified DBE regular dealer. Those delivery costs shall be deemed included in the price charged for the goods or materials by the certified DBE regular dealer, who shall be responsible for their distribution.

(d) For the purposes of this Special Provision, a manufacturer will be defined as a firm that operates or maintains a factory or establishment that produces on the premises the material, supplies, articles, or equipment required under the contract and of the general character described by the project specifications. A manufacturer shall include firms that produce finished goods or products from raw or unfinished material, or purchase and substantially alter goods and materials to make them suitable for construction use before reselling them.

(6) A Contractor may count toward the DBE contract goal the following expenditures to certified DBE firms that are not regular dealers or manufacturers for DBE program purposes:

(a) The entire amount of fees or commissions charged by a certified DBE firm for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of the federal-aid contract, if the fee is reasonable and not excessive or greater than would normally be expected by industry standards for the same or similar services.

(b) The entire amount of that portion of the construction contract that is performed by the certified DBE's own forces and equipment under the DBE's supervision. This includes the cost of supplies and materials ordered and paid for by the certified DBE for contract work, including supplies purchased or equipment leased by the certified DBE, except supplies and equipment a certified DBE subcontractor purchases or leases from the prime Contractor or its affiliates.

(7) A Contractor may count toward the DBE contract goal one hundred (100) percent of the fees paid to a certified DBE trucker or hauler for the delivery of material and supplies required on the project job site, but not for the cost of those materials or supplies themselves, provided that the trucking or hauling fee is determined by VDOT to be reasonable, as compared with fees customarily charged by non-DBE firms for similar services. Nor could a Contractor

count costs for the removal or relocation of excess material from or on the job site when the certified DBE trucking company is not also the manufacturer of or a regular dealer in those materials and supplies. The certified DBE trucking firm shall also perform a CUF on the project and not operate merely as a pass through for the purposes of gaining credit toward the DBE contract goal. Prior to submitting a bid, the Contractor shall determine, or contact the VDOT Civil Rights Division or its district Offices for assistance in determining, whether a DBE trucking firm will meet the criteria for performing a CUF on the project.

(8) The Contractor will receive DBE contract goal credit for the fees or commissions charged by and paid to a certified DBE broker who arranges or expedites sales, leases, or other project work or service arrangements provided that those fees are determined by VDOT to be reasonable and not excessive as compared with fees customarily charged by non-DBE firms for similar services. For the purposes of this Special Provision, a broker is defined as a person or firm that arranges for delivery of material, supplies, and equipment, or arranges project services but does not own or operate the delivery equipment necessary to transport materials, supplies, or equipment to or from a job site. A broker typically shall not purchase or pay for the material, supplies, or equipment, and if the broker does purchase or pay for those items those costs will be reimbursed in full. To receive DBE contract goal credit VDOT must determine that the DBE broker has performed a CUF in providing the contract work or service.

Performing a Commercially Useful Function (CUF)

No credit toward the DBE contract goal will be allowed for contract payments or expenditures to a certified DBE firm if that DBE firm does not perform a CUF on that contract. A DBE performs a CUF when the DBE is solely responsible for execution of a distinct element of the contract work and the DBE actually performs, manages, and supervises the work involved with the firm's own forces or in accordance with the provisions of the **DBE Participation for Contract Goal Credit** section of this Special Provision. To perform a CUF the certified DBE alone shall be responsible and bear the risk for the material and supplies used on the contract, selecting a supplier or dealer from those available, negotiating price, determining quality and quantity, ordering the material and supplies, installing those materials with the certified DBE's own forces and equipment, and paying for those materials and supplies. The amount the certified DBE firm is to be paid under the contract shall be commensurate with the work the certified DBE actually performs and the DBE credit claimed for the certified DBE's performance.

Monitoring CUF Performance

It shall be the Contractor's responsibility to ensure that all certified DBE firms selected for subcontract work on the contract, for which he seeks to claim credit toward the contract goal, perform a CUF. Further, the Contractor is responsible for and shall ensure that each certified DBE firm fully performs the certified DBE's designated tasks with the certified DBE's own forces and equipment under the certified DBE's own direct supervision and management or in accordance with the provisions of the **DBE Participation for Contract Goal Credit** section of this Special Provision. For the purposes of this provision the DBE 's equipment will mean either equipment directly owned by the DBE as evidenced by title, bill of sale or other such documentation or leased by the DBE and over which the DBE has control as evidenced by the leasing agreement from a firm not owned in whole or part by the prime Contractor or an affiliate of the Contractor under this contract.

VDOT will monitor the Contractor's DBE involvement during the performance of the contract. However, VDOT is under no obligation to warn the Contractor that a DBE's participation will not count toward the goal.

DBEs Must Perform a Useful and Necessary Role in Contract Completion

A DBE does not perform a commercially useful function if the DBE's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

DBEs Must Perform The Contract Work With Their Own Workforces

If a DBE does not perform and exercise responsibility for at least thirty (30) percent of the total cost of the DBE's contract with the DBE's own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, VDOT will presume that the DBE is not performing a commercially useful function and such participation will not be counted toward the contract goal.

Factors Used to Determine if a DBE Trucking Firm is Performing a CUF

The following factors will be used to determine whether a DBE trucking company is performing a CUF:

(1) To perform a CUF the DBE trucking firm shall be completely responsible for the management and supervision of the entire trucking operation for which the DBE is responsible by subcontract on a particular contract. There shall not be a contrived arrangement, including but not limited to any arrangement that would not customarily and legally exist under regular construction project subcontracting practices for the purpose of meeting the DBE contract goal;

(2) The DBE must own and operate at least one fully licensed, insured, and operational truck used in the performance of the contract work. This does not include a supervisor's pickup truck or a similar vehicle that is not suitable for and customarily used in hauling the necessary materials or supplies;

(3) The DBE receives full contract goal credit for the total reasonable amount the DBE is paid for the transportation services provided on the contract using trucks the DBE owns, insures, and operates using drivers that the DBE employs and manages;

(4) The DBE may lease trucks from another certified DBE firm, including from an owner-operator who is certified as a DBE. The DBE firm that leases trucks from another certified DBE will receive credit for the total fair market value actually paid for transportation services the lessee certified DBE firm provides on the contract;

(5) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of the transportation services provided by non-DBE lessees, not to exceed the value of transportation services provided by DBE-owned trucks on the contract. For additional participation by non-DBE lessees, the DBE will only receive credit for the fee or commission it receives as a result of the lease arrangement.

EXAMPLE: DBE Firm X uses two (2) of its own trucks on a contract. The firm leases two (2) trucks from DBE Firm Y and six (6) trucks from non-DBE Firm Z. DBE credit would be awarded for the total transportation services provided by DBE Firm X and DBE Firm Y, and may also be awarded for the total value of transportation services by four (4) of the six (6) trucks provided by non-DBE Firm Z. In all, full DBE credit would be allowed for the participation of eight (8) trucks. With respect to the other two trucks provided by non-DBE Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks that DBE Firm X receives as a result of the lease with non-DBE Firm Z.

(6) For purposes of this section, the lease must indicate that the DBE firm leasing the truck has exclusive use of and control over the truck. This will not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, provided the lease gives the DBE absolute priority for and control over the use of the leased truck. Leased trucks must display the name and identification number of the DBE firm that has leased the truck at all times during the life of the lease.

VDOT Makes Final Determination On Whether a CUF Is Performed

VDOT has the final authority to determine whether a DBE firm has performed a CUF on a federal-aid contract. To determine whether a DBE is performing or has performed a CUF, VDOT will evaluate the amount of work subcontracted by that DBE firm or performed by other firms and the extent of the involvement of other firms' forces and equipment. Any DBE work performed by the Contractor or by employees or equipment of the Contractor may be subject to disallowance under the DBE Program, unless the independent validity and need for such an arrangement and work is demonstrated.

Verification of DBE Participation and Imposed Damages.

After contract award, the Contractor shall submit to the Engineer a fully executed subcontract agreement for each DBE used to claim credit in accordance with the requirements stated on Form C-112, executed by both parties stating the work to be performed, details or specifics concerning such work and the price which will be paid for the aforementioned work no later than seven (7) working days prior to the Notice to Proceed. Because of the commercial damage that the Contractor and its DBE subcontractor could suffer if their subcontract pricing, terms, and conditions were known to competitors, the Department staff shall treat subcontract agreements as proprietary Contractor trade secrets with regard to Freedom of Information Act requests. In lieu of subcontract agreements, purchase orders may be submitted for haulers, suppliers, and manufacturers. Such purchase orders must contain, as a minimum, the following information: authorized signatures of both parties; description of the scope of work to include contract item numbers, quantities, and prices; and required federal contract provisions.

The Contractor shall also furnish, and shall require each subcontractor to furnish, information relative to all DBE involvement on the project for each month during the life of the contract in which participation occurs and verification is available. The information shall be indicated on Form C-63 and certified on Form C-63A, or by copies of cancelled checks with appropriate identifying notations. Failure to provide the forms to the Engineer by the Contractor's monthly progress estimate date may result in delay of approval of the Contractor's monthly progress estimate for payment. The names and certification numbers of DBE firms provided by the Contractor on the various forms indicated in this Special Provision shall be exactly as shown on the Department's latest list of certified DBEs. Signatures on all forms indicated herein shall be

those of authorized representatives of the bidder as shown on Form C-32 or Form C-32A, or authorized by letter from the bidder. If certified DBE firms are used which have not been previously documented with the Contractor's bid and for which the Contractor now desires to claim credit toward the project goal, the Contractor shall be responsible for submitting necessary documentation in accordance with the procedures stipulated in this Special Provision to cover such work prior to the DBE beginning work.

The Contractor shall submit to the Engineer its progress schedule as required by Section 103.06 of the Specifications or other such specific contract scheduling specification that may include contractual milestones, i.e., monthly or VDOT requested updates. The Contractor shall include a narrative of applicable DBE activities relative to work activities of the Contractor's progress schedule, including the approximate start times and durations of all DBE participation to be claimed for credit that shall result in full achievement of the DBE goal required in the contract.

On contracts awarded on the basis of good faith efforts, narratives or other agreeable format of schedule information requirements and subsequent progress determination shall be based on the commitment information shown on the latest Form C-111 as compared with the appropriate Form C-63.

Prior to beginning any major component or quarter of the work, as applicable, in which DBE work is to be performed, the Contractor shall furnish a revised Form C-111 showing the name(s) and certification number(s) of any currently certified DBEs not previously submitted who will perform the work during that major component or quarter for which the Contractor seeks to claim credit toward the contract DBE goal. The Contractor shall obtain the prior approval of the Department for any assistance it may provide to the DBE beyond its existing resources in executing its commitment to the work in accordance with the requirements listed in the **Good Faith Efforts Described** section of this Special Provision. If the Contractor is aware of any assistance beyond a DBE's existing resources that the Contractor, or another subcontractor, may be contemplating or may deem necessary and that have not been previously approved, the Contractor shall submit a new or revised narrative statement for VDOT's approval prior to assistance being rendered.

If the Contractor fails to comply with correctly completing and submitting any of the required documentation requested by this provision within the specified timeframes, the Department will withhold payment of the monthly progress estimate until such time as the required submissions are received VDOT. Where such failures to provide required submittals or documentation are repeated the Department will move to enjoin the Contractor and any prime contractual affiliates, as in the case of a joint venture, from bidding as a prime Contractor, or participating as a subcontractor on VDOT projects until such submissions are received.

Documentation Required for Semi-final Payment.

On those projects nearing completion, the Contractor must submit Form C-63 and appropriate Form C-63A(s) marked "Semi-Final" within twenty (20) days after the submission of the last regular monthly progress estimate to the Engineer. The forms must include each certified DBE used on the contract work and the work performed by each certified DBE. The forms shall include the actual dollar amount paid to each certified DBE for the accepted creditable work on the contract and monies owed the certified DBE subcontractor. The forms shall be certified under penalty of perjury, or other applicable law, to be accurate and complete. VDOT will use this certification and other information available to determine applicable DBE credit allowed to date by VDOT and the extent to which the DBEs were fully paid for that work. The Contractor shall acknowledge by the act of filing the forms that the information is supplied to obtain payment regarding a federal participation contract. A letter of certification, signed by both the prime Contractor, will accompany the forms and appropriate certified DBEs, indicating the amount, including any retainage that remains to be paid to the certified DBE(s).

Documentation Required for Final Payment.

On those projects that are complete, the Contractor shall submit a final Form C-63 and Form C-63A(s) marked "Final" to the Engineer within thirty (30) days of final acceptance. The forms must include each certified DBE used on the contract and the work performed by each DBE. The forms shall include the actual dollar amount paid to each DBE for the creditable work on the contract and monies owed the DBE subcontractor. VDOT will use these forms and other information available to determine if the Contractor and DBEs have satisfied the DBE contract goal percentage specified in the contract and the extent to which the DBEs were paid for that work. The Contractor shall acknowledge by the act of signing and filing the forms that the information is supplied to obtain payment regarding a federal participation contract.

Prompt Payment Requirements.

The Contractor shall make prompt and full payment to the subcontractor(s) of any retainage held by the prime Contractor after the subcontractor's work is satisfactorily completed.

For purposes of this Special Provision, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented, and accepted as required by the contract documents by VDOT. When VDOT has made partial acceptance of a portion of the prime contract, the Department will consider the work of any subcontractor covered by that partial acceptance to be satisfactorily completed. Payment will be made in accordance with the requirements of Section 107.01, Section 109.07, and Section 109.09 of the Specifications.

Upon VDOT's payment of the subcontractor's portion of the work as shown on the monthly progress estimate and the receipt of payment by the Contractor for such work, the Contractor shall make compensation in full to the subcontractor for that portion of the work satisfactorily completed and accepted by the Department. For the purposes of this Special Provision, payment of the subcontractor's portion of the work shall mean the Contractor has issued payment in full, less agreed upon retainage, if any, to the subcontractor for that portion of the subcontractor's work that VDOT paid to the Contractor on the monthly progress estimate.

The Contractor shall make payment of the subcontractor's portion of the work within seven (7) days of the receipt of payment from VDOT in accordance with the requirements of Section 109.10 of the Specifications.

If the Contractor fails to make payment of the subcontractor's portion of the work within the timeframe specified herein, the subcontractor shall contact the Engineer and the Contractor's bonding company in writing. The bonding company and VDOT will investigate the cause for non-payment and, barring mitigating circumstances that would make the subcontractor ineligible for payment, ensure payment in accordance with the requirements of Section 109.10 of the Specifications.

The Department will withhold payment of the Contractor's monthly progress estimates until the Contractor ensures that the subcontractors have been promptly paid for the work that they have performed successfully and for which the Department has accepted and paid the Contractor.

By bidding on this contract, and by accepting and executing this contract, the Contractor agrees to assume these contractual obligations, and to bind the Contractor's subcontractors contractually to those prompt payment requirements.
Nothing contained herein shall preclude the Contractor from withholding payment to the subcontractor in accordance with the terms of the subcontract in order to protect the Contractor from loss or cost of damage due to a breach of agreement by the subcontractor.

Data Collection

In accordance with 49CFR Section 26.11, all firms bidding on prime contracts and bidding or quoting subcontracts on federal-aid projects shall provide the following information to the Contract Engineer annually.

- Firm name;
- Firm address;
- Firm's status as a DBE or non-DBE:
- The age of the firm; and
- The annual gross receipts of the firm.

The above information can be submitted by means of the Annual Gross Receipts Survey as required in the Prequalification/Certification application.

All bidders, including DBE prime Contractor bidders, shall complete and submit to the Contract Engineer the Subcontractor/Supplier Solicitation and Utilization Form C-48 for each bid submitted within ten (10) days after the bid opening. Failure of bidders to submit this form in the timeframe specified will be cause for rejection of the bid.

Summary of Remedies Available to VDOT

Failure of any bidder\Contractor to comply with the requirements of this Special Provision for Section 110.04 of the Virginia Road and Bridge Specifications, which is deemed to be a condition of bidding, or where a contract exists, is deemed to constitute a breach of contract shall be remedied in accordance with the following:

Disadvantaged Business Enterprise (DBE) Program Requirements.

All administrative remedies noted in this provision are automatic unless the Contractor exercises the right of appeal within the required timeframe(s) specified herein.

DBE Program-related Certifications Made by Bidders\Contractors

Bids will be considered non-responsive and will be rejected for failure to comply with the requirements of this Special Provision and the contract specifications. Where a contract exists and where the Contractor, a DBE or any other firm retained by the Contractor has failed to comply with federal or VDOT DBE Program regulations and/or their requirements on that contract, VDOT has the authority and discretion to determine the extent to which the DBE contract goals have not been met, and will assess against the Contractor any remedies available at law or provided in the contract in the event of such a contract breach.

Bid Rejection

The failure of bidders to submit the required documentation within the timeframes specified in the Contract Goal, Good Faith Efforts Specified section of this Special Provision may be cause for rejection of the bid.

If the lowest bidder is rejected for failure to submit required documentation, the Department may either award the work to the next lowest bidder, or re-advertise and construct the work under contract or otherwise as determined by the Commonwealth Transportation Board (CTB).

Documentation and Administrative Reconsideration of Good Faith Efforts

During Bidding

Regardless of the DBE contract goal participation level proposed by the bidder or the extent of good faith efforts shown, all bidders shall timely and separately file their completed and executed Forms C-111 and C-112 and good faith efforts as aforementioned or face potential bid rejection. If a bidder does not submit its completed and executed C-111 or C-112 when required by this Special Provision the bidder's bid will be considered non-responsive and will be rejected.

If, after reconsideration, the Department determines the bidder has failed to meet the requirements of the contract goal and has failed to make adequate good faith efforts to achieve the level of DBE participation as specified in the bid proposal, the bidder's bid will be rejected.

If sufficient documented evidence is presented to demonstrate that the apparent low bidder made reasonable good faith efforts, the Department will award the contract and reduce the DBE requirement to the actual commitment identified by the lowest successful bidder at the time of its bid. However, such action will not relieve the Contractor of its responsibility for complying with the reduced DBE requirement during the life of the contract or any administrative sanctions as may be appropriate.

During the Contract

If the Contractor fails upon completion of the project to meet the required participation, the Contractor and any prime contractual affiliates, as in the case of a joint venture, may be enjoined from bidding as a prime Contractor, or participating as a subcontractor on VDOT projects for a period of 90 days.

Verification of DBE Participation and Imposed Damages for Non-compliance

If the Contractor fails to comply with correctly completing and submitting any of the required documentation requested by this provision within the specified timeframes, the Department will withhold payment of the monthly progress estimate until such time as the required submissions are received by VDOT. Where such failures to provide required submittals or documentation are repeated, the Department will move to enjoin the Contractor and any prime contractual affiliates, as in the case of a joint venture, from bidding as a prime Contractor, or participating as a subcontractor on VDOT projects until such submissions are received.

Prompt Payment Requirements

The Department will withhold payment of the Contractor's monthly progress estimates until the Contractor ensures that the subcontractors have been promptly paid for the work that they have performed successfully, and for which the Department has accepted and paid the Contractor.

In addition to the remedies described heretofore in this provision VDOT also exercises its rights with respect to the following remedies:

Suspect Evidence of Criminal Behavior.

Failure of a bidder, Contractor, or subcontractor to comply with the Virginia Department of Transportation Road and Bridge Specifications and these Special Provisions wherein there appears to be evidence of criminal conduct shall be referred to the Attorney General for the Commonwealth of Virginia and/or the FHWA Inspector General for criminal investigation and, if warranted, prosecution.

Suspected DBE Fraud

In appropriate cases, VDOT will bring to the attention of the U. S. Department of Transportation (USDOT) any appearance of false, fraudulent, or dishonest conduct in connection with the DBE program, so that USDOT can take the steps, e.g., referral to the Department of Justice for criminal

prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules provided in 49CFR Part 31.