

PART 3

SAMPLE

**COMPREHENSIVE AGREEMENT
DESIGN AND CONSTRUCT ROUTE
234 AND SUDLY MANOR DRIVE
INTERCHANGE PROJECT**

CONTRACT NUMBER

Between:

**THE BOARD OF COUNTY SUPERVISORS OF PRINCE
WILLIAM COUNTY, VIRGINIA,**

And

**DESIGN-BUILDER COMPANY NAME
ADDRESS
PHONE
EMAIL**

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I RECITALS	1
ARTICLE II DEFINITIONS	3
ARTICLE III ESTABLISHMENT OF PUBLIC-PRIVATE TRANSACTION	3
Section 3.1 Basic Agreement	3
Section 3.2 Parties to Transaction; Roles and Responsibilities	3
Section 3.3 Contract Documents	5
Section 3.4 Nature of Parties' Interests Under Certain Project Agreements	5
ARTICLE IV REGULATORY APPROVALS	6
Section 4.1 Regulatory Approvals	6
Section 4.2 No Federal Funds	6
ARTICLE V DESIGN, ACQUISITION AND CONSTRUCTION	6
Section 5.1 Design-Builder Obligation to Design	6
Section 5.2 Design-Builder Obligation to Construct	6
Section 5.3 Right of Way Acquisition	6
Section 5.4 Utility Relocation	7
Section 5.5 Wetlands and Environmental Mitigation	7
Section 5.6 Design-Builder Draws	7
ARTICLE VI RESERVED	7
ARTICLE VII DIRECTED CHANGES	7
ARTICLE VIII COUNTY AND VDOT OVERSIGHT	7
ARTICLE IX CONTRACTING PRACTICES – OBLIGATION TO REFRAIN FROM DISCRIMINATION	8
ARTICLE X INTERRELATIONS AMONG TRANSPORTATION FACILITIES	8
ARTICLE XI RELIANCE, INDEMNIFICATION AND INSURANCE	9
Section 11.1 Limitations on Design-Builder Right to Rely	9
Section 11.2 Indemnities	10
Section 11.3 Responsibilities Regarding Insurance	10

ARTICLE XII REPRESENTATIONS, WARRANTIES AND FINDINGS	10
Section 12.1 County Representations and Warranties	10
Section 12.2 Design-Builder Representations and Warranties	11
Section 12.3 Survival of Representations and Warranties	12
Section 12.4 County’s Findings Under PPTA	12
ARTICLE XIII TERMINATION	13
Section 13.1 Termination for Convenience	13
Section 13.2 Other Unilateral Rights to Terminate	13
Section 13.3. Liability after Termination.....	14
Section 13.4 Exclusive Termination Remedies	14
ARTICLE XIV DEFAULTS AND REMEDIES	14
Section 14.1 Design-Builder Defaults	14
Section 14.2 Design-Builder Cure Periods	15
Section 14.3 County Remedies for Design-Builder Default.....	15
Section 14.4 County Defaults	15
Section 14.5 County Cure Periods	16
Section 14.6 Design-Builder Remedies for County Default.....	16
Section 14.7 Dispute Resolution	16
ARTICLE XV RECORDS, REPORTS, WORK PRODUCT	18
Section 15.1 Maintenance of Records	18
Section 15.2 Public Records	18
Section 15.3 Reporting Requirements and Inspection and Audit Rights.....	19
ARTICLE XVI RESERVED RIGHTS	20
Section 16.1 Exclusions from Design-Builder Interests	20
Section 16.2 County Reservation of Rights	20
ARTICLE XVII MISCELLANEOUS	21
Section 17.1 Assignment	21
Section 17.2 No Gift or Dedication	21
Section 17.3 Notices	21
Section 17.4 Binding Effect.....	23
Section 17.5 Relationship of Parties; No Partnership.....	23
Section 17.6 No Third-Party Beneficiaries	24
Section 17.7 Waiver.....	24
Section 17.8 No Brokers	24
Section 17.9 Governing Law and Venue	25
Section 17.10 Use of Police Power.....	25
Section 17.11 Survival.....	25
Section 17.12 Construction and Interpretation of Agreement	25
Section 17.13 Counterparts	27
Section 17.14 Entire Agreement Amendment	27
Section 17.15 Virginia State Police Funding for Adequate Staffing.....	28

LIST OF EXHIBITS

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A.	Definitions
B.	Map of Project (Provided by Design-Builder)
C.	Design-Build Contract
D.	2016 General Conditions of Contract
E.	2016 Division I Amendments to Standard Specifications

COMPREHENSIVE AGREEMENT TO DESIGN AND CONSTRUCT ROUTE 234 - SUDLEY MANOR DRIVE INTERCHANGE

This **COMPREHENSIVE AGREEMENT TO DESIGN AND CONSTRUCT ROUTE 234 SUDLEY MANOR DRIVE INTERCHANGE** (“Agreement”) is made in **three (3) original counterparts**, by and between the **BOARD OF COUNTY SUPERVISORS OF PRINCE WILLIAM COUNTY** (“County”), the governing body of Prince William County, Virginia, a political subdivision of the Commonwealth of Virginia, whose address is 1 County Complex Court, Prince William, Virginia 22192, and **DESIGN-BUILDER COMPANY NAME** (“ ”), a - _____ company, whose address is _____.

ARTICLE I

RECITALS

Section 1.1. On March 25, 1995 the Governor of Virginia signed into law, effective July 1, 1995, the Public-Private Transportation Act (as amended, the “PPTA”), currently codified at Virginia Code § 33.2-1800 *et seq.*

Section 1.2. In enacting the PPTA, the Virginia General Assembly found and declared, among other things, that:

(a) there is a public need for timely development and/or operation of transportation facilities within the Commonwealth that address the needs identified by the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, enhancing economic efficiency, or any combination thereof and that such public need may not be wholly satisfied by existing methods of procurement in which qualifying transportation facilities are developed and/or operated;

(b) such public need may not be wholly satisfied by existing ways in which transportation facilities are developed and/or operated; and

(c) authorizing private entities to develop and/or operate one or more transportation facilities may result in the development and/or operation of such transportation facilities to the public in a more timely, more efficient, or less costly fashion, thereby serving the public safety and welfare.

Section 1.3. The PPTA grants the County the authority to allow private entities to design, construct and/or operate qualifying transportation facilities if the County determines there is a need for the facilities and private involvement would provide the facilities to the public in a timely and cost-effective fashion.

Section 1.4. The PPTA allows for both solicited and unsolicited project proposals.

Comprehensive Agreement to Design and Construct Route 234 - Sudley Manor Drive Interchange Project

Section 1.5. The County adopted Implementation Guidelines, effective July 1, 2003, currently Section 1000.00 *et seq.* of the County Procurement Regulations, based upon the guidelines promulgated by the State for the receipt, review, and selection of solicited and unsolicited proposals for negotiation under the PPTA.

Section 1.6. Pursuant to the PPTA, on August 8, 2024 Wagman Heavy Civil, Inc, submitted an unsolicited conceptual proposal (“Initial Conceptual Proposal”) to the County to design and construct the Route 234 - Sudley Manor Drive Interchange.

Generally, the Route 234 Sudley Manor Drive Interchange project consists of:

The Design-Builder shall perform all design and construction improvements at the Intersection of Route 234 (Prince William Parkway) at Sudley Manor Drive and modifications to the intersection of Prince William Parkway and Wellington Road. The project will construct an interchange at Prince William Parkway and Sudley Manor Drive To maintain free-flow traffic on Prince William Parkway. The project will grade separate Prince William Parkway and Wellington Road. The approved Innovation Town Center includes proffered improvements to construct a signal at Hornbaker Road/Wellington Road, as well as realign Bethlehem Road. New signals are being proposed as part of the overall interchange design. The project will increase capacity and reduce congestion along this important corridor.

The County Executive authorized a PPTA Review Committee (“Review Committee”) to review Initial Conceptual Proposal and recommend whether the County should accept it for further conceptual-phase consideration. The Review Committee recommended the County accept for consideration the Initial Conceptual Proposal for the Route 234 - Sudley Manor Drive Interchange project. In accordance with Prince William County Procurement Regulations §1000.04(c)(3) and Virginia Code § 33.2-1820 the County advertised for one hundred twenty (120) Days acceptance of competing proposals from interested parties.

Section 1.7. Three firms responded to the County’s advertisement for competing proposals. The Review Committee recommended advancing all three proposals to the detailed proposal phase.

Section 1.8. Based on the review and results of the evaluation committee, the County entered into negotiations with (Design-Builder) for consideration of award for the Route 234 - Sudley Manor Drive Interchange.

Section 1.9 The proposed transportation facilities are included in the Prince William County Comprehensive Plan and Transportation Plan. Based upon successful negotiations between the County and Design-Builder the parties agree to enter into this Agreement, which is in the best interest of the residents of the County and was approved by the Board on (insert date of award by BOCS).

NOW, THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the County and (Design-Builder) agree as follows:

ARTICLE II

DEFINITIONS

All capitalized terms used in this Agreement, but not expressly defined in this Agreement, shall have the respective meanings set forth in Exhibit A attached to this Agreement.

ARTICLE III

ESTABLISHMENT OF PUBLIC-PRIVATE TRANSACTION

Section 3.1. Basic Agreement.

(a) The County and (Design-Builder) agree that the Project, as generally shown on the map attached as Exhibit B and as more particularly identified in the Scope of Work, shall be designed, constructed, and warranted in a transaction involving this Agreement, the Design-Build Contract, and the other Contract Documents setting forth the distinct roles and responsibilities of the public and private sector participants.

(b) This Article III identifies and establishes the basic roles and responsibilities of such participants. This Article III is not intended, and shall not be construed, to impose any obligations on any Party, or provide any Party with any rights, that are in addition to any rights or obligations set forth elsewhere in this Agreement and the other Contract Documents.

Section 3.2. Parties to Transaction; Roles and Responsibilities.

(a) The parties to the transaction and this Agreement and the other Contract Documents, under which the Project shall be designed, constructed, and warranted, are the County and Design-Builder (the "Parties").

(b) The County:

(i) shall establish, pursuant to the Contract Documents, the terms and conditions under which the Project will be implemented;

(ii) grants (Design-Builder) the right and obligation to design, develop, and construct the Project on the terms and conditions set forth in the Contract Documents;

(iii) may perform Oversight Services with respect to Project implementation;

(iv) shall approve the design, shall perform duties associated with the acquisition and condemnation of all necessary Project Right of Way, and shall perform duties associated with Utility Relocation, as provided in the Contract Documents;

Comprehensive Agreement to Design and Construct Route 234 - Sudley Manor Drive
Interchange Project

- (v) shall take acceptance of the Work upon Final Acceptance thereof;
 - (vi) shall turn over the Project to VDOT for operation and maintenance as a part of the State road system following its completion;
 - (vii) shall provide funds to the Project and make payments to (Design-Builder), as specified in this Agreement, the Design-Build Contract, and any other Contract Document; and
 - (viii) shall arrange to finance the costs of the Project in a manner that results in the availability of funds in the amounts and at the times required to meet the projected needs for the Project.
- (c) (Design-Builder):
- (i) shall have the right and obligation to design, develop, construct, and perform all Work respecting the Project as and when provided in the Contract Documents;
 - (ii) shall cause the Project to be insured, as and when provided in the Contract Documents;
 - (iii) shall provide the Payment Bond and the Performance Bond for the Work (excluding the amount attributable to the allowances for right of way and utilities as defined in the Contract Documents), as and when provided in the Contract Documents;
 - (iv) shall comply with and perform all the duties and obligations of a private entity under the PPTA, this Agreement, and the other Contract Documents, including, to the extent applicable, the duties under Virginia Code § 33.2-1807;
 - (v) shall perform duties associated with the acquisition of all necessary Project Right of Way and shall perform duties associated with Utility Relocation and Environmental Mitigation as provided in the Contract Documents;
 - (vi) shall perform duties associated with the acquisition of all Regulatory Approvals as provided in the Contract Documents;
 - (vii) shall perform or caused to be performed the Work for the Project as stated in the Contract Documents;
 - (viii) shall provide sufficient personnel who are suitably qualified and experienced to perform the Work in an efficient and timely manner;
 - (ix) represents that it is capable in all respects (including the possession of sufficient financial resources to provide fully for the payment of its employees, Contractors, and Subcontractors) to fully perform the requirements of the Contract Documents and shall provide the Work in accordance with generally accepted and currently recognized industry best practices, procedures, and principles, and it shall exercise the same professional

standard of care and of quality as is customarily exercised by entities providing similar services in the Northern Virginia area;

(x) shall diligently and conscientiously devote its resources to the performance of the Work during the term of this Agreement in accordance with the requirements of the Contract Documents; and

(xi) shall fulfill its obligations to have VDOT accept the Project as part of the State road system.

Section 3.3. Contract Documents.

The Contract Documents and their content are briefly described below. The Contract Documents are to be read and construed together, and together constitute the comprehensive agreement under the PPTA (notwithstanding the fact that this Agreement is entitled "Comprehensive Agreement").

(a) Comprehensive Agreement. The County and Design-Builder are entering into this Agreement to establish the general structure and arrangements for implementing the Project in accordance with the PPTA and the Implementation Guidelines.

(b) Design-Build Contract. Concurrently with execution of this Agreement, the County and Design-Builder are entering into the Design-Build Contract, in the form attached to this Agreement as Exhibit C, pursuant to which (i) the Project shall be designed and constructed by Design-Builder, and (ii) each of (Design-Builder) and the County shall have rights and obligations relating to the Project as set forth therein.

Section 3.4. Nature of Parties' Interests Under Certain Project Agreements

The County and (Design-Builder) intend and agree that:

(a) (Design-Builder) has no fee title, leasehold estate, easement, or other real property interest of any kind in or to the Project or the Project Right of Way by virtue of this Agreement, any of the other Contract Documents, or otherwise; and

(b) the County will be the sole owner of fee simple title to the Project and the Project Right of Way and all improvements constructed, all tangible personal property installed, with full power and authority to possess, control, and utilize the Project and Project Right of Way, subject only to the terms and conditions of the Contract Documents, however, the County may convey fee simple title to all or any portion of the Project or Project Right of Way to the State, VDOT, and/or the CTB.

ARTICLE IV

REGULATORY APPROVALS

Section 4.1. Regulatory Approvals.

The Parties shall have obligations for securing any necessary Regulatory Approvals as provided in the Contract Documents.

Section 4.2. No Federal Funds.

The Parties acknowledge that no federal funds are being used for the construction of any portion of this Project. The County covenants that it will not use federal funds for construction of any portion of the Project or take any action that would subject any portion of the Project to federal requirements due to the use of federal funds thereon.

ARTICLE V

DESIGN, ACQUISITION AND CONSTRUCTION

Section 5.1. (Design-Builder) Obligation to Design.

(Design-Builder) shall design the Project in accordance with the terms, conditions, standards, requirements, and schedule set forth in the Contract Documents.

Section 5.2. (Design-Builder) Obligation to Construct.

(a) (Design-Builder) shall construct the Project in accordance with the terms, conditions, standards, requirements, and schedule set forth in or provided by the Contract Documents.

(b) (Design-Builder) shall not commence construction within a Construction Segment until all conditions precedent thereto, as set forth in the Contract Documents, have been satisfied. Notwithstanding the foregoing, if all necessary interests in land have been obtained, the County shall, upon receipt of proper plans, agreements, or other appropriate documentation, issue "early grading" and other permits or approvals to allow (Design-Builder) to begin clearing, grubbing, grading, and excavation, and to perform other appropriate work on any phase of the Project prior to the final approval of the final design in order to expedite the Project.

Section 5.3. Right of Way Acquisition.

Each of the Parties shall have obligations relating to the acquisition of the Project Right of Way in accordance with the provisions of the Contract Documents. Such property(ies)

or property interest(s) acquired by (Design-Builder) shall be titled in the name of the “Board of County Supervisors of Prince William County, Virginia.”

Section 5.4. Utility Relocation.

Each of the Parties shall have obligations relating to the relocation of utilities in accordance with the provisions of the Contract Documents.

Section 5.5 Wetlands and Environmental Mitigation

(Design-Builder) shall have obligations relating to required wetlands, assessments, archaeological studies, environmental assessments, or other Environmental Mitigation in accordance with the provisions of the Contract Documents.

Section 5.6. (Design-Builder) Payment Draws

(a) (Design-Builder) shall have no right to any draws for payment of costs until all conditions precedent to such draws, as set forth in the Design-Build Contract, have been satisfied.

(b) No draws from the County for design, construction, or any other Work shall be permitted or valid unless and until the County has received and approved a properly completed draw request, in the form attached to the Design-Build Contract.

ARTICLE VI

RESERVED

ARTICLE VII

DIRECTED CHANGES

The Parties agree that Directed Changes may be undertaken with respect to the Project only in accordance with the provisions of the Design-Build Contract under Section II.2.

ARTICLE VIII

COUNTY AND VDOT OVERSIGHT

Right to Oversee Construction. The County and VDOT shall have the right to carry out Oversight Services respecting the design and construction of the Project as set forth in the Contract Documents. (Design-Builder) shall fully cooperate with the County to facilitate its conduct of such Oversight Services as set forth in the Contract Documents.

ARTICLE IX

CONTRACTING PRACTICES - DISCRIMINATION PROHIBITED

(Design-Builder) shall not discriminate and it shall require that all Contractors not to discriminate against any person, or group of persons, on account of age, sex, marital status, race, creed, color, national origin, religion, status as a service disabled veteran, disability, or any other basis prohibited by federal or State law relating to discrimination in the permitting, design, acquisition, construction, maintenance, operation, or management of the Project, nor shall (Design-Builder) establish or permit any such practice or practices of discrimination or segregation with reference to the selection, use, hiring, firing, promotion, or termination of employees, contractors, subcontractors, and vendors or with reference to the use, occupancy or enjoyment of or access to the Project except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Design-Builder.

(Design-Builder) shall conduct its activities in connection with the Project in compliance with all other requirements imposed pursuant to Virginia Code §§ 2.2-4310 and 2.2-4311; Titles VI and VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; and the Americans With Disabilities Act of 1990, as amended, and any other Laws, Regulations, and Ordinance regarding discrimination in employment or public accommodation. The County does not discriminate against faith-based organizations.

ARTICLE X

INTERRELATIONS AMONG TRANSPORTATION FACILITIES

Coordination Regarding Certain Transportation Facilities. Subject to provisions of the Contract Documents, the County and VDOT shall have the right at any time to modify existing facilities, to construct new facilities, and to perform planned and emergency maintenance, renewal and replacement, safety and repair activities on existing and new facilities adjacent to or near the Project regardless of the impact of such activities on the Project. Should any such efforts by the County and/or VDOT impact (Design-Builder's) Work, (Design-Builder) shall promptly notify the County, in writing, and request a Change to the Contract time and/or Contract Price under the terms of Article 18 of the Design-Build Contract.

ARTICLE XI

RELIANCE, INDEMNIFICATION, AND INSURANCE

Section 11.1. Limitations on (Design-Builder's) Right to Rely.

(a) (Design-Builder) expressly acknowledges and agrees that the County's rights under this Agreement include the rights to reasonably (i) review, comment on, approve, disapprove, and/or accept designs, plans, specifications, work plans, construction, equipment, installation, plans for maintenance, traffic management, policing, and/or Project management, books, records, reports, or statements, (ii) review, comment on and approve or disapprove qualifications and performance of, and to communicate with, Contractors, Subcontractors, architects, engineers, or other consultants of (Design-Builder), and (iii) perform Oversight Services, and that such rights (A) exist solely for the benefit and protection of the County, (B) do not create or impose upon the County any standard or duty of care toward (Design-Builder) or any of its Subcontractors, all of which are hereby disclaimed, (C) may not be relied upon, nor may the County's exercise or failure to exercise any such rights be relied upon, by Design-Builder in determining whether (Design-Builder) has satisfied the standards and requirements set forth in this Agreement or any other Contract Document, and (Design-Builder) may not be asserted, nor may the County's exercise or failure to exercise any such rights be asserted, against the County by (Design-Builder) as a defense, legal or equitable, to (Design-Builder's) respective obligations to fulfill the standards and requirements of the Contract Documents by which (Design-Builder) is bound. Regardless of the County's exercise or failure to exercise any such rights, regardless of the issuance of permits or certificates of completion or acceptance, and regardless of Final Acceptance, (Design-Builder) at all times shall have an independent duty and obligation and otherwise manage the Project and Project Right of Way in accordance with the standards and requirements set forth in the Contract Documents.

(b) To the maximum extent permitted by law, (Design-Builder) releases and discharges the County from any and all duty and obligation to cause design, construction, or other management of or for the Project or Project Right of Way by (Design-Builder) to satisfy the standards and requirements set forth in the Contract Documents. (Design-Builder) knowingly and voluntarily grants this release and discharge with the full understanding of the risks involved and the potential consequences.

(c) No rights of the County described in subsection (a) above, no exercise or failure to exercise such rights, no failure of the County to meet any standard of care in the exercise of such rights, or certificates of completion or acceptance and no Final Acceptance shall:

(i) relieve (Design-Builder) of its responsibility for the selection and the competent performance of all Contractors, Subcontractors, architects, engineers, and other consultants (except those hired by, and in direct privity with, the County);

(ii) relieve (Design-Builder) of any of its obligations or liabilities under the Contract Documents;

(iii) be deemed or construed to waive any of the County's rights and remedies under the Contract Documents; or

(iv) be deemed or construed as any kind of representation or warranty, express or implied, by the County.

(d) Notwithstanding subsections (a), (b), and (c) above, (i) (Design-Builder) Contracting shall be entitled to rely on specific written deviations and written interpretative engineering decisions the County gives under the Contract Documents, respectively, (ii) the County is not relieved from any liability arising out of a knowing, intentional misrepresentation under any written statement the County delivers, and (iii) the County is not relieved of its obligations under the Design-Build Contract or any other Contract Documents.

Section 11.2. Indemnities.

(a) (Design-Builder) shall indemnify, defend at (Design-Builder's) expense, and hold harmless the County to the extent provided in the Design-Build Contract.

(b) The indemnities of (Design-Builder) shall survive the expiration or earlier termination of this Agreement and the Design-Build Contract.

Section 11.3. Responsibilities Regarding Insurance.

(a) (Design-Builder) shall carry or cause to be carried the insurance policies and satisfy or cause to be satisfied the insurance covenants set forth in the Contract Documents.

(b) The County may, but is not obligated to, purchase other and additional policies of insurance respecting the Project.

ARTICLE XII

REPRESENTATIONS, WARRANTIES, AND FINDINGS

Section 12.1. County Representations and Warranties.

The County represents and warrants to the (Design-Builder) as follows:

(a) The County is a political subdivision of the Commonwealth of Virginia and has full power, right, and authority to execute, deliver and perform its obligations under, in accordance with and subject to the terms and conditions, of this Agreement and other Contract Documents to which the County is a Party.

(b) Each Person executing this Agreement, the Design-Build Contract, or any other Contract Document on behalf of the County to which the County is a Party has been or at such time will be duly authorized to execute each such document on behalf of the County.

(c) Neither the execution and delivery by the County of this Agreement, the Design-Build Contract, and any other Contract Documents executed concurrently herewith to which the County is a Party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or violation of any other agreements or instruments to which it is a party or by which it is bound.

(d) There is no action, suit, proceeding, investigation, or litigation pending and served on the County which challenges the County's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement and the other Contract Documents to which the County is a Party, or which challenges the authority of the County official executing this Agreement or the other Contract Documents, and the County has disclosed to (Design-Builder) any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the County is aware.

(e) When executed by the County the Contract Documents will be valid and binding agreements of the County and enforceable against it in accordance with the terms thereof.

(f) The County has complied with the provisions of the PPTA and the Implementation Guidelines applicable to (Design-Builder's) proposal, the Project and the Contract Documents.

Section 12.2. (Design-Builder's) Representations and Warranties.

Design-Builder represents and warrants to the County as follows:

(a) (Design-Builder) is a duly organized corporation created under the laws of the State, licensed to transact business in the Commonwealth of Virginia, and has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right, and authority to execute and deliver this Agreement, the Design-Build Contract, and the other Contract Documents to which (Design-Builder) is a Party and to perform each and all of the obligations of Design-Builder provided for herein and therein.

(b) Design-Builder has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under this Agreement, the Design-Build Contract, and the other Contract Documents to which it is a Party.

(c) Each Person executing this Agreement, the Design-Build Contract, or any other Contract Document on behalf of Design-Builder has been or will at such time be duly authorized to execute each such document on behalf of Design-Builder.

(d) Neither the execution and delivery by Design-Builder of this Agreement and the other Contract Documents to which Design-Builder is a Party, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or will result in a default under or a violation of the governing instruments of Design-Builder or any other agreements or instruments to which it is a party or by which it is bound.

(e) There is no action, suit, proceedings, investigation, or litigation pending and served on Design-Builder which challenges Design-Builder's authority to execute, deliver, or perform, or the validity or enforceability of, this Agreement, the Design-Build Contract, and the other Contract Documents to which Design-Builder is a Party, or which challenges the authority of the Design-Builder official executing this Agreement, the Design-Build Contract, or the other Contract Documents; and Design-Builder has disclosed to the County any pending and unserved or threatened action, suit, proceeding, investigation, or litigation with respect to such matters of which Design-Builder is aware.

(f) Design-Builder is in material compliance with all Laws, Regulations, and Ordinances applicable to Design-Builder or its activities in connection with this Agreement, the Design-Build Contract, and the other Contract Documents.

(g) Design-Builder has complied with the provisions of the PPTA and the Implementation Guidelines applicable to its proposal, the Project, and the Contract Documents

Section 12.3. Survival of Representations and Warranties.

The representations and warranties of the County and Design-Builder contained in this Agreement and the other Contract Documents shall survive for one (1) year beyond the later of the expiration or earlier termination of this Agreement and the other Contract Documents.

Section 12.4. County's Findings Under PPTA.

The County, as the Responsible Public Entity with respect to the Project under the PPTA, makes the following findings:

(a) the actions taken by the County pursuant to the PPTA facilitate the timely construction and operation of the Project;

(b) there is a public need for the transportation facility of the type of Project;

(c) the estimated cost of the Project is reasonable in relation to similar facilities;

(d) Design-Builder plans will result in timely development of the Project;

(e) the Project will be owned by the County as a public road and it will be turned over to the Commonwealth of Virginia as part of the State road system;

(f) the design, construction, and warranting of the Project as provided by the Contract Documents serves the public purpose of the PPTA;

(g) the terms and conditions of this Agreement and the other Contract Documents serve the public purpose of the PPTA;

(h) the Contract Price, as the same may be adjusted pursuant to the Design-Build Contract, reflects a reasonable maximum rate of return on investment for Design-Builder for the purpose of the PPTA;

(i) no user fees are being provided with respect to the Project;

(j) this Project secures and promotes the public health, safety, and general welfare of the County and its residents;

(k) the plan for development of the Project is anticipated to have significant benefits, including person throughput, congestion mitigation, safety, economic development, environmental quality, and land use;

(l) the risks, liabilities, and responsibilities transferred, assigned, or assumed by Design-Builder provide sufficient benefits to the public to not proceed with the development of the Project through other means of procurement available to the County; and

(m) the requirements of Virginia Code § 33.2-1803(C)(1)–(5) have been met, and this Agreement and the Project are in the best interest of the public.

ARTICLE XIII

TERMINATION

Section 13.1. Termination for Convenience.

(a) The County may at any time after the execution of this Agreement, when the County determines in its sole discretion that such action is in the best interests of the County, terminate Design-Builder rights and obligations under this Agreement and the other Contract Documents, subject to subsection (b) below.

(b) If the County exercises its right of termination under subsection (a) above, the County shall deliver to Design-Builder a Notice of Termination and thereafter the County and Design-Builder shall comply with the provisions of Article 25 of the Design-Build Contract.

Section 13.2. Other Unilateral Rights to Terminate.

(a) The County shall have the right to terminate this Agreement and the Design-Build Contract due to an Event of Default by Design-Builder as set forth in the Design-Build Contract. Upon any such termination, Design-Builder's rights under this Agreement shall automatically terminate. The County's remedies against Design-Builder following any such termination are fully set forth in the Design-Build Contract.

(b) If the County exercises its right of termination under subsection (a) above, then the County shall deliver to Design-Builder the notice set forth in Section II.6 of the

Design-Build Contract and thereafter the County and Design-Builder shall comply with the provisions of Section II.6.

Section 13.3. Liability After Termination.

(a) In the event this Agreement and/or the Design-Build Contract is terminated by reason of a material default, such termination shall not excuse the defaulting party from any liability arising out of such default as provided in the Contract Documents.

(b) In the event this Agreement and/or the Design-Build Contract is terminated by reason other than a default, no party shall have any further obligation or liability except for performance of their respective obligations which are either expressly stated in the Contract Documents survive termination or by their sense and context are intended to survive termination.

Section 13.4. Exclusive Termination Remedies.

This Article XIII, together with the express provisions on termination set forth in the Design-Build Contract, set forth the entire and exclusive provisions and rights of the County and Design-Builder regarding termination of this Agreement and/or the Design-Build Contract, and any and all other rights to terminate at law or in equity are waived to the maximum extent permitted by law.

ARTICLE XIV

DEFAULTS AND REMEDIES

Section 14.1. Design-Builder Defaults.

Each of the following events shall constitute a Design-Builder Default under this Agreement:

- (a) any Event of Default by Design-Builder under this Agreement, the Design-Build Contract, or any other Contract Documents;
and
- (b) any representation or warranty made by Design-Builder herein or in any other Contract Documents which is inaccurate or misleading in any material respect on the date made and a material adverse effect upon the Project or the County's rights or obligations under the Contract Documents results therefrom; and
- (c) Design-Builder shall fail to timely observe or perform any covenant agreement, term, or condition required to be observed or performed by Design-Builder under the Contract Documents or anyone providing any of the Work under this Agreement through Design-Builder shall cause Design-Builder to do so.

Section 14.2. Design-Builder Cure Periods.

The Design-Builder shall have the following cure periods with respect to the following Design-Builder Defaults:

(a) respecting any Design-Builder Default under Section 14.1(a), the cure period, if any, in the Contract Documents; and

(b) respecting any Design-Builder Default under Section 14.1(b), a period of 30 Days after Design-Builder receives written notice of the Design-Builder Default, provided that if the Design-Builder Default is of such a nature that the cure cannot with diligence be completed within such time period and Design-Builder has commenced meaningful steps to cure immediately after receiving the default notice, then Design-Builder shall have such additional period of time, up to a maximum cure period of 180 Days, as is reasonably necessary to diligently effect cure.

Section 14.3. County Remedies for Design-Builder Default.

Upon the occurrence of any Design-Builder Default and expiration, without full cure, of any applicable cure period, the County may exercise any one or more of the following remedies as the County, in its sole and absolute discretion, shall determine:

(a) in the event of any Design-Builder Default under Section 14.1(a), any applicable remedies set forth in the Contract Documents.

(b) in the event of a Design-Builder Default under Section 14.1(b), any and all remedies available at law or in equity, including, but not limited to, recovery of damages to the extent provided by law, but excluding consequential damages.

(c) the County may offset any sums the County owes to Design-Builder by any sums owing to the County from Design-Builder, including, but not limited to, Liquidated Damages or undisputed or finally adjudicated monetary damages owing the County under the Contract Documents.

Section 14.4. County Defaults.

(a) Each of the following events shall constitute a County Default:

(i) the County shall fail to observe or perform any covenant, agreement, term, or condition required to be observed or performed by the County under this Agreement;

(ii) any representation or warranty made by the County herein or in any other Contract Documents shall be inaccurate or misleading in any material respect on the date made and a material adverse effect upon the Project or Design-Builder's rights or obligations under the Contract Documents results therefrom;

(iii) an event of Default by the County occurs under any other Contract Documents; or

(b) Except as set forth and described in the definition of Force Majeure, Design-Builder acknowledges that no act or omission of any federal, State, regional, or other local government or agency thereof, other than the County, shall constitute a County Default hereunder.

Section 14.5. County Cure Periods.

The County shall have the following cure periods with respect to the following County Defaults:

(a) respecting a County Default under this Section 14.4(a)(i) or (ii), a period of 30 Days after the County receives written notice of the County Default, provided that if the County Default is of such a nature that the cure cannot with diligence be completed within such time period and the County has commenced meaningful steps to cure immediately after receiving the default notice, the County shall have such additional period of time, up to a maximum cure period of 180 Days, as is reasonably necessary to diligently effect cure; and

(b) respecting a County Default under this Section 14.4(a)(iii), the cure period, if any, set forth in the relevant Contract Document.

Section 14.6. Design-Builder Remedies for County Default

Upon the occurrence of any County Default and expiration, without full cure, of any applicable cure period, Design-Builder may exercise any one or more of the following remedies as Design-Builder, in its sole and absolute discretion, shall determine, provided that there is no material breach, without full cure within any applicable cure period, on the part of Design-Builder under any of the Contract Documents:

(a) In the event of any County Default under this Section 14.4(a)(i) or (ii), any and all remedies available at law or in equity including, but not limited to, recovery of damages to the extent provided by law, but excluding consequential damages.

(b) In the event of any County Default under this Section 14.4(a) (iii), any applicable remedies set forth in the Design Build Contract or the relevant Contract Documents.

Section 14.7. Dispute Resolution

(a) All disputes, claims, and other matters in question between the Parties arising out of or in relation to this Agreement, the Design-Build Contract, and any other Contract Documents shall be resolved in accordance with the terms thereof.

(b) The Parties shall attempt to mutually resolve any dispute that may arise under this Agreement through reasonable and good faith negotiations between the Authorized County Representative and Authorized Contractor Representative. The Parties recognize that in

drafting this Agreement, it is impractical to make provisions for every contingency that may arise during its term. Accordingly, in order to achieve resolution of any Dispute concerning matters for which the Agreement provides no clear guidance, the Parties concur in the principle that this Agreement is intended to operate between them in fairness. Nonetheless, if no resolution is achieved pursuant to the terms of this subsection (b), the Parties shall have full rights to resolve Disputes in accordance with the remaining terms of this Section 14.7.

(c) In accordance with Virginia Code § 2.2-4363, this provision shall be followed for consideration and handling of all claims by the Contractor under this contract. Virginia Code § 2.2-4365 is not applicable to this Agreement, the Design-Build Contract, or any other Contract Documents. Under no circumstances is this subsection to be construed as an administrative appeals procedure governed by Virginia Code § 2.2-4365.

(d) Notice of the intent to submit a claim setting forth the basis for any claim shall be submitted in writing within thirty (30) Days after the occurrence of the event giving rise to the claim, or within thirty (30) Days of discovering the condition giving rise to the claim, whichever is later. In no event, shall any claim arising out of this Agreement, the Design-Build Contract, or any other Contract Documents be filed after the submission of the request for Final Payment by Design-Builder.

(e) Claims by Design-Builder with respect to this Agreement shall be submitted in writing including sufficient detail and accompanied by supporting documentation in the first instance for consideration by the Director of Transportation for Prince William County. The decision of the Director of Transportation for Prince William County shall be rendered in writing within forty-five (45) Days from the receipt of the claim from Design-Builder and shall be final and binding on behalf of the County, unless Design-Builder submits the claim for determination by the County Executive by mailing or otherwise furnishing the Chief Procurement Officer a copy of the claim, along with a request for determination by the County Executive within thirty (30) Days of the Director of Transportation's decision. The final decision of the County Executive shall be signed by the County Executive and rendered in writing within forty-five (45) Days from the receipt of the claim from Design-Builder, and shall be final and binding on behalf of the County, unless Design-Builder submits the claim for determination by the Board by mailing or otherwise furnishing the Chief Procurement Officer a copy of the claim, along with a request for determination by the Board within thirty (30) Days of the County Executive's decision. The Board shall consider a claim that includes sufficient detail and is accompanied by supporting documentation within sixty (60) Days of receipt and render a decision within forty-five (45) Days of the date on which the Board hears the claim in open meeting; provided, however that in no event shall the decision of the Board be rendered more than one hundred fifty (150) Days after a claim that includes sufficient detail and is accompanied by supporting documentation was submitted by Design-Builder for determination by the Board. The Board's procedure in considering claims under this Agreement shall be the same as that for other decisions of the Board on claims made under Section 15.2-1245 et seq., Virginia Code Ann. The decision of the Board shall be final.

(f) Should any decision-maker designated under this procedure fail to make a decision within the time period specified, then the claim is deemed to have been denied by the decision-maker.

(g) Pending a final determination of a claim, Design-Builder shall proceed diligently with the performance of the Work under this Agreement, the Design-Build Contract, and the other Contract Documents.

(h) In accordance with the provisions of Virginia Code § 2.2-4363, full compliance with this procedure set forth in the provision shall be a precondition to the filing of any lawsuit by Design-Builder against the Board arising out of this Agreement. If Design-Builder is dissatisfied with the decision of the County and Design-Builder has fully complied with this Section 14.7 and Virginia Code § 15.2-1245 *et seq.*, Design-Builder may institute a civil action as to such portion of the claim as is denied by the County to the extent permitted by law and the Contract Documents.

Each Party shall bear its own attorneys' fees and costs in any dispute or litigation arising out of or pertaining to this Agreement or any other Contract Document, and no Party shall seek or accept an award of attorneys' fees or costs.

ARTICLE XV

RECORDS, REPORTS AND WORK PRODUCT

Section 15.1. Maintenance of Records.

Design-Builder shall file and maintain a complete set of all books, records, documents, and information prepared or used by Design-Builder related to this Project as provided in the Design-Build Contract.

Section 15.2. Public Records and Protection of Design-Builder Confidential Records.

(a) Any Work Product the County owns or possesses pursuant to this Agreement, the Design-Build Contract, or any other Contract Document, and any record of which the County obtains a copy, may be considered public records under the Virginia Public Records Act, Virginia Code § 42.1-76 *et seq.*, Virginia Code, Virginia Code § 33.2-1820, or the Virginia Freedom of Information Act, Virginia Code § 2.2-3700 *et seq.*, and as such may be subject to public disclosure. The County recognizes that certain Work Product the County owns or possesses pursuant to the Design-Build Contract and other Contract Documents of which the County obtains a copy may contain information exempt from disclosure under Section 2.2-4342(F) or 2.2-3705.6(11) of the Virginia Code, may constitute trade secrets as defined in

Section 59.1-336 of the Virginia Code, and may include confidential information which is otherwise subject to protection from disclosure. Should such records become the subject of a request for public disclosure, the County shall respond as follows:

(i) The County will use reasonable efforts to promptly notify Design-Builder of such request and the date by which it anticipates responding.

(ii) Design-Builder must then assert, in writing to the County, any claim that such records contain information that is exempt from disclosure.

(iii) If Design-Builder fails to make such assertion within three (3) Business Days after the date the County notifies it of its intended response, the County shall have the right to make such disclosure.

(iv) If Design-Builder makes a timely and reasonable assertion that the requested records contain trade secrets or financial records exempt from disclosure or otherwise protected under State law, the County will deny the request for disclosure of such records or, upon consultation with Design-Builder, to agree upon a reasonable effort and legal cost, at the expense of Design-Builder seek judicial declaration of the rights of the parties.

(v) If the County's denial of a request for disclosure of records is challenged in court and the County agrees to a request by Design-Builder to defend its position, then Design-Builder shall assist the County in its defense and shall indemnify and hold harmless the County for any and all damages assessed and reasonable costs (including, but not limited to, the fees and costs of the County's attorneys) the County incurs in such defense, including any attorneys' fees assessed against the County under Virginia Code § 59.1-338.1 or any civil penalty assessed under Virginia Code § 2.2-3714.

(vi) If at any time, including prior to, during or after judicial consideration, provided that such judicial consideration did not grant an injunction against such disclosure, or is still pending and being diligently prosecuted to enjoin such disclosure, the County determines that Design-Builder does not have a valid claim that the requested records contain trade secrets or financial records exempt from disclosure or otherwise protected under State law, it shall so notify Design-Builder by email or facsimile, no less than three (3) Business Days prior to the date the County intends to make the disclosure to allow it to take such action as it deems appropriate prior to disclosure. In no event shall the County be liable to Design-Builder as a result of any disclosure of such records by the County pursuant to this Section 15.2 if Design-Builder fails to file or otherwise initiate and diligently pursue an appropriate action to enjoin such disclosure in a timely manner.

(b) If Design-Builder believes that any Work Product or any document subject to transmittal to or review by the County under the terms of this Agreement or any other Contract Documents contain information or trade secrets that are exempt or protected from disclosure pursuant to State law, Design-Builder shall use diligent efforts to clearly and properly identify such information prior to such transmittal or review, and the County shall confer on appropriate means of ensuring compliance with applicable laws prior to transmittal or review. Upon the written request of any party, Design-Builder and the County shall mutually develop a

protocol for the transmittal, review, and disclosure of Work Product or other documents produced or obtained by Design-Builder, as the case may be, so as to avoid violations of any applicable State law.

Section 15.3. Reporting Requirements, and Inspection and Audit Rights.

(a) Design-Builder shall deliver to the County financial and narrative reports, statements, certifications, budgets, and information as and when required under the Design-Build Contract.

(b) The County shall have audit rights respecting Design-Builder as set forth in Section II.20.1 of the Design-Build Contract.

(c) Nothing contained in this Agreement or any other Contract Document shall in any way limit the constitutional and statutory powers, duties, and rights of elected or appointed State officials, including the independent rights of the State Auditor of Public Accounts, in carrying out his or her legal authority. Design-Builder shall require each of its Contractors and Subcontractors to comply the requirements of this Section 15.3(c).

ARTICLE XVI

RESERVED RIGHTS

Section 16.1. Exclusions from Design-Builder Interests.

Design-Builder rights and interests in the Project and Project Right of Way shall be specifically limited only to such rights and interests which are necessary and required for design and construction of the Project and any other elements of the Work, pursuant to the Contract Documents. Design-Builder's rights and interests specifically exclude all Reserved Rights.

Section 16.2. County Reservation of Rights.

All rights to own, lease, sell, assign, transfer, utilize, develop, or take advantage of the Reserved Rights are reserved to the County; and Design-Builder shall not engage in any activity infringing upon the Reserved Rights. The County at any time may devote, use or take advantage of the Reserved Rights for any public purpose without any participation whatsoever by Design-Builder. The County reserves to itself all ownership, development, maintenance, repair, replacement, operation, use, and enjoyment of, and access to, the Project, Project Rights of Way, and Reserved Rights. No County activity or improvement respecting Reserved Rights shall materially interfere with the design, construction, or warranting of the Project.

ARTICLE XVII

MISCELLANEOUS

Section 17.1. Assignment.

(a) Except as otherwise provided in the Design-Build Contract, Design-Builder may not, without the prior written consent of the County, voluntarily or involuntarily assign, convey, transfer, pledge, mortgage, or otherwise encumber its rights or interests under this Agreement or the other Contract Documents.

(b) Any transfer of the right or practical ability to control the policies and decisions of Design-Builder (except transfers occurring after the Final Acceptance Date) whether due to transfer of partnership or membership interests, shares, beneficial interests, or otherwise, shall constitute an assignment prohibited under subsection (a) above without the County's prior written consent.

(c) The County may transfer and assign its interests in the Project, this Agreement, and any other Contract Document to any other public agency or public entity as permitted by law, provided that the successor or assignee has assumed all of the County's obligations, duties, and liabilities under this Agreement and the Contract Documents then in effect, and has provided Design-Builder with reasonable assurance of its legal and financial authority to honor and perform the same.

(d) If any Party changes its name, such Party agrees to promptly furnish the other Party with written notice of change of name and appropriate supporting documentation.

Section 17.2. No Gift or Dedication.

Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Project, Project Right of Way, or Work Product to the County or the general public or for any public use or purpose whatsoever, or be deemed to create any rights in the Project, Project Right of Way, or Work Product except as expressly set forth herein.

Section 17.3. Notices.

(a) Whenever under the provisions of this Agreement or the Design-Build Contract it shall be necessary or desirable for one Party to serve any notice, request, demand, report, or other communication on another party, the same shall be in writing and shall not be effective for any purpose unless and until actually received by the addressee or unless served:

- (i) personally;
- (ii) by independent, reputable, overnight commercial courier;
- (iii) by facsimile transmission;

Comprehensive Agreement to Design and Construct Route 234 Sudley Manor Drive
Interchange Project

- (A) where the transmitting Party includes a cover sheet identifying the name, location and identity of the transmitting party, the phone number of the transmitting device, the date and time of transmission and the number of pages transmitted (including the cover page),
- (B) where the transmitting device or receiving device records verification of receipt and the date and time of transmission receipt and the phone number of the other device, and
- (C) where the facsimile transmission is immediately followed by service of the original of the subject item in the manner provided in subsections (a)(i), (a)(ii), or (a)(iv) of this subsection; or
- (iv) by deposit three (3) Business Days in advance in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to Design-Builder:

Design-Builder
Street Address
City, State, Zip code
Attn: Authorized Representative

If to the County:

Christopher Shorter
County Executive
1 County Complex Court
Prince William, Virginia 22192 Fax:
(703) 792-4225

And to:

Shana N. Terry
Chief Procurement Officer/Director
1 County Complex Court, Suite 220
Prince William, Virginia 22192 Fax:
(703) 792-6774

Ricardo Canizales
Prince William County Department of Transportation
Director
5 County Complex Court
Prince William, Virginia 22192
Phone: (703) 792-6825
Fax: (703) 792-6885

With a copy to:

Michelle R. Robl
County Attorney
1 County Complex Court, Suite 240
Prince William, Virginia 22192
Fax: (703) 792-6633

(b) Either Party may, from time-to-time, by notice in writing served upon the other Party, designate an additional and/or a different mailing address in Virginia or an additional and/or a different person to whom all such notices, requests, demands, reports and communications are thereafter to be addressed. Any notice, request, demand, report, or other communication served personally shall be deemed delivered upon receipt, if served by mail or independent courier shall be deemed delivered on the date of receipt as shown by the addressee's registry or certification receipt or on the date receipt at the appropriate address is refused, as shown on the records or manifest of the U.S. Postal Service or independent courier, and if served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile (provided the original is thereafter delivered as aforesaid).

Section 17.4. Binding Effect.

Subject to the limitations of Section 17.1 of this Agreement, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective legal representatives, successors, and permitted assigns, and wherever a reference in this Agreement is made to any of the Parties, such reference also shall be deemed to include, wherever applicable, a reference to the legal representatives, successors, and permitted assigns of such Party, as if in every case so expressed.

Section 17.5. Relationship of Parties; No Partnership.

(a) The relationship of Design-Builder to the County shall be one of independent contractors, not an agent, partner, joint venture, or employee, and the County shall have no rights to direct or control the activities of Design-Builder or any Person related to Design-Builder.

(b) Officials, employees, and agents of the County shall in no event be considered employees, agents, partners, or representatives of Design-Builder.

(c) Design-Builder shall pay and comply with, and hold the County harmless against, the payments of all Design-Builder employee payroll-related contributions, premiums, and taxes of whatever nature, including any interest or penalties, which may be payable by Design-Builder under Laws, Regulations, and Ordinances.

Section 17.6. No Third-Party Beneficiaries.

Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits, or remedies upon, or creating any obligations of the Parties toward, any person or entity that is not a Party to this Agreement.

Section 17.7. Waiver.

(a) No waiver by any Party of any right or remedy under this Agreement or the other Contract Document shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement or the other Contract Document. The consent by one Party to any act by the other Party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

(b) No act, delay, or omission done, suffered, or permitted by one Party or its agents shall be deemed to waive, exhaust, or impair any right, remedy, or power of such Party under this Agreement or any other Contract Document, or to relieve the other Party from the full performance of its obligations under this Agreement and the other Contract Documents.

(c) No waiver of any term, covenant, or condition of this Agreement shall be valid unless in writing and signed by the obligee Party.

(d) The acceptance of any payment or reimbursement by a Party shall not: (i) waive any preceding or then-existing breach or default by the other Party of any term, covenant or condition of this Agreement, other than the other Party's prior failure to pay the particular amount or part thereof so accepted, regardless of the paid party's knowledge of such preceding or then-existing breach or default at the time of acceptance of such payment or reimbursement; or (ii) continue, extend or affect (A) the service of any notice, any suit, arbitration or other legal proceeding or final judgment, (B) any time within which the other Party is required to perform any obligation or (C) any other notice or demand.

(e) No custom or practice between the parties in the administration of the terms of this Agreement shall be construed to waive or lessen the right of a Party to insist upon performance by the other Party in strict compliance with the terms of this Agreement.

Section 17.8. No Brokers.

Each Party represents and warrants that it has not dealt with any real estate or business opportunity broker or agent or any finder in order to secure this Agreement.

Section 17.9. Governing Law and Venue.

This Agreement shall be governed and construed in accordance with the Constitution and laws of the Commonwealth of Virginia applicable to contracts executed and to be performed within the Commonwealth. The exclusive venue for any legal action arising out of or related to this Agreement, the Design-Build Contract, and any other Contract Documents shall lie in the Circuit Court for Prince William County, Virginia, located in the Eastern District of Virginia, Alexandria Division.

Section 17.10. Use of Police Power.

Nothing in this Agreement limits the authority of the County to exercise its regulatory and police powers granted by law, including, but not limited to, its powers of condemnation with respect to all or any part of the Project, the Project Right of Way, and any of Design-Builder rights hereunder. The Parties waive any requirement by the State Corporation Commission to issue a declaratory judgment regarding condemnation pursuant to Virginia Code § 33.2-1814 of the Virginia Code.

Section 17.11. Survival.

All covenants, agreements, representations, and warranties made in or pursuant to this Agreement shall be deemed continuing and made at and as of the date of this Agreement and at and as of all other applicable times during the Term. All covenants, agreements, representations, and warranties made in or pursuant to this Agreement shall survive for one (1) year beyond the later of the expiration or earlier termination of this Agreement and shall not be waived by the execution and delivery of this Agreement, by completion of construction, by any investigation by the County, or by any other event except a specific written waiver by the party against whom waiver is asserted unless otherwise provided herein.

Section 17.12. Construction and Interpretation of Agreement.

(a) The language in all parts of this Agreement shall in all cases be construed simply, as a whole, and in accordance with its fair meaning and not strictly for or against any party. The Parties acknowledge and agree that this Agreement has been prepared jointly by the Parties and has been the subject of arm's length and careful negotiation, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each Party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

(b) If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by either party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties to this Agreement, and the Parties agree, that in lieu of each clause or provision of this Agreement that

is illegal, invalid, or unenforceable, the parties in good faith shall supply as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible.

(c) The captions of the articles, sections, and subsections in this Agreement are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

(d) References in this instrument to this "Agreement" mean, refer to, and include this instrument as well as any riders, exhibits, addenda, and attachments (which are incorporated by reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation and/or undertaking "herein," "hereunder" or "pursuant hereto" (or language of like import) mean, refer to and include the covenants, conditions, obligations and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument. All terms defined in this instrument shall be deemed to have the same meanings in all riders, exhibits, addenda, attachments, or other documents affixed to or expressly incorporated by reference in this instrument unless the context clearly requires the contrary. Unless expressly provided otherwise, all references to Articles and Sections refer to the Articles and Sections set forth in this Agreement. Unless otherwise stated in this Agreement or the other Contract Documents, words which have well-known technical or construction industry meanings are used in this Agreement or the Contract Documents in accordance with such recognized meaning. All references to a subsection "above" or "below" refer to the denoted subsection within the Section in which the reference appears.

(e) As used in this Agreement and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

(f) This Agreement, its Exhibits, and the other Contract Documents are intended to be complementary and consistent with each other and shall, to the maximum extent possible, be construed according to such intent. In the event of an irreconcilable conflict or inconsistency between the terms and conditions of this Agreement, the Exhibits to this Agreement and/or the executed Project Agreements, the conflict or inconsistency shall be resolved by applying the following order of document precedence:

1. This Contract No. XXXXXXXXX inclusive of all Exhibits and Attachments;
2. General Conditions of Contract (Part 4);
3. County's Request for Detailed Proposals (RFDP) dated Month, Day, 2025 including all Addenda, inclusive of Part 1-Instructions to Offerors, Part 2 Project Technical Information and Requirements, including RFDP Information Package, Exhibits, Sections, and Addenda;
4. Division I Amendments (Part 5) to Standard Specifications, dated November 2016, as amended by the County;

5. Construction Documents prepared and approved in accordance with Article 2.4 of the General Conditions of Contract; and
6. Design Builder's Detailed Proposal dated, _____, including all final modifications, Proposal modifications and approved alternative technical concepts established herein, as accepted by the County on _____.

Section 17.13. Counterparts.

This instrument is executed in three (3) counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 17.14. Entire Agreement; Amendment.

(a) This Agreement and the Project Agreements constitute the entire and exclusive agreement between the Parties relating to the specific matters covered herein and therein. All prior or contemporaneous verbal or written agreements, understandings, representations and/or practices relative to the foregoing are superseded, revoked, and rendered ineffective for any purpose. This Agreement may be altered, amended, or revoked only by an instrument in writing signed by each party hereto, or its permitted successor or assignee.

(b) This Agreement and the other Contract Documents attempt to set forth in full all requirements applicable under the PPTA as to the design, construction, and warranting of the Project and attempt to define in full the rights and responsibilities of each Party in connection therewith. To the extent requirements and rights and responsibilities have not been addressed in this Agreement and the other Contract Documents, the Parties agree to carry out their respective responsibilities in the spirit of cooperation contemplated by the PPTA, recognizing that they may not have defined in a sufficient detail or anticipated fully all activities necessary for the full implementation of the Project.

(c) If any provision(s) of this Agreement is rendered obsolete or ineffective in serving their purpose by change in law, passage of time, financing requirements, or other future events or circumstances, the Parties agree to negotiate in good faith appropriate amendments to or replacements of such provisions in order to restore and carry out the original purposes thereof to the extent practicable; provided, however, that neither Party is obligated to agree to any amendment or replacement which would reduce its rights or enlarge its responsibilities under this Agreement in any material respect.

(d) At any time during the Term, any Party (i) shall apply to the other Party for any explanation as may be necessary with respect to the provisions of any Project Agreement, and (ii) shall promptly notify the other Party of all errors, omissions, inconsistencies, or other defects (including inaccuracies) which it may discover in the Project Agreements, shall provide written recommendations regarding changes or corrections to resolve any such error, omission, inconsistency, or other defect.

Section 17.15 Virginia State Police Funding for Adequate Staffing.

Pursuant to Virginia Code § 33.2-1808(I), the Parties, in consultation with the Virginia State Police, will provide for funding for adequate staffing by the Virginia State Police for general law enforcement services during both development and operation of the Project. As used in this subsection, "adequate staffing" means a level of staffing in accordance with the September 2003 report, "A Review of the Patrol Staffing Formula" as developed pursuant to Item 459(g) of Chapter 1042 of the Acts of Assembly of 2003.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Agreement on the date first written above.

**BOARD OF COUNTY SUPERVISORS OF
PRINCE WILLIAM COUNTY, VIRGINIA**

By: _____
Christopher Shorter, County Executive

Date Signed (Effective Date of Agreement)

DESIGN-BUILDER

By: _____
Authorized Representative
Design-Builder

Attest:

By: _____
Printed Name
Chief Procurement Officer

Approved as to form:

By: _____
Printed Name
County Attorney's Office

DEFINITIONS

Agreement Date means the later of the date written on the cover page of the Comprehensive Agreement and the date at which time both parties to the Comprehensive Agreement have executed and delivered both the Comprehensive Agreement and the Design-Build Contract.

Allowance means an amount of money, as provided in accordance with the Design-Build Contract, to pay certain Environmental Costs.

Approved Plans means the design and/or the construction plans and specifications for the Project that have been approved by VDOT and the County, including, but not limited to, all plans, elevations, sections, details, and diagrams furnished by Contractor showing the sizes, shapes, and location of component elements comprising the Project and all specifications, reports, calculations, records, and submittals necessary for design of the Project furnished by Contractor as described in the Design-Build Contract.

ASTM means the America Standard Testing Materials.

Authorized County Representative means any person designated to act on behalf of the County by the Contract Documents or a certificate signed by the County Executive and filed with Design-Builder.

Authorized Contractor Representative means any person designated to act on behalf of Design-Builder by the Contract Documents or a certificate signed by its President and filed with the County.

Board means the Board of County Supervisors as the governing body of the County.

Business Day means any Day other than a Saturday, Sunday or other day on which the New York Stock Exchange or banks are authorized or required to close in New York, New York, or Richmond, Virginia.

Change in Law means any change in Laws, Regulations, and Ordinances including Regulatory Approvals, but not including Regulatory Approvals taking effect (a) after the Agreement Date with respect to the Work initially authorized in the Design-Build Contract; or (b) after execution of a Change Order with respect to other Work. Change in law shall not include changes in Regulatory Approvals relating to the corporate existence or maintenance of Design-Builder.

Change Order means a written amendment to the terms and conditions of the Contract Documents issued in accordance with Section II.2 of the Design-Build Contract.

Claims means any and all claims, disputes, disagreements, causes of action, demands, suits, proceedings, damages, injuries, liabilities, obligations, losses, costs, and expenses.

Comprehensive Agreement means the Comprehensive Agreement to Design and Construct the Route 234 Sudley Manor Drive Interchange Project between Design-Builder and the County dated as of the Agreement Date, and all exhibits thereto, as supplemented or amended from time-to-time.

Construction Documents means all Approved Plans, Shop Drawings, Working Drawings, catalog cuts, and samples necessary for construction of the Project in accordance with the Contract Documents and to inspect that construction.

Construction Traffic Management Plan means the plan for traffic management submitted and approved in accordance with the Design-Build Contract.

Contract Documents means the Comprehensive Agreement and the Design-Build Contract, including all appendices and exhibits to each, the Scope of Work, the applicable Standard Specifications issued by VDOT, the Approved Plans, the CPM Payment Schedule, Contract Special Provisions, Special Provision Copied Notes, the Plans, Prince William County Purchasing Regulations, Design-Builder Proposal, General Conditions, Plans, Insurance coverages/policies, bonds, Specifications, and including all amendments and modifications to any of the foregoing, and all Change Orders issued.

Contractor means (Design-Builder) and its permitted successors and assigns.

Contractor Claim means a separate demand by Design-Builder for (a) a time extension which is disputed by the County, or (b) payment of money or damages arising from work done by or on behalf of Design-Builder in connection with the Design-Build Contract which is disputed by the County. A Contractor Claim will cease to be a Contractor Claim upon resolution thereof, including resolution by withdrawal or release thereof or delivery of a Change Order or Design-Build Contract amendment signed by all parties.

Contractor Party means and includes (Design-Builder), any related party thereto, including its parent, affiliate and subsidiary companies, and any member company, manager, partner, director, officer, employee, agent, contractor (other than the County), subcontractor (other than the County) at any tier, or any representative of (Design-Builder) or any such related party.

Contract Price shall have the meaning set forth in the Design-Build Contract.

County means Prince William County, Virginia.

County Default shall have the meaning set forth in Section 14.4 of the Comprehensive Agreement.

County Indemnatee means and includes the County, the Board, and all elected representatives, appointed officials, officers, members, employees, authorized agents, and authorized representatives of any of them.

Critical Path Milestone (CPM)/Payment Schedule means the most current schedule for the Project approved by the County.

Critical Path means the longest non-intermittent path between the first and the last event of the Project shown on the CPM Payment Schedule (or, if more than one such path exists, each such path).

CTB means the Commonwealth Transportation Board, a state board of the State.

Cultural Resources means historic buildings, structures, physical remains of a people's way of life, and any significant archaeology sites.

Days mean calendar days, unless otherwise designated.

Defect means, with respect to each element or aspect of the Work for which acceptable tolerances are specified in the Contract Documents or Reference Documents, any such element or aspect as of the Final Acceptance Date not conforming to such specified tolerances, and with respect to each element or aspect of the Work for which acceptable tolerances are not specified in the Contract Documents or Reference Documents, any such element or aspect not conforming to VDOT standards applicable thereto as of the time such element or aspect of the Work is undertaken; provided that in all instances "Defect" includes any element or aspect of the Work not conforming to the Design-Build Contract, Plans and Specifications, federal, State, or County laws, regulations, and ordinances or Regulatory Approvals.

Department means the Virginia Department of Transportation ("VDOT"), a department of the State, and any other State agency succeeding to the powers, authorities, and responsibilities of VDOT invoked by or under the Comprehensive Agreement.

Department Standards means the VDOT requirements applicable to performance of the Work contained in the manuals, standards and procedures set forth in the Reference Documents.

Design-Build Contract or **Contract** means the Design-Build Contract between the County and Design-Builder dated as of the Agreement Date, a copy of which is attached to the Comprehensive Agreement as Exhibit C, and any and all amendments and supplements thereto.

Design-Builder means (insert company name) the responsible party for the performance obligations of the Design Builder under this Contract.

Developer shall have the meaning assigned to the term "private entity" in Virginia Code Section 33.2-1800 and, for purposes of the Comprehensive Agreement, means (Design-Builder).

Developer Indemnitee means and includes (Design-Builder).

Developer Party means and includes (Design-Builder) and any director, officer, employee, agent, contractor (other than the County), subcontractor (other than the County) or any authorized representative Design-Builder.

Differing Site Condition shall have the meaning set forth in Article 4 of the General Conditions of the Contract.

Directed Change means any change in the Work (including changes in the standards applicable to the Work) which the County has directed Contractor to perform pursuant to Article 9 of the General Conditions of the Contract Between Department and (Design-Builder).

Dispute means a controversy, matter in question, or difference of opinion that remains unresolved following good faith negotiations between representatives of the County and (Design-Builder). Disputes may include, but shall not be limited to, such matters as Change Orders, interpretation of the Contract Documents, costs, time for performance, and Differing Site Conditions.

Draft Plans and Specifications means all drawings (including plans, elevations, sections, details and diagrams) furnished by Design-Builder showing the sizes, shapes, and location of component elements comprising the Project and all specifications, reports, calculations, records, and submittals necessary for design of the Project furnished by Design-Builder as described in Article 3 of the General Conditions of the Contract.

Draw Request means a draw request Design-Builder on the Draw Request and Certificate form attached as Appendix 1 to the Design-Build Contract.

Environmental Laws means all Laws, Regulations, and Ordinances now or hereafter in effect relating to the environment or to emissions, discharges, releases, or threatened releases of Hazardous Substances into the environment including into the air, surface water or ground water or onto land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances or otherwise relating to the protection of public health, public welfare, or the natural environment (including protection of nonhuman forms of life, land, surface water, groundwater and air) including the statutes listed in the definition of Hazardous Substances; the National Environmental Protection Act, as amended, 42 U.S.C. § 4321 et seq. the Occupational Safety and Health Act, as amended, 29 U.S.C. § 651 et seq. the Hazardous Materials Transportation Act, as amended, 49 App. U.S.C. §§ 1801 et the Endangered Species Act, as amended, 16 U.S.C. § 1531 et seq. the Clean Water Act, as amended, 33 U.S.C. § 1251 et seq. and the Migratory Bird Treaty Act, 16 U.S.C. § 703 et seq.

Environmental Monitoring Program means the Contractor's environmental monitoring program meeting the requirements set forth in the Design-Build Contract.

Event of Default shall have the meaning set forth in Article 11 of the General Conditions of the Contract.

Final Acceptance means the occurrence of the events described in General Conditions of the Contract.

Final Acceptance Date means the date on which Final Acceptance occurs under the Design-Build Contract.

Governmental Person means any federal, state, local, or foreign government, and any political subdivision or any governmental, quasi-governmental, judicial, public, or statutory instrumentality, or any administrative agency, authority, body, or entity.

Hazardous Substance means (a) any substance, product, waste, or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et the Hazardous Materials Transportation Act, 49 U.S. .C. Section 1801 q, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., the Toxic Substances Control Act, 15 U.S.C.

Section 2601 the Clean Water Act, 33 U.S.C. Section 1251 etç., the Clean Air Act, 42 U.S.C. Section 7401 et , the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Section 136 et Virginia Waste Management Act, § 10.1-1400 et q., Code of Virginia (1950) as amended, all as amended or as may be amended, or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes, (c) petroleum or crude oil or products thereof other than petroleum and petroleum products which are contained within regularly operated motor vehicles, (d) asbestos and (e) radioactive wastes and substances.

Implementation Guidelines means the Implementation Guidelines under the PPTA adopted by the County as Section 1000.00 et seq., of its Procurement Regulations on July 1, 2003, as amended.

Inspection means the act of viewing or looking carefully at construction, manufacturing, and design and maintenance practices, processes and products, including document control and Shop Drawing review, to ensure the practices, processes and products comply with the quality requirements contained in the Contract Documents; provided, however, that any such acts shall be performed by the County or any Governmental Person in a manner that does not interfere with the Contractor's performance of the Work or result in a County-Caused Delay and further provided the work is being performed in accordance with the Contract Documents.

Laws, Regulations, and Ordinances means all applicable laws, codes, rules, ordinances, restrictions, and regulations of the federal, State, regional, or any local government (including those resulting from the initiative or referendum process), and judicial or administrative orders applicable to the work.

Lien means any pledge, lien, security interest, mortgage, deed of trust, or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument, and the filing of or agreement to file any financing statement under the Virginia Uniform Commercial Code).

Liquidated Damages shall have the meaning set forth in Section I.6.5 of the Design-Build Contract.

Lump Sum Fixed Price shall have the meaning set forth in Section I.8 of the Design-Build Contract.

Notice of Termination means a notice issued by the County to terminate the Design- Build Contract and the performance of the Work by the Contractor pursuant to Section II.6 of the Design-Build Contract.

Notice to Proceed means the date the Design-Builder is authorized to begin Design-Build services.

Oversight Services means those services and functions the County has the right or obligation to perform or to cause to be performed under the Laws, Regulations, and Ordinances or any Contract

Document in order to monitor, review, manage, or administer the Project Agreements or the work or performance of the Developer under the Project Agreements; provided, however, that such services and functions must be performed by the County or any Governmental Person in a manner that does not interfere with the Contractor's performance of the Work or result in a County-Caused Delay.

Party(ies) means the parties to the Contract Documents, which are Design-Builder and the County.

Payment Bond means the payment bond described in Section 103.5 of the General Conditions of the Contract.

Performance Bond means the performance bond described in Section 103.5 of the General Conditions of the Contract.

Person means any individual, public or private corporation, county, district, authority, municipality, political subdivision, or other entity of the State or the United States of America, and any corporation, limited liability company, partnership, association, firm, trust, estate, or any other legal entity whatsoever.

Plans and Specifications means the 100% completed maps, plans, drawings, and specifications for different components of the Work, as approved by VDOT and the County, and bearing the seal of a Virginia licensed engineer.

PPTA means the Public-Private Transportation Act of 1995, which is codified as Title 32, Chapter 18, Section 33.2-1800 et seq., of the Virginia Code.

Pre-Existing Hazardous Substances means any Hazardous Substance that was present within the Project Right of Way limits prior to acquisition or use of the property for the Project, and which was not placed or deposited there by the Contractor.

Project means (a) all improvements constituting the Route 234 Brentsville Road Interchange Project as generally shown on the map attached as Exhibit B to the Comprehensive Agreement and as more particularly identified in the Contract Documents, (b) all other improvements and other Work Product which may be provided by the Contractor in accordance with the Contract Documents, and (c) all other improvements and other Work Product to be provided by Contractor as a condition to Final Acceptance in accordance with the Contract Documents.

Project Construction Permit is a permit issued by VDOT through its offices in Manassas, Virginia, for the construction of the project whenever construction is to be performed within VDOT maintained right-of-way.

Project Right of Way or Right of Way means, with respect to the Project, all real property (which term is inclusive of all estates and interests in real property) which is necessary for the ownership, construction, and operation of the Project by the County, and its acceptance by VDOT into the State Road System. The term specifically excludes any real property interests which Design-Builder deems convenient in connection with construction of the Project.

Punch List means incidental items of Work necessary to correct imperfections or seasonal or weather-sensitive items which have no adverse effect on the safety or operability of the Project.

Qualifying Transportation Facility shall have the meaning assigned to such term in Virginia Code Section 33.2-1800.

Quality Assurance (QA) means all those planned and systematic actions necessary to provide confidence that all Work fully complies with the Contract and that all materials incorporated in the Work, all equipment and all elements of the Work will perform satisfactorily for the purpose intended. Actions include design checks and reviews; document control; Shop Drawing review and approval; materials sampling and testing at the production site and the Project site; inspection of manufacturing/processing facilities and equipment; inspection of onsite equipment, calibration of test equipment, and documentation of QA activities.

Quality Assurance Manager or QA Manager means the Party responsible for inspecting and testing in accordance with the Quality Assurance and Control Inspection Program as described in the General Conditions of the Contract.

Quality Control (QC) means the total of all activities performed by the Contractor, designer, producer, or manufacturer to ensure that a product meets requirements of the Contract Documents. For highway design, construction, and maintenance, QC includes design procedures and checking, materials handling and construction procedures, calibration and maintenance of equipment, Shop Drawing review, document control, production process control, and any sampling, testing, and inspection done for these purposes. QC also includes documentation of QC efforts.

Reference Documents means those documents listed in the Project Technical Information & Technical Requirements.

Regulatory Approvals means all local, regional, state, and federal agreements, studies, findings, permits, approvals, authorizations, certifications, consents, decisions, exemptions, filings, leases, licenses, registrations, rulings and other governmental authorizations required to be obtained or completed under applicable Laws, Regulations and Ordinances prior to undertaking any particular activity contemplated by the Comprehensive Agreement or the Design-Build Contract.

Reserved Rights means all of the following:

- (a) in accordance with Article XVI of the Comprehensive Agreement, the County's right to use, possess and enjoy any real and personal property over, on, under or adjacent to the Project Right of Way for other transportation and transit facilities, including, but not limited to, tunnels, flyovers, interchanges and fixed guideways; and

- (b) all right to use, and use of:

- (i) all electrical, fiber optic, and wireless conduit, cable, capacity, towers, antennas, and associated equipment or other telecommunications equipment, hardware, and capacity existing over, on, under or adjacent to any Project Right of Way installed by anyone, whether before or after the Agreement Date;

- (ii) any area or space over, on, under or adjacent to the Project Right of Way for development and operation of any office, commercial, industrial or mixed use real estate project, such as but not limited to revenue-generating service or rest areas;

- (iii) any equipment, facilities or capabilities for ITS studies or applications installed by the

County or VDOT and the right to install any such equipment, facilities, or capabilities; and

(iv) any area or space over, on, under or adjacent to the Project Right of Way for any other commercial or non-commercial development or use.

Responsible Public Entity shall have the meaning assigned to such term in Virginia Code Section 33.2-1800, for purposes of the Comprehensive Agreement, means the County.

Retainage shall have the meaning set forth in Section I.10 of the Design-Build Contract.

Right of Way see “**Project Right of Way.**”

Safety Program means Contractor’s approved safety program meeting the requirements set forth in the Design-Build Contract.

Scope of Work means the description of the Work as set forth in the Contract Documents and contemplates the Work authorized or planned to be authorized under the Design-Build Contract.

Segment means a discrete portion of an element of a Phase of the Project; such as, clearing and grubbing, grading, drainage, paving, foundations, pier, column, decking, seeding, striping, electrical, etc.

Shop Drawings means drawings showing the sizes, shapes, and locations of component elements comprising the Project.

Site means those areas designated in writing by the County for performance of the Work and such additional areas as may, from time-to-time, be designated in writing by the County for Contractor’s use in performance of the Work. The Site initially includes the area within the Project Right of Way limits. For purposes of insurance, indemnification, safety, and security requirements and payment for use of equipment the term “Site” also includes any areas on which Utility Relocation Work is performed and any property being temporarily used by Contractor for storage of equipment and/or construction Work.

Standard Specifications means the VDOT Specifications stated in the General Conditions of the Contract.

State means the Commonwealth of Virginia.

Substantial Completion means the time at which the Project, or an agreed upon portion thereof is sufficiently complete so that the County can use the facility for the intended purpose in accordance with the contact documents, so that the County may occupy the opened roadways for the intended purpose.

Substantial Completion Date means the date by which the Contractor shall have achieved Substantial Completion of the Project or an agreed upon portion thereof, which date shall be subject to extensions of time as provided in the Design-Build Contract.

Subcontract means any agreement by Design-Builder with any other Person to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, or any such agreement at a lower tier, between a Subcontractor and its lower tier Subcontractor.

Subcontractor means any Person with whom Design-Builder has entered into any Subcontract to perform any part of the Work or provide any materials, equipment, labor, or supplies for the Project on behalf of Design-Builder (and any other Person with whom any Subcontractor has further subcontracted any part of the Work).

Supplier means any Person not performing Work at the Site that supplies machinery, equipment, materials or systems in connection with the performance of Work. Persons who merely transport, pick up, deliver, or carry materials, personnel, parts, or equipment, or any other items or persons to or from the Site shall not be deemed to be performing Work at the Site.

Surety means each properly licensed surety company, insurance company, or other Person approved by the State Corporation Commission to do business in the State, listed in the U.S. Treasury Department Circular 570 and with an A.M. Best and Company rating level of A or better, Class VII or better, and as approved by the County, at its sole discretion, which has issued the Payment Bond or Performance Bond.

Utility or utility means a public, private, cooperative, municipal, political subdivision, and government line, facility, or system used for the carriage, transmission, and/or distribution of cable television, electric power, telephone, telegraph, water, gas, oil, petroleum products, steam, chemicals, sewage, storm water not connected with the highway drainage, and similar substances that directly or indirectly serve the public. The term “Utility” specifically excludes (a) storm water lines connected with the highway drainage, and (b) traffic signals, street lights, and electrical systems for roadways unless installed or maintained by a utility owner.

Utility Owner or utility owner means the owner or developer of any Utility (including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies).

Utility Relocation means the removal, relocation and/or protection in place (including provision of temporary services as necessary) of any and all utility facilities that have to be removed, relocated and/or protected in place in order to permit construction of the Project.

Virginia Code means the Code of Virginia of 1950, as amended from time-to-time.

VDOT means the Virginia Department of Transportation, a department of the State, and any other State agency succeeding to the powers, authorities, and responsibilities of VDOT invoked by or under the Comprehensive Agreement.

Warranties mean the warranties made by Contractor in Section 2.9 of the General Conditions of the Contract.

Wetland and Environmental Mitigation means the wetland and environmental mitigation work necessary to fulfill federal and State requirements of the governing federal and State agencies as required by the Contract Documents.

Wet Soil means soil which cannot be conditioned to meet contract requirements by using normal industry standards within a reasonable time period.

Work means all of the administrative, design, engineering, Utility Relocation, procurement, professional, manufacturing, supply, installation, construction, supervision, management, testing,

verification, labor, materials, equipment, maintenance, documentation and other duties and services to be furnished and provided by Design-Builder as required by the Contract Documents, including all efforts necessary or appropriate to achieve Final Acceptance except for those efforts which such Contract Documents specify will be performed by Persons other than a Contractor Party.

Working Drawings means drawings needed to show things associated with the construction of something to be constructed, but which will not be part of the permanent construction, e.g. formwork.

Work Product means all the data, information, documentation, reports, and other work product, whether in paper, electronic, or some other format, produced, prepared, obtained, possessed, or deliverable by or on behalf of any Contractor Party and in any way related to the Project or Project Right of Way, including, but not limited to, Shop Drawings, Working Drawings, Draft Plans and Specifications, Plans and Specifications, record and as-built plans and specifications, calculations, engineering documents, geotechnical soils and soil boring data, analyses, reports and records, the Right of Way Plan, property acquisition files, agreements and documents (including records of payment and related correspondence, title policies, parcel diaries and all other documents relating to the acquisition of Right of Way), engineers' and inspectors' diaries and reports, utility relocation plans and agreements, right of way record maps and surveys, Change Orders, final quantities, pile driving records, records of accidents and traffic management, field test records and reports, concrete pour records, surfacing depth check records, grade and alignment books, cross-section notes, drainage notes, photographs, false work and form plans, records of construction materials, and any other documents which can be reasonably described as technical or engineering documents. Work Product expressly excludes, however, documents and information which Design-Builder and the County mutually agree in writing, or which a court determines, to be exempted or protected from public disclosure under Section 15.2 of the Comprehensive Agreement and which is not conceived or first reduced to practice for the Project, such as but not limited to, financial or pricing information or trade secrets of any Contractor Party.

EXHIBIT C

**EXHIBIT C SAMPLE LUMP SUM CONTRACT AGREEMENT BETWEEN
THE COUNTY AND DESIGN-BUILDER**



PRINCE WILLIAM COUNTY

**OFFICE OF PROCUREMENT SERVICES
1 County Complex Court, Prince William, Virginia 22191-9201
(703) 792-6770 Metro 631-1703, Ext. 6770 Fax (703) 792-4611)**

**CONTRACT TITLE: DESIGN BUILD SERVICES FOR THE PRINCE WILLIAM
ROUTE 234 - SUDLEY MANOR DRIVE INTERCHANGE
PROJECT**

CONTRACT NUMBER: XXXXXXXX

Between:

**PRINCE WILLIAM COUNTY
1 COUNTY COMPLEX COURT (MC460)
PRINCE WILLIAM, VA 22192-9201**

(703) 792-6770 METRO 631-1703 EXT 6770

And the Design-Builder:

[INSERT DESIGN-BUILDER INFORMATION]

Address:

Phone:

Fax:

Contact:

Email:

This Contract is prepared in accordance with Part 4 (General Conditions of Contract between the County and Design-Builder), and Part 5 (2016 Division I Amendments to Standard Specifications General Provisions for Design-Build Contracts Between the County and Design-Builder as supplemented by Prince William County) of the Request for Detailed Proposals (RFDP), and Procurement Regulations of Prince William County, which are incorporated into this Contract by reference.

This Contract made in two (2) original counterparts is entered into on this ____ day of ____ 2025, by and between the Board of County Supervisors of Prince William County, Virginia, or its authorized agents, or assignee, hereinafter called the party of the first part (Owner or County) and _____, hereinafter called the party of the second part (Contractor) for the project entitled: Design-Build Services for Route 234 – Sudley Manor Drive Interchange Project identified herein, on the following terms and conditions.

An Equal Opportunity Employer

SECTION I – SPECIAL PROVISIONS TO THE CONTRACT

I.1	Scope of Work	3
I.2	Contract Definitions	3
I.3	Incorporation and Order of Precedence of Documents	4
I.4	Entire Agreement	5
I.5	Contract Time	5
I.6	Ownership of Work Product	6
I.7	Contract Price	7
I.8	Payment Draws and Invoicing (Application for Payment)	8
I.9	Inspection and Acceptance and County Oversight	9
I.10	Notices	10
I.11	Key Personnel	11
I.12	The County's Representatives	11
I.13	The Design-Builder's Representative	12

SECTION II - GENERAL PROVISIONS TO THE CONTRACT

II.1	Assignability of Contract	13
II.2	Modifications or Changes to the Contract	13
II.3	Equal Employment Opportunity	13
II.4	Drug-free Workplace	14
II.5	Claims/Disputes	14
II.6	Termination for Convenience of the County	16
II.7	Americans Disabilities Act Provision	18
II.8	Termination for Default	19
II.9	Termination for Non-Appropriation of Funds	19
II.10	Governing Law and Choice of Forum	19
II.11	Immigration Reform and Choice of Forum	19
II.12	Indemnification and Hold Harmless	19
II.13	Record Maintenance, Retention and Examination of Records	20
II.14	Ethics in Public Contracting	20
II.15	County Reservation of Rights	20
II.16	Binding Effect	20
II.17	Assignment	21
II.18	Bonds and Insurance	21
II.19	Integration and Signatory	21
II.20	Other Provisions	22

Attachment(s) as stated below:

ATTACHMENTS TO CONTRACT (as negotiated)

SECTION I

SPECIAL PROVISIONS

I.1 Scope of Work

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

I.2 Contract Definitions

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

The Parties to this Contract under which the Project shall be designed, constructed, and warranted, are the County and [Insert Design-Builder Name], and referred to as the “Parties” to the Contract. Below provided are definitions of certain related parties:

“County” shall mean the Board of County Supervisors of Prince William County, Virginia, or the using department identified below and authorized by the Purchasing Regulations or other law to enter into Contracts.

“Using Department” for the purpose of this Contract shall mean Department of Transportation.

“Contract Administrator” assigned to administer this Contract for the County is Director of Transportation.

“Design Builder/Contractor/Engineer shall mean: [Insert Contractor Name and Address]. The authorized representative of the Design Builder is [Insert Representatives Name and Title], who is responsible for the performance obligations of the Design Builder under this Contract.

Contract: The written instrument used for signature and execution which binds the County and the Design-Builder and is evidence of mutual understanding and agreement between the Parties. The Contract expressly incorporates and enumerates any documents therein and referred to as the “Contract Document”.

Contract Documents: The Contract Documents are complimentary, and what is required by one shall be binding as if required by all. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work, including without limitation, all labor, materials, equipment, and furnishing required in connection there with. Such incorporated documents customarily include but not limited to; Contract Special Provisions, Special Provision Copied Notes, the Plans, Prince William County Purchasing Regulations, Design-Builder Proposal, General Conditions, Plans, Insurance coverages/policies, bonds, Specifications, and all Modifications, including Addenda and subsequent Change Orders.

I.3 Incorporation and Order of Precedence of Documents

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

This Contract is consistent with Code of Virginia and Prince William County Purchasing Regulations. In the event of an inconsistency between or conflict among documents, the inconsistency shall be resolved by giving first precedence to the Code of Virginia, then to the Purchasing Regulations.

Each of the Contract Documents is an essential part of this Contract, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to describe and provide for a complete contract.

In the event of any conflict among the Contract Documents, this Contract and any attachments thereto including subsequent Change Orders, Change Order Directives and/or Modifications shall in all events control.

With respect to the other Contract Documents the order of precedence shall be as set forth below.

1. All written modifications, amendments and Change Orders to this Contract issued in accordance with *2016 General Conditions of Contract Between the County and Design-Builder* ("General Conditions of Contract");
2. This Contract Agreement No. XXXXXXXXX (Part 3) executed by the County and Design-Builder, inclusive of all Exhibits and Attachments;
3. General Conditions of Contract (Part 4);
4. County's Request for Detailed Proposal (RFDP) dated June 16, 2025, including all Addenda inclusive of Part 1- Instructions for Offerors, Part 2, Project Technical Information and Requirements, including RFDP Information Package, Exhibits, Sections, and Addenda;
5. 2016 Division I Amendments (Part 5) to Standard Specifications, dated November 2016 ("Division I Amendments") as amended by the County;
6. Released for Construction Plans prepared and approved in accordance with Article 2.4 of the General Conditions of Contract, and
7. Design-Builder's Detailed Proposal submitted in response to RFDP; including all final modifications, Proposal modifications, and approved alternative technical concepts established herein.

Unless otherwise specified by the County any reference in the Contract Documents to a described publication affecting any portion of the Project shall be deemed to mean the latest edition or revision thereof and amendments and supplements thereto in effect on the date of this Design Build Contract. Referenced standards and Regulatory Approvals which constitute Contract requirements shall have the same order of precedence as the Contract Document which references them.

Special Provisions included in this Contract Document or other Special Provisions selected for use in design and construction of this Project that have been approved by VDOT shall govern over the VDOT specifications, design standards and manuals. Special Provision Copy Notes approved by VDOT and requirements specified within the text of the RFDP shall govern over both the Special Provisions and VDOT specifications, design standards and manuals.

I.4 Entire Agreement

The Contract Documents form the entire agreement between the County 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.

I.4.1 Except as specifically set forth in this Section I.3, and notwithstanding anything to the contrary in Design Builder's Proposal, Design-Builder is obligated to perform the Work in full compliance with the RFDP Documents. The parties agree, however, that:

- a. Betterments and higher and/or more stringent standards or specifications and design construction criteria, concepts, and drawings set forth in Design-Builder's Proposal (collectively referred to as "Enhancements") shall supersede the minimum requirements of the minimum requirements of the RFDP Documents and Design-Builder is obligated to perform the Work in compliance with the Enhancements.
- b. Those Alternative Technical Concepts (ATCs) identified herein have been approved, either fully or conditionally, by the County and supersede the Work in accordance with such ATCs, subject to Section 2.1.10 of the General Conditions of the Contract.

I.5 Contract Time

I.5.1 Notice to Proceed. The Design-Builder agrees to begin site work no later than thirty (30) calendar days after the written Notice-to-Proceed. The County will issue a Notice to Proceed within fifteen days after the Contract date, unless the parties mutually agree otherwise in writing.

I.5.2 Completion Dates.

I.5.2.1 Final Completion Date. The Design-Builder shall finally complete the Work in accordance with the Contract Documents no later than TBA (the "**Final Completion Date**"). The Final Completion Date is the date the project has achieved Final Acceptance.

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

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

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

I.5.5.1 If Final Acceptance of the Work is not attained by the Final Completion Date, Design-Builder shall pay the Five Thousand Dollars (\$5,000.00) per day as Liquidated Damages for each day that the actual Final Acceptance of the Work extends beyond the Final Completion Date.

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

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

(b) that any sums which would be payable under this Section I.6 are in the nature of liquidated damages, and not a penalty, and are fair and reasonable, and such payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failure; and

(c) that any sums which would be payable herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties, and any other damages, whether special or consequential, and of whatsoever nature incurred by the County 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.

I.6 Ownership of Work Product

I.6.1 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 the Design-Builder that is furnished to the County.

I.6.2 Ownership of Work Product. The County shall own all rights, title, and interest in the Work Product upon its receipt of such Work Product. The County’s ownership rights include, without restriction or limitation, the right of the County, and anyone contracting with the County, 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 the County on another

project. In receiving all rights, title and interest in the Work Product, the County 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 the County, execute all papers and perform all other acts that may be necessary (if any) to ensure that the County's rights, title, and interest in the Work Product are protected. The rights conferred herein to the County include, without limitation, the County's ability to use the Work Project without the obligation to notify or seek permission from the Design-Builder.

I.6.3 Use of Work Product at County's Risk. The County's use of the Work Product on any subsequent procurement by the County on another project shall be at the County's sole risk, and Design-Builder neither warrants nor represents that the Work Product is suitable for use on another project without modification. The County waives any rights to seek recovery from Design-Builder for any claims, damages, liabilities, losses and expenses arising out of or resulting from the County's use of the Work Product on another project.

I.7 Contract Price

In return for the services the County certifies funds are budgeted and appropriated and shall pay the Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of: _____ ("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.

I.7.1 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 the requirements of Section 109.05 of the Division I Amendments to the Standard Specifications.

I.7.2 Adjustments to Asphalt

The County and Design-Builder agree to adjust prices for the following items:

_____, in accordance with the County's pertinent special provisions, attached hereto as Exhibits 6.3(a), 6.3(b), and 6.3(c) provided Design-Builder declares its intent, in the Price Proposal, to use the provisions for price adjustments, and also submits the information required in the pertinent special provisions with its Proposal. Notwithstanding the special provisions, price adjustment for the items listed will be based on quantities identified in the Schedule of Items in Design-Builders 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 the County in the monthly report required by Section II.20.8 below, on forms provided by the County.

I.8 Payment Draws and Invoicing (Application for Payment)

I.8.1 Progress Payments

The Design-Builder shall submit to the County on the 10th day of each month, beginning with the first month after Design-Builders receipt of County's Notice to Proceed, Design Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract. Invoices shall be submitted based upon the percentage of work/services completed. Invoices shall cite the Purchase Order number, Contract number and date/period of services.

The County shall make payment within thirty (30) calendar days after the County'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 Article 6.3 of the General Conditions of the Contract. The County's payment shall comply with Virginia Code § 2.2-4347 et seq., which addresses prompt payment.

I.8.1.1 The Design-Builder agrees no draws for payment from the County for design, construction, or any other Work shall be permitted or valid unless and until the County has received and approved satisfactory draw request in (application for payment) acceptable format provided as an attachment and made a part of RFDP7108113 Part 1 by reference.

In the event that the Design-Builder utilizes a Subcontractor for any portion of the work under this Contract, the Design Builder hereby agrees to the following:

- 1) The Design-Builder shall take one (1) of the two (2) following actions within seven (7) calendar days after receipt of amounts paid to the Design Builder by the County for work performed by a Design Builder under the Contract.
 - a) Pay the Subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by that Subcontractor under the Contract; or
 - b) Notify the County and any Subcontractors, in writing, of Design-Builder's intention to withhold all or a part of a Subcontractor's payment, specifying the reason for non-payment.
- 2) The Design-Builder also agrees that it shall include in all of its subcontract a provision that:
 - a) obligates the Design to pay interest to a Subcontractor on all amounts owed by the Design-Builder that remain unpaid after seven (7) calendar days following receipt by the Design-Builder of payment from the County 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 I.9.1.1 with respect to each lower-tier Sub-subcontract.

I.8.1.2 The Design Builder's obligation to pay an interest charge to a Subcontractor pursuant to

Section I.9.9.1 above shall not be construed to be an obligation of the County, nor shall any modification to this Contract 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.

I.8.1.3 If the Design-Builder fails to make payment to the Subcontractor within the time frame and provisions specified in Section I.8.1.1 and I.8.1.2 above, the Subcontractor shall notify the County and Design-Builder's bonding company in writing. Design-Builder's bonding company shall be responsible for insuring payment to the Subcontractor.

I.8.1.4 Pursuant to Virginia Code §2.2-4354, Design-Builder agrees to provide the County within five (5) days of Contract Date, its federal employer identification number.

I.8.2 Interest

Payments due and unpaid by the County to Design-Builder, whether progress payments or Final Payment, shall bear interest commencing seven (7) days after payment is due in accordance with Virginia Code §2.2-4355.

I.8.3 Retainage

Retainage – The County reserves the right to hold in retainage 5% of the Lump Sum Fixed Price including Change Orders. The County shall pay Design-Builder the first 95% of the Lump Sum Fixed Price when payment is due. The County shall retain the remaining 5% of the Lump Sum Fixed Price until Design-Builder has obtained Substantial Completion. Upon Design-Builder's achievement of Substantial Completion the County shall increase payments to 98% of the Lump Sum Fixed Price following submission of an Application for Payment. The County shall retain the remaining 2% of the Lump Sum Fixed Price until Design-Builder has achieved Final Acceptance.

I.8.4 Final Payment - The Design-Builder shall submit its Final Application for Payment to the County in accordance with Article 6.6 of the General Conditions of Contract. The County shall make payments on Design-Builder's properly submitted and accurate Final Application for payment within (30) calendar days after the County's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for Final Payment as set forth in Article 6.6.2 of the General Conditions of Contract. The County's payment shall comply with Virginia Code §2.2-4347 et seq. dealing with prompt payment.

I.9 Inspection and Acceptance and County Oversight

Right to Oversee Construction. The County shall have the right to carry out Oversight Services respecting the design and construction of the Project as set forth in the Design-Build Contract. The Design-Builder shall fully cooperate with the County to facilitate its conduct of such Oversight Services as set forth in the Design-Build Contract.

All Work, Services, Tasks, and Reports, shall be conducted and completed in accordance with recognized and customarily accepted industry best practices, and shall be considered complete when the such final product and deliverables are approved as acceptable by the Contract Administrator

in writing.

In the event of rejection of any report or deliverable, the Design-Builder shall be notified in writing and shall have five (5) calendar days from date of issuance of notification to correct the deficiencies and resubmit the final plans/specifications/report/deliverable. Failure to submit acceptable work within the five (5) calendar days shall constitute a breach of the contract for which the Design -Builder may be held in default.

I.10 Notices

Whenever under the provisions of this Contract it shall be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the same shall be in writing and shall not be effective for any purpose unless and until actually received by the addressee or unless served:

- (i) personally;
- (ii) by independent, reputable, overnight commercial courier; or
- (iii) by facsimile transmission:

(A) where the transmitting Party includes a cover sheet identifying the name, location, and identity of the transmitting party, the phone number of the transmitting device, the date and time of transmission and the number of pages transmitted (including the cover page);

(B) where the transmitting device or receiving device records verification of receipt and the date and time of transmission receipt and the phone number of the other device; or

(C) where the facsimile transmission is immediately followed by service of the original of the subject item in the manner provided in subsections (a)(i), (ii), or (iv) hereof; or

(iv) by deposit three (3) business days in advance in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to the Design Builder:

[Firm Name]

[Title]

[Address]

[Telephone Number]

If to Prince William County:

Prince William County Chief Procurement Officer/Director

1 County Complex Court, Suite 220

Prince William, Virginia 22192

Fax: (703) 792-6411

And to:

Prince William County Department of Transportation Director

5 County Complex Court, Suite 290

Prince William, Virginia 22192

Phone: (703) 792-6825

Fax: (703) 792-6885

(D) Either Party may, from time to time, by notice in writing served upon the other party as aforesaid, designate an additional and/or a different mailing address in Virginia or an additional and/or a different person to whom all such notices, requests, demands, reports, and communications are thereafter to be addressed. Any notice, request, demand, report or other communication served personally shall be deemed delivered upon receipt, if served by mail or independent courier shall be deemed delivered on the date of receipt as shown by the addressee's registry or certification receipt or on the date receipt at the appropriate address is refused, as shown on the records or manifest of the U.S. Postal Service or independent courier, and if served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile (provided the original is thereafter delivered as aforesaid).

I.11 Key Personnel

During the period of performance, the Design-Builder shall make no substitutions of key personnel unless the substitution is necessitated by illness, death, or termination of employment. All substitutions are subject to the final approval of the County. The Design-Builder shall notify the Contract Administrator within 5 calendar days after the occurrence of any these events and provide the information required by the paragraph below.

The Design Builder shall provide a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the Contract Administrator. Proposed substitutes should have comparable qualifications to those of the persons being replaced.

I.12 The County's Representatives

The Contract Administrator assigned on behalf of the County is Ricardo Canizales, Director of Transportation. The Contract Administrator shall have authority and responsibility for all avoiding and resolving disputes under Section 10.2.2 of the General Conditions of the Contract including, but not limited to, approval of plans and designs, determinations regarding Final Acceptance of a Phase or the entire Project, decisions that involve changes to the Contract Documents, change orders, extensions of the Substantial Completion Date, Final Acceptance Date, and any change that would result in an increases in cost to the County.

On behalf of the County, **Mary Ankers, Capital Projects Design and Construction Division Chief** shall have the authority and responsibility for avoiding and resolving disputes under Section 3.4 of the General Conditions of the Contract including, but not limited to, act upon Field Changes, and day to day operational decisions relating to the construction of the project that do not involve a change to the scope of work, a change order, an extension of time or any increase in cost to the County.

During Construction the following persons are assigned accordingly under this Contract:

Ricardo Canizales
Transportation Director
Transportation Department
Prince William County Government
5 County Complex Court, Suite 290

Woodbridge, VA 22192
Phone: (703) 792-6825
E-mail: rcanizales@pwcgov.org

Mary Ankers, PE
Capital Projects Design and Construction Division Chief
Transportation Department
Prince William County Government
5 County Complex Court, Suite 290
Woodbridge, VA 22192
Phone: (703) 792-4228
E-mail: mankers@pwcgov.org

Elnour Adam, DBIA, CCM, PMP
Alternative Delivery Projects – Engineering Manager
Transportation Department
Prince William County Government
5 County Complex Court, Suite 290
Woodbridge, VA 22192
Phone: (703) 792-8469
E-mail: emadam@pwcgov.org

I.13 Design-Builder's Representatives

The Design-Builder designates the individual listed below as its Senior Representative which shall have the authority and responsibility set for in Section 10.2.2 of the General Conditions of the Contract including, but not limited to, On-site Field Changes, and day to day operational decisions relating to the construction of the project that do not involve a change to the scope of work, an extension of time or any increase in cost chargeable to the County.

For Design Builder:

(Insert Name).

The Design-Builder designates the individual listed below as its Representative which shall have the authority and responsibility set for in Section 2.1.1 of the General Conditions of the Contract including, but not limited to, all other decisions including, but not limited to, decisions that involve changes to the Contract Documents and change orders.

(Insert Name).

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

SECTION II GENERAL PROVISIONS

II.1 Assignability of Contract

Neither this Contract, nor any part hereof, may be assigned by the Design Builder to any other party without the prior express written permission of the County.

II.2 Modifications or Changes to the Contract

All modifications and changes to the Contract shall be in writing.

Prince William County Department Transportation Director, with the concurrence of the Purchasing Manager (except as otherwise provided by the Purchasing Regulations), shall, without notice to any sureties, have the authority to order changes in this Contract which affect the cost or time of performance. Such changes shall be ordered in writing specifically designated to be a "Change Order." Such orders shall be limited to reasonable changes in the services to be performed or the time of performance; provided that the Design-Builder shall not be excused from performance under the changed Contract by failure to agree to such changes, and it is the express purpose of this provision to permit unilateral changes in the Contract subject to the conditions and limitations herein.

The Design-Builder need not perform any work described in any change order unless it has received a certification in form of a Purchase Order from the County that funds budgeted and appropriated sufficient to cover the cost of such changes.

The Design-Builder shall make a demand for payment for completed changed work within 30 days of receipt of a change order, unless such time period is extended in writing, or unless the Purchasing Manager requires submission of a cost proposal prior to the initiation of any changed work or supplies. Later notification shall not bar the honoring of such claim or demand unless the County is prejudiced by such delay.

No claim for changes ordered hereunder shall be considered if made after final payment in accordance with the Contract.

II.3 Equal Employment Opportunity

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 Design- Builder's project activities under this Contract.

(a) The Design-Builder shall work with the County in carrying out EEO obligation and in their review of his/her activities under the contract;

(b) The Design Builder shall 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, pre-apprenticeship, and/or on the job training.”

1. **EEO Officer:** The Design-Builder shall designate who will have the responsibility for and must be capable of effectively administering and promoting an active program of EEO and who must be assigned adequate authority and responsibility to do so.
2. **Dissemination of Policy:** All members of the Design-Builder’s staff who are to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, shall be made fully cognizant of, and will implement, the EEO.

II.4 Drug-free Workplace

During the performance of this Contract, the Design-Builder agrees to (i) provide a drug-free workplace for the Design-Builder’s employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Design-Builder’s workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Design-Builder that the Design-Builder maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every Subcontract or purchase order over \$10,000.00, so that the provisions will be binding upon each Subcontractor or Design-Builder.

A “drug-free workplace” means a site for the performance of work done in connection with this Contract award to the Design-Builder in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of any controlled substance or marijuana during the performance of this Contract.

II.5 Claims/Disputes

In accordance with Section 2.2-4363, Virginia Code Ann., this provision shall be followed for consideration and handling of all claims by the Design-Builder under this Contract. Section 2.2- 4365, Virginia Code Ann., is not applicable to this Contract, and under no circumstances is this paragraph to be construed as an administrative appeals procedure governed by Section 2.2-4365, Virginia Code Ann.

Notice of the intent to submit a claim setting forth the basis for any claim shall be submitted in writing within ten (10) calendar days after the occurrence of the event giving rise to the claim, or within ten (10) calendar days of discovering the condition giving rise to the claim, whichever is later.

In no event shall any claim arising out of this Contract be filed after the submission of the request for Final Payment by the Design-Builder.

Claims by the Design-Builder with respect to this Contract shall be submitted in writing in the first instance for consideration by the Contract Administrator.

The decision of the Contract Administrator shall be rendered in writing within forty-five (45) calendar days from the receipt of the claim from the Design-Builder. If the Design-Builder is not satisfied with the decision or resolution of the Contract Administrator, the Design-Builder may file a formal dispute with regards to the claim with the Prince William County Director of Finance, which claim shall be received within thirty (30) calendar days of the date of decision of the Contract Administrator.

The Director of Finance shall reduce his or her decision to writing and shall mail or otherwise furnish a copy of this decision to the Design-Builder within forty-five (45) calendar days of the receipt of the claim from the Design-Builder. The decision of the Director of Finance shall be final on behalf of Prince William County unless the Design-Builder submits the claim to the County Executive within thirty (30) calendar days of the Director of Finance's decision. The Design-Builder may submit the claim to the County Executive by mailing or otherwise furnishing the Purchasing Manager a copy of the claim and a request for the County Executive's determination.

The County Executive's decision on the claim shall be rendered in writing to the Design-Builder within forty-five (45) calendar days of the Purchasing Manager's receipt of the request from the Design-Builder, and shall be final and binding on behalf of Prince William County, unless the Design-Builder submits the claim for determination by the Board of County Supervisors by mailing or otherwise furnishing the Chief Procurement Officer a copy of the claim, along with a request for determination by the Board within thirty (30) calendar days of the County Executive's decision. The Board shall consider the claim and render a decision within forty-five (45) calendar days of the date on which the Board hears the claim in open meeting.

The Board of County Supervisors' procedure in considering claims under this Contract shall be the same as that for other decisions of the Board of County Supervisors on claims made under Section 15.2-1245 et seq., Virginia Code Ann. The decision of the Board shall be final.

Should any decision-maker designated under this procedure fail to make a decision within the time period specified, then the claim is deemed to have been denied by the decision-maker.

Pending a final determination of a claim, the Design-Builder shall proceed diligently with the performance of the Work under the Contract.

In accordance with the provisions of Section 2.2-4363, Virginia Code Ann., full compliance with this procedure set forth in the provision shall be a precondition to the filing of any lawsuit by the Design-Builder against the Board of County Supervisors of Prince William County arising out of this Contract.

II.6 Termination for Convenience of the County

The parties agree the County may terminate this Contract, or any work or delivery required hereunder, from time-to-time either in whole or in part, whenever the County Executive of Prince William County shall determine that such termination is in the best interests of the County.

Termination, in whole or in part, shall be effected by delivery of a ten (10) calendar days written notice Notice of Termination signed by the County Executive or his designee, mailed or delivered to the Design-Builder, and specifically setting forth the effective date of termination.

If the County 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 the County. Design-Builder specifically waives any and all rights to claim from the County any cost, profit, overhead contribution, or any other monetary relief associated with the Contract Documents or Project, including, bid and proposal costs, or any services that might have constituted Work under the Contract Documents.

Upon receipt of such Notice, the Design-Builder shall:

1. Cease any further deliveries or work due under this Contract, on the date, and to the extent, which may be specified in the Notice;
2. Place no further orders with any subcontractors except as may be necessary to perform that portion of this Contract not subject to the Notice;
3. Terminate all subcontracts except those made with respect to Contract performance not subject to the Notice;
4. Assign to the County or its designee in the manner, at the times, and to the extent directed by the County, all of the right, title, and interest of Design-Builder under the Subcontracts so terminated, in which case the County 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.
5. Settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of the Purchasing Manager of Prince William County; and
6. Use its best efforts to mitigate any damages which may be sustained by it as a consequence of termination under this clause.
7. Transfer and deliver to the County or its designee, as directed by the County; (1) possession and control of the Project; and (2) all right, title, and interest of Design-Builder in and to: (i) the Work in process, completed Work, supplies, and other materials produces 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 the County 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 Final Acceptance, nor shall the Design-Builder have any liability with respect to any design materials produced with respect to the Project;

8. Complete performance in accordance with the Contract Documents of all Work not terminated;
9. Take all action that may be necessary, or that the County 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 the County has or may acquire an interest; and
10. As authorized by the County, use its best efforts to sell at fair market value any property of the types referred to in Section II.6.1; provided, however, that Design-Builder: (1) shall not take any such action with respect to any items for which title has previously transferred to the County; (2) is not required to extend credit to any purchaser; and (3) may acquire the property itself, under the conditions prescribed and at prices approved by the County. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the County under the Contract Documents or paid in any other manner directed by the County.
11. **6.1 Inventory.** Design-Builder shall submit to the County a list of termination inventory not previously disposed of and excluding items authorized for disposition by the County; and within thirty (30) calendar days of receipt of the list, Design-Builder shall deliver such inventory to the County and the County shall accept title to such inventory as appropriate.

II.6.2 Settlement Proposal. After termination, the Design-Builder shall submit a final settlement proposal to the County in the form and with the certification prescribed by the County. Design-Builder shall submit the proposal promptly, but no later than thirty (30) calendar days from the effective date of termination unless Design-Builder has requested a time extension in writing within such 30 calendar day period and the Chief Procurement Officer has agreed in writing to allow such extension.

II.6.3 Amount of Termination Settlement. The Design-Builder and the County 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 II.6 and any such settlement shall be subject to the provisions of the Procurement Regulations. 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 from the Prince William County Transportation Department's budget as described in this Section II.6. The County's execution and delivery of any settlement agreement shall not be deemed to affect any of its rights with respect to compliance of the Work which has achieved Final Acceptance with all applicable Contract requirements or any of its rights under payment and performance bonds or any of its rights against Subcontractors.

II.6.4 No Agreement as to Amount of Claim. In the event of failure of the Design-Builder and the County to agree upon the amount to be paid to the Design-Builder by reason of termination of Work pursuant to this Section II.6, the amount payable (exclusive of interest charges) shall be determined in accordance with the dispute resolution procedures of the General Conditions.

II.6.5 Reduction in Amount of Claim. The amount otherwise due the Design-Builder under Article II.6 shall be reduced by: (a) the amount of any valid claim which the County may have against the Design-Builder connection with this Contract Agreement; and (b) the agreed price for, or the proceeds of sale of, materials, supplies or other things previously paid for by the County 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 Section II.6

II.6.6 Payment. The County may, from time-to-time, under such terms and conditions as it may be prescribed and in its sole discretion, make partial payments on account against costs incurred by Design-Builder in connection with the terminated portion of this Contract Agreement, whenever in the opinion of the County the aggregate of such payments shall be within the amount to which the 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 Section II.6, such excess shall be payable by Design-Builder to the County 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%).

II.6.7 Inclusion in Subcontracts. The 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 the County and shall require that Subcontractors insert the same provision in each Subcontract at all tiers. The Design-Builder shall communicate, immediately upon receipt thereof, any Notice of Termination issued by the County to all affected Subcontractors.

II.6.8 No Consequential Damages. In the event of a termination for convenience under this Section II.6, 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 the 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 Section II.6. The payment to Design-Builder determined in accordance with this Section II.6 constitutes the Design-Builder's exclusive remedy for a termination hereunder.

II.6.9 No Waiver. Anything contained in this Contract to the contrary notwithstanding, a termination under this Section II.6 shall not waive any right or claim to damages which the County may have with respect to Work which has achieved Final Acceptance prior to the date of termination, and the County may pursue any cause of action which it may have by law or under this Contract Agreement on account of such completed Work. The Design-Builder makes no warranties with respect to Work which has not achieved Final Acceptance prior to the date of termination. The County's termination of this Contract Agreement shall not relieve any rights the County has under any performance bonds issued on the Project.

II.6.10 Dispute Resolution. The failure of the parties to agree on amounts due under Article II.6 shall be resolved in accordance with the requirements of the "Claims/Disputes" clause of this Contract.

II.6.11 Right to Use Work Product. If the County terminates this Contract pursuant to this Section II.6, the County's rights to use the Work Product shall be as set forth in Section I.6.

II.7 Americans Disabilities Act Provision

Design-Builder agrees to comply with the Americans with Disabilities Act (ADA) and all related regulations. Upon request, Prince William County will provide reasonable accommodations for persons with disabilities for County programs, services, and activities. The County will observe and implement all equal employment opportunity laws and regulations and will continue to make concerted efforts to assure its work environment is free of discrimination, including sexual harassment.

The ADA guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County programs, activities and services. Prince William County government contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy.

II.8 Termination for Default

Either party may terminate this Contract, without further obligation, for the default of the other party or its agents or employees with respect to any agreement or provision contained herein.

II.9 Termination for Non-Appropriation of Funds

If funds are not appropriated for any succeeding fiscal year subsequent to the one in which this Contract is entered into, for purposes of this Contract, then the County may terminate this Contract upon thirty (30) calendar days prior to written notice to the Contractor. Should termination be accomplished in accordance with this section, the County shall be liable only for payments due through the date of termination.

II.10 Governing Law and Choice of Forum

This Contract and any disputes hereunder shall be governed by the Constitution and laws of the Commonwealth of Virginia. It is further agreed that all disputes and matters whatsoever arising under, in connection with, or incident to this Contract, shall be litigated, if at all, in and before a state Court located in the County of Prince William in the Commonwealth of Virginia or a federal Court located in the Eastern District of Virginia, Alexandria Division, and any appropriate appellate Court thereof, to the exclusion of the courts of any other state, territory, country or other jurisdiction.

II.11 Immigration Reform and Control Act of 1986

The Design-Builder certifies that it does not and will not during the performance of this Contract violate the provisions of the Federal Immigration Reform and Control Act of 1986 which prohibits knowing employment of unauthorized aliens. The Design-Builder agrees that its employment of any person without legal status may subject it to termination of this Contract for default and agrees to include a similar provision in any subcontract.

II.12 Indemnification and Hold Harmless

The Design-Builder hereby agrees to indemnify, defend at its own expense, and hold harmless the Board of County Supervisors Prince William County, Virginia, and their officers, agents, employees, and volunteers, from any and all claims for property damage, personal injuries, and bodily injuries, of any kind whatsoever, including cost of investigation, all reasonable attorney's fees, and the cost of appeals arising out of any such claims or suits, because of any and all acts, errors, and omissions of the Design-Builder, including its agents, Subcontractors, employees, and volunteers, in connection with Work under this Contract.

II.13 Record Maintenance, Retention and Examination of Records

The Design-Builder shall keep full and detailed accounts and exercise such control as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of five (5) years after Final payment, the County and the County's accountants shall be afforded access from time-to-time, upon reasonable notice, to Design-Builder's records, books, and correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda, other data, including, electronic schedules and other electronic data (all collectively referred to as "Books and Records") relating to: (a) changes in the Work performed on a cost basis; or (b) any request by Design-Builder for an adjustment in the Contract Price or Contract Times. Design-Builder shall preserve all of its Books and Records for a period of five (5) years after Final Payment.

The Design-Builder further agrees to include in any subcontract for more than \$10,000 entered into as a result of this Contract, a provision to the effect that the subcontractor agrees that the County or any duly authorized representative shall, until the expiration of five (5) years after final payment under the subcontract, have access to and the right to examine and copy any directly pertinent books, documents, papers and records of such Design-Builder involved in transactions related to such subcontract, or this Contract.

The term "subcontract" as used herein shall exclude subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public. The period of access provided herein for records, books, documents and papers which may relate to any arbitration, litigation, or the settlement of claims arising out of the performance of this Contract or any subcontract shall continue until any appeals, arbitration, litigation, or claims shall have been finally disposed of.

II.14 Ethics in Public Contracting

The Design Builder hereby certifies that it has familiarized itself with Article 6 of Title 2.2 of the Virginia Public Procurement Act, Sections 2.2-4367 through 2.2-4377, Virginia Code Ann., and that all amounts received by it, pursuant to this Contract, are proper and in accordance therewith.

II.15 County Reservation of Rights

All rights to own, lease, sell, assign, transfer, utilize, develop or take advantage of the Reserved Rights are hereby reserved to the County; and the Design-Builder shall not engage in any activity infringing upon the Reserved Rights. The County at any time may devote, use or take advantage of the Reserved Rights for any public purpose without any participation whatsoever by Design-Builder. The County hereby reserves to itself all ownership, development, maintenance, repair, replacement, operation, use and enjoyment of, and access to, the Reserved Rights. No County activity or improvement respecting Reserved Rights shall materially interfere with the design, construction or warranting of the Project.

II.16 Binding Effect

Subject to the limitations of this Contract, this Contract shall be binding upon and shall inure to the benefit of the Parties hereto and their respective legal representatives, successors, and permitted

assigns, and wherever a reference in this Contract is made to any of the parties hereto, such reference also shall be deemed to include, wherever applicable, a reference to the legal representatives, successors and permitted assigns of such Party, as if in every case so expressed.

II.17 Assignment

The Design-Builder may not, without the prior written consent of the County, voluntarily or involuntarily assign, convey, transfer, pledge, mortgage, or otherwise encumber its rights or interests under this Contract or the other Project Agreements.

Any transfer of the right or practical ability to control the policies and decisions of the Design Builder (except transfers occurring after the Final Acceptance Date) whether due to transfer of partnership or membership interests, shares, beneficial interests or otherwise, shall constitute an assignment prohibited under paragraph above without the County's prior written consent.

The County may transfer and assign its interests in the Project, this Contract and to any other public agency or public entity as permitted by law, provided that the successor or assignee has assumed all of the County's obligations, duties and liabilities under this Contract Agreement then in effect, and has provided the Design Builder with reasonable assurance of its legal and financial authority to honor and perform the same.

If any party changes its name, such party agrees to promptly furnish the other parties with written notice of change of name and appropriate supporting documentation.

II.18 Bonds and Insurance

II.18.1 Insurance

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

II.18.2 Performance and Payment Bonds

The Design-Builder shall procure and maintain performance and payment bonds executed by a surety acceptable to the County, 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 Division I Amendments.

II.19 Integration and Signatory

(a) This Design-Build Contract and all related Contract Documents constitutes the entire and exclusive agreement between the Parties relating to the specific matters covered herein and therein. All prior or contemporaneous verbal or written agreements, understandings, representations and/or practices relative to the foregoing are hereby superseded, revoked and rendered ineffective for any purpose. This Contract may be altered, amended or revoked only by an instrument in writing signed by each party hereto, or its permitted successor or assignee.

(b) This Design-Build Contract Agreement attempts to set forth in full all requirements applicable to design, construct, and warrant the Project and attempts to define in full the rights and responsibilities of each Party in connection therewith. To the extent requirements and rights and responsibilities have not been addressed in this Design-Build Contract Agreement, the Parties agree to carry out their respective responsibilities in the spirit of cooperation recognizing that they may not have defined in a sufficient detail or anticipated fully all activities necessary for the full implementation of the Project.

(c) If any provisions of this Design-Build Contract Agreement are rendered obsolete or ineffective in serving their purpose by change in law, passage of time, financing requirements, or other future events or circumstances, the Parties agree to negotiate in good faith appropriate amendments to or replacements of such provisions in order to restore and carry out the original purposes thereof to the extent practicable; provided, however, that neither Party is obligated to agree to any amendment or replacement which would reduce its rights or enlarge its responsibilities under this Agreement in any material respect.

(d) At any time during the Term, any Party hereto:

- (i) shall apply to the other Party hereto for any explanation as may be necessary with respect to the provisions of any Project Agreement, and
- (ii) shall promptly notify the other Party hereto of all errors, omissions, inconsistencies or other defects (including inaccuracies) which it may discover in the Project Agreements, and shall provide written recommendations regarding changes or corrections to resolve any such error, omission, inconsistency or other defect.

II.20 Other Provisions

II.20.1 Project Management and Reporting Requirements

II.20.1.1 Preliminary Schedule. Unless otherwise stated in this Contract, within fifteen (15) calendar days of the Design-Builder's receipt of the County's Notice to Proceed, the Design-Builder shall submit to the County, for its review and approval, a Preliminary Schedule in accordance with Exhibit 11.1 (Special Provisions for Design-Build Schedules). The Preliminary Schedule shall be the basis for monitoring the Design-Builder's performance of the Work until such time as a Baseline Schedule has been approved by the County in accordance with Section II.20.1.2 below. The County reserves the right to withhold approval for all or part of the Design-Builder's Applications of Payment until such time the Design-Builder furnishes an approved Preliminary Schedule.

II.20.1.2 Baseline Schedule. Unless otherwise stated in this Contract, within ninety (90) calendar days of the Design-Builder's receipt of the County's Notice to Proceed, the Design-Builder shall submit to the County, for its review and approval, a Baseline Schedule in accordance with Exhibit 11.1. The County reserves the right to withhold approval for all or part of the Design-Builder's Applications for Payment until such time Design-Builder furnishes an approved Baseline Schedule.

II.20.1.3 Schedule Updates. The Design-Builder shall submit Schedule Updates in accordance with Exhibit 11.1. The County reserves the right to withhold approval for all or part of the Design-Builder's Applications for Payment until such time Design-Builder furnishes an approved Schedule Update.

II.20.1.4 Revised Baseline Schedule. The Design-Builder shall submit a Revised Baseline Schedule when required in accordance with Exhibit 11.1. The County reserves the right to withhold approval for all or part of the Design-Builder's Applications for Payment until such time Design-Builder furnishes an approved Revised Baseline Schedule.

II.20.1.5 Final As-Built Schedule. The Design-Builder shall submit a Final As-Built Schedule in accordance with Exhibit 11.1. The County reserves the right to withhold approval for all or part of the Design-Builder's Applications for Payment until such time Design-Builder furnishes an approved Final As-Built Schedule.

II.20.1.6 Other Information and Alternation. The Design-Builder shall, whenever required by the County, 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 the County and any alterations made shall reflect the requirement for coordination of the Work with the actions and obligations of the County and the work to be carried out by the County's Separate Contractors. If any alteration affects any such actions, obligations or Work, it shall not be made without the prior approval of the County. If the progress of the Work does not conform to the Baseline Schedule, as updated herein, the County may instruct Design-Builder to revise the Baseline Schedule, showing the modifications necessary to achieve completion within the Contract Times.

II.20.1.7 County's Separate Contractors. The Design-Builder agrees to include the activities of the County's Separate Contractors into the Baseline Schedule. The Design-Builder shall reasonably cooperate with the County'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.

II.20.1.8 County's Review and Approval of Schedule Submissions. The County's review and approval of the Preliminary, Baseline Schedule or subsequent Schedule Updates and Revised Baseline Schedule shall not be construed as relieving Design-Builder of its complete and exclusive control and responsibility over the means, methods, sequences and techniques for executing the Work and does not constitute approval or acceptance of Design-Builder's ability to complete the Work within the Contract Time(s).

II.20.1.9 Monthly Reports. Monthly reports shall be prepared by the Design-Builder and submitted to the County 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 the County's determination that the Project has achieved Final Acceptance. Each report shall include:

1. Photographs and detailed descriptions of progress, including each stage of design, right-of-way acquisition, Governmental Approvals including 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 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 narrative;
8. Unresolved claims or disputes that involve requests for extension to the Contract Time(s) or adjustment to any other date or milestone set forth in the Contract Documents or increases in the Contract Price;
9. All required EEO documentation for federal-aid projects;
10. Weekly work zone safety reviews, on the County-provided forms;
11. Erosion & Sediment Control Reports, on the County-provided forms; and
12. Actual quantities for fuel, asphalt and steel on County-provided forms.

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

II.20.1.10 Project Records. The 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 Attachment 11.1.10. If the project record relates to changes in the Work, preferably only one work package shall be referenced in such project record. If a project record relates to multiple work packages, then all related work packages shall be referenced in such project record. As a condition of Final Payment, Design-Builder shall provide the County with a complete set of all project records by and between Design-Builder and the County exchanged on the Project.

II.20.2 Exhibits

II.20.2.1 The following exhibits, as well as any other exhibits specifically set forth in this Contract are made part of and incorporated into this Contract and are included in the RFDP:

EXHIBIT 6.3(a) – ADJUSTMENT FOR ASPHALT

EXHIBIT 6.3(b) – FORM C-16a (PRICE ADJUSTMENT FOR ASPHALT)

EXHIBIT 11.1 – SPECIAL PROVISION FOR DESIGN-BUILD SCHEDULES

EXHIBIT 11.1.10 – EXAMPLE CORRESPONDENCE TRACKING LOG

(Signatures on following page)

BY:

**BOARD OF COUNTY SUPERVISORS
PRINCE WILLIAM COUNTY, VA.**

[INSERT DESIGN-BUILDER]

**County Representative
Ricardo Canizales
Transportation Director**

Authorized Signature

Typed / Printed Name

Title

ATTEST:

Shana Terry, Chief Procurement Officer

County Attorney Office Affix To Form

APPROVED AS TO FORM

County Attorney's Office

Title

SP109-000100-00

Exhibit 6.3(a)

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
ASPHALT MATERIAL PRICE ADJUSTMENT

January 5, 2016; Reissued July 12, 2016

All asphalt material contained in the attached master listing of eligible bid items and designated by pay items in the contract will be price adjusted according to the provisions 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 64S-22 f.o.b. price per ton and an average PG 64E-22 f.o.b. price per 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. The monthly state-wide average price will be posted on the Construction Division website on or about the first weekday of the following month. In the event the average prices were to change by 10 percent or more of the Base Index during the middle of the month the Contractor can submit a letter to the Department and supplier that provides evidence of the difference in price. Upon receipt of the letter consideration will be given to extend additional adjustments as deemed necessary.

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. 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.

Adjustment of any asphalt material other than PG 64S-22 and PG 64E-22 will be based on the indexes for PG 64S-22.

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 the bid proposal.

VIRGINIA DEPARTMENT OF TRANSPORTATION
**MASTER LISTING OF
ASPHALT MATERIAL ITEMS ELIGIBLE FOR PRICE ADJUSTMENT**

ITEM	DESCRIPTION	UNITS	SPECIFICATION
10062	Asphalt-Stab. Open-Graded Material	Ton	313
10416	Liquid Asphalt	Gal	311 312
10420	Blotted Seal Coat Ty. B	SY	ATTD
10422	Blotted Seal Coat Ty. C	SY	ATTD
10423	Blotted Seal Coat Ty. C-1	SY	ATTD
10424	Blotted Seal Coat Ty. D	SY	ATTD
10598	Ns Asphalt Concrete	Ton	315
10603	Asphalt Concrete Ty. SM-19.0A	Ton	315
10604	Asphalt Concrete Ty. SM-19.0D	Ton	315
10605	Asphalt Concrete Ty. SM-19.0E (76-22 or 64E)	Ton	315
10606	Asphalt Concrete Ty. SM-9.5	Ton	315
10607	Asphalt Concrete Ty. SM-12.5A	Ton	315
10608	Asphalt Concrete Ty. SM-12.5D	Ton	315
10609	Asphalt Concrete Ty. SM-12.5E (64E-22)	Ton	315
10610	Asphalt Concrete Ty. IM-19.0A	Ton	315
10611	Asphalt Concrete Ty. IM-19.0D	Ton	315
10612	Asphalt Conc. Base Cr. Ty. BM-25.0	Ton	315
10613	Asphalt Concrete Ty. BM-37.5	Ton	315
10614	Asphalt Concrete Ty. IM-19.0E (76-22 or 64E)	Ton	315
10635	Asphalt Concrete Ty. SM-9.5A	Ton	315
10636	Asphalt Concrete Ty. SM-9.5D	Ton	315
10637	Asphalt Concrete Ty. SM-9.5E (64E-22)	Ton	315
10639	Asphalt Concrete Ty. SM-19.0	Ton	315
10642	Asphalt Concrete Ty. BM-25.0A	Ton	315
10643	Asphalt Concrete Ty. BM-25.0D	Ton	315
10650	Stone Matrix Asphalt SMA-9.5(64H-22)	Ton	317
10651	Stone Matrix Asphalt SMA-9.5(64E-22)	Ton	317
10652	Stone Matrix Asphalt SMA-12.5(64H-22)	Ton	317
10653	Stone Matrix Asphalt SMA-12.5(64E-22)	Ton	317
10654	Stone Matrix Asphalt SMA-19.0(64H-22)	Ton	317
10655	Stone Matrix Asphalt SMA-19.0(64E-22)	Ton	317
10701	Liquid Asphalt Coating	SY	ATTD
12505	Asphalt Concrete Curb Backup Material	Ton	315
13240	Asphalt Concrete Sidewalk	Ton	504
16110	Emul. Asph. Slurry Seal Type A	SY	ATTD

16120	Emul. Asph. Slurry Seal Type B	SY	ATTD
16130	Emul. Asph. Slurry Seal Type C	SY	ATTD
16144	Latex Mod. Emul. Treat. Type B	Ton	ATTD
16145	Latex Mod. Emul. Treat. Type C	Ton	ATTD
16146	Latex Mod. Emul. Treat. Rutfilling	Ton	ATTD
16161	Modified Single Seal	SY	ATTD
16162	Modified Double Seal	SY	ATTD
16249	Nontracking Tack Coat	Gal.	ATTD
16250	Liquid Asphalt Matl. CMS-2 (Mod)	Gal	ATTD
16251	Liquid Asphalt Matl. CMS-2	Gal	ATTD
16252	Liquid Asphalt Matl. CRS-2	Gal	ATTD
16253	Liquid Asphalt Matl. CRS-2H	Gal.	ATTD.
16254	Liquid Asphalt Matl. RC-250	Gal	ATTD
16256	Liquid Asphalt Matl. RC-800	Gal	ATTD
16257	Ns Liquid Asphalt Matl.	Gal	ATTD
16260	Liquid Asphalt Matl. CRS-2L	Gal	ATTD
16325	NS Asphalt Concrete	Ton	N/A
16330	Asphalt Concrete Ty. SM-9.0A	Ton	315
16335	Asphalt Concrete Ty. SM-9.5A	Ton	315
16337	Asph. Conc. Ty. SM-9.5ASL (Spot Level)	Ton	315
16340	Asphalt Concrete Ty. SM-9.5D	Ton	315
16342	Asph. Conc. Ty. SM-9.5DSL (Spot Level)	Ton	315
16345	Asphalt Concrete Ty. SM-9.5E (64E-22)	Ton	315
16350	Asphalt Concrete Ty. SM-12.5A	Ton	315
16352	Asph. Con. Ty. SM-12.5ASL (Spot Level)	Ton	315
16355	Asphalt Concrete Ty. SM-12.5D	Ton	315
16357	Asph. Con. Ty. SM-12.5DSL (Spot Level)	Ton	315
16360	Asphalt Concrete Ty. SM-12.5E (64E-22)	Ton	315
16362	Asphalt Concrete Ty. SM-19.0A	Ton	315
16363	Asphalt Concrete Ty. SM-19.0D	Ton	315
16364	Asphalt Concrete Ty. SM-19.0E (76-22 or 64E)	Ton	315
16365	Asphalt Concrete Ty. IM-19.0A	Ton	315
16370	Asphalt Concrete Ty. IM-19.0D	Ton	315
16371	Asphalt Concrete Ty. IM-19.0E (76-22 or 64E)	Ton	315
16373	Asphalt Concrete Ty. IM-19.0A (T)	Ton	315
16374	Asphalt Concrete Ty. IM-19.0D (T)	Ton	315
16377	Asphalt Concrete Ty. BM-37.5	Ton	315
16379	Asphalt Concrete Ty. IM-19.0T	Ton	315
16390	Asphalt Concrete Ty. BM-25.0A	Ton	315
16392	Asphalt Concrete Ty. BM-25.0D	Ton	315
16395	Asphalt Concrete Ty. BM-25.0A (T)	Ton	315
16397	Asphalt Concrete Ty. BM-25.0D (T)	Ton	315
16400	Stone Matrix Asphalt SMA-9.5(64H-22)	Ton	ATTD
16401	Stone Matrix Asphalt SMA-9.5(64E-22)	Ton	ATTD
16402	Stone Matrix Asphalt SMA-12.5(64H-22)	Ton	ATTD
16403	Stone Matrix Asphalt SMA-12.5(64E-22)	Ton	ATTD
16404	Stone Matrix Asphalt SMA-19.0(64H-22)	Ton	ATTD

16405	Stone Matrix Asphalt SMA-19.0(64E-22)	Ton	ATTD
16490	Hot Mix Asphalt Treatment	Ton	ATTD
16500	Surf.Preparation & Restoration Type I	Ton	ATTD
16502	Surf.Preparation & Restoration Type II	Ton	ATTD
16504	Surf.Preparation & Restoration Type III	Ton	ATTD
67201	NS Asphalt Concrete Overlay	Ton	315
67210	NS Asphalt Concrete	Ton	315
68240	NS Asphalt Concrete	Ton	315

Exhibit 6.3(b)

Form C-16a
August 9, 2013

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
ASPHALT PRICE ADJUSTMENT (PG76-22 or PG 70-28)
DESIGN-BUILD PROJECTS**

INSTRUCTIONS - This form is to be completed and returned ONLY when asphalt concrete items containing PG 76-22 or PG 70-28 is being utilized on the project.

PROJECT NUMBER:

DISTRICT:

Bid Prices in this contract for items containing PG 76-22 or PG 70-28 asphalt cement were developed using an f.o.b.
price of \$_____per **IMPERIAL** ton for **PG 76-22 or PG 70-28**. This quote is project specific.

Price quotes signed by each supplier from which the Design-Builder proposes to obtain PG 76-22 or PG 70-28 shall be maintained by the Design-Builder. 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.)

PRINCE WILLIAM COUNTY DEPARTMENT OF
TRANSPORTATION SPECIAL PROVISION FOR
Design-Build Project Schedule

April 15, 2014

Exhibit 11.1

1. General

Design-Builder shall develop and maintain a project schedule, which shall be used by all involved parties to plan and execute all work required to complete the project. The project schedule will be used by the County to monitor the project, assess progress, and evaluate the effects of time-related issues on the project. The project schedule shall be prepared, maintained, and submitted in accordance with this provision, unless otherwise directed in writing by the County.

- A. **Scheduling Conference** – At the meeting held after the Date of Commencement, Design-Builder shall attend a Scheduling Conference with the County to discuss Design-Builder's overall plan to accomplish the Work; the detail work plan for the initial one hundred and twenty (120) calendar days; and scheduling information, project specific requirements, and other key issues necessary for the preparation, maintenance and submittal of the project schedule.
- B. **Project Scheduler** – For projects with awarded Contract Price of \$35 million or more, Design-Builder shall designate a Project Scheduler for the project and shall submit his/her qualifications for the County's written approval prior to submission of the Preliminary or Baseline Schedule. The Project Scheduler must have at least three (3) years of verifiable experience in successfully preparing and maintaining schedules on large scale projects of similar type and complexity. Design-Builder shall provide current contacts for verification of the Project Scheduler's qualifications and experience. The Project Scheduler shall be primarily responsible for the development and maintenance of the project schedule and shall be present in all scheduling meetings and discussions on major issues concerning the project schedule.

2. Schedule Submission Requirements

- A. **Preliminary Schedule** – Unless otherwise stated in Exhibit 1, within fifteen (15) days of Design-Builder's receipt of the County's Notice to Proceed, Design-Builder shall submit to the County, for its review and approval, a Preliminary Schedule. At its discretion, Design-Builder may submit in lieu of the Preliminary Schedule, a Baseline Schedule according to Section 11.1.4 of the Agreement and Section 2.B below. Until such time as a Baseline Schedule has been approved by the County, Design-Builder shall provide an update of the Preliminary Schedule every month. The Preliminary Schedule will be used to monitor and assess progress of the Work until a Baseline Schedule is approved by the County. The Preliminary Schedule submission shall consist of:
 - 1. **Preliminary Schedule**: A Preliminary Schedule prepared and submitted in the form of a Baseline Schedule as defined herein, showing at a minimum:
 - i) The detailed activities depicting the sequence and dates for any work planned during the first one-hundred and twenty (120) calendar days,

including as applicable project milestones, review by the County, FHWA, and other regulatory agencies; as well as environmental, permits, scope validation period, design, right-of-way, utility, and construction activities.

- ii) Summary level activities depicting the sequence and general timing for work planned after the first one-hundred and twenty (120) calendar days. At Design-Builder's discretion, detailed activities may be shown in lieu of summary level activities.
- iii) Quantities and dollar value of work associated with each activity for which Design-Builder expects to receive payment.
- iv) The project critical path (based on the longest path).

2. **Preliminary Schedule Narrative:** A Preliminary Schedule Narrative describing the Design-Builder's overall plan to accomplish the entire scope of Work and the detailed plan for work planned during the initial one-hundred and twenty (120) calendar days. The narrative shall describe the sequence of work, means and methods, productivity, and other significant scheduling assumptions on which the Preliminary Schedule is based. The narrative shall also describe the project critical path (longest path), work planned during each construction season, and any known or foreseeable issues that may impact the schedule.

3. **Preliminary Earned Value Schedule:** A Preliminary Earned Value Schedule showing Design-Builder's anticipated monthly earnings for the entire Project. The Preliminary Earned Value Schedule shall be prepared using VDOT's Form C-13CPM, which shall be based on monthly costs data generated from the Preliminary Schedule. The Preliminary Earned Value Schedule submission shall include:

- i) An Activity Cost-loading Report (ACR), showing a breakdown of the quantities and costs for each activity. The ACR shall be grouped by pay items and sorted by activity ID showing:
 - a) For each activity the Activity ID, Activity Name, Price/Unit, Budgeted Unit (quantity), Budgeted Cost, Actual Cost, Remaining Cost, and At Completion Cost.

- b) Pay item sub-totals of the budgeted units and costs for associated activities.
- c) The overall total budgeted cost for the Project.
- ii) An Earned Value Schedule using the VDOT Form C-13CPM.

B. Baseline Schedule – Unless otherwise stated in Exhibit 1, within ninety (90) days of Design-Builder’s receipt of the County’s Notice to Proceed, Design-Builder shall submit to the County, for its review and approval, a Baseline Schedule showing the Design-Builder’s initial detailed plan to accomplish the entire scope of the Project according to the Agreement. If the County does not approve such submission, Design-Builder shall revise and resubmit a Baseline Schedule to the County within seven (7) calendar days of its receipt of the County’s comments on such submission. This process shall continue until such time as the County approves a Baseline Schedule. Upon approval of the Baseline Schedule, it will be established as the Project “**Schedule of Record (SOR)**”. The SOR is the official and only schedule with which all parties will plan and execute all work required to complete the Project and against which progress of the Project and the Design-Builder’s performance will be assessed. The Baseline Schedule submission shall consist of:

1. **Baseline Schedule**: A Baseline Schedule depicting the detailed activities required to complete the entire scope of the Project, including as applicable, work to be performed by subcontractors, the County, and other involved parties. The Baseline Schedule shall be prepared according to the following:
 - i) Design-Builder shall prepare and maintain the Baseline Schedule using scheduling software that is capable of meeting all requirements of this provision. Design-Builder’s scheduling software shall be wholly compatible with the County’s scheduling software system and shall have the capability of creating a back-up copy of the working schedule in “XER” format. the County’s scheduling software system is the latest version of Primavera’s Project Management software (currently P6 version 7.0). At the Design-Builder’s request, secured access via the internet may be granted to allow the Design-Builder to develop and maintain its schedule in the County’s scheduling software system. 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.
 - ii) For each schedule submission, the Project ID shall be unique and shall be defined using the Contract ID as a prefix followed by the submission number (i.e. C00012345DB12_B01, C00012345DB12_U01, etc.).

- iii) The project “Must Finish By” date shall be defined with a specified date equal to the “Final Completion” date of the Contract.
- iv) The Baseline Schedule shall be developed using a hierarchical WBS, broken down by major phases of the Project, as applicable (i.e. project milestones, project management, design, public involvement, environmental, right-of-way, utility, and construction, etc.). Each major phase of the Project shall be broken down by phase, stage, or feature, as applicable. Each phase, stage, or feature shall then be further broken down into rational work packages, as applicable.
- v) Each work package shall be broken down into discrete and definable activities, with activity durations generally twenty (20) working days or less. Longer durations may be allowed as approved by the County for certain administrative or level of effort activities that are typically performed over longer periods of time. The Work shall be broken down in sufficient details to identify the phase, stage, feature, type of work, deliverable, and specific location in which the work occurs, including as applicable:
 - a) Project milestones;
 - b) Administrative activities such as key submittals , notifications, and review by the County, FHWA, and other regulatory agencies. Activity durations for submissions and approvals or consents required by the County shall be no less than the County’s minimum review duration identified in Section 3.1 of the General Conditions of Contract;
 - c) Design activities showing all work required to complete each stage of design and deliverable;
 - d) Public involvement activities;
 - e) Scope Validation Period;
 - f) Environmental and permitting activities;
 - g) Right-of-way acquisition activities showing all lots/parcels;
 - h) Utility relocations and adjustments activities broken down by type and specific location;
 - i) Procurement, fabrication, delivery activities of materials;

- j) Construction start-up activities such as mobilization, staging area, surveying, clearing and grubbing, construction access, etc.;
 - k) Maintenance of Traffic activities;
 - l) Construction activities broken down by phase, stage, feature, type of work, and specific location, as applicable;
 - m) Other necessary miscellaneous activities that consume time such as installation and removal of temporary systems or structures such as causeways, shoring, etc.; as well as settlement period, load test, curing, demolition, testing and acceptance period, punch list, clean-up, demobilization, etc.
- vi) Each activity shall be named to identify the phase, stage, feature, type of work, and specific location in which the work occurs, as applicable.
 - vii) Activity calendars shall be assigned using project-level calendars. Use of global calendars is not allowed and shall be cause for rejecting the schedule.
 - viii) Activity codes shall be defined and assigned to the individual activities to allow for filtering, grouping, and sorting of activities by project phase, responsibility, area, phase, stage, feature, work type, Work Orders, DBE, and other major work category, as applicable. Activity codes shall be assigned using project-level activity codes. Use of global activity codes is not allowed and shall be cause for rejecting the schedule.
 - ix) Constraints shall be used sparingly and on a case by case basis, as necessary. Constraints such as “Mandatory Start” or “Mandatory Finish” that violate network logic are not allowed and shall be cause for rejecting the schedule. If the Contract includes a specified start-no- earlier- than milestone, then the Contract milestone activity shall be constrained with a “Start On or After” constraint, with a date equal to the date specified in the Contract. If the Contract includes a specified Interim Milestone or Substantial Completion Milestone, then the Contract interim completion milestone activity or substantial completion milestone activity shall be constrained with a “Finish On or Before” constraint, with a date equal to the date specified in the Agreement.
 - x) The Baseline Schedule shall be cost-loaded and shall be the basis for the monthly progress payments as well as for assessing progress. Each activity associated with a pay item for which Design-Builder expects to receive payment shall be cost-loaded, using the scheduling software “Material” resource type and according to the following:
 - a) A material resource shall be defined for each pay item shown in the

Schedule of Items submitted in the Proposal, or a subsequently revised Schedule of Items approved by the County. Pay item ID codes shall be congruent to the extent possible with the VDOT five-digit standard and non-standard pay item numbers (for example: 00100 – Mobilization).

- b) Each proposed pay item material resource shall indicate the Resource ID, Resource Name, Unit of Measure, and Price/Unit as shown in the Schedule of Items. The pay item material resource ID shall be unique and shall be defined using the Contract ID as a prefix followed by the pay item number (i.e. C00012345DB12.00100).
- c) The “Auto Compute Actuals” and “Calculate costs from units” boxes for each pay item material resource shall be marked.
- d) A project-specific 20-80 resource curve shall be defined in the scheduling software using the Contract ID as a prefix and assigned to each assigned pay item resource to allocate costs to each associated activity over its duration based on the 20-80 earned value progress payment rules, according to Part 4, Article 6, and Section 6.2.
- e) The budgeted units and cost for each assigned pay item resource shall be defined to indicate the quantity and dollar value of work that the activity represents.
- f) The aggregate budgeted units and costs for all activities associated with a pay item shall equal the total quantity and value of the proposed pay item as shown in the Schedule of Items.
- g) The aggregate budgeted costs for all activities shall equal the current total Contract Price. Current total Contract Price will be considered to mean the current Contract amount including the original Contract Price and any approved adjustments for authorized changes to the Work. Anticipated payments or payments for adjustments such as asphalt, fuel, steel, retainage, incentives, disincentives, etc., shall not be included.
- xi) For projects with awarded Contract Price of \$35 million or more, the Baseline Schedule shall be resource-loaded to indicate the labor (manpower), material (re-usable materials), and equipment (machinery or equipment) required to accomplish each activity that represents a major operation. The Baseline Schedule shall be resource-loaded according to the following:
 - a) Project-specific labor resources using “Labor” resource type as

defined in the scheduling software shall be defined and assigned to indicate labor classification, trade, or crew that will perform the work. The labor Resource ID shall be unique and shall be defined using the Contract ID as a prefix followed by a unique code (e.g. C00012345C01.Pipe – Drainage Pipe Crew). Also, the Max Units/Time shall be defined for each labor resource to establish the daily availability limits. Budgeted Units shall be defined for each assignment to establish the total units of time required to perform the activity.

- b) Project-specific material resources using “Material” resource type as defined in the scheduling software shall be defined and assigned to indicate re-usable material that will be used to perform the work. The material Resource ID shall be unique and shall be defined using the Contract ID as a prefix followed by a unique code (e.g. C00012345C01.CF1 – Column Forms Set #1). Also, the Max Units/Time shall be defined for each material resource to establish the daily availability limits. Budgeted Units shall be defined for each assignment to establish the total units of time required to perform the activity.
 - c) Project-specific equipment resources using “Non-Labor” resource type as defined in the scheduling software shall be defined and assigned to indicate equipment or machinery that will be used to perform the work. The non-labor Resource ID shall be unique and shall be defined using the Contract ID as a prefix followed by a unique code (e.g. C00012345C01.CRN – Crane). Also, the Max Units/Time shall be defined for each non-labor resource to establish the daily availability limits. Budgeted Units shall be defined for each assignment to establish the total units of time required to perform the activity.
 - d) Assigned resource calendars shall be defined using the Contract ID as a prefix.
- xii) The project schedule software settings shall be defined according to the following Primavera P6 settings:
- a) Schedule dates shall be shown in the “Month-Day-Year” date format, with 2-digit numbers for the month, day, and year (e.g. 05-01-13).
 - b) Duration type for all activities shall be specified as “Fixed Duration & Units”.

- c) The “Drive activity dates by default” checkbox in the Project Details Resources tab shall be marked.
- d) The “Link Budget and At Completion Cost for not started activities” checkbox in the Project Details Calculation tab shall be marked.
- e) The “Reset Remaining Cost and Units to Original” in the Project Details Calculation tab shall be specified.
- f) The “Subtract Actual from At Completion” under “When updating actual units or costs” in the Project Details Calculation tab shall be specified.
- g) The “Recalculate Actual Units and Cost when duration % complete changes” checkbox in the Project Details Calculation tab shall be marked.
- h) The “Update units when costs changes on resource assignments” checkbox in the Project Details Calculation tab shall be marked.
- i) The “Link Actual and Actual This Period Units and Cost” checkbox in the Project Details Calculation tab shall be marked.
- j) Specify “Retained Logic” in the Scheduling Options dialog box for scheduling progressed activities.
- k) Specify “Longest Path” in the Scheduling Options dialog box for defining critical activities.
- l) Specify “Finish Float = Late Finish – Early Finish” in the Scheduling Options dialog box as the schedule calculation option to compute total float.

xiii) The project schedule shall be calculated using the precedence diagram network logic method (PDM) and the Critical Path Method (CPM). The use of resource-leveling to determine sequence, order, or timing of the activities is not allowed and shall be cause for rejecting the schedule.

2. **Baseline Schedule Narrative:** A Baseline Schedule narrative describing Design-Builder’s overall plan to accomplish the Work, as reflected on the Baseline Schedule including, as applicable:

- i) Project milestones including, as applicable Contract milestones and other key events such as start/finish dates for each major phase or stage of the project, major traffic switches, etc.

- ii) Work to be performed by the County and other involved parties, including when the work must be performed.
 - iii) The proposed overall sequence of Work, including where the work will begin and how the work will progress.
 - iv) A description of the project critical path (based on the longest path).
 - v) Scheduling assumptions including, the proposed means and methods, anticipated daily production rates, and general procedures for accomplishing major operations that are expected to drive the schedule.
 - vi) A log identifying the schedule constraints used in the Baseline Schedule and reason for using each constraint.
 - vii) A description of the project calendar(s) used in the Baseline Schedule, identifying the Calendar ID, standard number of work days per week, number of shifts per day, and number of hours per day as well as the anticipated number of non-working days per month for each calendar with considerations, as applicable, for holidays, normal weather conditions; as well as for seasonal or other known or specified restrictions (i.e. traffic, local events, environmental, permits, utility, etc.).
 - viii) The Contractor's resource plan indicating the number of crews, crew make-up, and major equipment needed to accomplish the Work as planned. The resource plan shall also describe how Design-Builder plans on meeting the resource requirements.
 - ix) A log of the applicable DBE participation activities in the schedule for which the Design-Builder intends to claim credit for attaining the DBE goal required in the Contract. The list shall indicate the proposed start/finish dates and durations of the DBE participation activities.
 - x) Any known or foreseeable issues that may impact the schedule. Also, describe how the issues will impact the schedule and any actions taken or needed to avoid or mitigate the impact.
3. **Baseline Earned Value Schedule:** A Baseline Earned Value Schedule showing Design-Builder's anticipated monthly earnings for the entire Project. The Baseline Earned Value Schedule submission shall include:
- i) An Activity Cost-loading Report (ACR) generated from the Baseline Schedule, showing a breakdown of quantities and costs for each activity. The ACR shall be grouped by pay item and sorted by activity ID showing:
 - a) For each activity the Activity ID, Activity Name, Price/Unit,

Budgeted Unit (quantity), Budgeted Cost, Actual Cost, Remaining Cost, and At Completion Cost.

b) Pay item sub-totals of the budgeted units and costs for associated activities.

c) The overall total budgeted cost for the Project.

ii) An Earned Value Schedule using the VDOT Form C-13CPM, which shall be based on monthly costs data generated from the Baseline Schedule.

C. Schedule Updates – On or before the tenth (10th) day of each month and as part of the monthly reports required by Section II.20.1.2 of Part 3 of the Agreement, Design-Builder shall submit to the County, for its review and approval, an update of the Baseline Schedule (“**Schedule Update**”). The Schedule Update shall reflect the current status of the Project and the plan to complete the remaining work as of the first (1st) day of the month (data date). If the County does not approve such submission, Design-Builder shall revise and resubmit a Schedule Update to the County within seven (7) calendar days of its receipt of the County’s comments on such submission. The Schedule Update submission shall consist of:

1. **Schedule Update**: A Schedule Update showing the as-built status of completed and ongoing activities; as well as the sequence and dates during which the remaining activities are scheduled to be completed as of the data date. The Schedule Update shall be based on the most recent approved Schedule and shall be prepared according to the following:

i) All activities that are completed prior to the current data date shall show actual start and finish dates. All on-going activities shall show actual start dates and remaining duration to indicate the amount of time required to complete the remaining work as of the current data date.

ii) Activity percent complete for on-going activities shall be based on amount of work completed as of the current data date relative to the total amount of work planned.

iii) Actual units and cost for each assigned work item resource shall be updated based on the 20-80 earned value progress rules (i.e. 20% at initiation and 100% at completion), in accordance with Part 4, Article 6, and Section 6.2.

iv) Activity logic shall be modified as necessary to correct out-of-sequence progress for on-going and remaining activities to reflect the Design-Builder’s current plan for completing the remaining work.

- v) The project schedule shall be calculated using the current data date.
2. **Schedule Update Narrative:** A Schedule Update Narrative describing the current status of the project, any deviations from scheduled performance, and any changes in Design-Builder's work plan, and the current work plan for accomplishing the remaining work as of the data date. The Schedule Update Narrative shall include a description of:
- i) The current status of project milestones including a description of any deviations from the date(s) specified in the Contract. If a milestone activity is scheduled to occur later than the date specified in the Contract, provide an explanation stating why the milestone date is forecasted to occur late and any actions taken or proposed to correct the delay.
 - ii) The current status of the Project in terms of progress earnings percent complete based on the actual total earnings to date relative to the current approved Contract value; as well as any progress deficiencies relative to planned progress as indicated on the SOR. If progress is falling behind, describe reasons for the deficiency and any actions taken or proposed to correct the progress deficiency.
 - iii) The project critical path and any deviations from the SOR.
 - iv) The work performed since the previous Schedule Update and any deviations from the work scheduled.
 - v) Any major changes in the Contractor's work plan in terms of sequence of construction, shifts, means and methods, manpower, equipment, or materials.
 - vi) Any changes made to the SOR since the previous submission. A Claim Digger report (or equivalent) may be used to identify the changes.
 - vii) Number of days lost due to adverse weather or other factors during the current update period. Provide a list of the lost days, including a description and start/finish times of the weather event or factor; activities affected and how the activities were affected, and any impacts on the critical path or project milestones. Also, describe any actions taken or proposed to mitigate any resulting delays.
 - viii) The status of pending issues such as access, permits, conflicts with other related or adjacent work, Work Orders, time extension requests, etc.
 - ix) Any problems encountered or anticipated since the previous submission, including an explanation of any corrective actions taken or required to mitigate or avoid the effects.

- x) Work planned for the next update period and any actions needed to be taken by the County or other involved parties.
2. **Schedule Update Earned Value:** A Schedule Update Earned Value showing the actual progress earnings to date and the projected earnings for each remaining month, as of the data date. The Schedule Update Earned Value submission shall include:
- i) An Activity Cost-loading Report (ACR) showing the updated cost data in the current Schedule Update as of the data date.
 - ii) An updated Form C-13CPM showing the actual earnings to date and projected monthly earnings for the remaining periods as of the data date based on cost data generated from the current Schedule Update.
- D. Revised Baseline Schedule** – If the County believes that the Work is being performed significantly different from the SOR, or major modifications in logic, activity duration, manpower, or cost are necessary, or are required to incorporate approved changes in the Work, it will submit a written request to Design-Builder. Design-Builder shall respond in writing within seven (7) days, either agreeing with the County’s proposed revision, and henceforth providing a **“Revised Baseline Schedule”**, as required by the County, or providing justification why the requested revisions should not be accomplished. If revisions cannot be agreed upon either through written correspondence or subsequent meetings, the County and Design-Builder shall agree to attempt to resolve the issues through the dispute resolution process of Article 10 in the General Conditions of Contract. If the County and the Design-Builder cannot agree on the proposed revisions, 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 the County in the Schedule Updates. The Revised Baseline Schedule shall be prepared and submitted in the form of a Baseline Schedule, according to Section 2.B above, except it shall reflect the current status of the completed and on-going activities and actual earnings to date as of the current data date. Upon approval by the County, the Revised Baseline Schedule shall replace any previously approved Baseline Schedule as the SOR for the remainder of the Project.
- E. Final As-built Schedule** – As part of its submission of Final Application for Payment, Design-Builder shall submit the final Schedule Update (**Final As-built Schedule**). The Final As-built Schedule shall show the actual start and finish dates for all activities in the schedule. Design-Builder shall certify in writing that the Final As-built Schedule accurately reflects the dates on which all activities contained in the schedule were actually performed. The Final As-built Schedule shall be submitted in the form of a Schedule Update according to Section II.20.1.5 above.

3. Schedule Submittal Format and Reports

Unless otherwise approved in writing by the County, the Design-Builder shall submit for each Preliminary Schedule, Baseline Schedule, Schedule Update, or Baseline Revision Schedule submission, the following submittal items and reports, in the formats specified below. Each electronic file submittal shall have a unique file name prefixed by the Contract ID to identify the Contract and type, number, item, and data date of the submission (e.g. C00012345DB01_B01_01-01-13.xer, C00012345DB01_B01_Narrative_01-01-13.pdf, C00012345DB01_B01_FormC-13CPM_01-01-13.xlsx, etc.). The submittals shall include.

1. A transmittal letter to the County, identifying the date of submittal and which Schedule is being submitted for review.
2. Two (2) sets of data compact disks (“CD”) containing a backup copy of the working schedule in the Primavera proprietary exchange format (“XER”) file format; as well as other required electronic file submittals as defined in Section 11.1.8.4 below. Each CD shall be labeled to indicate the Contract ID, type of submission, filename, and data date.
3. Two (2) sets of paper copies of the following schedule reports:
 - i) Schedule calculation log.
 - ii) A legible time-scaled bar-chart plot of the Schedule, organized by WBS, to show for each activity the Activity ID, Activity Name, Original Duration, Remaining Duration, Start and Finish dates, Activity Percent Complete, and Total Float. The bar-chart plot shall identify the project critical path (longest path).
4. Electronic file copies by email of the following:
 - i) A backup copy of the working schedule in “XER” file format.
 - ii) A copy of the time-scaled bar-chart plot of the project schedule in “PDF” file format.
 - iii) A tabular Predecessor and Successor Report (PSR) in “PDF” file format to show the predecessors and successors for each activity. The PSR shall be sorted by WBS and in ascending order by Activity ID and shall show for each activity:
 - a) Activity ID;
 - b) Activity Name;
 - c) Original Duration;
 - d) Remaining Duration;
 - e) Early Start;

- f) Early Finish;
 - g) Late Start;
 - h) Late Finish;
 - i) Free Float;
 - j) Total Float;
 - k) Critical (“Yes” or “No”);
 - l) For each predecessor/successor activity, show the Activity ID, Activity Name, Relationship Type, Lag, Free Float, Total Float, Driving (“Yes” or “No”), and Critical (“Yes” or “No”).
- iv) A copy of the schedule narrative in “PDF” file format.
 - v) A copy of the Activity Cost-loading Report (“ACR”) in “PDF” file format.
 - vi) A working file copy of the Earned Value Schedule (Form C-13CPM) in “xls” or “xlsx” file format.
 - vii) A copy of the Earned Value Schedule S-Curve in “PDF” file format.

4. Monitoring the Work and Assessing Progress

The County will monitor the Work regularly and assess progress of the Work monthly relative to the SOR to identify deviations from Design-Builder’s scheduled performance and to determine if progress is satisfactory according to the following:

A. Monthly Progress Meetings – At the monthly progress meeting held in accordance with Part 4 General Conditions, Article 2, Section 2.1.8, Design-Builder shall furnish a detailed 4-week look-ahead schedule based on the current schedule update and shall discuss the current status of the project, on-going work, and work planned for the following four (4) weeks.

B. Progress Evaluation – Progress will be evaluated by the County at the time of the monthly progress pay application on the basis of the Design-Builder’s latest approved Schedule Update. The Design-Builder’s actual progress will be considered unsatisfactory if any of the following conditions occur:

- i) The actual total earnings percentage for work completed to date, based on the current Pay Application, falls behind the anticipated cumulative late earnings percentage indicated in the SOR by one (1) percent or more.
- ii) The current projected completion date of a Contract milestone is more than fourteen (14) days after the milestone completion date specified in the Agreement, as applicable.
- iii) The current calculated completion date of the project is more than thirty (30) days after the lattermost of the Final Completion date or its extension.

C. Progress Deficiency and Schedule Slippage – When a monthly progress evaluation shows that the actual progress of the Work is unsatisfactory, the County will issue a written notice of unsatisfactory performance to the Design- Builder. Within 14 days from the date of receipt of the County’s notice, Design-Builder shall respond by submitting a written statement describing any actions taken or proposed by the Design-Builder to correct the progress deficiency. If the Design-Builder’s response includes a proposed recovery plan, the current progress schedule update shall be modified accordingly to show the Design-Builder’s proposed recovery plan. Design-Builder may submit to the County a written explanation and supporting documentation to establish that such delinquency is attributable to conditions beyond its control. If the County approves the Design-Builder’s recovery plan, the modified progress schedule update showing the recovery plan will be treated as the current update and will not replace the SOR.

If the Design-Builder fails to respond within the time required, or the response is unacceptable, its prequalification status may be changed as provided in Section 102.01 of Part 5, and the Design-Builder may be temporarily disqualified from bidding on contracts with the County as provided in Section 102.08 of Part 5, if progress remains unsatisfactory at the time of preparation of the next monthly progress estimate. The County may postpone taking these actions when a time extension is under consideration.

5. Schedule Impact Analysis (SIA)

In the event of an excusable delay that extends the completion date of the project beyond the Final Completion date, for which Design-Builder is seeking an extension of the contract time limit, it shall submit a request for an adjustment to the Agreement within the time period specified in Article 8 of Part 4 – General Conditions, unless directed otherwise in writing by the County. For requests for prospective changes or delays Design-Builder shall prepare and submit a SIA based on the TIA method. For requests for other delays Design-Builder shall prepare and submit a SIA based on the Contemporaneous Impact Analysis method. The Design-Builder shall submit along with its request for an adjustment to the Contract a SIA statement and applicable SIA schedules in accordance with the following:

1. SIA Statement – The SIA statement shall include the following.

- i) A description of the delay event, including time, date, and location of the event, if appropriate.
- ii) An explanation of why the delay constitutes a change to the Agreement, including references to applicable portions of the Contract.
- iii) A description of the activities or work items affected and any impact on the

project critical path, milestones, or completion date of the project, as applicable.

- iv) A description and reasons for any shifts in the project critical path relative to the preceding schedule update for each schedule update contemporaneous with the delay event, as applicable.
- v) A description and reasons for any revisions made to the SIA schedules since the previous submission, including added or deleted activities, and changes in logic, activity durations, calendars, and constraints.
- vi) A SIA summary showing for each SIA schedule as described herein, the data date and calculated completion dates for all applicable milestones and the project completion date. The SIA summary shall also show any differences in the calculated finish dates for each successive SIA schedule relative to the previous SIA schedule. Any schedule slippages shall be categorized appropriately as excusable compensable, excusable non-compensable, or non-excusable.
- vii) Any actions taken or needed to avoid or mitigate the delay impacts.
- viii) Any additional information needed to justify the request or facilitate timely resolution of the issue.

2. SIA Schedules – The SIA submission shall include as applicable:

- i) The SOR in place prior to the date the delay event started, showing the project critical path, affected activities, and any applicable milestones.
- ii) The most recently accepted project schedule update in place prior to the date the delay event started, showing the affected activities, project critical path, and any applicable milestones, including any variances in the durations and completion dates relative to the SOR.
- iii) A pre-delay schedule update showing the current status of the affected activities, project critical path, and any applicable milestones, including any variances in the durations and completion dates relative to the most recently accepted project schedule update in place prior to the date the delay event started.
- iv) Any contemporaneous project schedule updates submitted during the delay event showing the current status of the delay event, affected activities, project critical path, and any applicable milestones, including any variances in the durations and completion dates relative to the previous submission.
- v) A post-delay impacted schedule, showing the current status of the delay event, affected activities, project critical path, and any applicable milestones, including any variances in the durations and completion dates relative to the previous submission.

Exhibit 11.1.10
Correspondence Tracking Log for Project Records

Project: XYZ Project

Project:

CONTRACT ID #:

	CORR	Correspondence						
	EMAIL	Email						
	MEET	Meeting Minutes						
	MEMO	Memo (Internal)						
	MISC	Miscellaneous Files						
ID Number	Process	Description / Issue	Pay Package Reference	Date Received or Sent	From	To	Status (Open/Closed)	Record File Location Or Insert Hyperlink (ctrl + k)
C0001111DB00-1	CORR	VDOT to Design-Builder - Notice of Intent Letter	n/a	5/9/2007	VDOT	Design-Builder	Closed	
C0001111DB00-2	CORR	Performance and Payment Bonds	n/a	5/11/2007	Design-Builder	AAA	Closed	
C0001111DB00-3	CORR	Certificate of Insurance	n/a	5/15/2007	Design-Builder	CCC	Closed	
C0001111DB00-4	CORR	SWPP Certification Permit	n/a	5/15/2007	Design-Builder	Design-Builder	Closed	
C0001111DB00-5	CORR	C112 - Binding Agreements	n/a	5/17/2007	Design-Builder	BBB	Closed	
C0001111DB00-6	CORR	VDOT Request for Design-Builder Preconstruction Meeting	n/a	6/9/2007	VDOT	Design-Builder	Closed	
C0001111DB00-7	CORR	Design-Builder to VDOT - Escrow Document Review Meeting	n/a	6/15/2007	Design-Builder	VDOT	Closed	
C0001111DB00-8	CORR	VDOT to Design-Builder - CTB Award	n/a	6/21/2007	VDOT	Design-Builder	Closed	
C0001111DB00-9	MISC	Design-Builder Questions Regarding Final Contract Document Timeline	n/a	6/22/2007	Design-Builder	VDOT	Closed	
C0001111DB00-10	CORR	Design-Builder to VDOT - Preconstruction Meeting	n/a	7/17/2007	Design-Builder	VDOT	Closed	
C0001111DB00-11	CORR	VDOT to Design-Builder - Final Contract Documents	n/a	7/18/2007	VDOT	Design-Builder	Closed	
C0001111DB00-12	MEET	Preconstruction Meeting Minutes	n/a	7/23/2007	Design-Builder	VDOT	Closed	
C0001111DB00-13	CORR	VDOT to Design-Builder - Notice to Proceed	n/a	8/2/2007	VDOT	Design-Builder	Closed	
C0001111DB00-14	CORR	Design-Builder to VDOT Permit Application Request	1	8/2/2007	Design-Builder	VDOT	Closed	
C0001111DB00-15	EMAIL	Geotechnical Investigations - Preliminary Data	2	8/8/2007	Design-Builder	Design-Builder	Closed	
C0001111DB00-16	CORR	Design-Builder to VDOT - Flood Plain Study Inquiry	3	8/9/2007	Design-Builder	VDOT	Closed	
C0001111DB00-17	CORR	Payment Requisition # 1 - First submission	1,2,3	8/10/2007	Design-Builder	VDOT	Closed	
C0001111DB00-18	CORR	Payment Requisition # 1 - Second submission	1,2,3	8/13/2007	Design-Builder	VDOT	Closed	
C0001111DB00-19	MEMO	VDOT Acknowledgement of Receipt of Preliminary Roadway Plans	4	8/14/2007	VDOT	Design-Builder	Closed	
C0001111DB00-20	MEMO	VDOT to Design-Builder - ROW Plan Submittal 1 Comments	5	8/22/2007	VDOT	Design-Builder	Closed	
C0001111DB00-21	CORR	VDOT ID Outstanding Issues to Design-Builder	5	8/24/2007	VDOT	Design-Builder	Closed	
C0001111DB00-22	CORR	VDOT to Design-Builder - Comments Regarding Preliminary Roadway Plans	4	9/5/2007	VDOT	Design-Builder	Closed	
C0001111DB00-23	CORR	Payment Requisition # 2	4,5	9/10/2007	Design-Builder	VDOT	Closed	
C0001111DB00-24	MEMO	NVRPA Comments - Bridge Details	6	9/16/2007	NVRPA	Design-Builder	Closed	
C0001111DB00-25	CORR	Design-Builder to VDOT - Outstanding Issues	n/a	9/18/2007	Design-Builder	VDOT	Closed	
C0001111DB00-26	CORR	FWD: FOIA Request Mrs. Smith	n/a	9/20/2007	VDOT	Design-Builder	Closed	
C0001111DB00-27	CORR	FOIA Response to Mrs. Smith	n/a	9/23/2007	Design-Builder	VDOT	Closed	
C0001111DB00-28	MEMO	Memo to File - Reporting Requirements	n/a	9/25/2007	DDD	File	Closed	
C0001111DB00-29	CORR	Conflict of Interest Request for Determination	n/a	9/27/2007	OAG	VDOT	Closed	
C0001111DB00-30	CORR	VDOT Acknowledgement of Receipt of Final Roadway Plans	7	10/4/2007	VDOT	Design-Builder	Closed	
C0001111DB00-31	CORR	Payment Requisition # 3	6,7	10/10/2007	Design-Builder	VDOT	Closed	
C0001111DB00-32	CORR	VDOT to Design-Builder - Comments Regarding Final Roadway Plans	7	10/17/2007	VDOT	Design-Builder	Closed	
C0001111DB00-33	MEET	Permit Coordination Meeting Minutes	8	10/26/2007	VDOT	Design-Builder	Closed	
C0001111DB00-34	CORR	Town of Leesburg Comment - Utility Relocation Plans	9	10/27/2007	Design-Builder	VDOT	Open	

PART 4

2016 General Conditions of Contract

Between

The County and Design-Builder

(Date of Standard General Conditions: November 2016)

Table of Contents

Article 1: General	1
Article 2: Design-Builder’s Services and Responsibilities.....	4
Article 3: The County’s Services and Responsibilities	14
Article 4: Hazardous Environmental Conditions and Differing Site Conditions	16
Article 5: Insurance and Bonds	20
Article 6: Payment.....	20
Article 7: Indemnification	24
Article 8: Time	26
Article 9: Changes to the Contract Price and Time	29
Article 10: Contract Adjustments and Disputes	31
Article 11: Stop Work and Termination for Cause.....	32
Article 12: Miscellaneous.....	36

Article 1 **General**

1.1 Mutual Obligations

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

1.2 Basic Definitions

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

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

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

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

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

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

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

Contractor shall mean Design-Builder.

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

The County's Project Criteria are developed by or for the County to describe the County'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. The County's Project Criteria are included in the Request for Proposals and may include conceptual documents, design criteria, performance requirements and other project-specific technical materials and requirements.

Design Consultant is a qualified, licensed design professional, eligible to provide professional engineering and/or land surveying services in the Commonwealth of Virginia, who is

not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder or Subcontractor, to furnish design services required under the Contract Documents.

Engineer shall mean the County's Project Manager, who acts directly or through his/her duly authorized representative, the representative acts within the scope of the particular duties assigned to him or the authority given to him.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

State means the Commonwealth of Virginia.

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

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

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

Substantial Completion refers to when the relocated Route 234 Interchange is open to traffic, in accordance with the construction contract documents, so that the County may use or occupy the opened roadways for the intended purpose.

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

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

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

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

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

Article 2

Design-Builder's Services and Responsibilities

2.1 General

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

2.1.2 Design-Builder will attend a kick-off meeting with the County 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. The County will notify Design-Builder of the time and location of the kick-off meeting. All Design-Builder's Key Personnel shall participate in this kick-off meeting.

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

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

2.1.5 Design-Builder shall provide management for the Work in accordance with the organization chart set forth in the Proposal. Design-Builder acknowledges the importance of its "Key Personnel". "Key Personnel" shall include Design-Builder's Representative, Design-Build Project Manager, Design Manager, QA Manager, Construction Manager, and any other positions specifically identified in the RFQ, RFDP and/or the Proposal as "Key Personnel" (collectively, "Key Personnel"). Job duties and responsibilities of Key Personnel shall not be delegated to others for the duration of the Contract. Design-Builder shall not change or substitute any Key Personnel except due to voluntary or involuntary termination of employment, retirement, death, disability, or incapacity. None of the Key Personnel may be withdrawn from the Project without prior written approval of the County, with it being understood and agreed that Design-Builder will provide the County with at least thirty (30) days written notice of any request to withdraw any Key Personnel. The County will have the right to review the qualifications of each individual to be appointed to a Key Personnel position and to approve or disapprove use of such individual in such position prior to the commencement of any Work by such individual. Design-Builder shall remove or replace, or have removed or replaced, any personnel performing the Work if the County 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 RFDP Conceptual Plans included in Part 2 (Project Technical Information and Requirements), such deviations will be subject to the County's prior written approval. It will be the responsibility of Design-Builder to coordinate directly with the affected property owners to acquire such right-of-way. Design-Builder shall be responsible for assuming all risks associated with exceeding such right-of-way limits, including any public hearings and any NEPA document re-evaluation that may be required, and no modifications to the Contract Price or Contract Time(s) will be granted or considered.

2.1.7 Design-Builder shall submit its QA/QC Plan to the County for review and approval at the kick-off meeting referenced in Section 2.1.2 above. At the kick-off meeting, Design-Builder's

Design Manager and QA Manager shall provide a presentation of the QA/QC Plan for design and construction, using project-related scenarios

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

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

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

2.2 Scope Validation and Identification of Scope Issues

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

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

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

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

2.2.5 Design-Builder’s Assumption of Risk of Scope Issues. The Parties acknowledge that the purpose of the Scope Validation Period is to enable Design-Builder to identify those Scope Issues that could not reasonably be identified prior to the Agreement Date. By executing this Agreement,

Design-Builder acknowledges that the Scope Validation Period is a reasonable time to enable Design-Builder to identify Scope Issues that will materially impact Design-Builder's price or time to perform the Work. After the expiration of the Scope Validation Period, with the sole exception of those Scope Issues made the subject of a General Notice during the Scope Validation Period and subject to valid requests for Work Orders in accordance with Section 2.2.3 above, the Parties agree as follows:

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

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

2.2.7 Failure of Technical Proposal to Meet Requirements of the Contract Documents. Notwithstanding anything to the contrary in this Section 2.2 or elsewhere in the Contract Documents, the County shall have no responsibility in the event Design-Builder's Proposal fails to meet the requirements of the Contract Documents, regardless of whether: (a) the County modified the RFDP Documents to permit Design-Builder to implement a technical approach; (b) the County accepted Design-Builder's Proposal; or (c) any other action or inaction of the County is alleged by Design-Builder.

2.3 Design Professional Services

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

2.3.2 No Design Consultant is intended to be, nor shall any Design Consultant be deemed to be, a third-party beneficiary of this Agreement. The County 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 the County, assign such contracts to the County.

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

2.4 Design Development Services

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

2.4.2 Design-Builder shall, consistent with any applicable provision of the Contract Documents, provide the County with ten (10) sets of the following interim design submissions, in accordance with Part 2 (Project Technical Information and Requirements). The submissions should generally correspond to the County'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 the County may require. On or about the time of the scheduled submissions, Design-Builder and the County 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, the County 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 the County revised submittals for review and comment (and approval as the case may be).

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

accordance with the approved Released for Construction Plans and shall submit the approved Released for Construction Plans to the County prior to commencement of Work in accordance with Part 2 (Project Technical Information and Requirements).

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

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

2.5 Legal Requirements

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

2.5.2 Design-Builder may request, by submission of a Work Order request, that the Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the Agreement Date, affecting the performance of the Work. Such effects may include, without limitation, revisions Design-Builder is required to make to the Released for Construction Plans because of changes in Legal Requirements. Notwithstanding anything to the contrary, the relief afforded by this Section 2.5 shall not apply to changes in any tax laws, with Design-Builder bearing the risk of such changes.

2.6 Governmental Approvals

2.6.1 The 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 the County, Design-Builder shall undertake all efforts to obtain such Governmental Approvals subject to the County's reasonable cooperation with Design-Builder, including execution and delivery of appropriate applications and other documentation in forms approved by the County. Design-Builder shall deliver to the County, 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 the County in obtaining those Governmental Approvals that are the County'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) the County has been notified that such Governmental Approvals have been obtained; and (iii) the County has, after reviewing the validity and scope of the Governmental Approval, authorized Design-Builder to proceed.

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

2.7 Design-Builder's Construction Phase Services

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

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

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work lawfully in the Commonwealth of Virginia and consistent with the Contract Documents. Design-Builder shall not use any Subcontractor to whom the County has a reasonable objection, and shall obtain the County's written consent before making any substitutions or additions to Subcontractors previously identified to the County 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 the County 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 the County 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 the County performs other work on the Project or at the Site with Separate Contractors under the County's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such Separate Contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

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

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

2.8 Design-Builder's Responsibility for Project Safety

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

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

2.8.3 Design-Builder and Subcontractors shall comply with: (i) all Legal Requirements relating to safety; (ii) Design-Builder's HS&W plan; and (iii) any the County-specific safety requirements set forth in the Contract Documents, provided that such the County-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 the County's Representative and, to the extent mandated by Legal Requirements, to all Governmental Units having jurisdiction over safety-related matters involving the Project or the Work.

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

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

2.9 Design-Builder's Warranty

2.9.1 Design-Builder warrants to the County 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 the County with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide the County with all manufacturers' warranties upon Final Acceptance.

2.10 Correction of Defective Work

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

2.10.2 Design-Builder shall, within seven (7) days of receipt of written notice from the County 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, the County, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that the County will commence correction of such nonconforming Work with its own forces. If the County does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by the County 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 the County may have regarding Design-Builder's other obligations under the Contract Documents.

2.11 The County's Rights to Direct Design-Builder

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

Article 3

The County's Services and Responsibilities

3.1 Duty to Cooperate

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

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

3.2 Furnishing of Services and Information

3.2.1 The County has provided RFDP Information Documents in Part 2 of the RFDP 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, the County shall consider such issues in accordance with Section 2.2 above.

3.3 Financial Information

3.3.1 At Design-Builder's request, the County shall promptly furnish reasonable evidence satisfactory to Design-Builder that the County has adequate funds available and committed to fulfill all of the County's contractual obligations under the Contract Documents. If the County

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 the County's lenders or other financial sources. Notwithstanding the preceding sentence, after the Agreement Date, Design-Builder shall have no obligation to execute for the County or the County'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 The County's Representative

3.4.1 The County's Representative shall be responsible for providing County-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. The County'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 The County shall provide reasonable assistance to Design-Builder in obtaining those Governmental Approvals that are Design-Builder's responsibility.

3.6 The County's Separate Contractors

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

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

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

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

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

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

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

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

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

Article 4

Hazardous Environmental Conditions and Differing Site Conditions

4.1 Hazardous Environmental Conditions

4.1.1 General Obligations

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

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

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

.4 Before any Remedial Actions for Unknown Pre-Existing Hazardous Materials are taken that would inhibit the County's ability to ascertain the nature and extent of the Hazardous Environmental Condition, Design-Builder will afford the County the opportunity to inspect areas and locations that require Remedial Actions; *provided*, that in the case of a sudden release of any Unknown Pre-Existing Hazardous Materials, Design-Builder may take all reasonable actions necessary to stabilize and contain the release without prior notice or inspection, but will promptly notify the County of the sudden release and its location.

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

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

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

4.1.2 Pre-Existing Hazardous Materials

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

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

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

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

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

4.1.3 Design-Builder's Indemnification Obligations Regarding Hazardous Materials

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

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

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

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

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

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

4.2 Inspection of Site Conditions

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

4.2.2 Design-Builder will, after its receipt of the County's Notice to Proceed, undertake such testing, inspections and investigations as may be necessary to perform its obligations under the Contract Documents, including but not limited to additional geotechnical evaluations or Hazardous Materials studies. If Design-Builder intends to conduct additional geotechnical evaluations to supplement or corroborate the information contained in the RFDP Documents, it shall do so during the Scope Validation Period. Any Scope Issues that arise from such evaluations shall be treated in the manner set forth in Section 2.2 above. All reports or analyses generated by Design-Builder's testing, inspections and investigations, including but not limited to additional geotechnical testing, shall be furnished to the County 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 RFDP 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 the County of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

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

Article 5 **Insurance and Bonds**

5.1 Design-Builder's Insurance Requirements

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

5.2 Bonds and Other Performance Security

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

5.2.2 If Design-Builder is structured as a limited liability company, partnership or joint venture, the bonding approach used will ensure that the members of such organizations will have joint and several liability for the performance of the Work required for the Project. A single 100% performance bond and a single 100% payment bond shall be provided regardless of any co-surety relationship.

Article 6 **Payment**

6.1 Schedule of Payments

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

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

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

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

6.2 Monthly Progress Payments

6.2.1 On the tenth (10th) day of each month, Design-Builder shall submit for the County's review and approval its Application for Payment requesting payment for all Work performed as of the first day of such month and coinciding with the progress reflected in the monthly Baseline Schedule update. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.2 hereof. Payment shall be made in accordance with the following earned value calculation:

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

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

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

.2 QA/QC shall be an integral part of each activity. As part of each Application for Payment that includes completed activities, Design-Builder shall submit with the Application for Payment evidence of the QA/QC reviews, including any checklists, summary data, high-level/outline calculations or design checks, and evaluations of the work and the qualifications of the responsible personnel that completed the work, etc., that the relevant QA or QC reviewer relied on to make its determination the Work is complete and conforms to the requirements of the Contract Documents. Furthermore, the QAM shall: (a) verify that the design included in each activity has been completed in accordance with the Contract Documents; (b) certify that the construction included in each activity has been completed in accordance with the Contract Documents; and (c) certify that all required QA/QC tests, measurements, permits or other requirements have been completed and all non-conformance reports relative to the respective

activity have been resolved. The QAM's certification for monthly Application of Payment for construction activities shall include the following statement: *As the Quality Assurance Manager, I certify, to the best of my knowledge, information and belief based upon and to the extent of: (i) current on-site observations and field testing required to be performed; and (ii) material certifications and test reports, that each Work Package shown herein as complete has been completed in accordance with the Contract Documents, and that all required QA/QC tests, measurements, permits or other requirements have been completed and all non-conformance reports relative to a respective Work Package have been resolved except for the attached list of open issues.*

6.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that: (i) the County, in its sole discretion, agrees that it is willing to allow payment for such equipment and materials; (ii) the County 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, the County 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 the County 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, the County shall pay Design-Builder all amounts properly due. If the County 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 the County intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify the County's concerns. Design-Builder and the County will attempt to resolve the County'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, the County 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 the County 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 the County 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 the County against any claims for payment and mechanic's liens as set forth in Section 7.2.1 hereof.

6.6 Acceptance

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

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

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

.1 an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect the County'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 the County and remaining unsettled at the time of final payment, which claims shall be specifically listed in an attachment to the general release;

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

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

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

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

Article 7 **Indemnification**

7.1 Patent and Copyright Infringement

7.1.1 Design-Builder shall defend any action or proceeding brought against any County 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 County 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 County Indemnitees from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against County Indemnitees or Design-Builder in any such action or proceeding. Design-Builder agrees to keep the County Indemnitees informed of all developments in the defense of such actions.

7.1.2 If a County 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 the County and not offered or recommended by Design-Builder to the County; or (ii) arising from modifications to the Work by the County after acceptance of the Work.

7.2 Payment Claim Indemnification

7.2.1 Providing that the County 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 County

Indemnitees from any claims or mechanic's liens brought against any County Indemnatee or against the Project as a result of the failure of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from a County Indemnatee that such a claim or mechanic's lien has been made and/or filed, Design-Builder shall commence to take the steps necessary to resolve and/or discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, the County Indemnatee will have the right to resolve and/or discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.3 Design-Builder's General Indemnification

7.3.1 Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend County Indemnitees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for: (i) bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable; and (ii) any violation of Sections 2.5, 2.6, or 2.8 hereof by Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

7.3.2 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable, has a claim against a County Indemnatee, 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 the County 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 the County has received asserting such claim and (iii) notify Design-Builder that either: (a) the defense of such claim is being tendered to Design-Builder; or (b) the County 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 the County 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 the County 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 County Indemnitees, subject to reasonable approval of the County 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 the County of the progress of the defense and of any settlement discussions; and (ii) the County shall, at Design-Builder’s expense for all of the County’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 the County and maintain the confidentiality of all communications between it and Design-Builder concerning such defense to the extent allowed by law.

7.4.5 The County 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) the County, at the time it gives notice of the claim or at any time thereafter, reasonably determines that: (a) a conflict exists between it and Design-Builder which prevents or potentially prevents Design-Builder from presenting a full and effective defense; or (b) Design-Builder is otherwise not providing an effective defense in connection with the claim and Design-Builder lacks the financial capability to satisfy potential liability or to provide an effective defense. The County may assume its own defense pursuant to the above by delivering to Design-Builder written notice of such election and the reasons therefore.

7.4.6 If the County 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 the County is entitled to and elects to conduct its own defense, then it shall have the right to settle or compromise the claim with Design-Builder’s prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court, and with the full benefit of Design-Builder’s indemnity. Notwithstanding the foregoing, if the County elects to conduct its own defense and it is later determined that no indemnification obligation existed as to the particular claim, the County shall pay its own costs and expenses relating thereto. In addition, if the County elects to conduct its own defense because it perceives a conflict of interest, the County 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 the County may consider for an extension of the Contract Time(s) include acts or omissions of the County or anyone under the County'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 the County, including the events of wars, floods in excess of the base flood (as defined in the Division 1 Amendment), hurricane force wind, tornados, labor disputes, and earthquakes that cause ground accelerations in excess of AASHTO bridge design standards for the Site.

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

8.2.4 Should the County 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, the County has the right, but not the obligation, to so notify Design-Builder, and Design-Builder shall then work additional overtime, engage additional personnel and take such other measures as necessary to complete the Work within the Contract Time(s). Design-Builder shall bear all costs related to such

overtime, additional personnel and other measures.

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

8.3 Schedule Impact Analysis for Proposed Time Extensions

8.3.1 If Design-Builder claims that any event, including but not limited to a change in the Work, justifies an extension to the Contract Time(s), Design-Builder shall submit to the County a written Schedule Impact Analysis (SIA) in accordance with Exhibit 11.1 of the Agreement. Upon approval by the County, 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 the County or Design-Builder, but rather shall be used for the benefit of the overall Project. Activity splitting or float suppression techniques will not be permitted. Extension of the Contract Time(s) will be granted only to the extent the equitable time adjustments to the activity or activities affected by the event exceeds the total float of a critical activity or path and extends the Contract Time(s).

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

- .1** Within seven (7) days after receipt of a written change order.
- .2** Within ten (10) days from the beginning of any other event claimed to give rise to a delay.
- .3** Within the time period required for the filing of a written notice of claim pursuant to Article 10 Contract Adjustments and Disputes.

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

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

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

change order.

Article 9

Changes to the Contract Price and Time

9.1 Change Orders

9.1.1 A **Change Order (work order)** is issued after the Agreement Date signed by the County 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 Change Order shall be performed under the applicable conditions of the Contract Documents. The County and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

9.1.3 If the County requests a proposal for a change in the Change from Design-Builder and subsequently elects not to proceed with the change, a Change 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 the County, 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 The County 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 Change Order reflecting the terms of the agreement.

9.2.3 The County may issue a CCD by unilateral Change Order using the form provided by the County, subject further to the terms of Section 9.4.1.3.

9.3 Minor Changes in the Work

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided,

however that Design-Builder shall promptly inform the County and the QAM, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments

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

.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 the County;

.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 the County 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 the County or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted. Design-Builder shall bear the burden of proving that there is a substantial inequity in the unit rates.

9.5 Emergencies

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

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief

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

10.2 Dispute Avoidance and Resolution

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes and disagreements. If disputes or disagreements do arise, Design-Builder and the County 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 the County 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 the County's Representative. If the dispute or disagreement cannot be resolved through Design-Builder's Representative and the County's Representative, Design-Builder's Senior Representative and the County's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than forty-five (45) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving the dispute or disagreement. If the Senior Representatives determine that the dispute or disagreement cannot be resolved to the mutual satisfaction of both parties, despite their best efforts, then Design-Builder's sole remedy shall be to pursue the processes set forth in VA. CODE §33.1-386 and §33.1-387.

10.3 Duty to Continue Performance

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

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 THE COUNTY 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 the County for some damages that might otherwise be deemed to be consequential.

Article 11

Stop Work and Termination for Cause

11.1 The County's Right to Stop Work

11.1.1 The County 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 the County, by requesting a Work Order.

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

11.2 The County's Right to Perform and Terminate for Cause

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

- .1 begin the Work upon receipt of the County's Notice to Proceed;
- .2 provide a sufficient number of skilled workers, equipment, or supply the materials required by the Contract Documents;
- .3 comply with applicable Legal Requirements;
- .4 timely pay, without cause, Design Consultants or Subcontractors;
- .5 prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted; or
- .6 perform material obligations under the Contract Documents;

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

11.2.2 If any of the conditions set forth in Section 11.2.1 above exists, the County 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 the County, then the County 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, the County shall have the right, among other things, to terminate this Agreement for default.

11.2.3 Upon terminating this Agreement for default, the County 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 the County 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 the County, upon the County's written demand that it do so. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until Final Completion. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by the County in completing the Work, such excess shall be paid by the County to Design-Builder. If the County'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 the County. 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 the County in connection with the procurement 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 the County 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 The County 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 The County's failure to provide financial assurances as required under Section 3.3 hereof; or

.2 The County'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 the County with written notice that Design-Builder will stop work unless said event is cured within ten (10) days from the County's receipt of Design-Builder's notice. If the County 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 the County 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 The County's failure to provide Design-Builder with any information, permits or approvals that are the County'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 the County has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

.3 The County'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 the County that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within ten (10) days of the County's receipt of such notice. If the County fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to the County of its intent to terminate within an additional ten (10) day period. If the County, 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 the County of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if the County 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 the County'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 the County, 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, the County shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the County 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 the County 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 the County 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 the County (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 the County 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 the County to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

12.6 No Third-Party Beneficiary Status

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

12.7 Headings

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

12.8 Notice

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

12.9 Amendments

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

END OF PART 4
GENERAL CONDITIONS OF CONTRACT

PART 5

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

(Date of Standard Division I Amendments November 2016)

These Division I Amendments supersede Division I of the Standard Specifications

SECTION 101—DEFINITIONS OF ABBREVIATIONS, ACRONYMS, AND TERMS

101.01—Abbreviations and Acronyms

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

101.02—Terms

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

-A-

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

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

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

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

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

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

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

-B-

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

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

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

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

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

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

Bids, Invitation for. Used interchangeably with “Advertisement, Notice of” defined above.

Board. Commonwealth Transportation Board of Virginia.

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

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

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

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

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

-C-

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

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

Channel. A watercourse or drainage way.

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

Commonwealth. Commonwealth of Virginia.

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

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

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

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

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

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

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

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

County. Prince William County (and Prince William County Department of Transportation)

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

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

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

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

-D-

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

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

Department. Virginia Department of Transportation.

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

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

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

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

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

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

-E-

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

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

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

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

Engineer. As defined in Section 1.2 of the General Conditions

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

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

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

-F-

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

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

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

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

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

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

-G-

Gage. U.S. Standard Gage.

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

-H-

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

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

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

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

-I-

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

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

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

-J-K-

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

-L-

Laboratory. The testing laboratory of the County (or VDOT) or any other testing laboratory that may be designated by the Contract or by the Design-Builder.

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

-M-

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

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

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

-N-

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

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

-O-

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

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

-P-Q-

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

Pay Item. See Contract Item.

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

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

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

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

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

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

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

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

-R-

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

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

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

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

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

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

Road and Bridge Specifications. See Specifications.

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

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

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

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

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

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

-S-

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

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

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

Select Borrow. Borrow material that has specified physical characteristics.

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

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

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

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

Special Provision (SP). See Specifications.

Special Provision Copied Note (SPCN). See Specifications.

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

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

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

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

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

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

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

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

State. As defined in Section 1.2 of the General Conditions

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

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

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

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

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

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

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

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

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

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

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

Substantial Completion. Refers to when the Route 234 Brentsville Road Interchange are open to traffic, in accordance with the construction contract documents, so that the County may use or occupy the opened roadways for the intended purpose.

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

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

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

Supplemental Specifications (SS). See Specifications.

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

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

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

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

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

-T-

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

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

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

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

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

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

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

U-

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

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

-V-

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

-W-X-Y-Z-

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

Work. As defined in Section 1.2 of the General Conditions

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

SECTION 102—BIDDING REQUIREMENTS AND CONDITIONS

102.01—Not Used

102.02—Contents of RFQ and RFDP (Not Used)

102.03—Interpretation of Quantities in RFDP (Not Used)

102.04—Examination of Site of Work and Proposal

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

(b) Subsurface Data

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

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

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

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

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

(d) Utilities (Refer to RFDP)

102.05—Preparation of Proposal

(a) General (Refer to RFDP)

(b) Design Options (Refer to RFDP)

(c) Debarred Suppliers

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

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

(d) Required Certifications (Not Used)

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

(f) Signing the Proposal (Refer to RFDP)

(g) Additional Proposal Requirements

Offeror shall also comply with the requirements as set forth in the following exhibit(s) included with the RFDP:

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

102.06—Irregular Proposals

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

- (a) The Offeror fails to comply with the requirements of Sections 102.05 and 102.07;
- (b) The Proposal is not written in ink or typed;
- (c) The Offeror adds any provisions reserving the right to accept or reject an Award or enter into a contract pursuant to an Award except as otherwise permitted in the RFDP;
- (d) The Price Proposal is not in compliance with the RFDP;
- (e) The Proposal is not properly signed;
- (f) Erasures or alterations in the Offeror's entries are not initialed by the Offeror;
- (g) The Offeror fails to provide a complete Acknowledgment of Revision Sheet (C-78);
- (h) There are unauthorized additions, conditional or alternate proposals, or irregularities of any kind that may make the Proposal incomplete, indefinite, or ambiguous;
- (i) The unit prices in the Proposal are obviously mathematically and materially unbalanced, or either in excess or below the cost analysis values as determined by the County. A mathematically unbalanced Proposal is a Proposal containing lump sum or unit price items that do not include reasonable labor, equipment, and material costs plus a reasonable proportionate share of the Offeror's overhead costs, other indirect costs, and anticipated profit. A materially unbalanced Proposal is when the County determines that an award to the Offeror submitting a mathematically unbalanced Proposal will not result in the lowest ultimate cost to the County;
- (j) Any papers included in the Proposal are detached or altered when the Proposal is submitted except as otherwise provided for herein;

- (k) Proposals are submitted in envelopes showing a designation for a project other than the Project for which the Proposal is made;
- (l) The Offeror fails to submit a statement concerning collusion;
- (m) The Proposal contains any other deviation from the RFDP; or
- (n) The Offeror fails to register with the Prince William County Vendor Registration (<http://www.pwcgov.org/bid>) prior to the Award of the Contract.
- (o) The Offeror, if required, fails to register or obtain authorization to transact business in Virginia from the State Corporation Commission prior to bidding.

102.07—Proposal Guaranty (Proposal Bond)

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

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

102.08—Disqualification of Offeror

- (a) *Any* of the reasons set out in the rules Governing Prequalification Privileges may be considered sufficient for the disqualification of an Offeror or the rejection of a Proposal, or both. Such reasons for disqualification are not exclusive and disqualification may occur based on other requirements within these specifications.
 - 1. The Offeror does not have sufficient financial ability to perform the Contract. If a bond is required to ensure performance of a Contract, evidence that the Offeror can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the public body shall be sufficient to establish the financial ability of the Offeror to perform the Contract.
 - 2. The Offeror or any current officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted of, or pled guilty or nolo contendere within the past 10 years to a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Ethics in Public Contracting Statutes, § 2.2-4367 et seq. of the Code of Virginia, (ii) the Virginia Governmental Frauds Act, § 18.2-498.1 et seq. of the Code of Virginia, (iii) Conspiracy to Rig Bids to Government statutes § 59.1-68.6 et seq. of the Code of Virginia, (iv) any substantially similar law of the United States or another state, or (v) any criminal offense indicating a lack of moral or ethical integrity as may reasonably be perceived to relate to or reflect upon the bidder's business practices.
 - 3. The Offeror or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government.
 - 4. The Offeror failed to respond to the County's request for clarifying information requested relevant to the preceding paragraphs 1 through 3.
 - 5. The Offeror fails to register and participate in the E-Verify program as required by § 2.2-4308.2 et seq. of the Code of Virginia.

6. The Offeror or any officer, director, or owner thereof has had a judgement entered against them for violation of the Virginia Fraud Against Taxpayers Act (Code of Virginia § 8.01-2161 et seq.).
 7. More than one Proposal for the same work is submitted by an individual, partnership, Corporation, or Joint Venture under the same or different name. A Proposal submitted by an Affiliate of an individual, partnership, Corporation, or any party of a Joint Venture will be considered as more than one Proposal submitted for the same work. Affiliate as used herein shall conform to the definition in Section 101.02—Terms, with the term “Offeror” being used in lieu of the term “Design-Builder”.
 8. Evidence of collusion among Offerors in which case the participants in such collusion will not be considered for future bids until new applications for prequalification are approved according to the Rules Governing Prequalification Privileges.
 9. Incompetency or inadequate machinery, plants, or other Equipment as revealed by the Offeror’s financial and experience statements required by the RFDP and Contract Documents and the Rules Governing Prequalification Privileges.
 10. Unsatisfactory workmanship or unsatisfactory progress toward timely completion of the Work as demonstrated by performance records of current or past work for the County, other agencies or Departments of the Commonwealth, other public bodies in the Commonwealth, or agencies or departments of other states in the United States or federal government.
 11. The Design-Builder may be temporarily disqualified from bidding on contracts with the County when progress on the Work is determined by the County to be unsatisfactory according to Exhibit 11.1. If its name is removed from the list of prequalified Offerors, the Design-Builder will not be reinstated as a prequalified Offeror until the County deems that progress of the Work has improved to the extent that the Work can be completed within the Contract Time or until Final Acceptance of the Project.
 12. Uncompleted work under contract with the County that in the judgment of the County might hinder or prevent prompt completion of additional work if awarded.
 13. Failure to promptly pay or settle satisfactorily all undisputed bills for Materials, labor, Equipment, supplies, or other items specified in contracts in force at the time the new work comes before the Board for Award.
 14. Failure to comply with any Prequalification rule or regulation of the County.
 15. Failure to cooperate properly with representatives of the Commonwealth inspecting, monitoring, or administering construction or disorderly conduct toward any such representative in previous contracts.
 16. Default under a previous contract with the Commonwealth.
 17. Failure to pay amounts owed to the County as specified in Section 103.08.
 18. Making materially false statements in a bid or certified statement submitted to the County.
 19. Documentation of the failure to meet SWaM or DBE requirements on the County’s projects according to Section 107.
- (b) Temporary disqualification of an Offeror as provided herein will result in the temporary disqualification of each member of a Joint Venture and any Affiliate. Temporary disqualification will also result in disqualification of the Offeror, each member of a Joint Venture, and Affiliates as defined herein, for performance of work as Subcontractors that in the opinion of the County could adversely affect other work under contract to the County.

- (c) The above listed reasons for possible disqualification are not exclusive and disqualification may also occur based on other requirements within the RFDP or Contract Documents and in the Rules Governing Prequalification Privileges.
- (d) Disqualified Offerors may challenge and appeal their disqualification according to the Rules Governing Prequalification Privileges. Disqualified Offerors may be allowed to re-apply for prequalification and be reinstated on the List of Prequalified Vendors at the discretion of the State Contract Engineer, upon satisfactory compliance with the requirements of the RFDP. In addition, the disqualified Offeror shall submit a new prequalification application package and satisfy all prequalification requirements of these specifications and the Rules Governing Prequalification Privileges.

102.09—Submission of Proposal

Proposals shall be delivered in accordance with the instructions in the RFDP. Unless clearly stated otherwise, Proposals shall be submitted in two (2) separate, sealed parcels containing the Technical Proposal in one and the Price Proposal in the other. Parcels shall be clearly marked to identify the Project and the Offeror, and to identify the contents as Technical Proposal or Price Proposal. Proposals shall be sealed in an envelope and addressed to the Point of Contact identified in the RFDP for receipt of Proposals and shall be filed prior to the time and at the place specified in the RFDP. Proposals received after that time will be returned to the Offeror unopened. The County may defer the date for the opening of Proposals in which case the Offerors will be notified.

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

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

102.10—Withdrawal of Proposal (Not Used)

102.11—Prince William County Vendor Registration

Offerors shall be a registered Prince William County vendor before submitting a response to this RFDP. Offerors can register themselves at <http://www.pwcgov.org/bid>

102.12—Opening of Proposals.

Price Proposals will be opened in accordance with the instructions in the RFDP.

102.13—“E-Verify” – Verification of Work Authorization

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

- (a) “E-Verify program” means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, § 403(a), as amended, operated by the U.S. Department of Homeland Security, or a successor work authorization program designated by the U.S. Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603).
- (b) Offerors with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with the Department shall register and participate in the E-Verify program to verify

information and work authorization of their newly hired employees performing work pursuant to such contract. Offerors are not required to be registered with E-Verify program at the time Proposals are submitted, however; prior to award, the Successful Offeror must be registered with E-Verify program or the Proposal will be rejected.

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

SECTION 103—AWARD AND EXECUTION OF DESIGN-BUILD CONTRACTS

103.01—Consideration of Proposals

Proposals will be evaluated in accordance with the RFDP for the design-build contract.

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

103.02—Award of Contract (Not Used)

103.03—Cancellation of Award

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

103.04—Return of Proposal Guaranty

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

103.05—Requirements of Contract Bond

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

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

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

The Contract Bonds shall be made on official forms furnished by the County and shall be executed by the Offeror and a Surety company authorized to do business in Virginia in accordance with the laws of Virginia and the rules

and regulations of the State Corporation Commission. To be considered properly executed, the Contract Bonds shall include authorized signatures and titles.

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

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

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

103.06—Documents Required as a Condition to Award

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

- (a) **Contract:** The Agreement executed by the Successful Offeror.
- (b) **Contract Performance and Payment Bonds:** Contract Bonds shall conform to the requirements of Section 103.05.
- (c) **Affidavits and Documents:** Affidavits and documents set forth in the RFDP and executed by the Successful Offeror.
- (d) **Progress Schedule:** (Not Used)
- (e) **Insurance Coverages and Certificates of Insurance:** The Design-Builder shall procure and maintain the insurance coverages required below, in accordance with Paragraph (f) below. Design-Builder shall file certificates of insurance with the County evidencing the coverages and limits within fifteen (15) days after Notice of Intent to Award of the Contract.
 - .1 Workers' Compensation and Employer's Liability Insurance, with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of \$1 million bodily injury by accident or disease, each employee. If necessary, coverage shall be extended to cover any claims under the United States Longshoreman's Act and Harbor Workers Act and Jones' Act as may be appropriate for the Work.
 - .2 Commercial General Liability Insurance, including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and broad form contractual liability with limits of at least \$1 million per occurrence and \$2 million aggregate, applicable on a per project basis.
 - .3 Automobile Liability Insurance, with a limit of at least \$1 million combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired or borrowed vehicles on-site or off.
 - .4 Umbrella/Excess Liability Insurance in excess of the underlying limits noted above for employer's liability, commercial general liability, and automobile liability in the amount of \$20 million per occurrence and in the annual aggregate.
 - .5 Architects/Engineers Professional Liability Insurance, covering Design-Builder's lead design engineer for acts, errors or omissions arising in connection with the Work for not less than \$5 million any one

- claim and in the aggregate. If a particular project's features requires, in the discretion of the County, higher limits, such limits will be identified in the RFDP. This insurance shall be maintained throughout the duration of any warranty period and for at least three years after the expiration of any warranty period.
- .6 Contractor's Pollution Liability Insurance, to indemnify for bodily injury or property damage or amounts which Design-Builder or its agents, Subcontractors, or employees are legally obligated to pay for clean-up/remediation arising out of the work undertaken pursuant to the Contract Documents. Such insurance shall have minimum limits of \$2 million any one claim and in the aggregate and shall remain in full force and effect for five years following Final Completion.
 - .7 Unless specifically excluded in the RFDP, Builder's Risk Insurance, to provide coverage for physical loss, destruction or physical damage to the work. Such insurance shall cover Design-Builder, the County, and all Subcontractors and shall be maintained with a minimum limit of one hundred percent (100%) of the Contract Price. If Design-Builder would like to reduce this limit to the Maximum Probable Loss (MPL), then it shall conduct an MPL study by a third party builder's risk advisor. If the County agrees with the MPL study, then the minimum limits shall be in the amount of the MPL. Such insurance shall include replacement cost coverage for materials, supplies, equipment, machinery, and fixtures that are or will be part of the Project. Coverages shall include but are not limited to the following: right to partial occupancy, earthquake, earth movement, flood, transit, temporary and permanent works, expediting expenses, debris removal, offsite storage, soft costs and commissioning and start-up. If the County, in its sole discretion, determines that it the Builder's Risk Insurance should include Loss of Income/Delayed Opening coverage, it shall specify such in the RFDP.
 - .8 Additional Insurance Coverage. Design-Builder shall provide such other insurance as may be required by the County depending upon the nature of the Project, including but not limited to:
 - Protection and Indemnity Insurance (i.e., marine insurance).
 - U.S. Longshore and Harborworker's Act and Jones Act endorsements under the Worker's Compensation Insurance.
 - Railroad Protective Insurance, as set forth in Section 107.19 below.

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

- (f) **Insurance Requirements.** Design-Builder shall ensure that all insurances required in Paragraph (e) above contain the following provisions:
- .1 With the exception of workers' compensation and architect/engineers' professional liability insurance, the County shall be named, through specific policy endorsements, as an additional insured on all policies. Each such policy shall also include the appropriate severability of interest and cross-liability clauses to allow one insured to bring claim against another insured party.
 - .2 All insurance coverages shall be considered primary and non-contributory with regard to other insurances that might be available to Design-Builder or the County.
 - .3 All insurers shall waive rights of subrogation against the County for any claims covered by insurance required herein.
 - .4 Any inadvertent errors or omissions by Design-Builder in procuring the insurance required herein shall in no way prejudice the rights of the County to collect under such policies.
 - .5 Any deductibles shall be the sole responsibility of Design-Builder.
 - .6 The insurance shall remain in full force and in effect and will remain in effect for the duration required by the Contract Documents;

- .7 No insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to the County; and
- .8 With the exception of workers' compensation and automobile liability insurance, the insurance policies shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

(g) Additional Insurance Requirements

- .1 Design-Builder shall require all Subcontractors to carry the same insurance, and in the same amounts, required by Paragraphs (e)(1), (e)(2) and (e)(3) above.
- .2 Design-Builder shall file certificates of insurance with the County evidencing the coverages and limits described above within the times required by Paragraph (e) above. The certificates shall be executed by approved insurance companies authorized to do business in Virginia with a minimum "Best Rating" of "B +" or greater, and shall cover the Contract.
- .3 The insurance coverage limits shall not be construed to relieve Design-Builder or Subcontractor(s) of liability in excess of such coverage, nor shall it preclude the County from taking such actions as are available to it under any other provision of the Contract Documents or otherwise in law.

103.07—Failure to Furnish Bonds or Certificate of Insurance

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

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 County as a result of his neglect or refusal to execute a contract.

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

103.08—Contract Audit

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

- (a) Those that were used to prepare and compute the Proposal, prepare all schedules used on the Project, record the progress of Work on the Project, accounting records, purchasing records, personnel payments or records necessary to determine Employee credentials, vendor payments and written policies and procedures used to record, compute and analyze all costs incurred on the Project, including those used in the preparation or presentation of claims to the County.
- (b) Records pertaining to the Project as the County may deem necessary in order to permit adequate evaluation and verification of Design-Builder's compliance with Contract requirements, compliance with the County's business policies, and compliance with provisions for pricing Change Orders or claims

submitted by the Design-Builder or Subcontractors, shall be made available to the auditor(s) at the County's request. The Design-Builder shall make his personnel available for interviews when requested by the County.

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

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

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

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

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

103.09—Execution of Contract

- (a) The Proposal as submitted, including the Contract Documents specified in Section 103.06, shall be deemed accepted by the County upon submittal of the Contract bond, Design-Builder's bodily injury and property damage liability insurance certificates, and workers' compensation insurance certificate, and the County's final execution of the Contract. After the County has recommended the Proposal for Award, the Successful Offeror shall be required to sign and return a paper copy of such documents to the Contract Engineer. Failure to sign and return such documents will result in forfeiture of the Proposal bond. If a contract is not awarded within the time limit specified in Section 103.02, the Offeror may withdraw his Proposal without penalty or prejudice unless the time limit is extended by mutual consent. No contract shall be considered effective until it has been fully executed by all parties.
- (b) **Notice of Contract Execution.** The Contract Engineer will notify the Design-Builder of the date that the County has executed the Contract. The Contract Engineer or his designee will confirm the Contract execution date in such notice. The notice will identify the County's authorized representative responsible for written directives and changes to the Contract, who will contact the Design-Builder to arrange a pre-construction and scheduling conference.

103.10—Assignments, Transfers, or Assumptions of the Contract

The Design-Builder shall not assign, transfer, convey, or allow any person or business to assume or take over, in whole or in part, the Contract, the Design-Builder's duties, or performance obligations, arising under, from or relating to the Contract, except for subcontracting as provided in Section 105.06 or the rights of a surety issuing a performance bond for the Contract, without the County's specific written authorization. Any such unauthorized

assignment, transfer, conveyance, assumption or take over agreement shall be void and shall constitute a material breach of the Contract. No assignment, transfer, conveyance, assumption or take over agreement shall relieve the Design-Builder from its duties and obligations under the Contract, or release the Design-Builder of any liability under the Contract bonds.

SECTION 104—SCOPE OF WORK

104.01—Intent of Contract

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

104.02—Changes in Quantities or Alterations in the Work

(a) General

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

(b) Value Engineering Proposals

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

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

- Statement that the proposal is submitted as a VECP
- Statement concerning the basis for the VECP benefits to the County and an itemization of the pay items and requirements affected by the VECP
- Detailed estimate of the cost under the existing Contract and under the VECP

- Proposed specifications and recommendations as to the manner in which the VECP changes are to be accomplished
- Statement as to the time by which a contract Change Order adopting the VECP must be issued so as to obtain the maximum cost-effectiveness

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

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

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

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

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

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

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

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

SECTION 105—CONTROL OF WORK

105.01—Notice to Proceed

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

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

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

105.02—Pre-Construction Conference (Not Used)

105.03—Authorities of Project Personnel, Communication and Decision Making

(a) Authority of the County

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

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

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

(b) Authority of Inspector

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

The Inspectors are not authorized to make Final Acceptance of the Project, approve any operation or item, or act as foreman for the Design-Builder. However, the Inspectors will have the authority to reject defective work and material and suspend work that is being improperly performed, subject to the concurrence of the County. Such inspections shall not relieve the Design-Builder of any obligation to furnish acceptable Materials or provide completed construction that is in accordance with the Contract requirements.

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

(c) The Design-Builder

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

105.04—Gratuities

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

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

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

105.05—Character of Workers, Work Methods, and Equipment

(a) Workers

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

The Design-Builder shall immediately remove from the Project any workers who, in the County's opinion, do not perform their work in a proper, skillful and satisfactory manner or are intemperate or disorderly. The County shall direct the Design-Builder to do so in writing and such workers shall not be employed again on any portion of the Work without the County's written approval. If the Design-Builder fails to immediately remove the workers or furnish suitable and sufficient workers for satisfactory prosecution of the Work, the County 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 County's directive.

(b) Equipment

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

(c) Work Methods

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

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

105.06—Subcontracting

- (a) The Design-Builder shall notify the County of the name of the firm to whom the work will be subcontracted, and the amount and items of work involved. Such notification shall be made and verbal approval given by the County prior to the Subcontractor beginning work.
- (b) The Design-Builder shall perform with his own organization work amounting to not less than thirty percent (30%) percent of the total original Contract Price unless otherwise indicated in the Contract.

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

- 1. The Design-Builder maintains control over the supervision of the day-to-day activities of the leased employees;
 - 2. The Design-Builder remains responsible for the quality of the work of the leased employees;
 - 3. The Design-Builder retains all power to accept or exclude individual employees from work on the Project; and
 - 4. The Design-Builder remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.
- (c) The Design-Builder shall not subcontract any part of the Contract work to a contractor who is not prequalified with the County in accordance with Section 102.01, unless otherwise indicated in the Contract. This restriction does not apply to service providers, Design Consultants, consultants, manufacturers, suppliers, or haulers. Consent to subcontract or otherwise dispose of any portion of the

Contract work shall not relieve the Design-Builder of any responsibility for the satisfactory fulfillment of the entire Contract. All subcontracts shall be evidenced by written binding agreements that shall be available to the County upon request, before, during, and after their approval.

105.07—Cooperation of Design-Builder

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

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

105.08—Cooperation With Regard to Utilities

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

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

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

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

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

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

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

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

105.09—Cooperation among Contractors

Section 3.6 of the General Conditions of Contract has precedence.

105.10—Plans and Working Drawings

(a) General

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

(b) Plans

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

(c) Working Drawings

The Design-Builder shall furnish Working Drawings and maintain a set for the County 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 County. The Design-Builder shall identify Working Drawings and submittals by the complete state project and job designation numbers. Items or component materials shall be identified by the specific Contract Item number and Specification reference in the Contract.

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

The Design-Builder shall provide four (4) sets of any submittal. If a railroad, municipality, or other entity as specified in the Contract Documents is required to review the Working Drawings, the reviewed Working Drawings will be returned within forty-five (45) days from the date of receipt by the County. 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 County.

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

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

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

1. Steel Structures

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

2. Falsework

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

3. Concrete Structures and Prestressed Concrete Members

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

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

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

5. Reinforced Concrete Pipe

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

105.11—Conformity with Contract Documents

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

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

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

105.12—Coordination of Contract Documents

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

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

105.13—Construction Stakes, Lines, and Grades

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

105.14—Maintenance During Construction

(a) Traffic Control

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

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

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

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

3. **Flagging Traffic:** Certified flaggers shall be provided in sufficient number and locations as necessary for control and protection of vehicular and pedestrian traffic in accordance with the VWAPM. Flaggers

shall be able to communicate to the traveling public in English while performing the job duty as a flagger at the flagger station. Flaggers shall use sign paddles to regulate traffic in accordance with the VWAPM.

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

(b) Maintenance of Traffic

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

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

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

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

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

3. **Detours:** Detours may be indicated on the plans or in the special provisions or may be used with the County's approval. Unless otherwise designated in the Contract, the Design-Builder shall furnish, install and maintain all directional markings, for through-traffic on off-Project detours authorized or requested by the County with the exception of municipalities. Municipalities shall be responsible for off-Project roadway maintenance within their own corporate limits. Detours over existing state roads shall be designated, marked, and maintained by the Design-Builder. Directional markings for detours shall include signs. Responsibility for installation and maintenance of the signs shall be in accordance with Section 512.03(a). If any project is located wholly or in part within a municipality's corporate limits and through traffic is to be detoured at the municipality's request, the municipality will provide and maintain the

detours within the corporate limits and will furnish, install and maintain all directional markings. The provision of detours and marking of alternate routes will not relieve the Design-Builder of the responsibility for ensuring the safety of the public or from complying with any Contract requirements affecting the rights of the public within his Contract area of operations, including those concerning lights and barricades. Maintenance of all other detours shall be the Design-Builder's responsibility.

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

4. **Maintenance of Traffic During Suspension of Work:** During any suspension of work, the Design-Builder shall temporarily open to traffic such portions of the Project and temporary roadways as may be agreed upon by the Design-Builder and the County.
5. **Minimizing Traffic Delays:** Two-way traffic shall be maintained at all times unless the Contract or the County permits one-way traffic. The Design-Builder shall not stop traffic without the County's permission.

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

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

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

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

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

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

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

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

suitable salvaged material until the entrance can be completed and the required base and surface or stabilization course can be placed.

7. **Obstruction Crossing Roadways:** Where the Design-Builder places obstructions such as suction or discharge pipes, pump hoses, steel plates, or any other obstruction that must be crossed by vehicular traffic, they shall be bridged as directed by the County at the Design-Builder's expense. Traffic shall be protected by the display of warning devices both day and night. If operations or obstructions placed by the Design-Builder damage an existing traveled roadway, the Design-Builder shall cease operations and repair damages to the roadway at no additional cost to the County.
8. **Patching Operations:** Where existing hydraulic cement concrete pavement is to be patched, the operation of breaking and excavating old pavement shall extend for a distance of not more than two miles. Patching shall be coordinated with excavating so that an area of not more than one-half mile in which excavated patches are located shall be left at the end of any day's work. Necessary precautions shall be taken to protect traffic during patching operations.
9. **Temporary Structures:** The Design-Builder shall construct, maintain, and remove temporary structures and approaches necessary for use by traffic. After new structures have been opened to traffic, temporary structures and approaches shall be removed. The materials contained therein shall remain the property of the Design-Builder.

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

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

11. Opening Sections of Projects to Traffic

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

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

If the Design-Builder is not continuously prosecuting the Work to the County's satisfaction as determined by the Schedule of Record, the Design-Builder shall not be relieved of the responsibility for maintenance of the completed work during the period that the section of the Work is opened to traffic prior to Final Acceptance. The Design-Builder shall be responsible for any expense resulting from the opening of such

portions of the Work under these circumstances, except for slides. The Design-Builder shall conduct the remainder of the construction operations so as to cause the least obstruction to traffic.

(c) Maintenance of Work

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

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

2. Where the Contract specifies placing a course on another course or subgrade of embankment, base, subgrade, concrete, asphalt pavement, or other courses previously constructed, the Design-Builder shall maintain the courses or subgrades previously constructed in accordance with the Contract requirements when placing such course. This maintenance includes, but is not limited to draining, re-compacting, re-grading, or, if unacceptable or destroyed, the removal of work the County previously accepted.
3. **Grading Operations:** When the Design-Builder elects to complete the rough grading operations for the entire Project or exceed the length of one full day's surfacing operations, the rough grade shall be machined to a uniform slope from the top edge of the existing pavement to the ditch line.

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

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

(d) Maintenance Cost

The Design-Builder shall bear all costs of performing maintenance work before Final Acceptance, and of constructing and maintaining necessary approaches, crossings, intersections, and other features without direct compensation except as provided for herein. When the Design-Builder confines his operation to the surface of the roadway and reasonable width of the shoulder and the surface is disturbed or damaged by his operations or equipment, he shall be responsible for the restoration and maintenance of the surface that is disturbed or damaged.

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

105.15—Removing and Disposing of Structures and Obstructions

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

- (a) **Signs:** The Design-Builder shall relocate all signs within the construction limits that conflict with construction work as approved by the County. Signs that are not needed for the safe and orderly control of traffic during construction as determined by the County 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 County at the time the signs have been properly stored. Such signs will be removed from the storage area by the County. Any sign that is damaged or lost because of the fault of the Design-Builder shall be repaired or replaced at his expense. Costs for removing, storing, protecting, and reinstalling such signs shall be included in the Contract Price and no additional compensation will be made.
- (b) **Mailboxes and Newspaper Boxes:** When removal of existing mailboxes and newspaper boxes is made necessary by construction operations, the Design-Builder shall place them in temporary locations so that access to them will not be impaired. Prior to Final Acceptance, boxes shall be placed in their permanent locations as designated by the County and left in the same condition as when found. Boxes or their supports that are damaged through negligence on the part of the Design-Builder shall be replaced at his expense. The cost of removing and resetting existing boxes shall be included in other pay Contract items. New mailboxes designated in the plans shall be paid for in accordance with Section 521 of the Specifications.

105.16—Cleanup

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

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

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

105.17—Inspection of Work

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

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

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

Extra Work in accordance with the General Conditions of the Contract. If the work is unacceptable, the cost of uncovering or removing and replacing the covering or making good the parts removed shall be borne by the Design-Builder.

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

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

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

105.18—Removal of Unacceptable Work

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

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

In the event the Design-Builder is granted authorization to perform destructive sampling or testing, the Design-Builder shall obtain the approval of the County for the method and location of each test prior to beginning such sampling or testing. In addition, destructive sampling and testing shall be performed in the presence of the County.

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

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

SECTION 106—CONTROL OF MATERIAL

106.01—Source of Supply and Quality Requirements

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

At the option of the County, Materials may be approved at the source of supply. If it is found during the life of the Contract that previously approved sources of supply do not supply Materials or Equipment conforming to the Contract requirements, do not furnish the valid test data required to document the quality of the Material or Equipment, or do not furnish documentation to validate quantities to document payment, the Design-Builder shall

change the source of supply and furnish Material or Equipment from other approved sources. The Design-Builder shall notify the County of this change, and provide the same identifying information noted in this Section, at least sixty (60) days prior to their use on the Project, but not less than two weeks prior to delivery.

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

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

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

106.02—Material Delivery

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

106.03—Local Material Sources (Pits and Quarries)

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

- (a) Local Material sources shall be concealed from view from the completed Roadway and any existing public Roadway. Concealment shall be accomplished by selectively locating the pit or quarry and spoil pile, providing environmentally compatible screening between the pit or quarry site and the Roadway, or using the site for another purpose after removal of the Material, or restoration equivalent to the original use (such as farm land, pasture, turf, etc.). The foregoing requirements shall also apply to any pit or quarry opened or reopened by a Subcontractor. However, the requirements will not apply to commercial sand and gravel and quarry operations actively processing Material at the site prior to the date of the execution of the Contract.
- (b) The Design-Builder shall furnish the County a statement signed by the property owner in which the property owner agrees to the use of his property as a source of Material for the Project. Upon completion of the use of the property as a Material source, the Design-Builder shall furnish the County a release signed by the property owner indicating that the property has been satisfactorily restored. The requirements for a signed statement and release will not apply to commercial sources, sources owned by the Design-Builder, and sources furnished by the County.
- (c) Local Material pits and quarries that are not operated under a local or State permit shall not be opened or reopened without authorization by the County. The Design-Builder shall submit for approval a site plan, including, but not limited to, the following:
 - 1. The location and approximate boundaries of the Excavation; with a slope gradient of 3:1 or greater;

2. Procedures to minimize erosion and siltation;
3. Provision of environmentally compatible screening;
4. Restoration;
5. Cover vegetation;
6. Other use of the pit or quarry after removal of Material, including the spoil pile;
7. The drainage pattern on and away from the area of land affected, including the directional flow of water and a certification with appropriate calculations that verify all receiving Channels are in compliance with Minimum Standard 19 of the Virginia Erosion and Sediment Control Regulations;
8. Location of haul Roads and stabilized construction entrances if construction Equipment will enter a paved Roadway;
9. Constructed or natural waterways used for discharge;
10. A sequence and schedule to achieve the approved plan;
11. The total drainage area for temporary sediment traps and basins shall be shown. Sediment traps are required if the runoff from a watershed area of less than three acres flows across a disturbed area. Sediment basins are required if the runoff from a watershed area of three (3) acres or more flows across a disturbed area. The Design-Builder shall certify that the sediment trap or basin design is in compliance with the Contract Documents and all Legal Requirements. Once a sediment trap or basin is constructed, the dam and all outfall areas shall be immediately stabilized.

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

If the approved plan provides for the continued use or other use of the pit or quarry beyond the date of Final Acceptance, the Design-Builder shall furnish the County a bond made payable to the Commonwealth of Virginia in an amount equal to the Engineer's estimate of the cost of performing the restoration work. If the pit or quarry is not used in accordance with the approved plan within eight months after Final Acceptance, the Design-Builder shall perform restoration work as directed by the County, forfeit his bond, or furnish the County with evidence that he has complied with the applicable requirements of the State Mining Law.

- (d) Topsoil on County owned or furnished Borrow sites shall be stripped and stockpiled as directed by the County for use as needed within the construction limits of the Project or in the reclamation of Borrow and Disposal Areas.
- (e) If payment is to be made for Material measured in its original position, Material shall not be removed until Digital Terrain Model (DTM) or cross-sections have been taken. The Material shall be reserved exclusively for use on the Project until completion of the Project or until final DTM or cross-sections have been taken.
- (f) If the Design-Builder fails to provide necessary controls to prevent erosion and siltation, if such efforts are not made in accordance with the approved sequence, or if the efforts are found to be inadequate the County will withdraw approval for the use of the site and may cause the Design-Builder to cease all contributing operations and direct his efforts toward corrective action or may perform the Work with State forces or other means as determined by the County. If the Design-Builder does not perform such work, the cost of performing the Work plus twenty five percent (25%) for supervisory and administrative personnel will be deducted from monies due the Design-Builder.

- (g) Costs for applying seed, fertilizer, lime, mulch, and for restoration, drainage, erosion and siltation control, regrading, haul Roads, and screening shall be included in the Contract price for the type of Excavation or other appropriate Contract items.
- (h) If the Design-Builder fails to fulfill the provisions of the approved plan for screening or restoring Material sources, the County may withhold and use for the purpose of performing such work any monies due the Design-Builder. The Design-Builder shall be held liable for penalties, fines, or damages incurred by the County as a result of his failure to prevent erosion or siltation and take restorative action.
- (i) After removing all the Material from the local material sources, the Design-Builder shall remove metal, lumber, and other debris resulting from his operations and shall shape and landscape the area in accordance with the approved plan for such work.
- (j) **Sources Furnished by the County:** Sources furnished by the County will be made available to the Design-Builder together with the right to use such property as may be required for a plant site, stockpiles, and haul roads. The Design-Builder shall confine his Excavation operations to those areas of the property specified in the Contract. The Design-Builder shall be responsible for Excavation that shall be performed in order to furnish the specified Material.
- (k) **Sources Furnished by the Design-Builder:** When the Design-Builder desires to use local Material from sources other than those furnished by the County, he shall first secure the approval of the County. The use of Material from such sources will not be permitted until test results have been approved by the County and written authority for its use has been issued by the appropriate agency, organization or individual.

The Design-Builder shall acquire the necessary rights to take Material from sources he locates and shall pay all related costs, including costs that may result from an increase in the length of the haul. Costs of exploring, sampling, testing, and developing such sources shall be borne by the Design-Builder. The Design-Builder shall obtain representative samples from at least two (2) borings in parcels of ten (10) acres or less and at least three (3) additional borings per increment of five (5) acres or portion thereof to ensure that lateral changes in Material are recorded. Drill logs for each test shall include a soil description and the moisture content at intervals where a soil change is observed or at least every five (5) feet of depth for consistent Material. Samples obtained from the boring shall be tested by an approved Laboratory for grading, Atterberg limits, CBR, maximum density, and optimum moisture. The County will review and evaluate the Material based on test results provided by the Design-Builder. The County will reject any Material from a previously approved source that fails a visual examination or whose test results show that it does not conform to the Contract Documents.

106.04—Disposal Areas

The Design-Builder shall dispose of unsuitable or Surplus Material shown in the Contract Documents according to Contract requirements as specified herein. Material not used on the Project shall be disposed of by the Design-Builder off the Right of Way. The Design-Builder shall obtain the necessary rights to property to be used as an approved Disposal Area. For the purpose of these Division I Amendments to the Standard Specifications an approved Disposal Area is defined as that which is owned privately, not operated under a local or State permit, and has been approved by the County for use in disposing of Material not used on the Project.

The Design-Builder shall furnish the County a statement signed by the property owner in which the owner agrees to the use of his property for the deposit of Material from the Project. Upon completion of the use of the property as an approved Disposal Area, the Design-Builder shall furnish the County a release signed by the property owner indicating that the property has been satisfactorily restored. This requirement will be waived for commercial sources, sources owned by the Design-Builder, and sources furnished by the County.

If an approved Disposal Area is not designated in the Contract, the Design-Builder shall obtain the necessary rights to property to be used as an approved Disposal Area.

If the Design-Builder, having shown reasonable effort, is unsuccessful in obtaining the necessary rights to property to be used as an approved Disposal Area, the County will obtain rights for a disposal area unless otherwise provided for in the Contract. If not shown in the Contract, compensation will be in accordance with Sections 104.02 and 109.05.

Prior to the County approving the Design-Builder's Disposal Area, the Design-Builder shall submit a site plan that shall show:

1. The location and approximate boundaries of the Disposal Area.
2. Procedures to minimize erosion and siltation.
3. Provision of environmentally compatible screening.
4. Restoration.
5. Cover vegetation.
6. Other use of the Disposal Area.
7. The drainage pattern on and away from the area of land affected, including the directional flow of water and a certification with appropriate calculations that verify all receiving Channels are in compliance with Minimum Standard 19 of the Virginia Erosion and Sediment Control Regulations.
8. Location of haul roads and stabilized construction entrances if construction Equipment will enter a paved Roadway.
9. Constructed or natural waterways used for discharge.
10. A sequence and schedule to achieve the approved plan.
11. The total drainage area for temporary sediment traps and basins shall be shown. Sediment traps are required if the runoff from a watershed area of less than three (3) acres flows across a disturbed area. Sediment basins are required if the runoff from a watershed area of three acres or more flows across a disturbed area. The Design-Builder shall certify that the sediment trap or basin design is in compliance with the Contract Documents and all Legal Requirements. Once a sediment trap or basin is constructed, the dam and all outfall areas shall be immediately stabilized. Costs for the work described herein shall be included in the Contract Price. The Design-Builder shall certify that the sediment basin design is in compliance with the Virginia Erosion and Sediment Control Regulations, all local, state, and federal ordinances, and Section 107.16.

Disposal Areas shall be cleared but need not be grubbed. The clearing work shall not damage grass, shrubs, or vegetation outside the limits of the approved area and haul roads thereto. After the Material has been deposited, the area shall be shaped to minimize erosion and siltation of nearby streams and landscaped in accordance with the approved plan for such work or shall be used as approved by the County. The Design-Builder's design and restoration shall conform to the Contract requirements and federal, state, and local laws and regulations.

Excavated rock in excess of that used in Embankments in accordance with the requirements of Section 303 shall be deposited off the Right of Way in an approved Disposal Area. Deposits whose surface is composed largely of rock shall be leveled by special arrangement of the Material or reduction of the irregularity of the surface by crushing projections to create a reasonably uniform and neat appearance.

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

If the Design-Builder fails to provide and maintain necessary controls to prevent erosion and siltation, if such efforts are not made in accordance with the approved sequence, or if the efforts are found to be inadequate, the County will withdraw approval for the use of the site and may cause the Design-Builder to cease all contributing operations and direct his efforts toward corrective action or may perform the Work with State forces or other means as determined by the County, and deduct the cost of performing the Work plus twenty five percent (25%) for supervisory and administrative personnel from monies due or to be become due the Design-Builder.

Costs for applying seed, lime, fertilizer, and mulch; reforestation; drainage; erosion and siltation control; regrading; haul roads; and screening shall be included in the Contract Price.

(a) **Materials encountered by the Design-Builder** shall be handled and disposed of as follows:

1. **Unsuitable Material** -. The Design-Builders' geotechnical engineer shall confirm that slopes, earthwork, pavement, and foundation subgrades satisfy the design and Contract Document requirements. The Design-Builders' geotechnical engineer shall perform an inspection of all embankment and pavement subgrades and minor structure excavations immediately prior to placement of embankment fill, aggregate base, subbase or bedding materials to identify excessively soft, loose, dry or saturated soils that exhibit excessive pumping, weaving or rutting under the weight of the construction equipment. Materials unsuitable for use in the Work, as defined in Part 2 of the Contract, shall be disposed of at an approved Disposal Area or landfill licensed to receive such Material unless the materials can be adequately treated in place through chemical and/or mechanically stabilized method that shall be approved by the County. Such method shall be approved prior to use in the Work. All Unsuitable Materials shall be disposed of off-site and/or treated in place at no cost to the County. Design-Builder shall identify unsuitable Materials and methods of treatment on the plans and cross sections.
2. **Surplus Material** as shown in the Contract Documents that is not classified as unsuitable may be used to flatten slopes, to fill in ramp gores and medians provided the material is placed in accordance with the earthwork specifications. Surplus Material that is not needed shall be disposed of at an approved Disposal Area, a landfill licensed to receive such Material, or as directed by the County in writing.

Surplus Material stockpile areas on the right-of-way shall be cleared but need not be grubbed. The clearing work shall not damage grass, shrubs, or vegetation outside the limits of the approved area and the haul Roads thereto. Placement of fill material shall not adversely affect existing drainage structures. If necessary, modified existing drainage structures, as approved by the County, shall be paid for in accordance with Section 109.05. Within seven (7) days after the material has been deposited, the area shall be shaped and stabilized to minimize erosion and siltation.
3. **Organic materials** such as, but not limited to, tree stumps and limbs (not considered merchantable timber), roots, rootmat, leaves, grass cuttings, or other similar materials shall be chipped or shredded and used on the Project as mulch, given away, sold as firewood or mulch, burned at the Design-Builder's option if permitted by local ordinance, or disposed of at a facility licensed to receive such materials. Organic material shall not be buried in State Rights of Way or in an approved Disposal Area.
4. **Inorganic materials** such as brick, cinder block, broken concrete without exposed reinforcing steel, or other such material may be used in accordance with Section 303.04 or shall be disposed of at an approved Disposal Area or landfill licensed to receive such materials. If disposed of in an approved Disposal Area, the material shall have enough cover to promote soil stabilization in accordance with Section 303 and shall be restored in accordance with other provisions of this Section.

Concrete without exposed reinforcing steel, may be crushed and used as rock in accordance with Section 303. If approved by the County, these materials may be blended with soils that meet AASHTO M57 requirements and deposited in fill areas within the right-of-way in accordance with the requirements of Section 303 as applicable.

5. **Excavated rock** in excess of that used within the Project site in accordance with Section 303 shall be treated as surplus material.
6. **Other materials** such as, but not limited to, antifreeze, asphalt (liquid), building forms, concrete with reinforcing steel exposed, curing compound, fuel, Hazardous Materials, lubricants, metal, metal pipe, oil, paint, wood or metal from building demolition, or similar materials shall not be disposed of at an approved Disposal Area but shall be disposed of at a landfill licensed to receive such material.
7. Coal or other valuable materials uncovered during prosecution of the Work that are not specifically addressed by the Contract shall be disposed of as the County directs in writing.

If the Design-Builder fails to fulfill the provisions of the approved plan for screening or restoring Disposal Areas, the County 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 County as a result of his failure to prevent erosion or siltation.

106.05—Rights For and Use of Materials Found on Project

With the approval of the County, the Design-Builder may use in the Project any materials found in the Excavation that comply with the requirements of the Contract Documents. The Design-Builder shall replace at his own expense with other acceptable material the Excavation material removed and used that is needed for use in Embankments, Backfills, approaches, or otherwise. The Design-Builder shall not excavate or remove any material from within the construction limits that is not within the grading limits, as indicated by the slope and grade lines. The Design-Builder shall not own and shall not have the right to sell, trade or exchange, any coal or other valuable materials uncovered during the prosecution of the work without the County's specific written authorization.

106.06—Samples, Tests, and Cited Specifications

The Design-Builder shall inspect and test materials in accordance with the QA/QC Plan. Unless reference is made to a specific dated specification or special provision, references in the Contract Documents to AASHTO, ASTM, VTM, and other standard test methods and materials requirements shall refer to either the test specifications that have been formally adopted or the latest interim or tentative specifications that have been published by the appropriate committee of such organizations as of the date of the Notice of Advertisement.

Where permitted by the Special Provision for Use of Domestic Material, the inspection cost of structural steel items, precast concrete items, and prestressed concrete items fabricated in a country other than the continental United States shall be borne by the Design-Builder. Inspection of structural fabrication shall be performed in accordance with the requirements of the appropriate VTM by a commercial Laboratory approved by the County. Additional cleaning or repair necessary because of environmental conditions in transit shall be at the Design-Builder's expense. Materials requiring an MSDS will not be accepted at the Project site for sampling without the document.

106.07—Plant Inspection

If the County inspects materials at the source, the following conditions shall be met:

- (a) The County shall have the cooperation and assistance of the Design-Builder and producer of the Materials.
- (b) The County shall have full access to parts of the plant that concern the manufacture or production of the Materials being furnished.

- (c) For Materials accepted under a quality assurance plan, the Design-Builder or producer shall furnish equipment and maintain a plant laboratory at locations approved for plant processing of Materials. The Design-Builder or producer shall use the laboratory and equipment to perform quality control testing.

The laboratory shall be of weatherproof construction, tightly floored and roofed, and shall have adequate lighting, heating, running water, ventilation, and electrical service. The ambient temperature shall be maintained between 68 degrees F and 86 degrees F and thermostatically controlled. The laboratory shall be equipped with a telephone, intercom, or other electronic communication system connecting the laboratory and scale house if the facilities are not in close proximity to each other. The laboratory shall be constructed in accordance with the requirements of local building codes.

The Design-Builder or producer shall furnish, install, maintain, and replace, as conditions necessitate, testing equipment specified by the appropriate ASTM, AASHTO method, or VTM being used and provide necessary office equipment and supplies to facilitate keeping records and generating test reports. The Design-Builder or producer's technician shall maintain current copies of test procedures performed in the laboratory. The Design-Builder shall calibrate or verify all balances, scales, and weights associated with testing performed as specified in AASHTO R18. The Design-Builder or producer shall also provide and maintain an approved test stand for accessing truck beds for the purpose of sampling and inspection. Cast iron grinding pots and rubber mauls will be furnished by the County where required. The County may approve a single laboratory to service more than one plant belonging to the same Design-Builder or producer.

For crushed glass, the plant equipment requirements are waived in lieu of an independent third-party evaluation and certification of crushed glass properties by an AASHTO Materials Reference Laboratory (AMRL)-accredited commercial soil testing Laboratory demonstrating that the supplied Material conforms to Section 203 requirements. Random triplicate samples will be evaluated and analyzed for every 1,000 tons of Material supplied to the Project. The averaged results will be used for evaluation purposes. Suppliers of crushed glass shall maintain third party certification records for a period of three years.

- (d) Adequate safety measures shall be provided and maintained.
- (e) Design-Builder shall inspect all Materials upon delivery to the site for compliance with Contract requirements. All non-conforming Materials shall be rejected and removed from the site.

106.08—Storing Materials

Materials shall be stored in a manner so as to ensure the preservation of their quality and fitness for the Work. When considered necessary by the County, 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 County. Stored Material shall be located so as to facilitate their prompt inspection. Approved portions of the Right of Way may be used for storage of Material and Equipment and for plant operations. However, Equipment and Materials shall not be stored within the clear zone of the travel lanes open to traffic.

The Design-Builder shall provide additional required storage space at his expense. Private property shall not be used for storage purposes without the written permission of the owner or lessee. The Design-Builder shall furnish copies of the owner's written permission to the County. Upon completion of the use of the property, the Design-Builder shall furnish the County a release signed by the property owner indicating that the property has been satisfactorily restored.

Chemicals, fuels, lubricants, bitumens, paints, raw sewage, and other harmful materials as determined by the County and the VPDES *General Permit for Discharge of Stormwater from Construction Activities* shall not be stored within any floodplain unless no other location is available and only then shall the material be stored in a secondary containment structure(s) with an impervious liner. Also, any storage of these materials in proximity to natural or man-made drainage conveyances or otherwise where the materials could potentially reach a waterway if released under adverse weather conditions, must be stored in a bermed or diked area or inside a container capable of preventing a release. Double-walled storage tanks shall meet the berm/dike containment requirement

except for storage within flood plains. Any spills, leaks, or releases of such materials shall be addressed in accordance with Section 107.16(b) and (e). Accumulated rain water may also be pumped out of the impoundment area into approved dewatering devices. All proposed pollution prevention measures and practices must be identified by the Design-Builder in his Pollution Prevention Plan as required by the Specifications, other Contract Documents and/or the VDPES *General Permit for Discharge of Stormwater from Construction Activities*.

106.09—Handling Materials

Materials shall be handled in a manner that will preserve their quality, integrity, and fitness for the Work. Aggregates shall be transported in vehicles constructed to prevent loss or segregation of materials.

106.10—Unacceptable Materials

Materials that do not conform to the requirements of the Contract Documents shall be considered unacceptable. Such Materials, whether in place or not, will be rejected and shall be removed from the site of the Work and replaced at no additional cost to the County. If it is not practical for the Design-Builder to remove rejected Material immediately, the County will mark the rejected Material for identification. Rejected Material whose defects have been corrected shall not be used until the County gives written approval for its use. Upon the Design-Builder's failure to comply promptly with any order of the County made under this Section, the County may, in addition to other rights and remedies, have the unacceptable material removed and replaced, and deduct the cost of such removal and replacement from monies due or to become due the Design-Builder. The County shall file documentation of the correction with resolution of the Non-conformance report (NCR).

106.11—Material Furnished by the County

The Design-Builder shall furnish all Materials required to complete the Work except those specified to be furnished by the County.

Material furnished by the County will be delivered or made available to the Design-Builder at the points specified in the Contract. The cost of handling and placing Materials after delivery to the Design-Builder shall be included in the Contract Price

After receipt of the Materials, the Design-Builder shall be responsible for Material delivered to him, including shortages, deficiencies, and damages that occur after delivery, and any demurrage charges.

106.12—Critical Materials (Not Used)

SECTION 107—LEGAL RESPONSIBILITIES

107.01—Legal Requirements to Be Observed (Refer to Part 4 - General Conditions – Section 2.5, Legal Requirements)

107.02—Permits, Certificates, and Licenses. (Refer to Part 4 - General Conditions – Section 2.6, Governmental Approvals, and Section 3.5, Governmental Approvals)

107.03—Federal-Aid Provisions

When the U.S. Government pays all or any portion of the cost of a project, the Design-Builder shall comply with all applicable federal Legal Requirements applicable to the project. The Work shall be subject to inspection by the appropriate federal agency. Such inspection shall in no sense make the federal government a party of the Contract and will in no way interfere with the rights of either party to the Contract. For Federally-aided projects, the provisions contained in Form FHWA-1273 and other federal provisions incorporated into the Contract must be made a part of, and physically incorporated into all subcontracts so as to be binding in those agreements.

107.04—Furnishing Right of Way

The Design-Builder shall secure necessary rights of way and easements in advance of construction, in accordance with the provisions of the Contract. The County 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 County in lieu of a detour within the Right of Way or Easement area shall be acquired by the Design-Builder without the County being a party to the agreement, unless otherwise expressly stated in Part 2 of the Contract Documents.

107.05—Patented Devices, Materials, and Processes (Refer to Part 4 - General Conditions – Article 7, Indemnification)

107.06—Personal Liability of Public Officials

In carrying out any of the provisions of the Contract Documents, or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability upon the Board, Commissioner, County, or their authorized representatives, either personally or as officials of the Commonwealth. In all such matters, they act solely as agents and representatives of the Commonwealth.

107.07—No Waiver of Legal Rights

The County shall not be precluded or estopped by any measurement, estimate, approval, acceptance, or certificate made either before or after Final Acceptance of the Work, or payment therefore from showing (1) the true amount and character of the work performed and Materials furnished by the Design-Builder, (2) that any such measurement, estimate, acceptance, certificate, or payment is untrue or incorrectly made, or (3) that the work or Materials do not comply with the Contract requirements. The County shall not be precluded or estopped, notwithstanding any such measurement, estimate, approval, acceptance, certificate, or payment in accordance therewith, from recovering from the Design-Builder or his Surety, or both, such cost or damage as the County may sustain by reason of the Design-Builder's failure to comply with the Contract requirements. The County's acceptance of the whole or any part of the Work, or the County's payment for the whole or any part of the Work, or the County's granting of any extension of time, or the County's taking any possession of any part of the Work, shall not operate as a waiver of any portion of the Contract or of any right of power herein reserved or of any right to costs or damages. The County's express written waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

107.08—Protecting and Restoring Property and Landscape

The Design-Builder shall preserve property and improvements along the boundary lines of and adjacent to the Work unless their removal or destruction is specified in the Contract Documents. The Design-Builder shall use suitable precautions to prevent damage to such property.

When the Design-Builder finds it necessary to enter on private property, beyond the limits of the construction Easement shown in the Contract Documents, he shall secure from the owner or lessee a written permit for such entry prior to moving thereon. An executed copy of this permit shall be furnished to the County.

The Design-Builder shall be responsible for any damage or injury to property during the prosecution of the Work resulting from any act, omission, neglect, or misconduct in the Design-Builder's method of executing the Work or attributable to defective work or Materials. This responsibility shall not be released until Final Acceptance of the Project and a written release from the owner or lessee of the property is obtained.

When direct or indirect damage is done to property by or on account of any act, omission, neglect, or misconduct in the Design-Builder's method of executing the Work or in consequence of the non-execution thereof on the part of the Design-Builder, the Design-Builder shall restore such property to a condition similar or equal to that existing before such damage was done by repairing, rebuilding, or restoring, as may be directed by the County, or shall make a settlement with the property owner for such property damage. The Design-Builder shall secure

from the owner a written release from any claim against the County without additional compensation therefore. A copy of this release shall be furnished the County.

107.09—Design-Builder’s Responsibility for Utility Property and Services

At points where the Design-Builder’s operations are on or adjacent to the properties of any utility, including railroads, and damage to which might result in expense, loss, or inconvenience, work shall not commence until arrangements necessary for the protection thereof have been completed.

The Design-Builder shall cooperate with owners of utilities so that removal and adjustment operations may progress in a timely, responsible, and reasonable manner, duplication of adjustment work may be reduced to a minimum, and services rendered by those parties will not be unnecessarily interrupted.

If any utility service is interrupted as a result of accidental breakage or of being exposed or unsupported, the Design-Builder shall promptly notify the proper authority and shall cooperate fully with the authority in the restoration of service. If utility service is interrupted, repair work shall be continuous until service is restored. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority. When the Design-Builder’s work operations require the disconnection of “in service” fire hydrants, the Design-Builder shall notify the locality’s fire department or communication center at least twenty-four (24) hours prior to disconnection. In addition, the Design-Builder shall notify the locality’s fire County or communications center no later than twenty-four (24) hours after reconnection of such hydrants. The Design-Builder shall be responsible for any damage to utilities that, in the investigation and determination of the County, is found to be attributable to the Design-Builder’s neglect, means, or methods of performing the Work.

Nothing in this Section shall be construed to be in conflict with Section 107.08.

The Design-Builder shall comply with all requirements of the *Virginia Underground Utility Damage Prevention Act* (the Miss Utility law). The Design-Builder shall not make or begin any Excavation or demolition without first notifying the Miss Utility notification center for the area where the Project is located. The Design-Builder shall wait to begin its Excavation or demolition until 7:00 a.m. on the third working day following the Design-Builder’s notice to the notification center, unless the underground utilities cannot be marked within that time due to extraordinary circumstances. The Design-Builder may commence Excavation or demolition work only if confirmed through the Ticket Information Exchange (TIE) System, or the Design-Builder is notified directly, that all applicable utilities have either marked their underground line locations or reported that no lines are present in the Work vicinity.

107.10—Restoration of Work Performed by Others

The County may construct or reconstruct any utility service within the construction limits or grant a permit for the same at any time. The Design-Builder shall not be entitled to any damages occasioned thereby other than a consideration of an extension of time, unless the Design-Builder’s Work is damaged, altered or impeded by the condition.

When authorized by the County, the Design-Builder shall allow any Person to make an opening in the Highway within the limits of the Project upon presentation of a duly executed permit from the County or any municipality for sections within its corporate limits. When directed by the County, the Design-Builder shall satisfactorily repair portions of the Work disturbed by the openings. The work for such repairs as authorized and directed by the County will be paid for in accordance with Section 109.05 and shall be subject to the same conditions as the original work performed.

107.11—Use of Explosives

The Design-Builder shall be responsible for damage resulting from the use of explosives. Explosives shall be stored in a safe and secure manner in compliance with federal, state, and local laws and ordinances.

The Design-Builder shall notify each property and utility owner having a building, structure, or other installation above or below ground in proximity to the site of the Work of his intention to use explosives. Notice shall be given sufficiently in advance to enable the owners to take steps to protect their property. The review of the Design-Builder's plan of operations, blasting plan and the notification of property owners shall in no way relieve the Design-Builder of his responsibility for damage resulting from his blasting operations.

107.12—Responsibility for Damage Claims (Refer to General Conditions, Article 7 Indemnification)

107.13—Labor and Wages

The Design-Builder shall comply with the provisions and requirements of the workers' compensation law and public statutes that regulate hours of employment on public work.

- (a) **Predetermined Minimum Wages:** The provisions of laws requiring the payment of a minimum wage of a predetermined minimum wage scale for the various classes of laborers and mechanics, when such a scale is incorporated in the Contract, shall be expressly made a part of any Contract hereunder. The Design-Builder and his agents shall promptly comply with all such applicable provisions.

Any classification not listed and subsequently required shall be classified or reclassified in accordance with the wage determination. If other classifications are used, omission of classifications shall not be cause for additional compensation. The Design-Builder shall be responsible for determining local practices with regard to the application of the various labor classifications. For additional details of predetermined minimum wage rates.

- (b) **Labor Rate Forms:** The Design-Builder shall complete Form C-28, indicating by classification the total number of Employees, excluding executive and administrative Employees, employed on the Project. The Design-Builder shall also indicate on the form the compensation rate per hour for each classification. The Design-Builder shall submit an original and two copies of the form prior to the due date of the second estimate for payment and for each 90-day period thereafter until the Work specified in the Contract has been completed.

If at the time of Final Acceptance the period since the last labor report is 30 days or more, the Design-Builder shall furnish an additional labor report as outlined herein prior to payment of the final estimate.

- (c) **Job Service Offices:** In advance of the Contract starting date, the Design-Builder may contact the Job Service Office of the Virginia Employment Commission at the nearest location to secure referral of available qualified workers in all occupational categories. The closest office may be obtained by accessing the VEC website at <http://www.vec.virginia.gov> and "clicking" on "[VEC Local Offices](#)" to access "**VEC Workforce Centers**".

107.14—Equal Employment Opportunity

- (a) The Design-Builder shall comply with the applicable provisions of presidential executive orders and the rules, regulations, and orders of the President's Committee on Equal Employment Opportunity.
- (b) The Design-Builder shall maintain the following records and reports as required by the contract EEO provisions:
 - 1. Record of all applicants for employment

2. New hires by race, work classification, hourly rate, and date employed
 3. Minority and non-minority Employees employed in each work classification
 4. Changes in work classifications
 5. Employees enrolled in approved training programs and the status of each
 6. Minority Subcontractor or Subcontractors with meaningful minority group representation
 7. Copies of Form C-57 submitted by Subcontractors
- (c) If the Contract has a stipulation or requirement for trainees, the Design-Builder shall submit semiannual training reports in accordance with the instructions shown on the forms furnished by the County. If the Design-Builder fails to submit such reports in accordance with the instructions, his monthly progress estimate for payment may be delayed.
- (d) The Design-Builder shall cooperate with the County in carrying out EEO obligations and in the County's review of activities under the Contract. The Design-Builder shall comply with the specific EEO requirements specified herein and shall include these requirements in every subcontract of \$10,000 or more with such modification of language as may be necessary to make them binding on the Subcontractor.
- (e) **EEO Policy:** The Design-Builder shall accept as operating policy the following statement:
- It is the policy of this Company to assure that applicants are employed and that Employees are treated during employment without regard to their race, religion, sex, color, or national origin. Such action shall include employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship or on-the-job training.
- (f) **EEO Officer:** The Design-Builder shall designate and make known to the County an EEO Officer who can effectively administer and promote an active contractor EEO program and who shall be assigned adequate authority and responsibility to do so.
- (g) **Dissemination of Policy:**
1. Members of the Design-Builder's staff who are authorized to hire, supervise, promote, and discharge Employees or recommend such action or are substantially involved in such action shall be made fully aware of and shall implement the Design-Builder's EEO policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. The following actions shall be taken as a minimum:
 - a. Periodic meetings of supervisory and personnel office Employees shall be conducted before the start of work and at least once every six (6) months thereafter, at which time the Design-Builder's EEO policy and its implementation shall be reviewed and explained. The meetings shall be conducted by the EEO Officer or another knowledgeable company official.
 - b. New supervisory or personnel office Employees shall be given a thorough indoctrination by the EEO Officer or another knowledgeable company official covering all major aspects of the Design-Builder's EEO obligations within thirty (30) days following their reporting for duty with the Design-Builder.
 - c. The EEO Officer or appropriate company official shall instruct Employees engaged in the direct recruitment of Employees for the Project relative to the methods followed by the Design-Builder in locating and hiring minority group Employees.

2. In order to make the Design-Builder's EEO policy known to all Employees, prospective Employees, and potential sources of Employees such as, but not limited to, schools, employment agencies, labor unions where appropriate, and college placement officers, the Design-Builder shall take the following actions:

- a. Notices and posters setting forth the Design-Builder's EEO policy shall be placed in areas readily accessible to Employees, applicants for employment, and potential employees.

The Design-Builder shall furnish, erect, and maintain at least two (2) bulletin boards having dimensions of at least forty eight (48) inches in width and thirty six (36) inches in height at locations readily accessible to all personnel concerned with the Project. The boards shall be erected immediately upon initiation of the Work and shall be maintained until the completion of such Work, at which time they shall be removed from the Project. Each bulletin board shall be equipped with a removable glass or plastic cover that, when in place, will protect posters from weather or damage. The Design-Builder shall promptly post official notices on the bulletin boards.

- b. The Design-Builder's EEO policy and the procedures to implement such policy shall be brought to the attention of Employees by means of meetings, employee handbooks, or other appropriate means.

(h) **Recruitment:**

1. When advertising for employees, the Design-Builder shall include in all advertisements for employees the notation "An Equal Opportunity Employer" and shall insert all such advertisements in newspapers or other publications having a large circulation among minority groups in the area from which the Project work force would normally be derived.
2. Unless precluded by a valid bargaining agreement, the Design-Builder shall conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges, and minority group organizations. The Design-Builder shall identify sources of potential minority group employees and shall establish procedures with such sources whereby minority group applicants may be referred to him for employment consideration.
3. The Design-Builder shall encourage his Employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all Employees. In addition, information and procedures with regard to referring minority group applicants shall be discussed with Employees.

(i) **Personnel Actions:** Wages, working conditions, and Employee benefits shall be established and administered, and personnel action of any type shall be taken without regard to race, color, religion, sex, or national origin.

1. The Design-Builder shall conduct periodic inspections of the Project sites to ensure that working conditions and Employee facilities do not indicate discriminatory treatment of personnel.
2. The Design-Builder shall periodically evaluate the spread of wages paid within each classification to determine whether there is evidence of discriminatory wage practices.
3. The Design-Builder shall periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Design-Builder shall promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, corrective action shall include all affected individuals.

4. The Design-Builder shall investigate all complaints of alleged discrimination made to him in connection with obligations under the Contract, attempt to resolve such complaints, and take appropriate corrective action. If the investigation indicates that the discrimination may affect Persons other than the complainant, corrective action shall include those individuals. Upon completion of each investigation, the Design-Builder shall inform every complainant of all avenues of appeal.

(j) **Training:**

1. The Design-Builder shall assist in locating, qualifying, and increasing the skills of minority group and women employees and applicants for employment.
2. Consistent with work force requirements and as permissible under federal and State regulations, the Design-Builder shall make full use of training programs, i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance. Where feasible, twenty five percent (25%) of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.
3. The Design-Builder shall advise Employees and applicants for employment of available training programs and the entrance requirements for each.
4. The Design-Builder shall periodically review the training and promotion potential of minority group Employees and shall encourage eligible Employees to apply for such training and promotion.
5. If the Contract does not provide a separate Pay Item for trainees, the cost associated with the training specified herein shall be included in the contract price.
6. If the Contract requires trainees, training shall be in accordance with Section 518.

(k) **Unions:** If the Design-Builder relies in whole or in part on unions as a source of employees, best efforts shall be made to obtain the cooperation of such unions to increase opportunities for minority groups and women in the unions and to effect referrals by such unions of minority and women employees. Actions by the Design-Builder, either directly or through his Design-Builder's Association acting as agent, shall include the following procedures:

1. In cooperation with the unions, best efforts shall be used to develop joint training programs aimed toward qualifying more minority group members and women for membership in the unions and to increase the skills of minority group employees and women so that they may qualify for higher-paying employment.
2. Best efforts shall be used to incorporate an EEO clause into union agreements to the end that unions shall be contractually bound to refer applicants without regard to race, color, religion, sex, or national origin.
3. Information shall be obtained concerning referral practices and policies of the labor union except that to the extent the information is within the exclusive possession of the union. If the labor union refuses to furnish the information to the Design-Builder, the Design-Builder shall so certify to the County and shall set forth what efforts he made to obtain the information.
4. If a union is unable to provide the Design-Builder with a reasonable flow of minority and women referrals within the time limit set forth in the union agreement, the Design-Builder shall, through his recruitment procedures, fill the employment vacancies without regard to race, color, religion, sex, or national origin, making full efforts to obtain qualified or qualifiable minority group individuals and women. If union referral practice prevents the Design-Builder from complying with the EEO requirements, the Design-Builder shall immediately notify the County.

(l) **Subcontracting:** The Design-Builder shall use best efforts to use minority group Subcontractors or Subcontractors with meaningful minority group and female representation among their employees. Design-

Builders shall obtain lists of SWaM and DBE construction firms from the County. If SWaM and DBE goals are established in the RFDP Documents, the Design-Builder shall comply with Section 107.15.

The Design-Builder shall use best efforts to ensure Subcontractor compliance with his EEO obligations.

(m) **Records and Reports:** The Design-Builder shall keep such records as are necessary to determine compliance with his EEO obligations. The records shall be designed to indicate the following:

1. the number of minority and non-minority group members and females employed in each work classification on the Project.
2. the progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and females if unions are used as a source of the work force.
3. the progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female Employees.
4. the progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority group and female representation among their Employees.

Records shall be retained for a period of three (3) years following Final Acceptance and shall be available at reasonable times and places for inspection by authorized representatives of the County.

Each month for the first three (3) months after construction begins and every month of July thereafter for the duration of the Project, Form C-57 shall be completed to indicate the number of minority, non-minority, and female Employees currently engaged in each work classification shown on the form. The completed Form C-57 shall be submitted within three (3) weeks after the reporting period. Failure to do so may result in delay of approval of the Design-Builder's monthly progress estimate for payment.

107.15—Use of Small, Women-Owned, and Minority Business Enterprises (MBEs)

Not used

107.16—Environmental Stipulations

By signing the Proposal, the Offeror shall have stipulated (1) that any facility to be used in the performance of the Contract (unless the Contract is exempt under the Clean Air Act as amended [42 U.S.C. 1857, et seq., as amended by P.L. 91-604], the Federal Water Pollution Control Act as amended [33 U.S.C. 1251 et seq. as amended by P.L. 92-500], and Executive Order 11738 and regulations in implementation thereof [40 C.F.R., Part 15]) is not listed on the EPA's List of Violating Facilities pursuant to 40 C.F.R. 15.20; and (2) that the County will be promptly notified prior to the Award of the Contract if the Offeror receives any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be used for the Contract is under consideration to be listed on the EPA's List of Violating Facilities.

No separate payment will be made for the Work or precautions described herein.

Reference is made in various subsections of this section to Tidewater, Virginia. For the purposes of identifying the affected regions assigned to this designation and the requirements therein Tidewater, Virginia is defined as the Counties of Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland and York and the Cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach and Williamsburg.

- (a) **Erosion and Siltation:** The Design-Builder shall exercise every reasonable precaution, including temporary and permanent soil stabilization measures, throughout the duration of the Project to control erosion and prevent siltation of adjacent lands, rivers, streams, wetlands, lakes, and impoundments. Soil stabilization or erosion control measures shall be applied to erodible soil or ground materials exposed by any activity associated with construction, including clearing, grubbing, and grading, but not limited to local or on-site sources of materials, stockpiles, Disposal Areas and haul roads.

The Design-Builder shall comply with Sections 301.02 and 303.03 of the Specifications. Should the Design-Builder as a result of negligence or noncompliance fail to provide soil stabilization in accordance with these specifications, the cost of temporary soil stabilization in accordance with the provisions of Section 303 shall be at the Design-Builder's expense.

Temporary measures shall be coordinated with the Work to ensure effective and continuous erosion and sediment control. Permanent erosion control measures and drainage facilities shall be installed as the Work progresses.

For projects that disturb 10,000 square feet or greater of land or 2,500 square feet or greater in Tidewater, Virginia, the Design-Builder shall have within the limits of the project during land disturbance activities, an employee certified by the County in Erosion and Sediment control who shall inspect erosion and sediment control and pollution prevention practices, devices and measures for proper installation and operation and promptly report their findings to the Inspector. Failure on the part of the Design-Builder to maintain appropriate erosion and sediment control or pollution prevention devices in a functioning condition may result in the County notifying the Design-Builder in writing of specific deficiencies. Deficiencies shall be corrected immediately or as otherwise directed by the County. If the Design-Builder fails to correct or take appropriate actions to correct the specified deficiencies within twenty four (24) hours (or as otherwise directed) after receipt of such notification, the County may do one or more of the following: require the Design-Builder to suspend work in other areas and concentrate efforts towards correcting the specified deficiencies, withhold payment of monthly progress estimates, or proceed to correct the specified deficiencies and deduct the entire cost of such work from monies due the Design-Builder. Failure on the part of the Design-Builder to maintain a County certified erosion and sediment control employee within the Project limits when land disturbance activities are being performed will result in the County suspending work related to any land disturbance activity until such time as the Design-Builder is in compliance with this requirement.

(b) **Pollution:**

1. **Water:** The Design-Builder shall exercise every reasonable precaution throughout the duration of the Project to prevent pollution of rivers, streams, and impoundments. Pollutants such as, but not limited to, chemicals, fuels, lubricants, bitumens, raw sewage, paints, sedimentation, and other harmful material shall not be discharged into or alongside rivers, streams, or impoundments or into Channels leading to them. The Design-Builder shall provide the County a contingency plan for reporting and immediate actions to be taken in the event of a dump, discharge, or spill within eight hours after he has mobilized to the Project site.

Construction discharge water shall be filtered to remove deleterious materials prior to discharge into State waters. Filtering shall be accomplished by the use of a standard dewatering basin or a dewatering bag or other measures approved by the County. Dewatering bags shall conform to Section 245. During specified spawning seasons, discharges and construction activities in spawning areas of State waters shall be restricted so as not to disturb or inhibit aquatic species that are indigenous to the waters. Neither water nor other effluence shall be discharged onto wetlands or breeding or nesting areas of migratory waterfowl. When used extensively in wetlands, heavy Equipment shall be placed on mats. Temporary construction fills and mats in wetlands and flood plains shall be constructed of approved non-erodible materials and shall be removed by the Design-Builder to natural ground when the County so directs.

If the Design-Builder dumps, discharges, or spills any oil or chemical that reaches or has the potential to reach a waterway, he shall immediately notify all appropriate jurisdictional Governmental Units in

accordance with the requirements of the Contract and the VPDES *General Permit For Discharge of Stormwater From Construction Activities* and shall take immediate actions to contain, remove, and properly dispose of the oil or chemical.

Solids, sludges, or other pollutants removed in the course of the treatment or management of pollutants shall be disposed of in a manner that prevents any pollutant from such materials from entering surface waters in compliance with all applicable state and federal laws and regulations.

Excavation material shall be disposed of in approved areas above the mean high water mark shown in the Contract Documents in a manner that will prevent the return of solid or suspended materials to State waters. If the mark is not shown on the Plans, the mean high water mark shall be considered the elevation of the top of stream banks.

Constructing new Bridge(s) and dismantling and removing existing Bridge(s) shall be accomplished in a manner that will prevent the dumping or discharge of construction or Disposable Materials into rivers, streams, or impoundments.

Construction operations in rivers, streams, or impoundments shall be restricted to those areas where identified on the Plans and to those that must be entered for the construction of structures. Rivers, streams, and impoundments shall be cleared of Falsework, piling, debris, or other obstructions placed therein or caused by construction operations. Stabilization of the streambed and banks shall occur immediately upon completion of work if work is suspended for more than fourteen (14) days.

The Design-Builder shall prevent stream constriction that would reduce stream flows below the minimum, as defined by the State Water Control Board, during construction operations.

If it is necessary to relocate an existing stream or drainage facility temporarily to facilitate construction, the Design-Builder shall design and provide temporary Channels or culverts of adequate size to carry the normal flow of the stream or drainage facility. The Design-Builder shall submit a temporary relocation design to the County for review and acceptance in sufficient time to allow for discussion and correction prior to beginning the Work the design covers. Costs for the temporary relocation of the stream or drainage facility shall be included in the Contract. Stabilization of the streambed and banks shall occur immediately upon completion of, or during the Work, if the Work is suspended for more than fourteen (14) days.

Temporary Bridges or other minimally invasive structures shall be used wherever the Design-Builder finds it necessary to cross a stream more than twice in a six (6) month period unless otherwise authorized by water quality permits issued by the U. S. Army Corps of Engineers, Virginia Marine Resources Commission, or the Virginia Department of Environmental Quality for the Contract.

Conduct all operations near rivers, streams, or impoundments in accordance with applicable water quality permits. Do not conduct clearing or grubbing within one hundred (100) feet of the limits of Ordinary High Water or a delineated wetland until authorized by the County.

2. **Air:** The Design-Builder shall comply with the provisions of the Contract and the State Air Pollution Control Law and Rules of the State Air Pollution Control Board, including notifications required therein.

Burning shall be performed in accordance with all applicable local laws and ordinances and under the constant surveillance of watchpersons. Care shall be taken so that the burning of materials does not destroy or damage property or cause excessive air pollution. The Design-Builder shall not burn rubber tires, asphalt, used crankcase oil, or other materials that produce dense smoke. Burning shall not be initiated when atmospheric conditions are such that smoke will create a hazard to the motoring public or airport operations. Provisions shall be made for flagging vehicular traffic if visibility is obstructed or impaired by smoke. At no time shall a fire be left unattended.

Asphalt mixing plants shall be designed, equipped, and operated so that the amount and quality of air pollutants emitted will conform to the rules of the State Air Pollution Control Board.

- a. **VOC Emission Control Areas** - The Design-Builder is advised that when the Project is located in a volatile organic compound (VOC) emissions control area identified in the State Air Control Board Regulations (9 VAC 5-20-206) and in the Table I-3 below the following limitations shall apply:
- (1) Open burning is prohibited during the months of May, June, July, August, and September in VOC Emissions Control areas
 - (2) Cutback asphalt is prohibited April through October except when use or application as a penetrating prime coat or tack is necessary in Virginia Department of Environmental Quality Volatile Organic Compound (VOC) Emissions Control Areas.* See the 9 VAC 5-40, Article 39 (Emission Standards for Asphalt Paving Operations) and 9 VAC 5-130 (Regulation for Open Burning) for further clarification.

TABLE I-3			
VOC Emissions Control Area	VDOT District	Jurisdiction	
Northern Virginia	NOVA	Alexandria City Arlington County Fairfax County Fairfax City Falls Church City Loudoun County Manassas City Manassas Park City Prince William County	
Northern Virginia	Fredericksburg	Stafford County	
Fredericksburg	Fredericksburg	Spotsylvania County Fredericksburg City	
Hampton Roads	Fredericksburg	Gloucester County	
Hampton Roads	Hampton Roads	Chesapeake City Hampton City Isle of Wight County James City County Newport News City Norfolk City Poquoson City Portsmouth City Suffolk City Virginia Beach City Williamsburg City York County	

Richmond	Richmond	Charles City County Chesterfield County Colonial Heights City Hanover County Henrico County Hopewell City Petersburg City Prince George County Richmond City	
Western Virginia	Staunton	Frederick County Winchester City	
Western Virginia	Salem	Roanoke County Botetourt County Roanoke City Salem City	

* Regulations for the Control and Abatement of Air Pollution ([9 VAC 5-20-206](#))

- (3) Emission standards for asbestos incorporated in the EPA's National Emission Standards for Hazardous Air Pollutants apply to the demolition or renovation of any institutional, commercial, or industrial building, structure, facility, installation, or portion thereof that contains friable asbestos or where the Design-Builder's methods for such actions will produce friable asbestos.

The Design-Builder shall submit demolition notification the United States Environmental Protection Agency (USEPA) and the Virginia Department of Labor and Industry a minimum of 10 business days prior to starting work on the following bridge activities:

- a) Dismantling and removing existing structures
- b) Moving an entire structure
- c) Reconstruction and repairs involving the replacement of any load-bearing component of a structure

Address notifications to:

Virginia Department of Labor and Industry
Asbestos Program
Powers-Taylor Building
13 South Thirteenth Street
Richmond, VA 23219

Land and Chemical Division
EPA Region III
Mail Code LC62
1650 Arch St.
Philadelphia, PA 19103-2029

3. **Noise:** The Design-Builder's operations shall be performed so that exterior noise levels measured during a noise-sensitive activity shall not exceed 80 decibels. Such noise level measurements shall be taken at a point on the perimeter of the construction limit that is closest to the adjoining property on which a noise sensitive activity is occurring. A *noise-sensitive activity* is any activity for which lowered noise levels are essential if the activity is to serve its intended purpose and not present an unreasonable public

nuisance. Such activities include, but are not limited to, those associated with residences, hospitals, nursing homes, churches, schools, libraries, parks, and recreational areas.

The Design-Builder shall monitor construction-related noise. If construction noise levels exceed 80 decibels during noise sensitive activities, the Design-Builder shall take corrective action before proceeding with operations. The Design-Builder shall be responsible for costs associated with the abatement of construction noise and the delay of operations attributable to noncompliance with these requirements.

The County may prohibit or restrict to certain portions of the Project any work that produces objectionable noise between 10 PM and 6 AM. If other hours are established by local ordinance, the local ordinance shall govern.

Equipment shall in no way be altered so as to result in noise levels that are greater than those produced by the original equipment.

When feasible, the Design-Builder shall establish haul routes that direct his vehicles away from developed areas and ensure that noise from hauling operations is kept to a minimum.

These requirements shall not be applicable if the noise produced by sources other than the Design-Builder's operation at the point of reception is greater than the noise from the Design-Builder's operation at the same point.

- (c) **Forest Fires:** The Design-Builder shall take all reasonable precautions to prevent and suppress forest fires in any area involved in construction operations or occupied by him as a result of such operations. The Design-Builder shall cooperate with the proper authorities of Governmental Units in reporting, preventing, and suppressing forest fires. Labor, tools, or equipment furnished by the Design-Builder upon the order of any forest official issued under authority granted the official by law shall not be considered a part of the Contract. The Design-Builder shall negotiate with the proper forest official for compensation for such labor, tools, or equipment
- (d) **Archeological, Paleontological, and Rare Mineralogical Findings:** In the event of the discovery of prehistoric ruins, Indian or early settler sites, burial grounds, relics, fossils, meteorites, or other articles of archeological, paleontological, or rare mineralogical interest during the prosecution of Work, the Design-Builder shall act immediately to suspend work at the site of the discovery and notify the Engineer. The Engineer will immediately notify the proper State authority charged with the responsibility of investigating and evaluating such finds. The Design-Builder shall cooperate and, upon the request of the Engineer, assist in protecting, mapping, and removing the findings. Labor, tools, or Equipment furnished by the Design-Builder for such work will be paid for in accordance with the requirements of Section 104.03. Findings shall become the property of the Commonwealth unless they are located on federal lands, in which event they shall become the property of the U.S. government.

When such findings delay the progress or performance of the Work, the Design-Builder shall notify the County in accordance with Sections 108.03 and Section 109.05.

- (e) **Storm Water Pollution Prevention Plan and VPDES General Permit for the Discharge of Stormwater from Construction Activities**

A Stormwater Pollution Prevention Plan (SWPPP) identifies potential sources of pollutants which may reasonably be expected to affect the stormwater discharges from the construction site and any off site support facilities located on County/VDOT rights of way and easements. The SWPPP also describes and ensures implementation of practices which will be used to minimize or prevent pollutants in such discharges.

The SWPPP shall include, but not be limited to, the approved Erosion and Sediment Control (ESC) Plan, the approved Stormwater Management (SWM) Plan (if applicable), the approved Pollution Prevention Plan, and all related Specifications, Standards, and requirements contained within the Contract Documents and shall be required for all land-disturbing activities that disturb 10,000 square feet or greater, or 2,500 square feet or greater in Tidewater, Virginia.”

Land-disturbing activities that disturb one (1) acre or greater require coverage under the County of Environmental Quality’s VPDES General Permit for the Discharge of Stormwater from Construction Activities (hereafter referred to as the VPDES Construction Permit) According to IIM-LD-242, the County will apply for and secure VPDES Construction Permit coverage for all applicable land disturbing activities on County/VDOT rights of way or easements for which it has contractual control, including off-site (outside the Project limits) support facilities on County/VDOT rights of way or easements that directly relate to the construction activity.

The Design-Builder shall be responsible for securing VPDES Construction Permit coverage and complying with all permit conditions for all support facilities that are not located on County/VDOT rights of way or easements.

The required contents of a SWPPP for those land disturbance activities requiring coverage under the VPDES Construction Permit are found in Section II of the permit. While a SWPPP is an important component of the VPDES Construction Permit, it is only one of the many requirements for the land disturbing activity that must be addressed in order to be in full compliance with the conditions of this permit. The requirements of this permit will be satisfied by the Design-Builder’s compliance with the Project’s SWPPP terms and conditions.

The Design-Builder and all other persons that oversee or perform activities covered by the VPDES Construction Permit shall be responsible for reading, understanding, and complying with all of the terms, conditions and requirements of the permit and the Project’s SWPPP including, but not limited to, the following:

1. Project Implementation Responsibilities

The Design-Builder shall be responsible for the installation, maintenance, inspection, and, on a daily basis, ensuring the functionality of all erosion and sediment control measures on a daily basis and all other stormwater runoff control and pollution prevention measures identified within or referenced within the SWPPP, the construction plans, the specifications, all applicable permits, and all other Contract Documents or applicable governmental approvals.

The Design-Builder shall be solely responsible for the temporary erosion and sediment control protection and permanent stabilization of all borrow areas and soil disposal areas located outside of County/VDOT right of way or easement.

The Design-Builder shall prevent or minimize any storm water or non-storm water discharge that will have a reasonable likelihood of adversely affecting human health or public and/or private properties.

2. Certification Requirements

In addition to satisfying the Section 107.16(a) personnel certification requirements, the Design-Builder shall certify his activities by completing, signing, and submitting Form C-45 VDOT SWPPP Design-Builder Certification Statement to the County at least seven (7) days prior to commencing any Project-related land-disturbing activities, both within the Project limits and any support facilities located on County/VDOT rights of way or easements outside the Project limits.

3. SWPPP Requirements for Support Facilities

The County will secure VSMP Construction Permit coverage for support facilities located on County/VDOT rights of way or easements according to IIM-LD-242. The County shall also be responsible for securing separate VSMP Construction Permit coverage for support facilities that are not located on County/VDOT rights of way or easements.

Support facilities shall include, but not be limited to, off-site Borrow and Disposal Areas, construction and waste materials or Equipment storage areas, equipment and vehicle washing, maintenance, storage and fueling areas, storage areas for fertilizers, fuels, or chemicals, concrete wash out areas, sanitary waste facilities and any other areas that may generate a storm water or non-stormwater discharge directly related to the construction site.

Support Facilities located on County right of way or easements:

- a. For those support facilities located within the Project limits but not included in the construction plans for the Project, the Design-Builder shall develop a SWPPP in accordance with Chapter 10 of the VDOT Drainage Manual which shall include, where applicable, an erosion and sediment control plan, a stormwater management plan according to [IIM-LD-195](#), and a pollution prevention plan according to these Specifications and the SWPPP General Information Sheet notes in the construction plans or other such contract documents. All plans developed shall be reviewed and approved by appropriate personnel certified through DEQ's ESC and SWM Certification program and shall be developed according to Section 105.10 and shall be submitted to the County for review and approval. Once approved, the County will notify the Design-Builder in writing that the plans are accepted as a component of the Project's SWPPP and VPDES Construction Permit coverage (where applicable) and shall be subject to all conditions and requirements of the VPDES Construction Permit and all other contract documents. No land disturbing activities can occur in the support area(s) until written notice to proceed is provided by the County.
- b. For support facilities located outside the Project limits and not included in the construction plans for the Project, the Design-Builder shall develop a SWPPP in accordance with Chapter 10 of the VDOT Drainage Manual which shall include, where applicable, an erosion and sediment control plan, a stormwater management plan (where applicable) according to [IIM-LD-195](#), a pollution prevention plan according to these specifications and the SWPPP General Information Sheet notes in the construction plans or other such contract documents and all necessary documents for obtaining VPDES Construction Permit coverage according to [IIM-LD-242](#). All plans developed shall be reviewed and approved by appropriate personnel certified through DEQ's ESC and SWM Certification program and shall be developed according to Section 105.10 and shall be submitted to the County for review and approval. Once approved by the County, the County will secure VPDES Construction Permit coverage according to [IIM-LD-242](#). After the County secures VPDES Construction Permit coverage for the support facility, the County will notify the Design-Builder in writing. The support facility shall be subject to all conditions and requirements of the VPDES Construction Permit and all other contract documents. No land disturbing activities can occur in the support area(s) until written notice to proceed is provided by the County.

4. Inspection Procedures

a. Inspection Requirements

The Design-Builder shall be responsible for conducting site inspections in accordance with the requirements herein. Site inspections shall include erosion and sediment control and pollution prevention practices and facilities. The Design-Builder shall document such inspections by completion of Form C-107, Construction Runoff Control Inspection Form, in strict accordance with the directions contained within the form. Inspections shall include all areas of the site disturbed by construction activity, all on-site support facilities and all off site support facilities within County/VDOT right of way or easement. Inspections shall be conducted at least once every 7 calendar days (equivalent to once every five (5) business days) and within forty eight (48) hours

following any measureable storm event. In the event a measureable storm event occurs when there are more than forty eight (48) hours between business days, the inspection shall occur no later than the next business day. A business day is defined as Monday through Friday excluding State holidays. A measurable storm event is defined as one producing 0.25 inches of rainfall or greater over a twenty four (24) hour time period. The Design-Builder shall install a rain gage at a central location on the Project site for the purposes of determining the occurrence of a measureable storm event. Where the Project is of such a length that one rain gage may not provide an accurate representation of a the occurrence of a measurable storm event over the entire Project site, the Design-Builder shall install as many rain gages as necessary to accurately reflect the amount of rainfall received over all portions of the Project. The rain gage shall be observed no less than once each business day at the time prescribed in the SWPPP General Information Sheet notes in the construction plans or other contract documents to determine if a measureable storm event has occurred. The procedures for determining the occurrence of a measurable storm event are identified in the SWPPP General Information Sheet notes in the construction plans or other contract documents. For those areas of the site that have been temporarily stabilized or where land disturbing activities have been suspended due to continuous frozen ground conditions and stormwater discharges are unlikely, the inspection schedule may be reduced to once per month. If weather conditions (such as above freezing temperatures or rain or snow events) make stormwater discharges likely, the Design-Builder shall immediately resume the regular inspection schedule. Those definable areas where final stabilization has been achieved will not require further inspections provided such areas have been identified in the Project's Stormwater Pollution Prevention Plan.

b. Corrective Actions

If a site inspection identifies an existing control measure that is not being maintained properly or operating effectively; an existing control measure that needs to be modified; locations where an additional control measure is necessary; or any other deficiencies in the erosion and sediment control and pollution prevention plan, corrective action(s) shall be completed as soon as practical and prior to the next anticipated measurable storm event but no later than seven days after the date of the site inspection that identified the deficiency.

5. Unauthorized Discharges and Reporting Requirements

The Design-Builder shall not discharge into State waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances nor shall otherwise alter the physical, chemical, or biological properties of such waters that render such waters detrimental for or to domestic use, industrial consumption, recreational or other public uses.

a. Notification of non-compliant discharges

The Design-Builder shall immediately notify the County upon the discovery of or the potential of any unauthorized, unusual, extraordinary, or non-compliant discharge from the land construction activity or any of support facilities located on County/VDOT right of way or easement. Where immediate notification is not possible, such notification shall be not later than twenty four (24) hours after said discovery.

b. Detailed report requirements for non-compliant discharges

The Design-Builder shall submit to the County within five (5) days of the discovery of any actual or potential non-compliant discharge a written report describing details of the discharge to include a description of the nature and location of the discharge; the cause of the discharge; the date of occurrence; the length of time that the discharge occurred, the volume of the discharge; the expected duration and total volume if the discharge is continuing; a description of any apparent or potential effects on private and/or public properties and State waters or endangerment to public health; and

any steps planned or taken to reduce, eliminate, and prevent a recurrence of the discharge. A completed Form C-107 shall be used for such reports.

6. Changes and Deficiencies

The Design-Builder shall report to the County when: (a) any planned physical alterations or additions are made to the land disturbing activity; or (b) deficiencies in the Project plans or Contract are discovered that could significantly change the nature of or increase potential for pollutants discharged from the land disturbing activity to surface waters and that have not previously been addressed in the SWPPP.

7. Amendments, Modifications, Revisions and Updates to the SWPPP

- a. The Design-Builder shall amend the SWPPP whenever site conditions, construction sequencing or scheduling necessitates revisions or modifications to the erosion and sediment control plan, the pollution prevention plan, or any other component of the SWPPP for the land disturbing activity or onsite support facilities,
- b. The Design-Builder shall amend the SWPPP to identify any additional or modified erosion and sediment control and pollution prevention measures implemented to correct problems or deficiencies identified through any inspection or investigation process.
- c. The Design-Builder shall amend the SWPPP to identify any new or additional person(s) or contractor(s) not previously identified that will be responsible for implementing and maintaining erosion and sediment control and pollution prevention devices.
- d. The Design-Builder shall update the SWPPP to include:
 - (1) A record of dates when major grading activities occur, construction activities temporarily or permanently cease on a portion of the site, and stabilization measures are initiated.
 - (2) Documentation of replaced or modified erosion and sediment control and pollution prevention controls where periodic inspections or other information have indicated that the controls have been used inappropriately or incorrectly.
 - (3) Identification of areas where final stabilization has occurred and where no further SWPPP or inspection requirements apply.
 - (4) The date of any prohibited discharges, the discharge volume released, and what actions were taken to minimize the impact of the release.
 - (5) A description of any measures taken to prevent the reoccurrence of any prohibited discharge.
 - (6) A description of any measures taken to address any issues identified by the required erosion and sediment control and pollution prevention inspections.
- e. The Design-Builder shall update the SWPPP no later than seven (7) days after the implementation and/or the approval of any amendments, modifications, or revisions to the erosion and sediment control plan, the pollution prevention plan, or any other component of the SWPPP.
- f. Revisions or modifications to the SWPPP shall be approved by the County and shall be documented by the Design-Builder on a designated plan set (Record Set) in accordance with Chapter 10 of the VDOT Drainage Manual. All updates to the SWPPP shall be signed by the delegated authority as identified on the SWPPP.

- g. The record set of plans shall be maintained with other SWPPP documents on the Project site or at a location convenient to the Project site where no on site facilities are available.

107.17—Construction Safety and Health Standards

- (a) In the performance of this Contract the Design-Builder shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The Design-Builder, Subcontractors at any tier, and their respective employees, agents and invitees, shall at all times while in or around the Project site comply with all applicable laws, regulations, provisions, and policies governing safety and health under the Virginia Occupational Safety and Health (VOSH) Standards adopted under the Code of Virginia, and any laws, regulations, provisions, and policies incorporated by reference including but not limited to the Federal Construction Safety Act (Public Law 91-54), 29 CFR Chapter XVII, Part 1926, Occupational Safety and Health Regulations for Construction, and the Occupation Safety and Health Act (Public Law 91-596), 29 CFR Chapter XVII, Part 1910 Occupational Safety and Health Standards for General Industry, and subsequent publications updating these regulations.
- (b) The Design-Builder shall provide all safeguards, safety devices and protective equipment, and take any other needed actions as it determines, or as the Engineer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public, and to protect property in connection with the performance of the Work. The Design-Builder shall be responsible for maintaining and supervising all safety and health protections and programs to ensure compliance with this Section. The Design-Builder shall routinely inspect the Project site for safety and health violations. The Design-Builder shall immediately abate any violations of the safety and health requirements or duties at no cost to the County.
- (c) It is a condition of this Contract, and shall be made a condition of each subcontract, which the Design-Builder enters into pursuant to this Contract, that the Design-Builder and any Subcontractor shall not permit any employees in performance of the Contract, to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to their health or safety as determined by the Virginia Work Area Protection Manual or under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).
- (d) VOSH personnel, on all Federal-aid construction contracts and related subcontracts, pursuant to 29 CFR 1926.3, the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out their duties.

107.18—Sanitary Provisions

The Design-Builder shall provide and maintain in a neat, sanitary condition such accommodations for the use of Employees as may be necessary to comply with the requirements of the State and local Board of Health or other bodies or tribunals having jurisdiction.

107.19—Railway-Highway Provisions

If the Design-Builder's work requires hauling materials across the tracks of a railway, he shall make arrangements with the railway for any new crossing(s) required. Access to existing rail crossings with off-road heavy Equipment shall also be arranged by the Design-Builder. Charges made by the railway company for the construction or use of new or existing crossings and their subsequent removal and for watchperson or flagger service at such crossings shall be reimbursed by the Design-Builder directly to the railway company under the terms of their separate individual arrangements before Final Acceptance.

Work to be performed by the Design-Builder in construction on or over the railway Right of Way shall be performed at times and in a manner that will not unnecessarily interfere with the movement of trains or traffic on

the railway track. The Design-Builder shall use care to avoid accidents, damage, or unnecessary delay or interference with the railway company's trains or other property. If any interruption of railway traffic is required by the Design-Builder's actions, he shall obtain prior written approval from the railway company.

The Design-Builder shall conduct operations that occur on or over the Right of Way of any railway company fully within the rules, regulations, and requirements of the railway company and in accordance with the requirements of any agreements made between the County and the railway company. The applicable portions of such agreements shall be provided by County to Design-Builder upon Design-Builder's request, unless the Contract Documents require the Design-Builder to obtain such agreement.

- (a) **Flagger or Watchperson Services:** Flagger or watchperson services required by the railway company for the safety of railroad operations because of work being performed by the Design-Builder or incidental thereto will be provided by the railway company. The cost for such services as required for work shown in the Contract Documents will be borne by the Design-Builder. Any cost of such services resulting from work not shown in the Contract Documents or for the Design-Builder's convenience shall be borne by the Design-Builder and shall be paid directly to the railway company(s) under the terms of their separate individual agreement.

No work shall be undertaken on or over the railway Right of Way until the watchpersons or flaggers are present at the Project site. The Design-Builder shall continuously prosecute the affected work to completion to minimize the need for flagger or watchperson services. Costs for such services that the County determines to be unnecessary because of the Design-Builder's failure to give notice as required herein before initially starting, intermittently continuing, or discontinuing work on or over the railway Right of Way shall be borne by the Design-Builder and will be deducted from monies due him.

- (b) **Approval of Construction Methods on Railway Right of Way:** The Design-Builder shall submit to the County a plan of operations showing the design and method of proposed structural operations and shall obtain its approval before performing any work on the railway company's Right of Way unless otherwise indicated in the railroad agreement. The plan shall be clear and legible and details shall be drawn to scale. The plan shall incorporate any stipulations or requirements the railroad may impose for the evaluation of the Design-Builder's contemplated operations. The plan shall show, but not be limited to, the following:

1. proximity of construction operations to tracks.
2. depth of Excavation with respect to tracks.
3. description of structural units.
4. vertical and horizontal clearances to be afforded the railroad during installation and upon completion of Excavation.
5. sheeting and bracing.
6. method and sequence of operations.

Approval shall not relieve the Design-Builder of any liability under the Contract. The Design-Builder shall arrange the Work so as not to interfere with the railway company's operation except by agreement with the railway company.

- (c) **Insurance:** In addition to insurance or bonds required under the terms of the Contract, the Design-Builder shall carry insurance covering operations affecting the property of the railway company. The original railroad protective liability insurance policy and certificate of insurance showing insurance carried by the Design-Builder and any Subcontractors shall be submitted to the railway company for approval and retention.

Neither the Design-Builder nor any Subcontractor shall begin any work affecting the railway company until the railway company has received the insurance.

Notice of any material change in or cancellation of the required policies shall be furnished the County 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 County with respect to the operations to be performed that he carries regular contractor's public liability insurance. The insurance shall provide for a limit of at least the dollar value specified in the Contract for all damages arising out of bodily injuries to or the death of one person and subject to that limit for each person a total limit of at least the dollar value specified in the Contract for all damages arising out of bodily injuries to or death of two or more persons in any one occurrence, and regular design-builder's property damage insurance providing for a limit of at least the dollar value specified in the Contract for all damages arising out of bodily injury to or destruction of property in any one occurrence, and subject to that limit per occurrence, a total or aggregate limit of at least the dollar value specified in the Contract for all damages arising out of injury to or destruction of property during the policy period. The Design-Builder's public liability and property damage insurance shall include explosion, collapse, and underground damage coverage. If the Design-Builder subcontracts any portion of the Work, he shall secure insurance protection in his own behalf under the Contract's public liability and property damage insurance policies to cover any liability imposed on him by law for damages because of bodily injury to, or death of persons and injury to, or destruction of property as a result of Work undertaken by the Subcontractors. In addition, the Design-Builder shall provide similar insurance protection for and on behalf of any Subcontractors to cover their operation by means of separate and individual design-builder's public liability and property damage policies. As an alternative, he shall require each Subcontractor to provide such insurance in his own behalf.
2. **Railroad protective insurance and public liability and property damage:** The policy furnished the railway company shall include coverage for contamination, pollution, explosion, collapse, and underground damage. The policy shall be of the type specified hereinafter and shall be expressed in standard language that may not be amended. No part shall be omitted except as indicated hereinafter or by an endorsement that states an amendment or exclusion of some provision of the form in accordance with the provisions of a manual rule. The form of the endorsement shall be approved as may be required by the supervising authority of the State in which the policy is issued. A facsimile of the Policy Declarations form as shown in the RFDP Documents shall be made a part of the policy and shall be executed by an officer of the insurance company. The several parts of the requirements and stipulations specified or inferred herein may appear in the policy in such sequence as the company may elect.

a. **For a policy issued by one company:**

(NAME AND LOCATION OF INDEMNITY COMPANY), a _____ (Type of Company) Insurance Company, herein called the Company, agrees with the insured named in the Policy Declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the Policy Declarations made by the named insured and subject to all of the terms of his policy.

For a policy issued by two companies:

(NAME AND LOCATION OF INDEMNITY COMPANY) and (NAME AND LOCATION OF INDEMNITY COMPANY), each a _____ Insurance Company (Type of Company), herein called the Company, severally agree with the insured named in the Policy Declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the Policy Declaration made by the named insured and subject to all of the terms of this policy, provided the named Indemnity Company shall be the insured with respect to Coverage _____

and no other and the named Insurance Company shall be the insurer with respect to Coverage _____ and no other.

b. **Insuring agreements:**

- (1) **Coverages: Coverage A—Bodily injury liability:** To pay on behalf of the insured all sums that the insured shall become legally obligated to pay as damages because of bodily injury, sickness, or disease including death at any time resulting therefrom (hereinafter called bodily injury) either (1) sustained by any person arising out of acts or omissions at the designated job site that are related to or are in connection with the Work described in Item 6 of the Policy Declarations; or (2) sustained at the designated job site by the Design-Builder, any Employee of the Design-Builder, any employee of the governmental authority specified in Item 5 of the Policy Declarations, or any designated employee of the insured, whether or not arising out of such acts or omissions.

Coverage B—Property damage liability: To pay on behalf of the insured all sums the insured shall become legally obligated to pay as damages because of physical injury to or destruction of property, including loss of use of any property because of such injury or destruction (hereinafter called property damage) arising out of acts or omissions at the designated job site that are related to or are in connection with the Work described in Item 6 of the Policy Declarations.

Coverage C—Physical damage to property: To pay for direct and accidental loss of or damage to rolling stock and other contents, mechanical construction Equipment, or motive power Equipment (hereinafter called loss) arising out of acts or omissions at the designated job site that are related to or are in connection with the work described in Item 6 of the Policy Declarations; provided such property is owned by the named insured or is leased or entrusted to the named insured under a lease or trust agreement.

- (2) **Definitions:** *Insured* means and includes the named insured and any executive officer, director, or stockholder thereof while acting within the scope of his duties as such.

Design-Builder means the Design-Builder designated in Item 4 of the Policy Declarations and includes all Subcontractors of the Design-Builder but not the named insured.

Designated employee of the insured means (1) any supervisory employee of the insured at the job site; (2) any employee of the insured while operating, attached to, or engaged on work trains or other railroad Equipment at the job site that is assigned exclusively to the Design-Builder; or (3) any employee of the insured not within (1) or (2) who is specifically loaned or assigned to the work of the Design-Builder for prevention of accidents or protection of property, the cost of whose services is borne specifically by the Design-Builder or governmental authority.

Contract means any contract or agreement to carry a Person or property for a consideration or any lease, trust, or interchange contract or agreement respecting motive power, rolling stock, or mechanical construction Equipment.

- (3) **Defense and settlement supplementary payments:** With respect to such insurance as is afforded by this policy under Coverages A and B, the Company shall defend any suit against the insured alleging such bodily injury or property damage and seeking damages that are payable under the terms of this policy, even if any of the allegations of the suit are groundless, false, or fraudulent. However, the Company may make such investigation and settlement of any claim or suit as it deems expedient.

In addition to the applicable limits of liability, the Company shall pay (1) all expenses incurred by the company, all costs taxed against the insured in any such suit, and all interest on the entire

amount of any judgment therein that accrues after entry of the judgment and before the Company has paid or tendered or deposited in court that part of the judgment that does not exceed the limit of the Company's liability thereon; (2) premiums on appeal bonds required in any such suit and premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, but without obligation to apply for or furnish any such bonds; (3) expenses incurred by the insured for first aid to others that shall be imperative at the time of the occurrence; and (4) all reasonable expenses, other than loss of earnings, incurred by the insured at the Company's request.

- (4) **Policy period and territory:** This policy applies only to occurrences and losses during the policy period and within the United States, its territories or possessions, or Canada.

c. **Exclusions:** This policy does not apply to the following:

- (1) liability assumed by the insured under any contract or agreement except a contract as defined herein.
- (2) bodily injury or property damage caused intentionally by or at the direction of the insured.
- (3) bodily injury, property damage, or loss that occurs after notification to the named insured of the acceptance of the Work by the governmental authority, other than bodily injury, property damage, or loss resulting from the existence or removal of tools, uninstalled Equipment, and abandoned or unused Materials.
- (4) under Coverage A(1), B, and C, to bodily injury, property damage, or loss, the sole proximate cause of which is an act or omission of any insured.
- (5) under Coverage A, to any obligation for which the insured or any carrier as his insurer may be held liable under any workers' compensation, employment compensation, or disability benefits law or under any similar law; provided that the Federal Employer's Liability Act, *U.S. Code* (1946) Title 45, Sections 51-60, as amended, shall for the purpose of this insurance be deemed not to be any similar law.
- (6) under Coverage B, to injury to or destruction of property owned by the named insured or leased or entrusted to the named insured under a lease or trust agreement.
- (7) under any liability coverage, to injury, sickness, disease, death, or destruction (1) with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, or Nuclear Insurance Association of Canada or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or (2) resulting from the hazardous properties of nuclear material and with respect to which any Person is required to maintain financial protection pursuant to the Atomic Energy Act of 1954 or any law amendatory thereof or the insured is (or had this policy not been issued would be) entitled to indemnity from the United States or any agency thereof under any agreement entered into by the United States, or any agency thereof, with any Person.
- (8) under any Medical Payments Coverage or any Supplementary Payments provision relating to immediate medical or surgical relief or to expenses incurred with respect to bodily injury, sickness, disease, or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any Person.
- (9) under any liability coverage, to injury, sickness, disease, death, or destruction resulting from the hazardous properties of nuclear material if (1) the nuclear material is at any nuclear facility owned or operated by or on behalf of an insured or has been discharged or dispersed therefrom;

(2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported, or disposed of by or on behalf of an insured; or (3) the injury, sickness, disease, death, or destruction arises out of the furnishing by an insured of services, Materials, or parts for Equipment in connection with the planning, construction, maintenance, operation, or use of any nuclear facility; if such facility is located in the United States, its territories or possessions, or Canada, this exclusion applies only to injury to or destruction of property at such nuclear facility.

(10) under Coverage C, to loss attributable to nuclear reaction, nuclear radiation, or radioactive contamination or to any act or condition incident to any of the foregoing.

(11) As used in exclusions (7), (8), and (9), the following definitions apply:

Disposable material means material containing by product material and resulting from the operation by any Person of any nuclear facility included in the definition of nuclear facility under (i) or (ii) below.

Hazardous properties include radioactive, toxic, or explosive properties.

Injury or destruction with respect to injury to or destruction of property, includes all forms of radioactive contamination of property.

Nuclear facility means:

- a) any nuclear reactor.
- b.) any equipment or device designed or used for separating the isotopes of uranium or plutonium; processing or utilizing spent fuel; or handling, processing, or packaging waste.
- c) any equipment or device designed or used for the processing, fabricating, or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 (or any combination thereof) or more than 250 grams of uranium 235.
- d) any structure, basin, Excavation, premises, or place prepared or used for the storage or disposal of waste (includes the site on which any of the foregoing is located, all operation conducted on such site, and all premises used for such operations).

Nuclear material means source material, special nuclear material, or byproduct material.

Nuclear reactor means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

Source material, special nuclear material, and byproduct material have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

Spent fuel means any fuel element or fuel component (solid or liquid) that has been used or exposed to radiation in a nuclear reaction.

- d. **Conditions:** The following conditions, except conditions (3) through (12), apply to all coverages. Conditions (3) through (12) apply only to the coverage noted thereunder.

- (1) **Premium:** The premium bases and rates for the hazards described in the Policy Declarations are stated therein. Premium bases and rates for hazards not so described are those applicable in

accordance with the requirements of the manuals used by the company. The term “contract cost” means the total cost of all Work described in Item 6 of the Policy Declaration. The term “rental cost” means the total cost to the Design-Builder for rental or work trains or other railroad Equipment, including the remuneration of all employees of the insured while operating, attached to, or engaged thereon. The advance premium stated in the Policy Declarations is an estimated premium only. Upon termination of this policy, the earned premium shall be computed in accordance with the Company’s rules, rates, rating plans, premiums, and minimum premiums applicable to this insurance. If the earned premium thus computed exceeds the estimated advance premium paid, the Company shall look to the Design-Builder specified in the Policy Declarations for any such excess. If the earned premium is less than the estimated advance premium paid, the Company shall return to the Design-Builder the unearned portion paid. In no event shall payment or premium be an obligation of the named insured.

- (2) **Inspection:** The named insured shall make available to the Company records of information relating to the subject matter of this insurance. The Company shall be permitted to inspect all operations in connection with the Work described in Item 6 of the Policy Declarations.
- (3) **Limits of liability, Coverage A:** The limit of bodily injury liability stated in the Policy Declarations as applicable to “each person” is the limit of the Company’s liability for all damages (including damages for care and loss of services) arising out of bodily injury sustained by one Person as the result of any one occurrence. The limit of such liability stated in the Policy Declarations as applicable to “each occurrence” is (subject to the provision respecting each Person) the total limit of the Company’s liability for all such damage arising out of bodily injury sustained by two or more Persons as the result of any one occurrence.
- (4) **Limits of liability, Coverages B and C:** The limit of liability under Coverages B and C stated in the Policy Declarations as applicable to “each occurrence” is the total limit of the Company’s liability for all damages and all loss under Coverages B and C combined arising out of physical injury to, destruction of, or loss of all property of one or more Persons or organizations, including the loss or use of any property attributable to such injury or destruction under Coverage B, as the result of any one occurrence. Subject to the provision respecting “each occurrence”, the limit of liability under Coverages B and C stated in the Policy Declaration as “aggregate” is the total limit of the Company’s liability for all damages and all loss under Coverages B and C combined arising out of physical injury to, destruction of, or loss of property, including the loss or use of any property attributable to such injury or destruction under Coverage B.

Under Coverage C, the limit of the Company’s liability for loss shall not exceed the actual cash value of the property, or if the loss is a part thereof, the actual cash value of such part, at time of loss, nor what it would then cost to repair or replace the property of such part thereof with other of like kind and quality.

- (5) **Severability of interests, Coverages A and B:** The term *the insured* is used severally and not collectively. However, inclusion herein of more than one insured shall not operate to increase the limits of the Company’s liability.
- (6) **Notice:** In the event of an occurrence or loss, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place, and circumstances thereof and the names and addresses of the injured and of able witnesses shall be given by or for the insured to the company or any of its authorized agents as soon as is practicable. If a claim is made or a suit is brought against the insured, he shall immediately forward to the Company every demand, notice, summons, or other process received by him or his representative.

- (7) **Assistance and cooperation of the insured, Coverages A and B:** The insured shall cooperate with the Company and upon the Company's request attend hearings and trials and assist in making settlements, securing and giving evidence, obtaining the attendance of witnesses, and conducting suits. Except at its own cost, the insured shall not voluntarily make any payment, assume any obligations, or incur any expense other than for first aid to others that shall be imperative at the time of an accident.
- (8) **Action against Company, Coverages A and B:** No action shall lie against the Company unless as a condition precedent thereto the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant, and the Company. Any Person who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No Person shall have any right under this policy to join the Company as a part to any action against the insured to determine the insured's liability. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the Company of any of its obligations hereunder.
- (9) **Action against Company, Coverage C:** No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy nor until 30 days after proof of loss is filed and the amount of loss is determined as provided in this policy.
- (10) **Insured's duties in event of loss, Coverage C:** In the event of loss, the insured shall protect the property, whether or not the loss is covered by this policy. Any further loss attributable to the insured's failure to protect shall not be recoverable under this policy. Reasonable expenses incurred in affording such protection shall be deemed incurred at the company's request.
- The insured shall also file with the Company, as soon as practicable after loss, his sworn proof of loss in such form and including such information as the Company may reasonably require and shall, upon the Company's request, exhibit the damaged property.
- (11) **Appraisal, Coverage C:** If the insured and the Company fail to agree as to the amount of loss, either may demand an appraisal of the loss within 60 days after the proof of loss is filed. In such event the insured and the Company shall each select a competent appraiser, and the appraisers shall select a competent and disinterested umpire. An award in writing or any two shall determine the amount of loss. The insured and the Company shall each pay his chosen appraiser and shall bear equally the other expenses of the appraisal and umpire. The Company shall not be held to have waived any of its rights by any act relating to appraisal.
- (12) **Payment of loss, Coverage C:** The Company may pay for the loss in money, but there shall be no abandonment of the damaged property to the Company.
- (13) **No benefit to bailee coverage:** The insurance afforded by this policy shall not inure directly or indirectly to the benefit of any carrier or bailee (other than the named insured) liable for loss to the property.
- (14) **Subrogation:** In the event of any payment under this policy, the Company shall be subrogated to all of the insured's rights of recovery therefore against any Person. The insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.
- (15) **Application of insurance:** The insurance afforded by this policy is primary insurance. If the insured has other primary insurance against a loss covered by this policy, the Company shall not be liable under the policy for a greater proportion of such loss than the applicable

limit of liability stated in the Contract bears to the total applicable limit of all valid and equitable insurance against such loss.

- (16) **3-year policy:** A policy period of 3 years is comprised of three consecutive annual periods. Computation and adjustment of earned premium shall be made at the end of each annual period. Aggregate limits of liability as stated in this policy shall apply separately to each annual period.
- (17) **Changes:** Notice to any agent of knowledge possessed by any agent or by any other Person shall not affect a waiver or a change in any part of this policy or stop the Company from asserting any right under the terms except by endorsement issued to form a part of this policy signed by * _____ provided, however, changes may be made in the written portion of the Policy Declaration by * _____ when initialed by such * _____ or by endorsement issued to form a part of this policy signed by such * _____. [*Insert titles of authorized company representatives.]
- (18) **Assignment:** Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon.
- (19) **Cancellation:** This policy may be cancelled by the named insured by mailing to the Company written notice stating when the cancellation shall become effective. This policy may be cancelled by the Company by mailing to the named insured, Design-Builder, and governmental authority at the respective addresses shown in this policy written notice stating when such cancellation shall be effective (not less than 30 days thereafter). The mailing of notice shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the named insured or the Company shall be equivalent to mailing. If the named insured cancels, the earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, the earned premium shall be computed pro rata. The premium may be adjusted either at the time cancellation is effected or as soon as practicable after the cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.
- (20) **Policy Declarations:** By acceptance of this policy, the named insured agrees that such statements in the Policy Declarations as are made by him are his agreements and representations, that his policy is issued in reliance on the truth of such representations, and that this policy embodies all agreements existing between himself and the Company or any of its agents relating to this insurance.

e. **For a policy issued by one company:**

In witness whereof, the _____ Indemnity Company has caused this policy to be signed by its president and a secretary at _____ and countersigned on the Policy Declarations page by a duly authorized agent of the Company.

(Facsimile of Signature)

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 Policy 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 County evidence of the railway company's approval and a copy of the required insurance policies. The State will not be responsible for any claims from the Design-Builder resulting from delay in the acceptance of any of these policies by the railway company other than consideration of an extension of time. If the delay is caused by the failure of the Design-Builder or his insurer to file the required insurance policies promptly, an extension of time will not be granted.
- (e) **Beginning Construction:** Preliminary contingent work or other work by the railway company may delay the starting or continuous prosecution of the work by the Design-Builder. The Design-Builder shall be satisfied as to the probable extent of such work and its effect on the operations prior to submitting a bid for the work. The State will not be responsible for any claims by the Design-Builder resulting from such delays except that an extension of time may be considered.
- (f) **Arranging for Tests:**
1. **Railroad Specifications:** When ordering Materials that are to conform to railroad specifications, the Design-Builder shall notify the railway company, who will arrange for tests. The Design-Builder shall specify in each order that the Materials are to be tested in accordance with the requirements of the railroad specifications and not those of the County.
 2. **Highway Specifications:** When ordering Materials that are to conform to highway specifications, the Design-Builder shall specify in each order that the Materials are to be tested in accordance with the requirements of the Standard Specifications.

107.20—Construction Over or Adjacent to Navigable Waters

The County will obtain a permit from the U.S. Coast Guard for the anticipated construction or demolition activities of structures on County projects that cross a waterway(s) under the jurisdiction of the U.S. Coast Guard. As the permit holder, the County must apply to the U.S. Coast Guard for approval of permit modifications that the Design-Builder requests to the original County permit.

Prior to starting demolition or construction operations the Design-Builder shall meet with the County and the U.S. Coast Guard (U.S. Coast Guard Coordination Meeting) to present its planned operations and the potential impacts those operations may pose to water traffic. As part of this meeting, the parties shall establish in writing the proper protocol for emergency closures and be governed accordingly.

- (a) **Activities subject to Coast Guard regulation under the Permit.** Following the U.S. Coast Guard Coordination meeting, the Design-Builder shall submit its proposed schedule of operations in writing to the County. The County shall review and provide written comments, if applicable, to the Design-Builder within seven (7) days following receipt of the Design-Builder's schedule of operations. The Design-Builder shall incorporate the County's comments and submit its notice of scheduled operations to the County and to the U.S. Coast Guard at least thirty (30) days prior to commencement of any permitted construction or demolition operations. U.S. Coast Guard acceptance of the Design-Builder's written schedule of operations is a condition precedent to the Design-Builder's commencement of those operations.
- (b) **Activities that require Channel closures or restrictions.** In addition to the submittal of its proposed schedule of operations as described in (a) above, Design-Builder shall submit Plans that comply with the Permit for Falsework, cofferdams, floating Equipment and other obstructions to the Channel or Channels to the County. The Design-Builder's attention is directed to the possibility that advance notification for consideration of approval may vary depending on the type and duration of proposed closures, the time of

year for requested closure(s), and location of existing Bridge(s) and waterway(s) involved, and the impact to entities served along or through the waterway(s). The County shall review and provide written comments, if applicable, to the Design-Builder within thirty (30) days following receipt of the Design-Builder's Plans. The Design-Builder shall incorporate the County's comments and submit its Plans to the County and to the U.S. Coast Guard at least thirty (30) days prior to commencement of any permitted construction or demolition operations. The Design-Builder may not commence activities that require Channel closures or restrictions without the prior written approval of the County and the U.S. Coast Guard. The Design-Builder shall be responsible for complying with all operational requirements that the U.S. Coast Guard may place on the Design-Builder as conditions of approval.

In addition, the Design-Builder shall request and obtain County and U.S. Coast Guard approval in writing before commencing any operations that deviate from the Design-Builder's schedule of operations when these operations interfere or have the potential to interfere with navigation of water traffic outside of timeframes previously approved by the County and the U.S. Coast Guard.

Notices shall be sent to the U.S. Coast Guard, Fifth District Bridge Office (OBR), 431 Crawford Street, Portsmouth, VA 23704-5004. Payment of any penalty or fine that may be levied by the U.S. Coast Guard for Design-Builder violations of Bridge regulations found in 33 CFR Parts 114, 115, 116, 117 and 118 shall be the responsibility of the Design-Builder. Further, any delay to the Contract as a result of actions or inaction by the Design-Builder relative to the requirements herein that are determined by the County to be the fault of the Design-Builder will be a non-compensable and non-excusable delay.

The cost to comply with the requirements of this provision and to provide and maintain temporary navigation lights, signals and other temporary work associated with the structure(s) under this Contract required by the U.S. Coast Guard for the protection of navigation during construction or demolition operations shall be included in the Price Proposal for other appropriate pay items.

107.21—Size and Weight Limitations

- (a) **Hauling or Moving Material and Equipment on Public Roads Open to Traffic:** The Design-Builder shall comply with legal size and weight limitations in the hauling or moving of Material and Equipment on public Roads open to traffic unless the hauling or moving is covered by a hauling permit.
- (b) **Hauling or Moving Material and Equipment on Public Roads Not Open to Traffic:** The Design-Builder shall comply with legal weight limitations in the hauling or moving of Material and Equipment on public Roads that are not open to traffic unless the hauling or moving is permitted elsewhere herein or is otherwise covered by a hauling permit. The Design-Builder shall be liable for damage that results from the hauling or moving of Material and Equipment. The hauling or moving of Material and Equipment on the Pavement Structure or across any structure during various stages of construction shall be subject to additional restrictions as specified or directed by the County.
- (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 County prior to fabrication or manufacture of the items. The request shall state the reasons for adjustment and shall be accompanied by supporting data, including Working Drawings where necessary.
- (d) **Construction Loading of Structures:** In the construction, reconstruction, widening, or repair of bridge, culvert, retaining wall and other similar type structures including approaches, the Design-Builder shall consider construction loads during the planning and prosecution of the work. If the loading capacity of these type structure(s) is not shown in the Contract, the Design-Builder is responsible for contacting the office of the appropriate district bridge engineer to obtain the loading capacity information. Construction loads include but are not limited to the weight of cranes, trucks, other heavy construction or material delivery equipment,

as well as the delivery or storage of materials placed on or adjacent to the structure or parts thereof during the various stages (phases) of the work in accordance with the Design-Builder's proposed work plan. The Design-Builder shall consider the effect(s) of construction loads on the loading capacity of these type structure(s) in his sequencing of the work and operations, including phase construction. At the County's request the Design-Builder shall be prepared to discuss or review his proposed operations with the County with regard to construction loads to demonstrate he has taken such into consideration in the planning and execution of the work.

SECTION 108—PROSECUTION AND PROGRESS OF WORK

108.01—Prosecution of Work

The Design-Builder shall provide sufficient labor, Materials, Equipment, and tools and shall prosecute the Work with such means and methods and with such diligence as is required to attain and maintain a rate of progress necessary to ensure completion of the Project within the Contract Time(s) in accordance with the Contract Documents.

Once the Design-Builder has begun work, the Design-Builder shall prosecute the Work continuously and to the fullest extent possible except for suspensions authorized or ordered by the County according to Section 108.05. If approval is given to suspend the Work temporarily, the Design-Builder shall notify the County at least twenty four (24) hours in advance of resuming operations.

The Design-Builder shall notify the County at least twenty-four (24) hours in advance of any changes in the Design-Builder's planned operations or work requiring inspection.

108.02—Limitation of Operations

(a) General.

The Design-Builder shall conduct the Work in a manner and sequence that will ensure its expeditious completion with the least interference to traffic and shall have due regard for the location of detours and provisions for handling traffic. The Design-Builder shall not open any work to the prejudice or detriment of work already started. The County may require the Design-Builder to finish a section of work before work is started on any other section.

(b) Holidays

Except as is necessary to maintain traffic, work shall not be performed on Sundays or the following holidays without the permission of the County: January 1, Easter, Memorial Day, July 4, Labor Day, Thanksgiving Day, and Christmas Day.

If any of these holidays occurs on a Sunday, the following Monday shall be considered the holiday.

In addition to the Sunday or Holiday work limitations, mobile, short duration, short-term stationary, or intermediate-term stationary temporary traffic control zone (as defined in the VWAPM) lane closures on mainline lanes, shoulders, or ramps shall not be performed during the following Holiday time periods without the written permission of the County. Additionally, a long-term stationary temporary traffic control zone (as defined in the VWAPM) shall not be initially put in place, adjusted, or removed during the following Holiday time periods without the written permission of the County:

- **January 1:** From Noon on the preceding day until Noon on the following day, except as indicated below for Holidays occurring on a Friday/Saturday or Sunday/Monday.
- **Easter:** As indicated below for Holidays occurring on a Sunday.

- **Memorial Day:** As indicated below for Holidays occurring on a Monday.
- **July 4:** From Noon on the preceding day until Noon on the following day, except as indicated below for Holidays occurring on a Friday/Saturday or Sunday/Monday.
- **Labor Day:** As indicated below for Holidays occurring on a Monday.
- **Thanksgiving Day:** From Noon on the Wednesday preceding Thanksgiving Day until Noon on the Monday following Thanksgiving Day.
- **Christmas Day:** From Noon on the preceding day until Noon on the following day, except as indicated below for Holidays occurring on a Friday/Saturday or Sunday/Monday.

If the Holiday occurs on a Friday or Saturday: From Noon on the preceding Thursday to Noon on the following Monday.

If the Holiday occurs on a Sunday or Monday: From Noon on the preceding Friday to Noon on the following Tuesday.

108.03—Progress Schedule (Refer to Part 3 - Lump Sum Design-Build Agreement – Article 11 - Other Provisions)

The Design-Builder shall submit a Preliminary Schedule, Baseline Schedule and updates in accordance with the requirements of the General Conditions of Contract. Payment for Material stockpiled or stored in accordance with Section 109.08 will not be considered in determining the Design-Builder's rate of progress.

108.04—Determination and Extension of Completion Date (Refer to Part 4 - General Conditions – Article 8 Time, Article 9 Changes to the Contract Price and Time, and Article 10 Contract Adjustments and Disputes)

108.05—Suspension of Work Ordered by the Department (Refer to Part 4 - General Conditions – Article 11 Stop Work and Termination for Cause)

108.06—Failure to Complete on Time

For each day that any work remains incomplete after the Contract Times specified for the completion of the Work, the Department will assess liquidated damages against the Design-Builder in accordance with the Contract.

108.07—Default of Contract (Refer to Part 4 - General Conditions – Article 11 Stop Work and Termination for Cause)

108.08—Termination of Contract (Refer to Part 4 - General Conditions – Article 11 Stop Work and Termination for Cause)

108.09—Acceptance (Refer to Part 4 – General Conditions – Article 6 Payment)

108.10—Termination of Design-Builder's Responsibilities (Refer to Part 4 - General Conditions – Article 11 Stop Work and Termination for Cause)

SECTION 109—MEASUREMENT AND PAYMENT

109.01—Measurement of Quantities

- (a) **General:** Unless otherwise specifically stated to the contrary in Article 6 of the Agreement, this Section 109.01 will only be applicable to Contract Price adjustments made under Article 9 of the General Conditions. The methods of measurement and computations to be used to determine quantities of Material furnished and work performed will be those generally recognized as conforming to good engineering practice.

Longitudinal measurements for surface area computations will be made along the surface and transverse measurements will be the surface measure shown in the Contract Documents or ordered in writing by the County. Individual areas of obstructions with a surface area of nine (9) square feet or less will not be deducted from surface areas measured for payment.

Structures will be measured in accordance with the neat lines shown in the Contract Documents

Items that are measured by the linear foot will be measured parallel to the base or foundation upon which they are placed.

Allowance will not be made for surfaces placed over an area greater than that shown in the Contract Documents or for any Material moved from outside the area of the cross-section and lines shown in the Contract Documents.

When standard manufactured items are specified and are identified by weights or dimensions, such identification will be considered nominal. Unless more stringently controlled by tolerances in the Contract Documents, manufacturing tolerances established by the industries involved will be accepted.

- (b) **Measurement by Weight:** Materials that are measured or proportioned by weight shall be weighted on accurate scales as specified in this Section. When material is paid for on a tonnage basis, personnel performing the weighing shall be certified by the County 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 County and shall be submitted to the County prior to the furnishing of the tonnage material.

The Design-Builder shall have the weighperson perform the following:

1. Furnish a signed weigh ticket for each load that shows the date, load number, plant name, size and type of material, project number, schedule or purchase order number, and the weights specified herein.
2. Maintain sufficient documentation so that the accumulative tonnage and distribution of each lot of material, by contract, can be readily identified.
3. Submit by the end of the next working day a summary of the number of loads and total weights for each type of material by contract.

Trucks used to haul Material being paid for by weight shall display the truck uniform identification number and legal gross and legal net weight limits. These markings shall be no less than two (2) inches high and permanently stenciled on each side of the truck with contrasting color and located as to be clearly visible when the vehicle is positioned on the scales and observed from normal position of the weigh Person at the scale house.

The truck to be used in the weighing operation shall be the weight of the empty truck determined with full tank(s) of fuel and the operator seated in the cab. The tare weight of trucks shall be recorded to the nearest twenty (20) pounds. At the option of the Design-Builder, a new tare may be determined for each load. When a new tare is obtained for each load, the requirement for full tank(s) of fuel will be waived.

Net rail shipment weights may be used for pay quantities when evidenced by railroad bills of lading. However, such weights will not be accepted for pay quantities of Materials that subsequently pass through a stationary mixing plant.

Scales shall conform to the requirements for accuracy and sensitivity as set forth in the *National Institute of Standards and Technology Handbook No. 44 for Specification Tolerances and Requirements for Commercial and Weighing Devices*. Scales used in the weighing of Materials paid for on a tonnage basis shall be approved and sealed in accordance with the requirements of the policies of the Bureau of Weights and Measures of the Department of Agriculture and Consumer Services, or other approved agencies, at least once every six (6) months and upon being moved. Hopper and truck scales shall be serviced and tested by a scale service representative at least once every six (6) months. Hopper scales shall be checked with a minimum 500 pounds of test weights and truck scales shall be checked with a minimum 20,000 pounds of test weights.

Copies of scale test reports shall be maintained on file at the scale location for at least eighteen (18) months, and copies of all scale service representative test reports shall be forwarded to the County.

The quantity of Materials paid for on a tonnage basis shall be determined on scales equipped with an automatic printer. Truck scale printers shall print the net weight and either the gross or tare weight of each load. Hopper scale printers shall print the net weight of each load. The weigh ticket shall also show the legal gross weight for Material weighed on truck scales and the legal net weight for Material weighed on hopper scales.

If the automatic printer becomes inoperative, the weighing operation may continue for forty eight (48) hours provided satisfactory visual verification of weights can be made. The written permission of the District Materials Engineer shall be required for the operation of scales after 48 hours.

If significant discrepancies are discovered in the printed weight, the ultimate weight for payment will be calculated on volume measurements of the Materials in place and unit weights determined by the County or by other methods deemed appropriate to protect the interests of the Commonwealth.

- (c) **Measurement by Cubic Yard:** Material that is measured by the cubic yard, loose measurement or vehicular measurement, shall be hauled in approved vehicles and measured therein at the point of delivery. Material measured in vehicles, except streambed gravel, silt cleanout, or other self-consolidating material will be allowed at the rate of 2/3 the volume of the vehicle. The full volume of the vehicle will be allowed for streambed gravel. Such vehicles may be of any size or type acceptable to the County 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 County 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 County and shall be agreed to by the Design-Builder before they are used.

- (c) **Measurement by Lump Sum:** When used as an item of payment, the term *lump sum* will mean full payment for completion of work described in the Contract. When a complete structure or structural unit is specified as a Contract Item, the unit of measurement will be lump sum, and shall include all necessary fittings and accessories. The quantities may be shown in the Contract Documents for items for which lump sum is the method of measurement. If shown, the quantities are approximate and are shown for estimating purposes only and no measurement of quantities will be made for payment. Items that are to be measured as complete units will be counted by the County in the presence of a representative of the Design-Builder.

- (d) **Measurement for Specific Materials:**

1. **Concrete (Measured by Volume Measure):** Concrete will be measured and computed by dividing the work into simple geometrical figures and adding their volumes.
2. **Concrete (Measured by Square or Lineal Measure):** Concrete will be measured and computed by dividing the work into simple geometrical figures and adding their areas or measuring linearly along the item's surface.
3. **Excavation, Embankment, and Borrow:** In computing volumes of Excavation, Embankment, and Borrow, methods having general acceptance in the engineering profession will be used. When the measurement is based on the cross-sectional area, the average end area method will be used.
4. **Asphalt:** Asphalt will be measured by the gallon, volumetric measurement, based on a temperature of 60 degrees F using the following correction factors:
 - a. 0.00035 per degree F for petroleum oils having a specific gravity 60/60 degrees F above 0.966
 - b. 0.00040 per degree F for petroleum oils having a specific gravity 60/60 degrees F between 0.850 and 0.966
 - c. 0.00025 per degree F for emulsified asphalt

Unless volume correction tables are available, the following formula shall be used in computing the volume of asphalt at temperatures other than 60 degrees F:

$$V^1 = V \times [1 - K(T - 60)]$$

Where:

V = volume of asphalt to be corrected;

V^1 = volume of asphalt at 60 degrees F;

K = correction factor (coefficient of expansion); and

T = temperature in degrees F of asphalt to be corrected.

When asphalt is delivered by weight, the volume at 60 degrees F will be determined by dividing the net weight by the weight per gallon at 60 degrees F.

Asphalt will be measured by weight. Net certified scale weights, or weights based on certified volumes in the case of rail shipments, will be used as a basis of measurement, subject to correction when asphalt has been lost from the car or the distributor, disposed of, or otherwise not incorporated in the work.

When asphalt is shipped by truck or transport, net certified weights or volumes subjected to correction for loss or foaming may be used to compute quantities.

Only the quantity of asphalt actually placed in the work and accepted will be considered in determining the amount due the Design-Builder.

5. **Timber:** Timber will be measured in units of 1,000 foot-board-measure actually incorporated in the structure. Measurement will be based on nominal widths and thicknesses and the extreme length of each piece.
6. **Equipment rental:** Equipment rental will be measured by time in hours of actual working time and necessary traveling time of the Equipment within the limits of the Project or source of supply and the Project except when another method of measurement is specified.

109.02—Plan Quantities (Not Used)

109.03—Scope of Payment

Payments to the Design-Builder will be made for the Work in accordance with the Agreement.

The Design-Builder shall accept the compensation provided for in the Contract as full payment for the following:

- (a) Furnishing all Materials, labor, tools, Equipment, and incidentals necessary to complete the work according to the Contract.
- (b) Performing all Work contemplated in the Contract.
- (c) All loss or damage arising from the nature of the Work or from action of the elements or any other unforeseen difficulties that may be encountered during prosecution of the Work and until its Final Acceptance.
- (d) All risks of every description connected with the prosecution of the Work.
- (e) All expenses incurred in consequence of the suspension of the Work as herein authorized.
- (f) Any license, use, or infringement of patent, trademark, or copyright.
- (g) The completion of the Work in accordance with the Contract requirements.

The payment of any partial estimate prior to Final Acceptance of the Project as provided for in Section 108.09 shall in no way affect the obligation of the Design-Builder to repair or replace any unacceptable, unauthorized or defective work or materials, or to be responsible for all damages attributable to such unacceptable, unauthorized or defective work or materials.

109.04—Compensation for Altered Quantities [Refer to Agreement (Article 6, Contract Price) and General Conditions (Article 9, Changes to Contract Price and Time)]

109.05—Contract Price Adjustments

Contract Price adjustments shall be made in conformance with the requirements of Article 9 of the General Conditions. In the event the Contract Price adjustment is to be made under Subparagraphs .3 or .4 of Section 9.4.1, or in the event of claims by Design-Builder under Article 10, then the rates for labor, Equipment, Materials and otherwise will be compensated in the following manner:

- (a) **Labor:** Unless otherwise approved, the Design-Builder will receive the rate of wage or scale as set forth in his most recent payroll for each classification of laborers, forepersons, and superintendent(s) who are in direct charge of the specific operation. The time allowed for payment will be the number of hours such workers are actually engaged in the work. If overtime work is authorized, payment will be at the normal overtime rate set forth in the Design-Builder's most recent payroll. If workers performing the class of labor needed have not been employed on the Project, mutually agreed on rates will be established. However, the rates shall be not less than those predetermined for the Project, if applicable. An amount equal to forty five percent (45%) of the approved payroll will be included in the payment for labor to cover administrative costs, profit, and benefits or deductions normally paid by the Design-Builder.
- (b) **Insurance and Tax:** The Design-Builder will receive an amount equal to twenty five percent (25%) of the approved payroll exclusive of additives of administrative cost as full compensation for property damage and liability, workers' compensation insurance premiums, unemployment insurance contributions, and social security taxes.
- (c) **Materials:** The Design-Builder will receive the actual cost of Materials accepted by the County that are delivered and used for the work including taxes, transportation, and handling charges paid by the Design-Builder, not including labor and Equipment rentals as herein set forth, to which fifteen percent (15%) of the

cost will be added for administration and profit. The Design-Builder shall make every reasonable effort to take advantage of trade discounts offered by Material suppliers. Any discount received shall pass through to the County. Salvageable temporary construction Materials will be retained by the County, or their appropriate salvage value shall be credited to the Commonwealth, as agreed on by the County.

- (d) **Equipment:** The Design-Builder shall provide the County a list of all Equipment to be used in the work. For each piece of Equipment, the list shall include the serial number; date of manufacture; location from which Equipment will be transported; and for rental Equipment, the rental rate and name of the company from which it is rented. The Design-Builder will be paid rental rates for pieces of machinery, Equipment, and attachments necessary for prosecution of the work that are approved for use by the County. Equipment rental will be measured by time in hours of actual time engaged in the performance of the work and necessary traveling time of the Equipment within the limits of the Project or source of supply and the Project. Hourly rates will not exceed 1/176 of the monthly rates of the schedule shown in the *Rental Rate Blue Book* modified in accordance with the *Rental Rate Blue Book* rate adjustment tables that are current at the time the extra work is performed. Equipment rental rates not modified by the adjustment factors or rate modifications indicated in the *Rental Rate Blue Book* will not be considered. Hourly rates for Equipment on standby will be at fifty percent (50%) of the rate paid for Equipment performing work. Operating costs shall not be included in the standby rate. For the purposes herein "standby time" is defined as the period of time Equipment ordered to the jobsite by the County is available on-site for the work but is idle for reasons not the fault of the Design-Builder or normally associated with the efficient and necessary use of that Equipment in the overall operation of the work at hand.

Payment will be made for the total hours the Equipment is performing work. When Equipment is performing work less than forty (40) hours for any given week and is on standby, payment for standby time will be allowed for up to forty (40) hours, minus hours performing work. Payment will not be made for the time that Equipment is on the Project in excess of twenty four (24) hours prior to its actual performance in the work. An amount equal to the *Rental Rate Blue Book* estimated operating cost per hour will be paid for all hours the Equipment is performing work. This operating cost shall be full compensation for fuel, lubricants, repairs, greasing, fueling, oiling, small tools, and other incidentals. No compensation will be paid for the use of machinery or equipment not authorized by the County.

The Design-Builder will be paid freight cost covering the moving of Equipment to and from the specific work operation provided such cost is supported by an invoice showing the actual cost to the Design-Builder. However, such payment will be limited to transportation from the nearest source of available equipment. If Equipment is not returned to the nearest equipment storage lot but is moved to another location, the freight cost paid will not exceed the cost of return to the nearest storage lot.

The rates for Equipment not listed in the *Rental Rate Blue Book* schedule shall not exceed the hourly rate being paid for such Equipment by the Design-Builder at the time of the performance of the extra work. In the absence of such rates, prevailing rates being paid in the area where the authorized work is to be performed shall be used.

If the Design-Builder does not possess or have readily available Equipment necessary for performing the extra work and such Equipment is rented from a source other than a company that is an Affiliate, payment will be based on actual invoice rates, to which fifteen percent (15%) of the invoice cost will be added for administrative cost and profit. If the invoice rate does not include the furnishing of fuel, lubricants, repairs, and servicing, the invoice rate will be converted to an hourly rate, and an amount equal to the *Rental Rate Blue Book* estimated operating cost per hour will be added for each hour the Equipment is performing work.

- (e) **Miscellaneous:** No additional allowance will be made for attachments that are common accessories for Equipment as defined in the *Rental Rate Blue Book*, general superintendents, timekeepers, secretaries, the use of small hand held tools or other costs for which no specific allowance is herein provided. The Design-Builder will receive compensation equal to the cost of the bond, special railroad insurance premiums, and other additional costs necessary for the specific work as determined by the County. The Design-Builder shall supply documented evidence of such costs.

- (f) **Compensation:** The compensation as set forth in this Section shall be accepted by the Design-Builder as payment in full for work performed on the basis described in this Section 109.05. At the end of each day, the Design-Builder's Representative and the Inspector shall compare and reconcile records of the hours of work and Equipment, labor, and Materials used in such work. Such accounting may not include actual costs or labor rates where these are not available but shall be used to verify quantities, types of Materials or labor, and number and types of Equipment.

If all or a portion of the work is performed by approved Design Consultants, Subcontractors, or Sub-Subcontractors, Design-Builder will be paid ten percent (10%) of the subcontract net costs to cover the Design-Builder's profit and administrative cost. The amount resulting will not be subject to any further additives. The itemized statements of costs as required below shall be submitted on a form that separates the subcontracted portions of the labor, Materials, and Equipment from the other costs.

- (g) **Statements:** Payments will not be made for work performed on the basis described in this Section 109.05 until the Design-Builder has furnished the County duplicate itemized statements of the cost of such work detailed as follows:

1. payroll indicating name, classification, date, daily hours, total hours, rate, and extension of each laborer, foreperson, and Superintendent.
2. designation, dates, daily hours, total hours, rental rate, and extension for each unit of Equipment.
3. quantities of Materials, prices, and extensions.
4. transportation of Materials.

Statements shall be accompanied and supported by invoices for all Materials used and transportation charges. However, if Materials used are not specifically purchased for such work but are taken from the Design-Builder's stock, then in lieu of the invoices, the Design-Builder shall furnish an affidavit certifying that such Materials were taken from his stock; that the quantity claimed was actually used; and that the price, transportation, and handling claimed represented his actual cost.

109.06—Common Carrier Rates (Not Used)

109.07—Eliminated Items

The County shall have the right to delete any item of Work in the Contract. In such case, the County shall notify Contractor of such deletion and the parties shall proceed in accordance with Article 9 of the General Conditions.

109.08—Partial Payments

(a) General

Payment will be made in accordance with the Agreement and the General Conditions of the Contract.

(b) Payment To Subcontractors (Not Used)

Payment to Subcontractors will be made in accordance with the Agreement and the General Conditions of the Contract.

(c) Retainage (Not Used)

Retainage will be in accordance with the Agreement and the General Conditions of the Contract.

109.09—Payment for Material on Hand

When requested in writing by the Design-Builder, payment allowances may be made for materials secured for use on the Project and required to complete the Project. Such material payments will be made for only those actual quantities of materials identified in the Contract, approved change orders, or otherwise **authorized and documented by the County** based on delivery tickets, bills of lading, or paid invoices. All such payments shall be in accordance with the following terms and conditions:

- (a) **Structural Steel or Reinforcing Steel:** An allowance of one hundred percent (100%) of the cost to the Design-Builder for structural steel **or reinforcing steel** materials secured for fabrication not to exceed sixty percent (60%) of the contract price may be made when such material is delivered to the fabricator and has been adequately identified for exclusive use on the Project. **The provisions of this section for steel reinforcement will only apply where the quantity of steel reinforcement is identified as a separate and distinct bid item for payment.** An allowance of one hundred percent (100%) of the cost to the Design-Builder for superstructure units and reinforcing steel, not to exceed ninety percent (90%) of the contract price, may be made when fabrication is complete. Prior to the granting of such allowances, the materials and fabricated units shall have been tested or certified and found acceptable to the County 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 County. **For the purposes of this section fabrication is defined as any manufacturing process such as bending, forming, welding, cutting or coating with paint or anti-corrosive materials which alters, converts, or changes raw material for its use in the permanent finished work.**
- (b) **Other Materials:** For aggregate, pipe, guardrail, signs and sign assemblies, and other nonperishable material, an allowance of one hundred percent (100%) of the cost to the Design-Builder for materials, not to exceed ninety percent (90%) of the contract price, may be made when such material is delivered **to the Project** and stockpiled or stored in accordance with the requirements specified herein. Prior to the granting of such allowances, the material shall have been tested and found acceptable to the County. Allowances will be based on invoices, bills, or the estimated value of the material as approved by the County.
- (c) **Excluded Items:** No allowance will be made for fuels, form lumber, falsework, temporary structures, or other work that will not become an integral part of the finished construction. **Additionally, no allowance will be made for perishable material such as cement, seed, plants, or fertilizer.**
- (d) **Storage:** Material for which payment allowance is requested shall be stored in an approved manner in areas where damage is not likely to occur. If any of the stored materials are lost or become damaged, the Design-Builder shall repair or replace them **at no additional cost to the County. Repair or replacement of such material will not be considered the basis for any extension of contract time.** If payment allowance has been made prior to such damage or loss, the amount so allowed or a proportionate part thereof will be deducted from the next progress estimate payment and withheld until satisfactory repairs or replacement has been made.

When it is determined to be impractical to store materials within the limits of the Project, the County may approve storage on private property or, for structural units and reinforcing steel, on the manufacturer's or fabricator's yard. Requests for payment allowance for such **stored** material shall be accompanied by a release from the owner or tenant of such property or yard agreeing to permit the removal of the materials from the property without cost to the Commonwealth. The County must be allowed access to the materials for inspection during normal business hours.

- (e) **Materials Inventory:** If the Design-Builder requests a payment allowance for properly stored Material, he shall submit a certified and itemized inventory statement to the County no earlier than five days and no later than two days prior to the progress estimate date. The statement shall be submitted on forms furnished by the County 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 County 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 County will deduct the full amount of the previous statement from the progress estimate.

At the conclusion of the Project, the cost of Material remaining in storage for which payment allowance has been made will be deducted from the progress estimate.

109.10—Final Payment

Payment will be made in accordance with the Agreement and the General Conditions of Contract.

109.11—Exhibits

The following exhibits, as well as any other exhibits specifically set forth in Exhibit 1 (Project Specific Terms), are made part of, and incorporated into these Division I Amendments to the Standard Specifications. (Exhibits to Part 5 are included in the RFDP):

EXHIBIT 102.05(g.1) -- SPECIAL PROVISION FOR USE OF DOMESTIC MATERIAL

END OF PART 5
DIVISION I AMENDMENTS TO THE STANDARD SPECIFICATIONS